April 14, 2017

## Filed Via ECF

The Honorable Donovan W. Frank
United States District Court - District of Minnesota
Warren E. Burger Federal Building
316 North Robert Street
St. Paul. MN 55101

Re: Jensen et al v. Minnesota Department of Human Services et. al

Court File No: 09-CV-1775 DWF/BRT

Our File No.: 7400-001

## Dear Judge Frank:

We respectfully submit this letter in follow up to the Court's April 5, 2017, Order (<u>Doc. 626</u>), and direction to the parties. We suggest the following briefing schedule: Defendants' Opening Brief: July 17; Settlement Class Response: August 7; Reply: August 21. <u>Alternatively</u>: Defendants' Opening Brief: May 1; Response: July 21; Reply August 14.

Six years after signing the Stipulated Class Action Settlement Agreement, and in the midst of continuing non-compliance, defendants now suddenly claim the Court has no jurisdiction over them to enforce the Settlement, directly contravening the Court's order approving the settlement including its specific reference to the Court's jurisdiction:

The Court shall retain jurisdiction over this matter for two (2) years from its approval of this Agreement for the purposes of receiving reports and information required by this Agreement, or resolving disputes between the parties to this Agreement, or as the Court deems just and equitable.

Final Approval Order (<u>Doc. 104</u>) Ex. A XVIII.B; March 18, 2016 Order (<u>Doc. 551</u>) ("The Court has since extended its jurisdiction on three occasions, most recently extending its jurisdiction to December 4, 2019. The Court is hopeful that substantial compliance with the Jensen Settlement Agreement will be achieved by this date.") Defendants' new tactic ignores these orders and federal law including the Court's inherent authority to sanction defendants for their non-compliance over many years. *See Kokkonen v. Guardian Life Insurance Co. of America*, <u>511 U.S. 375</u> (1994) (jurisdiction to enforce a settlement "if the parties' obligation to comply with the terms of the settlement agreement is made part of the order of dismissal; either by...a provision retaining jurisdiction over the settlement agreement or by incorporation of the terms of the settlement agreement in the order."); *Fox v. Acadia State Bank*, <u>937 F.2d 1566, 1568</u>–1569 (11th Cir. 1991) (settlement and dismissal does not deprive jurisdiction to impose sanctions).

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The Settlement Agreement includes substantial statewide promises and action to protect and improve the lives of people with disabilities, including the development of best practices, rules and an Olmstead Plans. The Court made clear to the parties and public what this jurisdiction meant in this wide-sweeping, complicated settlement:

The subject matter encompassed by the Settlement Agreement is specialized and its implementation is admittedly complex, involving intricate and interlocking activities by multiple state agencies, state officials, and others, over many months. As the Court stated at the settlement approval hearing, the credibility and reliability of the judicial process is at stake when an order such as this is entered and, therefore, the Court intended to ensure that it was fully informed on the progress of implementation. The First Circuit Court of Appeals expressed this view in a systemic education case, explaining that "the monitoring process is a basic responsibility of the court. To the extent that the myriad of minor problems which will arise can be resolved without the necessity of resorting to the district judge, the process of implementation will be facilitated." Morgan v. Kerrigan, 530 F.2d 401, 429 (1st Cir. 1976), cert. denied, 426 U.S. 935 (1976).

[T]he Court also acknowledged, at that time, its obligation to oversee, facilitate, and enforce compliance with the terms of the Settlement Agreement, which was intended to benefit many individuals with developmental disabilities for years to come.

July 17, 2012, Order at 12. (<u>Doc. 159</u>); see December 20, 2012, Order at 3 (<u>Doc.188</u>); In re Corrugated Container Antitrust Litig., 752 F.2d 137, 141 (5th Cir. 1985) ("In a class action, the district court has a duty to class members to see that any settlement it approves is completed, and not merely to approve a promise, even in the form of a negotiable instrument, to pay the relief to which it has decided class members are entitled.")

Our response to defendants' new position will require reviewing thousands of pages in the case record along with hundreds of orders and reports involving DHS non-compliance, and the Court's actions to enforce the Settlement and facilitate compliance, including its appointment of a Court Monitor who issued comprehensive reports on defendants' non-compliance. Mindful of the substantial time needed to respond, I suggested a dispositive motion briefing schedule with a mid-July opening brief as I have a jury trial in May and will be out of town in June for a family vacation. Defendants' counsel stated they want to file an opening brief in two weeks. I suggested they provide an alternative schedule so we could propose dates that allow enough time to appropriately brief the matter. Defendants reaffirmed they want a brief in two weeks and cannot wait until mid-summer because they are concerned about ongoing reporting to the Court.

Thank you.

Respectfully,

O'MEARA, LEER, WAGNER & KOHL, P.A.

/s/ Shamus P. O'Meara

Shamus P. O'Meara