UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

James and Lorie Jensen, et al.,

Plaintiffs,

vs.

Minnesota Department of Human Services, et al.,

Defendants.

Case No. 09-cv-01775 DWF-BRT

MEMORANDUM OF LAW IN SUPPORT OF DISMISSAL FOR LACK OF JURISDICTION

INTRODUCTION

By the express terms of the parties' Settlement Agreement ("SA") (Doc. 136-1), the Court was without jurisdiction over this matter no later than December 4, 2014, the same day the SA itself expired. The Court should vacate its orders that require continuing action by the Department of Human Services ("DHS" or "Defendants") – whether by reports or otherwise – after December 4, 2014, and direct the Clerk of Court to close this case.

FACTUAL AND PROCEDURAL BACKGROUND

I. PLAINTIFF'S ORIGINAL CLAIMS.

On July 30, 2009, Plaintiffs filed their Amended Complaint in this matter, alleging a number of constitutional, statutory, and common law claims. Each of these claims arose from the alleged use of seclusion and mechanical restraint at a single DHS facility, Minnesota Extended Treatment Options ("METO"). Doc. 3, p. 48.

II. THE SETTLEMENT AGREEMENT.

On December 5, 2011, the Court entered an order approving the settlement agreement negotiated and entered into by the parties. *See* Doc. 136 (the Court's final approval order); 136-1 (the SA). The SA provides for the closure of METO and governs the use of restraint and seclusion at successor facilities. It also addresses transition planning for class members and training and practices at METO successor facilities. Doc. 136-1, pp. 6-15. In addition, the SA contains a number of provisions under a "System Wide Improvements" heading, including: (1) three non-binding terms addressing the expansion of Community Support Services; (2) requirements that the State develop a plan to consider amendments of Minn. Rules 9525.2700-2810 consistent with *Olmstead v. L.C.*, 527 U.S. 582 (1999); and (3) terms related to the Minnesota Security Hospital and the Anoka Metro Regional Treatment Center. *Id*. at 20-21. The SA "constitutes a single, integrated, written contract expressing the entire agreement of the parties relative to the subject matter hereof." Doc. 136-1, p. 42.

The SA required reporting to the Court for the duration of the Court's jurisdiction regarding the use of restraint, the principal subject of the case. Under the heading "Internal and External Review of the Use of Restraints," the SA required appointment of an external reviewer "[i]n order to monitor the Facility's use of manual and mechanical restraints." *Id*. at 10, 11. The SA required the external reviewer to "issue quarterly

reports to the Court for the duration of [the SA] . . . describ[ing] whether the Facility[1] is operating consistent with best practices, and with [the SA]." *Id*. at 12. The SA contained no other reporting requirements.

The SA provided that Plaintiffs are required to bring an enforcement action if they believed Defendants were violating the SA. Doc. 136-1, pp. 39-40. Upon approval of the SA, the Court dismissed Plaintiffs' claims with prejudice. Doc. 136, p. 3.

III. THE COURT EXTENDS ITS JURISDICTION.

In approving the SA, the Court "reserve[d] continuing jurisdiction for *the time period* set forth in the [SA]." Doc. 136, p. 2 (emphasis added). Section XVIII.B of the SA gave the Court jurisdiction "for two (2) years from [the Court's] approval of [the SA] for the purposes of receiving reports and information required by [the SA], or resolving disputes between the parties to [the SA], or as the Court deems just and equitable." Doc. 136-1, p. 39. The SA set forth one condition under which the jurisdictional period could be extended: if, after a meet-and-confer process, Plaintiffs "continue to believe a pattern and practice of substantial non-compliance with Attachment A exists, Plaintiffs may . . . file a motion with the Court to extend *the reporting requirements* to the Court under [the SA] for an additional one (1) year." *Id*. (emphasis added). Attachment A was a policy that governed the use of therapeutic intervention techniques and emergency

[1] The SA defined the "Facility" as being limited to METO, "its Cambridge, Minnesota successor, and the two new adult foster care transitional homes to which residents of METO have been or may be transferred." Doc. 136-1, p. 5.

manual restraint at METO and successor facilities. Doc. 136-1, pp. 54-64; *see also* Doc. 279, 279-1 (order and amended Attachment A).

Plaintiffs never brought such a motion. Two years from the date of settlement approval elapsed on December 4, 2013. Even if a motion had been brought, a third year elapsed on December 4, 2014. Accordingly, the SA provided that the Court's jurisdiction over this matter ended no later than December 4, 2014. *See* Doc. 136-1, p. 39.

The Court first ordered extension of its jurisdiction over this matter on August 27, 2013. Doc. 223. The Court imposed an additional year of jurisdiction to December 4, 2014. *Id*. at 3. The Court also said it "expressly reserve[d] the authority and jurisdiction to order an additional extension of jurisdiction, depending upon the status of compliance by the Defendants with the specific provisions of the Settlement Agreement, absent stipulation of the parties." *Id*.

On September 3, 2014, the Court extended its own jurisdiction for an additional two years, to December 4, 2016. Doc. 340, p. 14. In so doing, the Court said that SA Section XVIII.B "provides that the Court's jurisdiction would be determined 'as the Court deems just and equitable,'" (citing the SA, Doc. 104 or 136-1, p. 39) and also cited its own August 27, 2013 reservation of "authority and jurisdiction to order an additional extension of jurisdiction." *Id*. at 9. The Court stated that it "expressly reserved the authority and jurisdiction to order an additional extension of jurisdiction, depending upon the status of the Defendants' compliance and absent stipulation of the parties." *Id*. at 14.

On February 22, 2016 – nearly ten months before December 4, 2016, and without any request from Plaintiffs – the Court again extended its jurisdiction, to December 4,

2019. Doc. 545. The Court said it was acting pursuant to SA Section XVIII.B and its September 3, 2014 order granting itself extended jurisdiction, and again "expressly reserve[d] the authority and jurisdiction to order an additional extension of jurisdiction, depending upon the status of Defendants' compliance and absent stipulation of the parties." *Id*. at 6.

IV. THE COURT APPOINTED A COURT MONITOR TO ASSESS WHETHER DEFENDANTS COMPLIED WITH THE SA.

On July 17, 2012, in response to "compliance concerns raised by Plaintiffs," the Court found a need for "a process to investigate potentially conflicting information, provide a coherent and complete presentation, and make recommendations to the Court." Doc. 159, pp. 9-10. The Court found that "[a]ppointment of an independent advisor, consultant, or monitor is appropriate in light of the nature and complexity of the Defendants' obligations under the court-approved [SA]." *Id*. at 11. The Court viewed itself as having an "obligation to oversee, facilitate, and, yes, enforce compliance with the terms of [the SA]." *Id*. at 12.[2]

The Court then appointed David Ferleger as "advisor and monitor," and ordered the parties to "cooperate fully" with him, and "provide him with access to the facilities, services, programs, data, and documents relevant to the [SA]." *Id.* at 13-14. The Court gave Mr. Ferleger "*ex parte* access to the parties, their counsel and to the Court," and

[2] The Court would later express that its goal is to "ensure that the spirit and the intent of the [SA], not just the words of the [SA], would be implemented going forward," and charged itself and the parties to "carry out that same passion, spirit, and intent of the [SA] . . . . The Court is certain that all parties agree that justice requires that we do so." Doc. 188, p. 10.

granted him the power to "convene meetings, meet relevant individuals and groups, attend case-related court proceedings and review pleadings, motions, and documents submitted to the court." *Id.* at 14. Finally, the Court ordered that "[t]he format and structure for the reports of the External Reviewer shall . . . be developed in cooperation with, and determined by, David Ferleger." *Id.* at 15.

A. The Court Monitor Vastly Exceeded Any Authority Under The SA.

Shortly thereafter, the Court Monitor explained he would measure Defendants' compliance against 100 "evaluation criteria" ("ECs") derived from every area of the SA. Doc. 163, p. 10. The ECs did not simply measure compliance with areas addressing restraint, which are the only areas on which the SA requires reporting to the Court or allows Plaintiffs to seek an extension of jurisdiction. Doc. 163, p. 10; Doc. 136-1, pp. 11-12, 39. The Court Monitor was clear that he imposed on Defendants the burden to demonstrate compliance before each "EC is released from active judicial oversight," *id.*, even though the SA did not place such a burden on Defendants.

After a September 17, 2012 status report set forth Defendants' current compliance on each EC, Plaintiffs' counsel objected because "under the [SA], the *external reviewer*, not DHS, is required to issue quarterly reports to the Court." Doc. 170, p. 2 (emphasis in original). The Court later unilaterally ordered an amendment to the SA by declaring that "[t]he external reviewer function, as set forth in the [SA] at paragraph VII.B (External Reviewer) will be subsumed within the Monitor's role as originally set forth in the Court's July 17, 2012 Order," Doc. 211, p. 6, despite the SA's explicit statement that the

external reviewer "shall not be a 'Special Master' nor 'Court Appointed Monitor.'" Doc. 136-1, p. 12.

On October 22, 2012, the Court Monitor filed his "First Quarterly Report to the Court," which described in detail a "Certification Process for Release from Active Judicial Oversight" *see* Doc. 195, p. 9. The report proposed that the "[r]elease from active judicial oversight should occur when there had been sufficient compliance, in quantity and duration, that one would reasonably believe that there is sufficient momentum and commitment (and internal DHS attentiveness) to sustain compliance." *Id*. at 8. As noted, the SA itself placed no burden on Defendants to demonstrate compliance, but allowed Plaintiffs to seek at most a one-year reporting extension if *they* demonstrate "substantial non-compliance" with restraint protocol. Doc 136-1, p. 39. The Court and Monitor have since repeatedly stated that it is Defendants' burden to show "substantial compliance" with every term of the settlement agreement before jurisdiction will end. *See, e.g.*, Doc. 212, p. 6; Doc. 223, p. 8; Doc. 340, p. 14 ("The Court Monitor shall serve for as long as necessary for Defendants to achieve substantial compliance."); Doc. 551 (repeatedly stating Defendants must "achieve compliance."). Again, nowhere did the SA require that Defendants demonstrate substantial compliance; to the extent the SA announced a compliance standard, it required Plaintiffs to show "substantial non-compliance" with Attachment A to extend jurisdiction for a third year. Doc. 136-1, p. 39.

B. The Court's Expansion Of The Court Monitor's Authority Contrary To The SA.

On April 25, 2013, the Court issued an order "declin[ing] to accept the parties' stipulation to limit the role of the [Court Monitor]" and directing the Court Monitor to "independently investigate, verify, and report on compliance with the Settlement Agreement and the policies set forth therein on a quarterly basis." Doc. 212, p. 6. The Court required Defendants to comply with an extensive status report protocol, which Defendants must comply with to this day. *Id*. at 6-8. The Court did so, in part, following its criticism that the parties, at a January 24, 2013 status conference, had not informed the Court of an executive order to be filed by Governor Mark Dayton on January 28, 2013. *Id*. at 3. The Court also seemed to base its order on the fact that, in a bill before the legislature, DHS supported certain legislative enactments – enactments not alleged to violate the SA – but failed to "give explanation or notice to the Court as to its relationship to the [SA]." *Id*. at 5.

The Court expanded the Court Monitor's duties on numerous other occasions. *See, e.g.*, Doc. 223, pp. 6-9; Doc. 237, p. 2; Doc. 248, p. 2; Doc. 266, p. 2; Doc. 298; Doc. 309; Doc. 323; Doc. 578, p. 3. On September 3, 2014, for instance, the Court found that "a more substantial role is necessary" for the Court Monitor, Doc. 340, p. 10, and granted him numerous additional duties and powers, including the power to "issue reports

on compliance *and other issues*[3] in this case at his discretion." *Id*. at pp. 11-14; (quote at p. 12 (emphasis added)).

Consistent with this view of the case, the Court and Court Monitor have reached beyond compliance issues on many occasions, and purported to exercise authority to approve day-to-day administrative and client placement decisions made by DHS and others. For instance, the Court ordered Defendants to "submit a proposed Rule 40 Implementation Plan for the Court's review and approval" as well as approval of the Court Monitor, including "tasks, specific deadlines for each task, persons responsible, anticipated obstacles or challenges, actions to be taken to overcome such obstacles or challenges, and resources required." Doc. 223, pp. 4-5. But the SA placed no such obligation on Defendants; instead the SA simply required Defendants to "convene a [Rule 40 Advisory Committee] . . . to study, review, and advise the [DHS] on how to modernize Rule 40 . . . ." Doc. 136-1, p. 19. The Court later gave the Court Monitor "responsibility and authority . . . to finalize the DHS's plan for the Settlement Agreement Evaluation Rule 40 Modernization Plan . . . ." Doc. 266, p. 2 (discussing Doc. 248).

[3] The Court Monitor reached beyond compliance on several occasions. (*E.g.*, Doc. 294, p. 7 ("As MSHS-Cambridge enters its last months, DHS is encouraged to work with its clients to achieve a sense of vibrancy, activity, and optimism through meaningful activity"); Doc. 273, p. 2 (stating "the Court Monitor believes it is important for [DHS] to attend carefully to establishing a culture in the dispersed Cambridge successors, and in the department generally of attending to the lessons of the proceedings in this case, establishing a shared institutional memory, and of compliance with the Court's orders"; also stating "DHS needs not only to learn from mistakes, but proactively to examine why, at times, that learning has not taken place").

In another instance, the Court ordered Defendants to report weekly to the Court Monitor concerning discharge of an individual, D.P., from the Cambridge facility. Doc. 309 (ordering Defendants to "report to the Court Monitor on a weekly basis regarding its actions and progress with respect to D.P.," "report . . . challenges to the Court Monitor weekly, together with the Government's actions to overcome those challenges," and to report "to the Court Monitor weekly" action or inaction by counties or provider agencies that are impeding D.P.'s timely move). On June 27, 2014, the Court continued to require Defendants to report to the Court Monitor "at least weekly or, if he so requests, more often." Doc. 323, pp. 3-4. On January 13, 2015, the Court ordered that although D.P. had transitioned to a new home and "the [relevant] motion is moot," "Defendants shall continue to report to the Court Monitor on a regular basis regarding D.P.'s living situation." Doc. 379, p. 2.[4]

On February 19, 2014, the Court Monitor directed DHS to "examine the deep learning which may be needed to bring understanding of this litigation and the nature of compliance with court orders, and to act upon the results of that examination," threatening to recommend action by the Court if DHS did not comply. Doc. 273, p. 2. The Court Monitor has purported to "accept" with caveats vulnerable adult reporting requirements set forth by the Minnesota Legislature, Doc. 285, p. 7, causing the Court to order Defendants to comply with state law. Doc. 292. The Court Monitor evaluated DHS compliance with expressly non-binding "goals and objectives" set forth in the SA.

[4] The Court has also "reserve[d] the right to vacate specific provisions of the [SA]" under certain circumstances. Doc. 266, p. 6.

See Doc. 136-1, pp. 16-18; Doc. 388; Doc. 551, pp. 12-15 (Court order setting forth additional reporting requirements on these terms). The Court Monitor has exercised editorial authority over DHS' website and PowerPoint presentations. Doc. 395.[5]

To this day, the Court Monitor, at Court direction, continues to assess Defendants' supposed burden to show compliance. Doc. 604, pp. 2 ("'assess[ing] substantial compliance'" by Court order), 10-132. The Court has continued to set forth reporting requirements that have no existence in the SA. *See, e.g.*, Doc. 551, pp. 9-10 (requiring DHS to provide to the Court additional information on certain 911 calls, when the SA (Doc. 136-1, p. 11) requires only that a form be filled out and provided to the external reviewer).

C. The Court Monitor's Fees And Expenses.

Minnesota taxpayers have now paid the Court Monitor over one million dollars in fees and expenses. *See* Docs. 182, 191, 218, 221, 234, 252, 260, 267, 277, 291, 307, 316, 331, 339, 345, 367, 380, 394, 406, 436, 474, 485, 518, 527, 546, 557, 570) (ordering checks issued to the Court Monitor for a combined total of $1,018,995.24, with yearly totals as follows: $11,362.23 (2012); $269,054.19 (2013); $346,757,45 (2014),

[5] The Court and Court Monitor have also reached beyond even their own overall "substantial compliance" burden improperly placed on Defendants, and instead focused on overseeing the individual circumstances of particular individuals. *See, e.g.*, Doc. 258 (responding to the Court Monitor's request to audit the circumstances surrounding a class member's admission to a hospital).

$357,985.73 (2015); $33,835.64 (2016)).[6] Respective amounts paid to the Court Monitor in 2013, 2014, and 2015, exceed federal district court judicial compensation in those years. *See* United States Courts, Judicial Compensation, http://www.uscourts.gov/judges-judgeships/judicial-compensation (last visited Apr. 21, 2017) (setting forth federal district court judge's compensation as follows: $174,000 (2012 and 2013); $199,100 (2014); $201,100 (2015).)

ARGUMENT

I. THE COURT'S JURISDICTION OVER THIS MATTER IS GOVERNED SOLELY BY THE SA.

A. Federal Courts Retain Ancillary Jurisdiction Over A Settlement Agreement Only As Provided In The Agreement Itself.

This Court's jurisdiction over this matter is governed solely by the terms of the SA. "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Accordingly, "[f]ederal courts do not have automatic ancillary jurisdiction to enforce a settlement agreement arising from federal litigation." *Gilbert v. Monsanto Co.*, 216 F.3d 695, 699 (8th Cir. 2000) (citing *Kokkonen*, 511 U.S. at 380). Instead, "[a]ncillary jurisdiction to enforce a settlement agreement exists only '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

[6] As part of discussions regarding his budget in early 2013, the Court Monitor filed with the Court a document criticizing Defendants' proposed $144,000 annual cap on his compensation as "insufficient" and lacking a basis. Doc. 208, pp. 2-3.

settlement agreement [ ] or by incorporat[ion of] the terms of the settlement agreement in the order.'" *Miener v. Missouri Dept. of Mental Health*, 62 F.3d 1126, 1127 (8th Cir. 1995) (quoting *Kokkonen*, 511 U.S. at 381).

Ancillary enforcement jurisdiction can only be provided for under the terms set forth in the governing settlement agreement. *See Miener*, 62 F.3d at 1127; *Roberts v. Ocwen Loan Servicing*, LLC, 617 F. App'x 613, 614 (8th Cir. 2015) (dismissing a federal action to enforce settlement agreement when brought outside that agreement's 60-day jurisdiction retention period); *4:20 Commc'ns, Inc. v. Paradigm Co.*, 336 F.3d 775, 778 (8th Cir. 2003) (dismissing federal action to enforce settlement agreement when brought outside that agreement's 90-day jurisdiction retention period). If federal courts had freestanding jurisdiction to order jurisdiction, they would cease to be "courts of limited jurisdiction." *See Kokkonen*, 511 U.S. at 377. Accordingly, the SA controls the Court's jurisdiction over this case.

B. Defendants Cannot Agree To Jurisdiction Outside The Terms Of The SA, Or Waive Their Objection To The Court's Jurisdiction.

Defendants' conduct cannot be the basis for the Court's jurisdiction or waiver of an objection to the Court's jurisdiction. It is well settled that "parties may not expand the limited jurisdiction of the federal courts by waiver or consent." *4:20 Commc'ns*, 336 F.3d at 778; *see also Pacific Nat'l Ins. Co. v. Transport Ins. Co.*, 341 F.2d 514, 516 (8th Cir.), *cert. denied*, 381 U.S. 912 (1965) ("The parties, however, may not confer subject matter jurisdiction upon the federal courts by stipulation, and lack of subject matter jurisdiction cannot be waived by the parties or ignored by the court."); *Lawrence*

County v. South Dakota, 668 F.2d 27, 29 (8th Cir.1982) ("federal courts operate within jurisdictional constraints and . . . parties by their consent cannot confer subject matter jurisdiction upon the federal courts.").[7]

As discussed, the Court's jurisdiction in this case solely conferred upon it the ability to hear a motion to enforce the SA, if such a motion was brought while the Court had jurisdiction. *Roberts*, 617 F. App'x at 614; *4:20 Commc'ns*, 336 F.3d at 778.[8] Plaintiffs never filed such a motion. Even if the SA did not require Plaintiffs to have filed a motion to enforce, orders and judgments filed after a court loses jurisdiction are void. *Safeguard Bus. Sys., Inc. v. Hoeffel*, 907 F.2d 861, 864 (8th Cir. 1990); *see also In re Rice*, 42 B.R. 838, 845 (Bankr. D.S.D. 1984) ("it is axiomatic that orders entered by a court without jurisdiction are void."). *See also Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) ("[C]ourts, including this Court have an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from a party."); *Ferrari v. Best Buy Co.*, Civ. No. 14-2956 (DWF/FLN), 2016 WL 5508818, at *2 (D. Minn. Sept. 28, 2016) ("Even in the absence of a challenge from any party,

[7] Because a federal court's lack of subject matter jurisdiction cannot be waived, the issue may even be raised for the first time on appeal. *4:20 Commc'ns*, 336 F.3d at 778. Indeed, "the cases are legion holding that a party may not waive a defect in subject-matter jurisdiction or invoke federal jurisdiction simply by consent." *Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 26, (1989) (Stevens, J., concurring) (citing *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 377, n.21 (1978); *Sosna v. Iowa*, 419 U.S. 393, 398 (1975); *California v. LaRue*, 409 U.S. 109, 112, n.3 (1972); *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 17–18, and n.17 (1951); *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934); *Jackson v. Ashton*, 33 U.S. 148 (1834)); *Pacific Nat'l Ins. Co.*, 341 F.2d at 516; *Lawrence County*, 668 F.2d at 29).

[8] As noted, the SA recognized this by setting forth a procedure for Plaintiffs to bring a motion to enforce. Doc. 136-1, pp. 39-40.

courts have an independent obligation to determine whether subject matter jurisdiction exists.").

II. UNDER THE SA, THE COURT'S JURISDICTION ENDED NO LATER THAN DECEMBER 4, 2014.

As explained above, the Court's continued jurisdiction is solely governed by the terms of the SA. Consistent with *Kokkonen*, the parties in this matter provided for retention of Court jurisdiction in the SA, and the Court included a provision retaining jurisdiction in its order of dismissal as set forth in the SA. Doc. 136-1, pp. 38-39; Doc. 136, p. 2 ("this Court hereby reserves continuing jurisdiction for the time period set forth in the Agreement."). The SA provides that jurisdiction ended no later than December 4, 2014.

"A settlement agreement is essentially a contract, subject to contractual rules of interpretation and enforcement." *Goddard, Inc. v. Henry's Foods, Inc.*, 291 F. Supp. 2d 1021, 1028 (D. Minn. 2003) (citing *Ridgecliffe Second Association v. Boutelle*, 2001 WL 1182404, at *2 (Minn. Ct. App., Oct. 9, 2001)); *see also Sheng v. Starkey Labs., Inc.*, 53 F.3d 192, 194 (8th Cir. 1995) ("Settlement agreements are governed by basic principles of contract law."). Because "[c]ontract interpretation . . . is ordinarily a matter of state law," *Great Lakes Commc'n Corp. v. AT&T Corp.*, 124 F. Supp. 3d 824, 838 (N.D. Iowa 2015) (citing *Volt Info. Scis., Inc. v. Bd. of Trs. of the Leland Stanford Junior Univ.*, 489 U.S. 468, 474 (1989), a federal settlement agreement is governed by the contract law of the forum state. *American Prairie Constr. Co. v. Hoich*, 594 F.3d 1015, 1023 (8th Cir.2010).

"[W]here the language of the contract is clear and unambiguous, there is no opportunity for interpretation or construction." *Wessels, Arnold & Henderson v. Nat'l Med. Waste, Inc.*, 65 F.3d 1427, 1436 (8th Cir. 1995). Minnesota courts "construe a contract as a whole and attempt to harmonize all clauses of the contract." *Chergosky v. Crosstown Bell, Inc.*, 463 N.W.2d 522, 525 (Minn. 1990). "Phrases and sentences cannot be dissected and read separately and 'out of context with the entire agreement.'" *River Valley Truck Ctr., Inc. v. Interstate Companies, Inc.*, 704 N.W.2d 154, 163 (Minn. 2005) (quoting *Metro Office Parks Co. v. Control Data Corp.*, 205 N.W.2d 121, 124 (Minn. 1973)). "Because of the presumption that the parties intended the language used to have effect, [Minnesota courts] attempt to avoid an interpretation of the contract that would render a provision meaningless." *Chergosky*, 463 N.W.2d at 526.

The SA, which "constitutes a single, integrated, written contract expressing the entire agreement of the parties" in this matter, Doc. 136-1, p. 42, contained a provision limiting the Court's jurisdiction to no later than December 4, 2014. First, the SA stated that "[t]he Court shall retain jurisdiction over this matter for two (2) years from its approval of this Agreement." Doc. 136-1, p. 39, Section XVIII.B. The Court approved the agreement on December 5, 2011, Doc. 136, meaning that the parties chose to grant the Court an initial jurisdictional retention period lasting until December 4, 2013. The SA provided that "the reporting requirements" could be extended by no more than one additional year upon a showing by *Plaintiffs* of "a pattern and practice of substantial

non-compliance" with the restraint policy contained in Attachment A.[9] *Id*. The SA did not allow jurisdiction to be extended upon noncompliance with any other term of the SA, and in any event did not contemplate more than a single one-year extension past the initial two-year retention period. The plain language of the SA therefore clearly and unambiguously provided that the Court's jurisdiction extending no longer than December 4, 2014.[10] *See Wessels*, 65 F.3d at 1436.

Although Plaintiffs never attempted to make the showing required to trigger the additional year of jurisdiction authorized by the SA, the Court first imposed an extension "pursuant to Section XVIII.B of the [SA]." Doc. 223, p. 3.[11] Even assuming this extension was proper under the SA, jurisdiction under the Court's first extension order ended on December 4, 2014 – about 27 months ago. *See, e.g.*, *Buettner v. Kunard, Barnett, Kakeldey & Gates, Ltd.*, No. 4-95-720 (JRT/RLE), 1998 WL 668035, at *1 (D. Minn. Aug. 10, 1998) (court was without subject matter jurisdiction "given the District Court's Order of Dismissal, with prejudice, which was entered on March 31,

[9] Plaintiff's here never brought such a motion.

[10] As noted, the SA contemplated that any third year of jurisdiction would be a limited one, extending only "the reporting requirements to the Court." Doc. 136-1, p. 39. In addition, the SA also provided that, with the exception of a few specified provisions, the parties intended the SA itself to terminate along with the Court's jurisdiction. Doc. 136-1, p. 40, Section XVIII.E.

[11] Defendants note that this extension, while motivated by the Court's concern with "the status of compliance or noncompliance by the Defendants with the provisions of the [SA]," had nothing to do with any allegation or finding that Defendants were in substantial noncompliance with Attachment A, the only basis on which the Court could order an additional year of jurisdiction over reporting. Doc. 136-1, p. 38.

1998, and which retained jurisdiction for a period of 45 days—a period that expired before the Motion to Enforce was filed.").

Accordingly, the Court's jurisdiction over this matter ended no later than December 4, 2014.

III. THE SA DID NOT AUTHORIZE THE COURT TO EXTEND ITS OWN JURISDICTION.

As discussed, the Court has purported to extend its jurisdiction over the SA twice more. These extensions were ordered without any authority under the SA or governing law. Doc. 340, p. 9; Doc. 545, p. 6; *Kokkonen*, 511 U.S. at 380.

In its September 3, 2014 order extending jurisdiction past December 4, 2014, the Court – nearly three years after adoption of the SA – held for the first time that the SA allows that "the Court's jurisdiction would be determined 'as the Court deems just and equitable.'" Doc. 340, p. 9 (citing SA Section XVIII.B). The SA does not confer such jurisdiction on the Court. Instead, the language cited by the Court plainly refers to what activities the Court may undertake during the two year period it retained 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.

Doc. 136-1. After authorizing the initial two-year retention of jurisdiction, this sentence sets forth three categories of "purposes" of the Court's jurisdiction retention: (1) receiving reports; (2) resolving disputes; and (3) purposes the Court deems "just and equitable." As noted above, the language is clear and unambiguous, and "there is no opportunity for interpretation or construction." *Wessels*, 65 F.3d at 1436. If, in

negotiating the SA, the parties wanted potentially indefinite retention of jurisdiction at the Court's discretion, they would have said so in the SA.

Nevertheless, even if this provision was ambiguous, the Court's interpretation is incorrect because it renders Section XVIII.B's explicit jurisdiction retention procedure meaningless. *Chergosky*, 463 N.W.2d at 526. If the parties wanted jurisdiction to continue indefinitely at the Court's discretion, it does not make sense that they would have provided for a definite initial jurisdiction period of two years, or outlined a detailed motion procedure upon which Plaintiffs might receive another definite period of an additional year. The SA also limits the Court's potential third year of jurisdiction to only "the reporting requirements to the Court under [the SA]," Doc. 136-1, p. 39, meaning the parties could not have intended the Court to have jurisdiction beyond December 4, 2014.[12]

Overall, the Court's interpretation of the SA fails to "harmonize all clauses of the contract." *Chergosky*, 463 N.W.2d at 526. Instead, it ignores the specific, bargained-for jurisdiction extension process, impermissibly "dissecting" Section XVIII.B by reading the "just and equitable" clause "separately and 'out of context with the entire agreement.'" *River Valley Truck Ctr.*, 704 N.W.2d at 163 (Minn. 2005); *see also Long v. Madigan*, 869 F. Supp. 720, 724 (D. Minn. 1994) (court lacked jurisdiction to hear motion to enforce settlement when settlement did not contain "any provision which

[12] As noted, in its order approving the SA and in its judgment, the Court acknowledged that its jurisdiction would not continue indefinitely and expressly referred to "the time period" set forth in the SA as governing its continuing jurisdiction. Doc. 136, p. 2; Doc. 137, p. 1.

expressly records their intent that the Court should indefinitely retain jurisdiction over the case following the dismissal of the Plaintiffs' claims with prejudice," and in fact contained a specified, definite retention period).[13]

In sum, the plain and unambiguous language of the SA states that jurisdiction would continue for at most three years. Reading Section XVIII.B in any other way violates fundamental principles of Minnesota contract law and renders the SA's language related to federal court jurisdiction meaningless. Because the jurisdictional retention period allowed by the SA has passed, the Court must dissolve any order currently applicable to Defendants, discontinue monitoring or supervision, and order the Clerk of Court to close this case.

Indeed, in expanding the SA beyond its terms, the Court has exercised control over DHS that is not permitted even upon an actual finding of liability. *See Milliken v. Bradley*, 418 U.S. 717, 743-44 (1974) (a court "in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution" and not create "operational problems" that require the Court to act as a "de facto 'legislative authority.'"); *see also Kendrick v. Bland*, 740 F.2d 432, 438-39 (6th Cir. 1984) (A district court "breach[es] fundamental principles of federalism and exceed[s] its authority" when it orders a remedy that is not the "least

[13] As discussed, the Court has also repeatedly purported to reserve jurisdiction to extend its own jurisdiction. *See* Doc. 340, p. 9; Doc. 545, p. 6; *see also* Doc. 223, p. 3. But a federal court has no authority to grant itself jurisdiction. *Kokkonen*, 511 U.S. at 380; *Gilbert*, 216 F.3d at 699; *Miener*, 62 F.3d at 1127; *Roberts*, 617 F. App'x at 614; *4:20 Commc'ns*, 336 F.3d at 778.

intrusive available."); *Bell v. Wolfish*, 441 U.S. 520, 562 (1979) (warning of the "natural tendency to believe that [one's own] individual solutions to often intractable problems are better and more workable than those persons who are actually charged with and trained in running of a particular institution under examination.").

CONCLUSION

For the foregoing reasons, DHS respectfully requests that the Court dissolve its orders that require DHS to take any action after December 4, 2014, discontinue monitoring or supervision, and direct the clerk to close this case.

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OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

s/ Scott H. Ikeda
SCOTT H. IKEDA
Assistant Attorney General
Atty. Reg. No. 0386771

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1385 (Voice)
(651) 297-7206 (TTY)
scott.ikeda@ag.state.mn.us

ANTHONY R. NOSS
Assistant Attorney General
Atty. Reg. No. 0389951

AARON WINTER
Assistant Attorney General
Atty. Reg. No. 0390914

ATTORNEYS FOR
STATE DEFENDANTS