



May 27, 2020

VIA CM/ECF ONLY

The Honorable Donovan W. Frank
Senior U.S. District Judge, District of Minnesota
United States District Court
724 Warren E. Burger Federal Building
and U.S. Courthouse
316 North Robert Street, Suite 724
St. Paul, MN 55101

**Re: *James and Lorie Jensen, et al. v. Minnesota Department of Human Services, et al.*
U.S. District Court File No. 09-CV-01775-DWF-BRT
Dr. Gary LaVigna Invoice, dated April 30, 2020**

Dear Judge Frank:

Pursuant to the Court's orders of March 4, May 14, and May 18, 2020 (Doc. Nos. 820, 835, and 840) regarding objections to Dr. LaVigna's invoices, State Defendants write regarding the April 30, 2020 invoice ([Doc. No. 834](#)), and revised invoice filed May 18, 2020 ([Doc. No. 839](#)) that Dr. LaVigna submitted. By way of background, as the Court knows, Dr. LaVigna is paid from funds deposited in the Court's registry account by State Defendants between 2013 and 2015 for the purpose of carrying out the provisions of the Settlement Agreement and to "accommodate the additional responsibilities of the Court Monitor." *See* Doc. Nos. 213, 216, 224, 227, 229, 287, 383, 385, 479, 820. The Court had not ordered any payments from the account since before the suspension of the Court Monitor's duties in January 2017, and as of February 24, 2020, \$665,383.48 remained in the Court's registry account. *See* Doc. Nos. 605, 612, 820. On March 4, 2020, after State Defendants objected to paying for the *sua sponte* review, the Court ordered use of these earlier-deposited funds for Dr. LaVigna's review. *See* [Doc. No. 820](#).

Dr. LaVigna's original, April 30, 2020 invoice did not provide any information about the work being billed for, stating only that Dr. LaVigna performed "14 hours of service" in March and April, which was billed at \$7,000. ([Doc. No. 834](#)) State Defendants' counsel spoke to Dr. LaVigna on May 15, and asked Dr. LaVigna to submit a revised invoice with additional detail allowing State Defendants to determine the reasonableness of the amounts billed. Dr. LaVigna stated he did not have a record of the specific number of hours spent on different tasks or the dates on which those hours were spent, but that he would revise the invoice to provide what information he had. The revised invoice filed May 18, 2020 ([Doc. No. 839](#)) states that Dr. LaVigna spent this time reading documents, participating in calls and email exchanges

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with various individuals, including DHS staff and the Court's consultants (Dr. Wieck and Ms. Opheim),¹ and writing a report. The invoice, however, does not (as Dr. LaVigna stated it would not) indicate when these tasks were performed or how much time Dr. LaVigna spent on each task.

While State Defendants have an obligation to ensure State taxpayer funds are justifiably and reasonably spent, and note they cannot fully make that determination in the absence of additional information such as the date on which services were performed, and the amount of time spent on each day, they understand Dr. LaVigna's revised invoice contains all of the information Dr. LaVigna has at this point and leave to the Court to decide whether it has enough information to justify the expenditure.² Regardless of what the Court decides, State Defendants respectfully ask that Dr. LaVigna be directed to include information related to dates of work and work performed in future invoices, and note that State Defendants may object to future invoices to the extent such information is not included.

Sincerely,

s/ Scott H. Ikeda

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¹ State Defendants understand that Dr. LaVigna's conversations with some of the DHS employees referenced occurred in May, rather than March or April. If Dr. LaVigna is including his work in May, it appears his list of individuals he spoke with may be incomplete: in Dr. LaVigna's May 12, 2020 email to the Court he references a "[p]hone [c]all with the Honorable Donovan W. Frank."

² State Defendants note that the lack of any future objection to this or other invoices should not be construed as State Defendants' assent to the Court's orders requiring Dr. LaVigna to report on restraint practices at the Forensic Mental Health Program and the Anoka Metro Regional Treatment Center. *See* Doc. Nos. 798, 820. Additionally, while State Defendants did not object to Dr. LaVigna's request for an extension of the deadline to complete his review, State Defendants do not waive any objection to further extension of the Court's jurisdiction, which is set to expire on September 15, 2020. *See* [Doc. 737 at 38](#).