



July 2, 2020

*VIA CM/ECF WITH PERMISSION*

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**

Dear Judge Frank:

State Defendants write regarding the schedule for responses to Dr. Gary LaVigna's recently-submitted report, dated June 29, 2020 and filed on June 30. *See* [Doc. 853](#).

First, as a point of clarification, State Defendants understand this report to be the final version of Dr. LaVigna's report, and not the initial draft. Consistent with the Court's December 17, 2019 Order ("December 2019 Order"), *see* [Doc. 779, p. 17](#), Dr. LaVigna provided an initial draft of his report to State Defendants on June 11, 2020, and State Defendants provided Dr. LaVigna their comments on June 22. The June 29 report resulted from this process, again consistent with the schedule set forth in the December 2019 Order. *Id.* Accordingly, and consistent with the Court's direction that State Defendants "share the final reports with Plaintiffs' Class Counsel, the Consultants, and the Court," *id.*, State Defendants forwarded the June 29 final report to Plaintiffs' counsel and the Consultants on July 1.

Second, as the Court knows, the December 2019 Order sets forth that the Consultants have ten business days to respond to the final report, and that Plaintiffs have seven business days to respond to the final report thereafter. [Doc. 779, p. 17](#). While the December 2019 Order gave State Defendants the opportunity to comment on the initial draft of Dr. LaVigna's report as referenced above, it does not give State Defendants an opportunity to reply to the statements filed by the Consultants or Plaintiffs or to respond to Dr. LaVigna's report on the record. *Id.* State Defendants believe they should have the opportunity to be heard—and to inform the Court—about any issues raised by the Consultants or Plaintiffs in their responsive statements, and about the report. *Fuentes v. Shevin*, 407 U.S. 67, 83 (1972) ("[A] court does not decide a dispute until it has had an opportunity to hear both sides."). Accordingly, State Defendants respectfully request that they be allowed to file a reply no later than seven business days after Plaintiffs file their statement with the Court. *See* [Doc. 779, p. 17](#).

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Relatedly, State Defendants are mindful that the Court has set a status conference for September 24, 2020, and it may be that the Court intends to discuss next steps at that time. To the extent the Court contemplates addressing Dr. LaVigna's report and the responses thereto, however, State Defendants respectfully ask that the Court provide notice of any contemplated action as well as an opportunity for State Defendants to be heard before any action is taken. *See Day v. McDonough*, 547 U.S. 198, 210 (2016) ("Of course, before acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions.").<sup>1</sup>

Sincerely,

**s/ Aaron Winter**

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<sup>1</sup> State Defendants have previously raised concerns about the Court taking certain actions *sua sponte*, prior to which State Defendants believe they did not have notice or an opportunity to be heard. *See, e.g., Doc. 743, pp. 16-17* (arguing the Court extended its jurisdiction without providing notice it contemplated doing so); *Doc. 787, pp. 18-19* (arguing the Court ordered review of mechanical restraint use at FMHP and AMRTC without providing notice it contemplated doing so).