

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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James and Lorie Jensen, as ) Case No. CV 09-1775 (DWF/FLN)  
)  
parents, guardians and next )  
)  
friends of Bradley J. Jensen,) )  
)  
et al., )  
)  
)  
Plaintiffs, )  
)  
)  
vs. ) St. Paul, Minnesota  
) December 1, 2011  
) 10:30 a.m.  
)  
Minnesota Department of Human) )  
Services, an Agency of the )  
)  
State of Minnesota, et al., )  
)  
)  
)  
Defendants. )  
)  
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BEFORE **THE HONORABLE DONOVAN W. FRANK**  
UNITED STATES DISTRICT COURT JUDGE

**HEARING ON FINAL APPROVAL  
OF THE SETTLEMENT AND ATTORNEY FEES**

**APPEARANCES:**

For the Plaintiffs: Johnson & Condon, P.A.  
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St. Paul, Minnesota 55101

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

**P R O C E E D I N G S**

**IN OPEN COURT**

THE COURT: You may all be seated, thank you. I would like to welcome you all here to the Federal Courthouse. And that is true whether you have been here for a hearing before today or not.

My name is first name Donovan, last name Frank. I am the Federal Judge assigned to this case. And more than most civil cases, and more than -- even though each Federal Judge across the country and here has a number of class action settlements, this case is unusual in a good way because I have gotten to know the parties, the lawyers, because I have also been involved in the meetings, numerous times over the last couple of years, with the lawyers as they strived to reach the Settlement that we are going to be talking about today.

I will try to do my best to accommodate those that if someone needs to use a restroom or needs a break or needs to stand or stretch, you should feel free to do that. If someone feels strongly as we go through that they had planned to speak, but they are hoping for a recess first, then please somebody get my attention and I will make whatever necessary arrangements that I can, unless for some reason it would be unfair to someone, which is not likely.

I have a tentative list of individuals who wish to

1 make a statement or speak to the Court. And so we will --  
2 and a couple of individuals are hoping to be called earlier,  
3 than later, and so I will do my best to honor that, as well.

4 The plan right now is to, much like other final  
5 hearings and class actions and final fairness hearings, is  
6 to have class counsel make a summary of the settlement and  
7 where we are at, as has been agreed to by the parties. And  
8 then I will hear brief remarks from two of the other counsel  
9 with respect to their views, because we are going to try to  
10 honor those of you that are here who wish to address the  
11 Court.

12 Unless I need to make some other arrangement or  
13 accommodation, the podium goes up and down, here. So  
14 whether people need to stand and address the Court, or sit  
15 either in a chair, wheelchair, or some other, depending upon  
16 if there is other equipment we need, we can lower the podium  
17 all the way to waist level. It will come all the way down.  
18 And people can be free to address the Court from either  
19 standing or sitting there by the podium, whatever you feel  
20 most comfortable.

21 I will note for the record before we have  
22 introductions that the orders in the case, of course, are  
23 all public. And to the extent we did start late, I am the  
24 Judge in the case. I apologize. It was my insistence on  
25 meeting with the lawyers, not theirs. So, if someone is

1 frustrated with that, they should put that on my shoulders,  
2 not the attorneys.

3 Much like other actions, the rules required me to  
4 set in place an order which all of the attorneys agreed to,  
5 a way by which people could make objections and comments to  
6 the Court about the Settlement, as of this date and this  
7 time, because we checked both electronically and otherwise,  
8 both late last night and this morning, there have been no  
9 objections, no objections filed. And I have received no  
10 correspondence.

11 And I will have more to say about my contact that  
12 was all on the record with a Court Reporter, sometimes in  
13 the presence of counsel, sometimes not by phone, of reaching  
14 out to Class Members, because it is the first time I have  
15 done that in my 27-year career as a Judge.

16 But, I had numerous phone calls that I reached out  
17 to, with agreement of the lawyers to their credit, to  
18 parties if they had questions about opting out of the  
19 settlement, and I will touch on that at the end of this  
20 hearing.

21 So again, welcoming everybody here, and I will try  
22 to do my best to accommodate everyone so that you have a  
23 right to be heard, why don't we have introductions before  
24 Mr. O'Meara begins?

25 We can start on my left-hand, my left, but the

1 right side of the courtroom facing me. We can note  
2 introductions?

3 MR. O'MEARA: Good morning, Your Honor, Shamus  
4 O'Meara on behalf of the Settlement Class.

5 MS. MULLIN: Good morning, Your Honor, Annie  
6 Mullin and this is Plaintiff James Brinker.

7 THE COURT: Good morning.

8 MR. ORBOVICH: Good morning, Your Honor, Sam  
9 Orbovich from the law firm of Fredrikson & Byron  
10 representing Defendant Scott TenNapel.

11 MR. ALPERT: Good morning, Your Honor, Steve  
12 Alpert, Assistant Attorney General, representing the  
13 Minnesota Department of Human Services.

14 Along with me is Ken Kohnstamm, also Assistant  
15 Attorney General. Thank you.

16 THE COURT: Mr. O'Meara? You may proceed.

17 MR. O'MEARA: Thank you, Your Honor. May it  
18 please the Court, Counsel, and all Members present.

19 This is the Plaintiffs' Petition to this Honorable  
20 Court for Final Approval of the Stipulated Class Action  
21 Settlement Agreement, Court Docket number 104, which was  
22 preliminarily approved on June 23, 2011, as well as  
23 Plaintiffs' Application for Attorneys Fees and Costs for the  
24 Settlement Class Counsel.

25 Our Petition is brought on behalf of several

1 hundred people with developmental disabilities, Your Honor,  
2 who resided in the Minnesota Extended Treatment Options  
3 Program, otherwise known as METO, who experienced aversive  
4 and/or deprivation procedures while at METO, including  
5 restraint and seclusion, or seclusion, between July 1, 1997  
6 and May 1, 2011, otherwise known as the Class period.

7 It is important for the Court and everyone here to  
8 know that every individual who resided at METO during that  
9 time period that I just mentioned received notice in many  
10 cases, multiple notices of the Settlement, and we will get  
11 into that in a little bit more detail later, and were  
12 provided an opportunity to submit a claim form, to  
13 participate in the Settlement Fund, which I will be speaking  
14 about, as well as to execute and return to our office as  
15 Settlement Class Counsel, a request for exclusion to opt out  
16 of the settlement.

17 Just by way of brief introduction and overview,  
18 the settlement at its core prohibits some techniques that  
19 were part of the lawsuit, originally, and part of an  
20 investigation by the Ombudsman of Mental Health and  
21 Developmental Disabilities which I will be speaking to  
22 briefly, as well. But, mechanical restraint, in this case  
23 the use of handcuffs and law enforcement type leg irons.  
24 Manual restraints and other pain-producing techniques to  
25 punish people with developmental disabilities is prohibited;

1 and that is agreed upon. Mandatory staff training for state  
2 employees and the implementation of positive behavioral  
3 supports is part of the settlement.

4 There is a schedule of monetary benefits to Class  
5 members who submitted a claim form and who have a documented  
6 incident of restraint or seclusion. That has been agreed  
7 to.

8 Perhaps the most important aspect of this  
9 Settlement, Your Honor, is that it is going to benefit not  
10 only all Class Members, but the approximate 100,000 people  
11 with developmental disabilities in this state and their  
12 families. And I will be speaking to some of the statewide,  
13 really unprecedented, provisions of the Settlement Agreement  
14 that we as Settlement Class Counsel find to be simply  
15 wonderful.

16 Things such as statewide changes of the care and  
17 treatment of people with developmental disabilities, the  
18 formation of an Olmstead Committee in recognition of the  
19 important principles articulated by the U.S. Supreme Court  
20 in the *Olmstead versus L.C.* case.

21 Rule 40, which is an important rule that governs  
22 the care and treatment of people with developmental  
23 disabilities is going to be looked at by a committee. And  
24 there will be an administrative process with public comment  
25 that would hopefully lead to some changes that would imbue

1 the best practices that the professionals around these  
2 issues care about and will comment on. And then, of course,  
3 there is regular reporting to this Court over the next two  
4 years, and I think that is an important aspect.

5 So, what does this mean? This means from our  
6 perspective as Settlement Class Counsel, that the Class  
7 Action Settlement Agreement and its unprecedented  
8 comprehensive positive changes in the daily protections  
9 afforded not only Class members but all people with  
10 developmental disabilities in this state is reasonable and  
11 meaningful.

12 And while this PowerPoint is a summary of our  
13 position, Your Honor, we have submitted a comprehensive  
14 brief in support of our Petition, as well as numerous  
15 exhibits. And we rely on that for purposes of the record.  
16 And we carefully considered and evaluated the facts. There  
17 are many complicated facts that are involved in these types  
18 of claims in this federal lawsuit. And we have considered  
19 the unique population of people who are vulnerable, people  
20 with developmental disabilities that we represent, and some  
21 of whom are here. And we looked at these comprehensive  
22 changes. And we as Class Counsel stand here, Your Honor,  
23 and with certainty can advise that the Settlement Agreement  
24 is fair. It is reasonable. And it is adequate.

25 We are mindful, as Settlement Class Counsel, and I



1 believe there's a lot of people behind me that feel the same  
2 way, of several things that impact the lives of the people  
3 that we represent, the people that deal and struggle with  
4 developmental disabilities, and disabilities in general.

5 Ten years ago there was a census, and these  
6 numbers are actually greater, but there are 700,000  
7 Minnesotans outside of institutions over age 5 that have at  
8 least one disability. 85 percent of women with a  
9 developmental disability will be sexually assaulted in their  
10 lifetimes, many more than once. 93 percent of people with  
11 autism are unemployed. 70 percent of people with  
12 disabilities are unemployed, and these people struggle daily  
13 with fundamental issues that some of us take for granted,  
14 housing, transportation, health care, access to justice and  
15 discrimination.

16 I am not alone in standing here and advising the  
17 Court of this, and I believe this Court, in particular, this  
18 Judge is well aware of the findings that predicated the  
19 enactment of the Americans with Disabilities Act, that there  
20 is discrimination involving people with physical and mental  
21 disabilities. It exists. Its present. And it needs to be  
22 dealt with. It is pervasive. It is a social problem.

23 It impacts employment, housing, public  
24 accommodation, education, transportation, communication,  
25 recreation, institutionalization, health services, voting,

1 and access to public services.

2 And I think important for this process in this  
3 Class Action Settlement that Congress found in 1990 when  
4 this Act was amended that people with disabilities often had  
5 no legal recourse to redress the discrimination that they  
6 faced.

7 So, when it comes to access to justice, I firmly  
8 believe that justice prevails upon us to act. It doesn't  
9 exist because I happen to represent a group of Plaintiffs  
10 with disabilities, it prevails upon each of us and it imbues  
11 in us a sense of justice.

12 THE COURT: I just -- I am putting down the lights  
13 so people can -- not for mood lighting, but I will  
14 acknowledge that is my courtroom. I will also acknowledge  
15 that my robe is gone, because one of the individuals  
16 visiting that day, my friend Rod, thought he should wear the  
17 robe because I was late coming in for the session. So, he  
18 has my robe on, and that is why I am there in a white shirt  
19 and a tie.

20 And I should say that whether it is important or  
21 not, it's these visits, because it is the people's  
22 courthouse, and if equality and equal access to justice is  
23 to mean anything, this was unrelated to this case. So, if  
24 there are people in the audience who say, well, was this  
25 part of the Class Action? No, it was not. These things go

1 on frequently for the betterment of the country. But, that  
2 is my courtroom, and the odd-looking chap up in the back in  
3 the white shirt is me. So --

4 MR. O'MEARA: And I appreciate the Court  
5 mentioning that this was not part of the case. And it  
6 actually is, from my standpoint as Settlement Class Counsel,  
7 it's important -- well, really, regardless of whether you  
8 are representing the state of Minnesota, or a doctor that  
9 has been sued, or a family member who was restrained or  
10 secluded, it really goes without saying that it is quite  
11 remarkable that this Federal District and this Court and  
12 you, Your Honor, provide this type of access to people who  
13 are vulnerable. And it is our sense of justice,  
14 collectively, that I think drives that.

15 And so on behalf of the people that we represent,  
16 on behalf of the hundreds of people with developmental  
17 disabilities and their families, we appreciate the  
18 recognition that this Court has provided to these citizens.

19 THE COURT: I apologize for the interruption, but  
20 two brief observations. One is, some people whether they  
21 are here or not may be thinking that, well, if the Judge is  
22 involved in some disability initiatives, is that why he got  
23 the case? The answer is no.

24 We have, like all Federal Courts, a pure random  
25 assignment system. And while the case was randomly assigned

1 to me, Judges don't have the right to say, I would like that  
2 case, or that case. We would probably like to sometimes,  
3 but it is a nice, objective system.

4 And to the credit of the individuals in the  
5 photograph, their response to their visit here was, well,  
6 Judge, we have been willing to come to where you work, now  
7 we want you to come to where we work. And so I have visited  
8 some of their workplaces, because they said equal is equal,  
9 and they were right. So, I have been to some of their work  
10 sites, to their credit. So --

11 MR. O'MEARA: Well, Judge, this moves in  
12 mysterious ways and it is through the tireless exertions and  
13 passions of everyone. So, there are families here today,  
14 Your Honor, that struggle in quiet solitude, with pride and  
15 compassion in their own lives that deal with these issues.

16 There are thousands of people that work in our  
17 State Government, in our Federal Government, and in our  
18 local agencies, who have provided justice by choosing a  
19 career that highlights the care and treatment of people with  
20 developmental disabilities.

21 It is important to recognize that it is just not  
22 on one side of the aisle, it is on all sides of the aisle  
23 that justice is done. It is the lawyers in State Government  
24 whom we worked with for two and a half years. It is the  
25 lawyers for the doctors that were sued as individual

1 defendants that we have worked with and dialogued for two  
2 and a half years. And it is the exertions of these  
3 individuals, in partnership with the Federal Court, that  
4 spent many, many hours in facilitating communication. And  
5 with consultants that worked with us. And with people who  
6 have tirelessly worked on these issues for years upon whose  
7 shoulders we stand today that brings us to an agreement that  
8 I think is unprecedented that will benefit hundreds of  
9 thousands of people in this state.

10 So, let's get to some of the details. And I am  
11 going to move through this a bit quickly because we have  
12 other people that want to speak. There were complaints  
13 about maltreatment of residents at the METO Facility that  
14 led to investigations by the Ombudsman for Mental Health and  
15 Developmental Disabilities and the Office of Health Facility  
16 Compliance.

17 In September of 2008, the Ombudsman for Mental  
18 Health and Developmental Disabilities issued a report  
19 entitled, "Just Plain Wrong." And it is dozens of pages  
20 long and it is available on the Ombudsman's website. But,  
21 as it boils down to its essence to me as Settlement Class  
22 Counsel, there were findings that METO residents were  
23 subjected to the excessive use of restraint and seclusion,  
24 including law enforcement or metal type handcuffs and leg  
25 irons often for benign behavior, and in non-emergency

1 situations. And Roberta Opheim, the Ombudsman, is here  
2 today and she may or may not speak to these issues.

3 We started the Federal Class Action Lawsuit, which  
4 is the subject matter of today's hearing, in July of 2009.  
5 We had two Plaintiffs, originally, and we later amended it  
6 to include three families.

7 We sued under several causes of action involving  
8 the Civil Rights Act, Federal and Minnesota Constitutions,  
9 the Americans with Disabilities Act, the Rehabilitation Act,  
10 the Minnesota Human Rights Act, and we had several other  
11 causes of action. And we requested that this Court certify  
12 the class as a class -- the lawsuit as a class action.

13 We wanted this Court to prevent or, in legal  
14 terms, enjoin the Defendants from using mechanical restraint  
15 and seclusion and these other things we have been talking  
16 about, to require the lawful and humane conditions be in  
17 place for METO residents, and to have this Court declare  
18 unconstitutional certain rules and laws, as well as a  
19 request for monetary damages and attorney's fees. It is  
20 important for everyone to know that the Defendants denied  
21 any wrongdoing. They believe that the things that they were  
22 doing were lawful and appropriate; and that they were acting  
23 in good faith.

24 And there were several defenses that were  
25 asserted, many of which we looked at long and hard. And

1 counsel can speak to them if they wish, but sovereign  
2 immunity, official immunity, qualified immunity, lack of  
3 jurisdiction, lack of standing, and some practical  
4 difficulties with the burden of moving forward with  
5 evidence, all were part of the defense case.

6 And from these original lawsuit positions, the  
7 parties developed legal positions and filed motions for  
8 dismissal. In our case, we filed a Motion for Class  
9 Certification. But, the really neat thing about it all is  
10 that very early on, almost right after we started this  
11 action, the lawyers got together with authority of their  
12 clients and we began a substantive dialogue that didn't  
13 stop, that went on for two and a half years.

14 We exchanged provisions, we looked at policies, we  
15 revised protocol, we talked and discussed and involved  
16 ourselves in a partnership to collaborate on finding common  
17 ground. And I have been in a lot of these lawsuits, Your  
18 Honor, and this stands out as the most significant  
19 involvement, sustained involvement of lawyers to reach  
20 common ground and resolve difficult issues that I have ever  
21 been involved with, and I am very proud of that.

22 We, when I say "we," the parties engaged  
23 consultants; Colleen Wieck, the Executive Director of the  
24 Governor's Council on Developmental Disabilities; Roberta  
25 Opheim, the Ombudsman, who I mentioned; Ann Henry, Senior

1 Attorney at the Minnesota Disability Law Center; and also  
2 Anne Barry who I think at the time was Chief Compliance  
3 Officer, and then later became Deputy Commissioner as a  
4 resource, that really met with Colleen and Roberta and kind  
5 of elevated the discussion between the professions that deal  
6 with these issues. And it was a really neat thing to see  
7 that separate interaction that then guided and helped the  
8 lawyers to --

9 THE COURT: I am not waving you off, but I am  
10 trying to say they should be free to come in if they wish;  
11 that is fine. Go ahead, Mr. O'Meara.

12 MR. O'MEARA: These consultants helped guide our  
13 thought process, our development of policies. And these are  
14 complicated issues, Your Honor, and you have been a part of  
15 this for a while. And it was important for us to have  
16 consultants to work with.

17 And we looked at the ongoing risks of litigation  
18 and statute of limitations defenses and the absence of legal  
19 causation and potential road blocks, including the  
20 stereotypes that drive some of these issues involving people  
21 with developmental disabilities, and what might happen in  
22 terms of testimony and evidence.

23 And it led to the conclusion that I highlighted  
24 earlier, that this is a reasonable settlement, that it makes  
25 sense.



1           The prohibited techniques we mentioned, the  
2           exception to the use of restraints is that there needs to be  
3           a qualifying emergency. And then we are using things like  
4           Velcro straps. We are not using things like metal handcuffs  
5           anymore, and that is important.

6           All of these claims were settled involving the use  
7           of aversive or deprivation procedures during the time period  
8           I mentioned. The METO program, it was agreed, would be  
9           closed as of June 30th of this year. It has been closed.  
10          It's successor program is up and running now.

11          There is a process for third-party review, as well  
12          as an internal review of incidents that allow permitted or  
13          qualifying restraints. That is a big deal. That is  
14          important. That provides a sense, I think, of fairness in  
15          how this process is being used. And then we have a  
16          limitation on transfers of people with a commitment status  
17          of developmental disability to the St. Peter Security  
18          Hospital. And there may be others here that will speak to  
19          that issue, but that was an important consideration. I  
20          spoke about the Olmstead Committee, I spoke about the Rule  
21          40 Committee. These are really important things that I  
22          think some of the advocates here would like to speak to and  
23          I will leave that up to them. But, that is what the  
24          statewide impact is going to be about in a large way, about  
25          bringing advocates and the state and these agencies

1 together, and to partner and collaborate on the care and  
2 treatment, the appropriate care and treatment of our loved  
3 ones going forward, transition planning, staff training,  
4 visitor policy that has been revised.

5 And then there is a monetary aspect to it. I  
6 would submit that the monetary provisions are, while  
7 important, should not shroud or obscure the really  
8 comprehensive equitable changes that I just went through.  
9 We have a total monetary settlement of \$2,976,400 this was  
10 reduced from an original \$3 million settlement due to the  
11 opt out of class members. There is a request for attorneys  
12 fees of one-third of the total settlement, this is  
13 consistent with Eighth Circuit law that we've discussed in  
14 our briefing involving a percentage of the Fund. And we  
15 provided some additional information to the Court in the  
16 regard.

17 THE COURT: Well, and not to dwell on that, but I  
18 think it should be observed, unlike most cases I have been  
19 involved in, within that fees are all claims administration  
20 costs, all implementation costs, and responsibility by your  
21 firm, apart from you are the go-to person when somebody  
22 feels over the next period of time there is not complete  
23 compliance with parts of the agreement, issuance of the  
24 checks -- I don't want to focus on the monetary aspects,  
25 either, but within those fees are all of the claims

1 administration costs, as Judges call them, and all of the  
2 expenses of implementation, including not just up until  
3 today, but until all of these things with the help of the  
4 Court have been paid out.

5 MR. O'MEARA: Thank you, Your Honor. And we have  
6 also agreed to participate in the Olmstead Committee, the  
7 Rule 40 Committee, to be a part of this and not walk away  
8 from the future of what is going to happen to the people  
9 that we represent and those others across the state who had  
10 developmental disabilities in their family. And that is  
11 really an important aspect of what we want to be about.

12 THE COURT: Well, and of course you know, as we  
13 have discussed with all lawyers, and I will say it now, and  
14 I will probably say it before we are done, that obviously  
15 anybody whether they come to the Court or to you or the  
16 other -- or the DHS, if somebody feels that, well, there are  
17 parts of this -- that we heard what everybody said back on  
18 that first day in December, and we don't know what is going  
19 on, or we don't think there is compliance. I mean, I  
20 suspect somebody is going to walk into your office or they  
21 are going to ring you up and say, what is happening? I  
22 mean, and so, as the lawyers in the room know, and  
23 non-lawyers, that is a part of your responsibility that is  
24 also in these numbers, although -- which comes along with  
25 the job.

1 MR. O'MEARA: Right. And I wasn't kidding when I  
2 said that this agreement is really a common sense of  
3 justice. And I am not saying that lightly. This was  
4 discussed and vetted for a long time, for two and a half  
5 years. And a lot of people became involved in it, and  
6 people at high levels. And to me, it is far more  
7 significant to stand here and hold up this extraordinary  
8 agreement, and it is truly extraordinary, in partnership  
9 with the state of Minnesota, in partnership with the doctors  
10 that were originally sued.

11 And we are not going to get anything better than  
12 this by going to trial and having it forced upon people.  
13 This is a true partnership, a true collaboration, and I am  
14 extremely proud of everyone involved. It took a lot of  
15 doing.

16 There is a schedule, and I will just go back for a  
17 second, here. The remaining amount of \$1.689 million is  
18 distributed in accordance with the schedule that is agreed  
19 upon subject to the Court review of any additional  
20 information that Class Members submitted. And that schedule  
21 is part of the Class Action, Stipulated Class Action  
22 Settlement Agreement, and that is what the schedule looks  
23 like.

24 The remaining funds after distribution of  
25 attorneys fees, costs and disbursements, and \$75,000 each to

1 the named-Plaintiffs for their service as class  
2 representatives, as well as for their damages, would then be  
3 distributed equally to three programs for people with  
4 developmental disabilities and their families. And those  
5 programs, if I am mindful of the settlement provisions,  
6 would be recommended to the Court collaboratively between  
7 Colleen Wieck, the Executive Director of the Governor's  
8 Council on Developmental Disabilities, and Anne Barry, the  
9 Deputy Commissioner of the Department of Human Services.  
10 For the Court to consider in its discretion as to how those  
11 funds would then be administered.

12 THE COURT: At some point I was going to say, I  
13 will say it briefly here, it bears repeating, as all of the  
14 lawyers know, that quite unusual, first in my experience as  
15 a sitting judge, we all in my chambers, but all on the  
16 record, we called all of the opt-outs, because unlike any  
17 class actions I have had, a number of the opt outs said, we  
18 have not an unkind thing to say about anybody. We don't  
19 want any money. We are concerned it may adversely affect us  
20 in other ways if we stay a member.

21 Because I think my view, joined in by all of the  
22 lawyers, there was a misunderstanding, because the most  
23 common reason people opt out is usually to say, we are going  
24 file our own lawsuit, and we are not going to be part of  
25 this.

1           When we called them, I am speaking only for  
2           myself, when I called a number of these individuals that  
3           decided to come back in, not just because they had  
4           misunderstood, they came in for this reason. They know that  
5           any monies left over will be dealt with with public  
6           education to try to address the -- take on, head on, the  
7           stereotypes, these derogatory stereotypes that are all  
8           inaccurate about individuals with disabilities, with  
9           developmental intellectual disabilities, that time and time  
10          again with my conversations with them, they said if that is  
11          what the remainder -- even if we don't request anything, if  
12          that is how you are going to deal with this, then we want to  
13          be a part of it. So, I have made a commitment, but it is  
14          consistent with the agreement. And as you all well know,  
15          you have agreed, I will see to it that that is done.

16               MR. O'MEARA: Thank you, Your Honor. The last  
17               aspect of remaining funds is that the Court in its  
18               discretion can use up to \$50,000 from those funds to hire  
19               special counsel or expert services relating to special needs  
20               trust, or estate planning or similar needs, as we look at  
21               money that would be held by the Court, for the Court in its  
22               discretion to assure itself that the money is going to the  
23               right place and that appropriate procedures have been set in  
24               place with these families, so that they are not jeopardizing  
25               anything.

1           THE COURT: If I may just very briefly say, we  
2           have in the courtroom today Tiffany Sanders, who is our  
3           Director of our Pro Se Project, who thanks to her recently  
4           got recognized -- Tiffany, if you want to just recognize  
5           yourself back there, please? Because of her efforts,  
6           recently recognized, received the Harrison Tweed Award as  
7           the outstanding Pro Se Project in America.

8           Why would I bring that up today and waste people's  
9           time? My goal is to spend none of that \$50,000. With the  
10          help of our program and working with the Disability Law  
11          Center and other organizations and expecting specialists in  
12          these areas to step forward and work with our program,  
13          because in our case we don't use any taxpayers' money in our  
14          program.

15          It is my hope to do the right thing for each of  
16          these Class Members that need legal advice, which I will say  
17          at the end of this hearing, without spending any of that  
18          money. That is my goal, so we can use it again for public  
19          education and other ways to reach out to the communities to  
20          again address some of these stereotypes that continue to  
21          exist, I'm sorry to say.

22          MR. O'MEARA: The last part of this, I have, I  
23          mean, several slides on notice, and I am just going to go  
24          fast through them, Your Honor, because I think that notice  
25          has been adequate --

1 THE COURT: Oh, I believe it has.

2 MR. O'MEARA: -- timely, and I can go through the  
3 specifics if you'd like, but it is in our Petition. In a  
4 nutshell, 700 mailings went out June 30th, followed by a few  
5 more after that. Repeated phone calls, repeated letters and  
6 notice to class members, guardians or recorded contacts for  
7 people, for class members went out.

8 We had just a great opportunity to work with  
9 Colleen Wieck and Roberta Opheim, who followed up directly  
10 with Class Members and Guardians and worked to find contact  
11 information.

12 Steve Alpert from the Attorney General's Office  
13 worked tirelessly, along with Annie Mullin of our office,  
14 who is to the right of me, on finding contact information.  
15 And if I stacked up all of the e-mails that we had on this,  
16 Your Honor, it would go to the sealing on all of the things  
17 that were done to get the notice out to people, including  
18 the extraordinary things that the Court has mentioned. The  
19 Court held that chambers conference, amongst many chambers  
20 conferences where we invited advocates, professionals,  
21 professional advocates that would come in and help us  
22 understand what process would best serve these people who  
23 are vulnerable, who don't have access to phones, don't have  
24 transportation.

25 How do we do this? Well, we had a toll-free



1 conference. The Court called a number of the opt-outs. We  
2 talked about it as lawyers. This is really a collaborative  
3 effort, unique in many respects, with all counsel and the  
4 Court to access, and to provide information to loved ones  
5 and to families and to guardians. And we can't thank the  
6 Court enough for its involvement.

7 And I am just going to scroll through some of  
8 this.

9 THE COURT: All right.

10 MR. O'MEARA: I do want to mention that the Court,  
11 upon these discussions and sort of this evolving notice  
12 process, and upon agreement of counsel, extended the  
13 deadline to submit claim forms and issued an order in that  
14 regard to allow additional time for people to participate in  
15 a Settlement Fund. And I thought that was pretty needed, as  
16 well.

17 So, it all comes down to, to me, and to our  
18 office, it is an extraordinary agreement. It is something  
19 that was negotiated. It was at arm's length negotiations.  
20 It was done in the spirit of cooperation to try to find  
21 common ground on difficult emotional issues, and difficult  
22 not only legally, but difficult practically, certainly  
23 emotionally, and we are very proud of everyone's efforts.

24 You know, when you deal with Sam and Dave and Ken  
25 and Steve, you have got to bring out the big guns. And so,

1 all I've got to say is that -- and we actually negotiated  
2 part of the settlement in the jumpsuit, so there is a sort  
3 of sense of humor that is part of some of this. But, we are  
4 very much appreciative of everyone's efforts.

5 It would be remiss of me, Your Honor, if I didn't  
6 thank Annie Mullin of our office who has spent hundreds and  
7 hundreds of hours in preparing and working with the lawyers  
8 and the Court, and most importantly with the families that  
9 we represent. And so, I thank her personally, as well.  
10 Thank you, Your Honor.

11 THE COURT: Thank you. I will hear from Mr.  
12 Alpert.

13 MR. ALPERT: Thank you. May it please the Court?  
14 My name is Steve Alpert. I am the Assistant Attorney  
15 General. I represent the Minnesota Department of Human  
16 Services and other individuals and Defendants in this  
17 particular case.

18 I would like to recognize Anne Barry, who is the  
19 Deputy Commissioner of Human Services, who has been involved  
20 in this case throughout and will continue to be personally  
21 involved in this case. She will specifically address the  
22 Court with her comments later.

23 I would also like to specifically recognize my  
24 colleague Ken Kohnstamm, also an Assistant Attorney General  
25 with the Minnesota Attorney General's Office representing

1 the Department. He was seated at counsel table.

2 For both of us, this has been particularly  
3 gratifying that we are working on not only a very important  
4 case, but we are working on a case where we are able to make  
5 a difference in people's lives. We are not just for once  
6 talking about money. We are not just talking about  
7 Government taking a position and refusing to budge, you  
8 know, under the typical stereotype. And we both put a lot  
9 of time and effort and personal involvement in this matter.  
10 Because in the end, as the Court has seen from the  
11 presentation and from all of the discussions and documents,  
12 this is an important settlement. It will make a huge  
13 difference for people in a positive manner.

14 I would like to, again, thank Ms. Barry. I would  
15 like to thank the Department and all of the people from the  
16 Department that have been working with us and will continue  
17 to work with us, the other parties, and the consultants who  
18 had not only the willingness, but the ability to work  
19 through some complex issues and reach an agreement. And  
20 again, it will greatly improve the quality in care of the  
21 lives of a large number of persons with disabilities, not  
22 only in Minnesota, but we have people that come through  
23 Minnesota. And it will impact them, as well. And we think  
24 that this agreement will set the tone for other states, as  
25 well.

1 I particularly want to thank the Court and its  
2 staff, not just this Court, the Magistrate, its staff, this  
3 Court. We used a mediator that had -- a former Magistrate  
4 Judge in this matter, using the expertise of that  
5 individual. But, particularly this Court and staff for the  
6 incredible amount of time that this Court has put into this  
7 case, the access that the parties have had to the Court to  
8 obtain its guidance in order to work through these  
9 incredibly difficult issues, and to reach what we think is a  
10 very good settlement going forward.

11 The Court has made itself available on very short  
12 notice to us. As Mr. O'Meara has pointed out, it made  
13 itself available to advocacy groups at a meeting, invited  
14 all of the advocacy groups to make sure they were well  
15 informed, and had access to the parties and the Court to  
16 make sure their input was taken into consideration.

17 The Court had a call-in, a phone call where any of  
18 the potential Class Members, their families, their  
19 guardians, their representatives, could ask questions of the  
20 Court and get immediate answers, or a promise of a soon to  
21 be given answer to their questions and concerns.

22 And the Court has agreed, which is, I think, very  
23 unusual, the Court has agreed to continue to be more  
24 directly involved in this matter -- not monitoring the case,  
25 but being directly involved to make sure again that the

1 funds will in fact go to the people that deserve to get the  
2 funds, and to make sure that the spirit and intent of this  
3 agreement, not just the words of this agreement, will be  
4 implemented going forward. Not just for the two years, but  
5 at the end of the two years, we believe the Court, as well  
6 as everyone else, will be satisfied that the positive nature  
7 of this Agreement will go forward beyond that two-year  
8 period of time.

9 On behalf of the Department and the other  
10 Defendants we represent, we would respectfully request that  
11 the Court approve this Settlement Agreement as submitted to  
12 the Court. And like other counsel, I will be available to  
13 try to help answer any questions or concerns that may arise  
14 that the Court may have. Thank you.

15 THE COURT: Counsel?

16 And where we are going to be at after we hear from  
17 counsel is I will have to make a decision whether we begin  
18 with allowing people to address the Court, or whether there  
19 is going to be people who are hoping that I will take a  
20 short recess, I will make that decision in just a few  
21 moments on how best to proceed to try to accommodate  
22 everybody that is here.

23 MR. ORBOVICH: Your Honor, my name is Sam Orbovich  
24 with the law firm of Fredrikson & Byron. I represent Dr.  
25 Scott TenNapel. Dr. TenNapel was the Clinical Director at

1       METO from about July of 2004 through January of 2009. So,  
2       he was present at METO for a period of the class action  
3       settlement. The question presented to the Court today is  
4       whether this Court should accept the 52-page stipulated  
5       Class Action Settlement Agreement as fair, reasonable and  
6       adequate, and is in the best interest of the Settlement  
7       Class Members. Dr. TenNapel would request that you issue an  
8       order accepting the Settlement Agreement as proposed.

9               Mr. O'Meara's recitation and explanation of the  
10       Settlement Agreement was very accurate, but we should note  
11       that the 52-page settlement agreement, itself, is detailed,  
12       it is comprehensive, it is thorough. And your Order, if you  
13       grant it, will incorporate that Settlement Agreement in its  
14       entirety.

15              So, the paraphrasing that all counsel does today  
16       is not a substitute for the detailed negotiated provisions  
17       that carefully were drafted in that Agreement.

18              Dr. TenNapel would assert that the Class Action  
19       Settlement Agreement should be accepted for a few additional  
20       reasons. First, there is a precise, yet comprehensive,  
21       definition of the Class. It is clear, and it is thorough.

22              Secondly, there is prospective relief that will be  
23       implemented and has been implemented by the Department of  
24       Human Services. And as counsel has noted before me, that  
25       relief will definitely better people's lives. And thirdly,

1       there is an equitable and transparent method for disbursing  
2       the settlement proceeds to those Members who filed claims.

3               Under the terms of the Settlement Agreement, Dr.  
4       TenNapel holds the right to move the Court for an Order  
5       voiding his participation or modifying his contribution.  
6       That was a provision that was negotiated as a safeguard in  
7       case a substantial number of claimants decided to opt out  
8       and pursue their own litigation. It is a hallmark of the  
9       fairness and reasonableness of this Settlement Agreement  
10      that no METO resident has initiated a lawsuit separate from  
11      this class action, and none has stated an interest in doing  
12      so. So, I am pleased to notify the Court today for the  
13      record that Dr. TenNapel will not file any motions to void  
14      his participation, or file any motions to ask the Court to  
15      modify his contribution. There have been a number of people  
16      that have been mentioned today, Your Honor, that have  
17      invested considerable time and effort to achieve this  
18      resolution.

19             Dr. TenNapel would like to specifically thank Anne  
20      Barry and Mike Turbin from the Minnesota Department of Human  
21      Services, all counsel of record; the Honorable Jonathan  
22      Lebedoff, who presided over two mediation sessions back in  
23      September of 2010, laying the groundwork for this.

24             And specifically, I would like to thank Ken  
25      Kohnstamm whose strategy and wisdom brought us to today.

1 Thank you very much.

2 THE COURT: Thank you. What I would like to do,  
3 without necessarily stating that depending on how we proceed  
4 that we won't take some recess, but we have been in the  
5 courtroom approximately a little over 50 minutes, less than  
6 an hour.

7 I would like to, at a minimum, have a few of you  
8 make any statements you wish to make to the Court, knowing  
9 we may have to take a recess, unless one or more of you say,  
10 I can't believe the Judge is continuing on without a recess.  
11 I was going to ask, assuming she is still in the courtroom,  
12 is Bonnie Smith here in the courtroom?

13 THE CLERK: Judge, she had to leave for another  
14 appointment.

15 THE COURT: Oh, I'm sorry. Okay, so I am sorry  
16 about that. I will mispronounce names, here, probably.  
17 Heidi Myhr, M-y-h-r?

18 Is it okay, mam, if you stand at the podium?  
19 Would you like to be seated? It is up to you.

20 MS. MYHR: No, that is fine, but thank you for  
21 asking.

22 THE COURT: Okay.

23 MS. MYHR: It is very nice of you.

24 THE COURT: You go ahead and tell me what is  
25 important for --



1 MS. MYHR: My name is Heidi Myhr. And I am from  
2 West St. Paul in Dakota County. In 1988 I was in the Anoka  
3 Regional Treatment Center and mistreated and put into  
4 time-out and abused and put down with four men and one woman  
5 on a hard plastic bed. By that morning I ended up saying I  
6 am going to listen to what they have to say and I tried to  
7 file a case to the Anoka Regional Treatment Center and I  
8 wrote a little thing on it which you probably have gotten.

9 THE COURT: I do.

10 MS. MYHR: That is why I am here today, so the  
11 future of people in the next generation doesn't end up  
12 abused like I did over just a stupid little TV  
13 malfunctioning, and everybody wanted to relax and have a  
14 good time. And three days later we got a new TV. So, that  
15 is not how you get what you need accomplished. And I just  
16 know I got a little fed up, but my heart says in the future  
17 no one should have to go through that. And thanks for  
18 letting me speak today.

19 THE COURT: Please, if I may, I just want to thank  
20 you for -- thank you for coming, you set an example for us  
21 all. It is a reminder. And I promise you that I will carry  
22 out my oath and my responsibility to do what I know you hope  
23 this agreement does. And I so appreciate you coming in.

24 Most people don't like coming to court under any  
25 circumstance, and I appreciate so much that you had come.

1 Thank you.

2 MS. MYHR: Well, I came because I believe the  
3 future shouldn't, you know, follow the path, you know? I  
4 think it should be erased and moved on, so that is why I am  
5 here today to speak for the other self advocates, or  
6 people -- because I truly believe that my heart was to go to  
7 the State Hospital, that is what they told me, to get help,  
8 to get better, not to get angry and get worse. And that is  
9 not the way it was originally planned. So, I want -- if we  
10 do still have state hospitals in the future, that we go  
11 there for the intentions that it originally was set up for,  
12 not to be abused.

13 THE COURT: Thank you so very much.

14 Kurt, I apologize if I mispronounce the name. Is  
15 it Rutzen, Rutzen, R-u-t-z-e-n? Would you like to sit or  
16 stand, sir?

17 MR. RUTZEN: I am standing. Thank you for asking.

18 THE COURT: And I want to say that you and I have  
19 met along the way.

20 MR. RUTZEN: I think we have.

21 THE COURT: Not related to this case, directly,  
22 but --

23 MR. RUTZEN: Yes.

24 THE COURT: So, thank you for coming. If you  
25 would please state your name and just say what you would

1 like to say.

2 MR. RUTZEN: Yes, my name is Kurt Rutzen. And I  
3 appreciate you allowing me to talk today for just a minute  
4 or so. I live alone in my own apartment with my cat. And I  
5 drive my own car. And disability people, as I am, we are  
6 people, too. We are in society, too. And we deserve  
7 everything that everyone else deserves.

8 And we're -- I support highly the bringing of this  
9 forward. And I appreciate all of you working on this. And  
10 very, very concerned of the other cases out there where  
11 people can just shove under a rug, and out of mind, out of  
12 sight, and nobody has to know.

13 We need to keep bringing these issues to the  
14 forefront to get them right, and do what is right for  
15 disability people. And I care so, so much. And I work with  
16 the ARC of Minnesota. And they do a fantastic job. I can't  
17 even tell you. And I better quit there or I will go on and  
18 on for hours. We don't have that much time, so I thank you,  
19 Your Honor. And let's move forward.

20 THE COURT: I want to -- I want to thank you for  
21 coming, and I think you understand, so I wouldn't have to  
22 say this. But you show us the way, too. And what you are  
23 really saying is that you, individuals with disabilities  
24 enjoy the promise of the Constitution and the promise of  
25 America.

1 MR. RUTZEN: Yes.

2 THE COURT: It is time that, and I so hope,  
3 because getting to meet so many people, those stereotypes  
4 fall away as so untrue. So, I thank you so much because you  
5 make us a better system and this a better case by your  
6 willingness to come in here and say what you have to say.  
7 And I thank you so much.

8 MR. RUTZEN: Thank you so much. In the last ten  
9 years, we you guys have stopped, stopped labeling jobs and  
10 our people.

11 THE COURT: Thank you.

12 MR. RUTZEN: Which many do.

13 THE COURT: They do indeed.

14 MR. RUTZEN: Thank you so much.

15 THE COURT: Thank you so much. John Jordan? If  
16 John is here? I hear -- okay, and I -- Julie Kenny?

17 MR. O'MEARA: She is not here, Your Honor.

18 THE COURT: Okay. Roberta Opheim? How are you  
19 today?

20 MS. OPHEIM: Good. Good morning, Your Honor, and  
21 members of the Court. My name is Roberta Opheim. I am  
22 Minnesota's Ombudsman for Mental Health and Developmental  
23 Disabilities. That is an independent state agency that  
24 serves citizens who are receiving services for mental  
25 illness, developmental disabilities, chemical dependency and

1 children with emotional disturbance.

2 I couldn't be more proud of the mission that the  
3 Legislature stated for this office when they created the  
4 office. And that is, to promote the highest attainable  
5 standards of treatment, competency and efficiency and  
6 justice for citizens receiving services for those  
7 disabilities.

8 In 2007, our office received two complaints that  
9 initially we thought were a minor reflection of the system.  
10 These were families directed to us after working with ARC  
11 related to problems their loved ones were having in the  
12 treatment program known as METO.

13 That began an 18-month process for our agency that  
14 culminated in the public report that was referred to by the  
15 Plaintiffs' counsel, just plain wrong. And I want to thank  
16 the individuals in my agency who worked on that, one of whom  
17 is here, Chris Mitchell, the other Cheryl Turcott and Arlene  
18 Wagner, who diligently went out there, looked through  
19 records, did research, talked to individuals and did one of  
20 the most comprehensive reviews that has been done by our  
21 agency.

22 During the course of that review, the agency had a  
23 number of concerns after conducting its review about the  
24 quality of care and treatment, the civil and human rights of  
25 the individuals, and the safety of the clients and the staff

1 who were engaging in the restraint procedures.

2 Specifically, the concern initially focused around  
3 excessive use of restraints as a treatment modality rather  
4 than the common practice of reserving it as a tool of last  
5 resort and only in emergency situations. This philosophy of  
6 care was so engrained in the staff that they could not see  
7 the pattern that was developing within their own facility.  
8 And in fairness to the staff, they truly believed that they  
9 were offering state of the art care and believed that they  
10 were helping individuals.

11 In addition to our office conducting the review,  
12 we worked in tandem with the Disability Law Center who then  
13 came in to represent clients in an effort for them to be  
14 moved out of the facility into more integrated settings.  
15 Efforts that we tried to negotiate change in practice, were  
16 not successful at that time.

17 In addition, there was a concern of a pattern of  
18 retaliation towards families and guardians who raised  
19 concerns or who objected to the treatment methods that were  
20 being outlined.

21 However, the Ombudsman is here today not to focus  
22 on the past, but to speak in support of the future, the  
23 support of this agreement which I agree with all of the  
24 speakers so far is a monumental agreement with unprecedented  
25 cooperation of opposing sides, and also the engagement of

1 the advocacy community and individuals.

2 And I want to thank the Judge for his  
3 unprecedented access to all of the parties in the case,  
4 including the individual members of the Class.

5 THE COURT: Well, but people like yourself,  
6 Colleen Wieck and others insisted I give this access, I  
7 would think, along with the lawyers. And there were others,  
8 too, so I thank you.

9 MS. OPHEIM: Well, I still think you went above  
10 and beyond. I support the compensation that is given to the  
11 clients that were subjected to these practices. I think it  
12 is a vindication of what they experienced /and while  
13 monetary damages can never make anyone whole, they are  
14 recognition that they were subjected to practices that were  
15 not acceptable.

16 But, specifically, we support and applaud the  
17 policies and the practices that will emerge that are  
18 outlined in the agreement, which include the department's  
19 discontinuation of general practices of mechanical  
20 restraints, and the movement to persons that are planning,  
21 and elimination or reduction of the necessity for seclusion  
22 and restraint.

23 We have long supported the concept of rewriting  
24 what is commonly referred to as the aversive deprivation  
25 procedures of Rule 40. In that we were concerned that it

1 gave the impression that a planned use of restraints was  
2 acceptable. That was not the intent of Rule 40, but  
3 unfortunately may have been an outcome. And most of all, we  
4 really applaud this state for agreeing to develop an  
5 Olmstead plan. While I believe Minnesota has been ahead in  
6 many states of their development of services, I think that  
7 this will help us to organize and move even further forward.

8 And the last issue, which is speaking to a number  
9 of clients who subsequently were transferred with  
10 developmental disabilities to the Minnesota Securities  
11 hospital Which is predominantly set up as an institution for  
12 persons who are mentally ill and dangerous.

13 THE COURT: That is true.

14 MS. OPHEIM: Originally we had concerns that the  
15 wording of the settlement would still allow for admission of  
16 developmental disability clients to the Security Hospital by  
17 county simply by committing the person mentally ill and  
18 dangerous, in addition to developmental disabilities, or in  
19 lieu of.

20 However, that did not address that the treatment  
21 practices for certain disabilities need to be altered, even  
22 if there is a co-occurring mental illness. However, our  
23 office has worked very cooperatively with the Department of  
24 Human Services to development a process to attempt to  
25 identify and divert situations where that might occur.



1           And I am very pleased and supportive of what I  
2           believe Assistant Commissioner Barry will be speaking to as  
3           the Department's commitment to that diversion process.

4           THE COURT: And I can just confirm that whether it  
5           was you raising it, or the Deputy Commissioner or others,  
6           that that became a discussion and focus, just as you have  
7           explained it in the last two get-togethers the lawyers had.  
8           And so now I guess I understand how it came to the  
9           forefront. Because I reacted the same way you have. I  
10          believe that it appears that that has been and will be  
11          addressed, the concerns that you have initially raised.

12          MS. OPHEIM: Not only will this agreement  
13          recognize what these clients went through, but it will help  
14          all citizens with developmental disabilities across the  
15          state. I want to thank the Department of Human Services,  
16          the Plaintiffs, and all counsel and all those involved in  
17          the lawsuit for their hard work in reaching this agreement.  
18          Thank you.

19          THE COURT: I would like to thank you, because  
20          even though you have had more contact with some of the  
21          counsel -- and of course you and I knew each other before  
22          this lawsuit -- but, you have been there every step of the  
23          way. And in fact, actually we modified the Order early on  
24          where you became a consultant and got access to certain  
25          information. And it looks like if people have concerns

1 about how this is being complied with or carried out, it  
2 looks like you will be one of the individuals and agencies,  
3 not the only one, who will be -- your phone is probably  
4 going to ring, or the e-mail is probably going to go off, so  
5 you are probably going to remain there every step of the  
6 way, I suspect.

7 MS. OPHEIM: Well, our office is always glad to be  
8 available to any citizen of the state of Minnesota,  
9 especially the ones that we serve. And we certainly hope in  
10 working cooperatively with the Department, that we can avoid  
11 complaints and just monitor progress. Thank you.

12 THE COURT: I would just make the observation, I  
13 think you implied it. I think something that probably goes  
14 unnoticed because the agreement is over 50 pages long, is  
15 the new approach to the chemical restraint issue, as well,  
16 and putting that on everybody's radar with the restrictions  
17 as defined on page 8 of the agreement.

18 MS. OPHEIM: Yes. And we are very pleased with  
19 that, also.

20 THE COURT: Thank you.

21 MS. OPHEIM: And we are pleased with that also.

22 THE COURT: Thank you, again.

23 MS. OPHEIM: Thank you.

24 THE COURT: Brad Hansen? Is Mr. Hansen here? And  
25 he is going to be upset with me because he is going to say

1       you don't recognize me? I may be in the back, but we have  
2       met. So --

3               MR. HANSEN: Hello, I am Brad Hansen. I work at  
4       ARC Greater Twin Cities, which is an agency, and it served  
5       folks with disabilities from birth to end of life, ensuring  
6       that their health, safety and welfare are the first  
7       considerations.

8               The picture of the individual on this is Mr.  
9       Jensen, who is the very first person that got involved in  
10      this case. I was the advocate called by his mom and dad.  
11      They weren't guardians at the time, and he went from  
12      Willmar -- it is a system problem where the group home had  
13      requested a little additional funding so that he could have  
14      additional staffing to deal with issues. And that was  
15      denied, and then he went to a crisis home in Minneapolis and  
16      then eventually ended up in METO.

17              And he went into METO, this is Mr. Jensen, here.  
18      He is where we all started from. He ended up in METO and  
19      his mom and dad were shut out from METO staff because they  
20      weren't guardians. They wouldn't tell him anything. A  
21      couple of months later they got guardianship and went up  
22      there and they were horrified with what they were seeing,  
23      that he was in metal handcuffs, and leg hobbles laying prone  
24      on the floor for spitting.

25              Now, you know, Rule 40, its intention is last

1 resort. And it should be to prevent someone else or himself  
2 from being hurt. He was on one of those -- if you looked at  
3 the slides, he was on the 251 or more abuses in less than a  
4 year. From anything from looking funny at somebody to  
5 acting out.

6 Most of his acting out was self-injurious  
7 behaviors, which could have been redirected, and wasn't.  
8 The only other issue I wanted to speak on this case is that  
9 when looking at case records at METO, and the only thing  
10 they wrote about, well he had an incident, he had an  
11 incident on this date. Never saw any positive statement in  
12 his daily log.

13 To METO's credit, they decided to all of a sudden  
14 do a med assessment. They changed all of his meds, and for  
15 him it worked. And a month and a half later, he is now out  
16 of -- he was out of METO. He was placed in a group home and  
17 has been there ever since.

18 His first aggression after he left METO was  
19 towards his mom. And right now he is successfully living in  
20 a group home where they don't do any restraints of any kind.  
21 They are having him out in the community. He is living a  
22 full life.

23 My concern is I worked with other people that have  
24 gone to METO. A couple of them have gone from METO after  
25 all of this came out, and was transferred to St. Peter.

1 They use, constantly, restraints for these folks without  
2 having to have a Rule 40 or any other type of situation.  
3 The two fellows who were there were placed on a sex offender  
4 and mental health unit, and he had neither one of those  
5 diagnoses.

6 My concern moving forward is that we have some way  
7 of looking at -- if we need treatment, let's get treatment,  
8 not put them someplace where -- in a warehouse.

9 THE COURT: I thank you. And Ms. Opheim talked  
10 about the same thing, bringing that issue to the attention  
11 of everyone. And I think that it is being addressed. And I  
12 thank you for it, because obviously someone started working  
13 with the Department of Human Services because there has been  
14 this discussion since this whole thing got started with that  
15 St. Peter issue, the mentally ill and dangerous and the  
16 issues related to that.

17 MR. HANSEN: I also would like to thank the  
18 Ombudsman Office, because when I met with the Jensens, you  
19 know, we were both horrified, and said we need to call the  
20 Ombudsman. And you have seen where we have come from since.  
21 So --

22 THE COURT: Thank you.

23 I thought I would do one other individual and take  
24 a short eight to ten-minute recess. We won't be quitting at  
25 noon, we will hear everybody out. But, if somebody is out

1       there saying, well, the Judge doesn't know it, but if I  
2       don't get to speak now, I have to leave or go. Is there  
3       anyone in that position? Then they should step forward,  
4       because I would rather spend the extra time than somebody  
5       saying: Well, I had to leave, I didn't get the chance to  
6       speak.

7               If that is how you feel, you should come to the  
8       podium now, and I will actually do more than one if I need  
9       to, if it means -- because I don't want to deprive anybody  
10      of an opportunity to say what you would like to say today.  
11      So, that means -- you are going to stay with us, Mr.  
12      Granquist? All right. So, why don't we take a short -- we  
13      will hold to, depending on -- we will try to have everybody  
14      beginning at 11:55.

15             I anticipate just by the length of things, I  
16      suspect that somewhere in the area of 12:30 is when this  
17      will conclude, but if we need more time, we will take it.  
18      Because I will be ruling at the end of this hearing. There  
19      is nothing taken under advisement, as it is called. I will  
20      be ruling at this time. So, let's take eight to  
21      ten minutes.

22             You are free to go out in the hallway, you are  
23      free to stay in the courtroom, and then we will see you all  
24      back here in just a few minutes. All right?

25             (Recess.)

1 THE COURT: Math Ziegler? Is Mr. Ziegler here?

2 Okay. Steve Larson? Mr. Larson, how are you, today?

3 MR. LARSON: Your Honor, I am fine. And thank you  
4 for this opportunity to testify. I am Steve Larson, the  
5 Public Policy Director for the ARC, Minnesota and I am here  
6 representing not only the ARC, but the for Consortium for  
7 Citizens with Disabilities. The ARC provides advocacy and  
8 support for persons with intellectual and developmental  
9 disabilities, and the Consortium with Citizens with  
10 Disabilities has over 60 members representing advocacy  
11 organizations, providers, and just a variety of  
12 organizations that support people in the community. And I  
13 am here representing those organizations to say that we  
14 strongly support the Jensen Settlement and the work that has  
15 been done by the Court to date.

16 We are specifically supportive of systemwide  
17 relief that is offered in the Settlement and to cover the  
18 issues of restraint and seclusion. This case involves  
19 several hundred people who lived at METO. But, we think  
20 that the settlement will benefit the 100,000 people with  
21 disabilities that are on Medical Assistance in Minnesota.  
22 And that is not only persons with intellectual and  
23 developmental disabilities, but those are other individuals  
24 with physical disabilities or mental illness, brain injury,  
25 in addition to those individuals with intellectual and

1 developmental disabilities, and all of those people will  
2 benefit from the settlement.

3 We think that one of the most important provisions  
4 is the development of the Olmstead Commission.

5 THE COURT: I agree.

6 MR. LARSON: Thank you, Your Honor. And we think  
7 that the Olmstead Commission, in order to be effective, it  
8 needs to measure progress and include all of the populations  
9 that I just highlighted in order to benefit from this  
10 Settlement.

11 We also believe strongly that the Rule 40 update  
12 is necessary and that this, too, should include all  
13 populations of persons with disabilities. When the  
14 Ombudsman report first came out three years ago, there were  
15 a number of people in the community that provided services  
16 to individuals with disabilities.

17 And they cautioned me to say, Steve, this is not  
18 only a problem in state-operated services, but we need to be  
19 more vigilant in our community on the whole, because the  
20 institutional thinking that was existent in METO can exist  
21 in any environment. And it doesn't take very long for that  
22 to develop. So, as we improve our system, we need to keep  
23 that in mind and be very vigilant in those areas.

24 We also think that the Court has outlined how this  
25 Settlement is going to be monitored, but since there isn't a



1 court monitor or a court master, we certainly think that the  
2 Court should access any technical advisors it needs to make  
3 sure that we are monitoring this as closely as possible so  
4 that the community as a whole can continue to benefit.

5 THE COURT: Well, I assume I can make the  
6 assumption that ARC and others are going to keep a rather  
7 watchful eye over how we are doing, would that be a fair --

8 MR. LARSON: Your Honor, that is absolutely  
9 correct, and I think the disability community, in general.  
10 But, I want to make sure the whole system is benefiting from  
11 this and I want to make sure we do that. And along that  
12 line, we hope that both the Olmstead and Rule 40 Committees  
13 could be subject to the Chapter 13D, the open meeting law  
14 requirement, so that these are open to anyone that wants to  
15 view what is happening by those committee members that are  
16 participating.

17 THE COURT: Well, we will ask the lawyers and  
18 their clients what they think about that before we are done,  
19 here.

20 MR. LARSON: Thank you, Your Honor. And I think  
21 in the Court's wisdom, you had set up a system so that the  
22 benefits acquired through the Settlement by the Plaintiffs  
23 will be protected. And we think that this needs to be  
24 monitored very closely, too, and I was glad to hear that  
25 there were going to be a number of parties involved in that

1 and the ARC Minnesota, as well, is interested in providing  
2 any assistance that we can in that particular area.

3 Finally, the ARC and the Consortium for Citizens  
4 with Disabilities, as the Court has asked, are intending to  
5 be fully involved in the committees that are being  
6 developed, the Olmstead and Rule 40, and will working  
7 closely to monitor the progress in this case. And I want to  
8 thank the Court again for the great work in developing this  
9 Settlement. Thank you.

10 THE COURT: Thank you very much. Luther  
11 Granquist, if you like, sir?

12 How are you today?

13 MR. GRANQUIST: Fine, Your Honor. May it please  
14 the Court? It is a pleasure to appear before you as a  
15 non-lawyer.

16 I would be remiss if I didn't reflect back on  
17 settlement conferences that I was involved with Ken  
18 Kohnstamm earlier on in litigation that went on for several  
19 decades. And the comments that were made about working with  
20 the A.G.'s Office, working with attorneys who may be on the  
21 other side, but were committed to being fair and effective  
22 representatives, not only of their clients, but other people  
23 in Minnesota. And we are lucky that we have had an A.G.'s  
24 Office like that.

25 THE COURT: And I thank you for saying that. And

1       you would know as better, or more than probably anyone. And  
2       I think -- I don't know if the non-lawyer public really ever  
3       understands that. It doesn't just take a skilled advocate.  
4       It is someone who wants to truly act in the public community  
5       interest. You know that better than most. So --

6               MR. GRANQUIST: Looking at the Settlement, Kurt  
7       mentioned the need to continually bring these issues to the  
8       forefront. And the issue of restraint of human beings in an  
9       institutional setting has deep roots.

10              Mary Miller from a nonexistent town south of Amboy  
11       went to the first hospital for the insane in 1865 and ended  
12       up in the Quiet, which of course is a room that was locked.  
13       Her room was locked anytime that she was in it, anyway,  
14       which is another story.

15              One of the first purchases made by Samuel Shantz,  
16       who was the superintendent there, was some Utica boxes,  
17       coffins with holes punched in them that people were placed  
18       in and kept in for extended periods of time. The roots are  
19       deep that have to be dealt with here.

20              In 1959, I believe it was Governor Youngdahl  
21       burned the restraints on Halloween night at Anoka State  
22       Hospital; but, they came back.

23              In the seventies, in the duty side of the system,  
24       there were a group of young psychologists that came in, the  
25       young Turks that were going to do effective work in terms of

1 using the techniques of behavior modification, and some were  
2 good and some were not so good. I was just showing several  
3 people a picture of the restraint chair at Brainerd State  
4 Hospital in Building 10 that was in the corner there, a  
5 little room that was built for restraints, and here is this  
6 restraint chair and Timmy Neilsen, 10 years old, was put in  
7 that on a regular basis.

8 We talk about benign actions, people could be put  
9 in restraint for property destruction, and I read a record  
10 that said, put in restraint for property destruction. What  
11 did this person do? He tore up a paper. This is going to  
12 require constant vigilance. And hopefully, the latter  
13 portions of the Settlement Agreement, the ones that are not  
14 obligatory, that are in a sense "do right" orders are at the  
15 core of this and they are going to require effective  
16 intervention on an ongoing basis if this is going to have a  
17 truly beneficial effect on monitoring.

18 I know something about this, because the  
19 agreements that we negotiated in the past with the state  
20 required some very specific things to be done, and some very  
21 specific things were not done. And that was brought to  
22 light only because there was ongoing access, access to  
23 facilities and to records, to see that there is in fact  
24 compliance with the staples, the ones that aren't obligatory  
25 under this settlement agreement.

1           A couple of other points, the disposition of the  
2           proceeds. You may recall that it was probably in the  
3           eighties, I -- things, in retrospect, kind of blur together.  
4           But Metro Mobility was established and it was a total  
5           fiasco. And the National Guard came in and ran the trucks  
6           for a while, and then there was a lawsuit brought by an  
7           eminent law firm in the city of Minneapolis and they got an  
8           award of monetary damages.

9           And somewhere down the pike, I represented 60  
10          people that lived in Phoenix Residence in Dakota County,  
11          Ramsey County, that had received an amount of money in  
12          settlement, in amounts ranging from \$1.65 to \$65.70, or  
13          something like that. And of those modest total awards, they  
14          were permitted to keep \$0.65 and \$0.75, respectively,  
15          because all dollar amounts were set against cost of care in  
16          an ICR/MR. And the law firm didn't do a thing about it. I  
17          think hopefully you don't need to use the \$50,000, but to  
18          have an effective mechanism to ensure that there is  
19          settlement, I think, is appropriate.

20          THE COURT: And you will hear me at the end of  
21          this hearing, I am going to institute part of an order where  
22          if there is an agency out there that feels that there is, in  
23          addition to my commitment and promise under the agreement to  
24          with or without services of counsel to assure no effect on  
25          eligibility, I am going to make certain findings at the end

1 of today's hearing. So that if there is an agency or an  
2 individual who has concluded -- because I am going to rule  
3 as a matter of law that this is not a resource -- as a  
4 matter of law and equity, it cannot and will not affect  
5 eligibility in any way.

6 And if there are individuals or groups that feel  
7 that I have stepped beyond my jurisdiction, they have got to  
8 come through me. And so, if I am incorrect, at least they  
9 have got to come to me, with or without the services of a  
10 lawyer. That is going to be part of the order that is going  
11 to be generated today.

12 I have to smile, Your Honor, the Court is an  
13 ultimate eligibility technician overseer, that is wonderful.

14 THE COURT: Don't ask me to do any math tables in  
15 the next few minutes.

16 MR. GRANQUIST: One other point, and it goes to  
17 what Steve Larson was talking about in terms of Olmstead and  
18 the need for a truly integrated system. And you asked Steve  
19 if the ARC was committed, and of course they are. And so  
20 are other folks committed to making this work. But, it is  
21 fundamentally, Your Honor, a sense of value. What do we  
22 really care about the human beings that were at METO, at  
23 Cambridge, at Faribault, at all of the institutions in the  
24 state? And as a society, what commitment do we give? And  
25 one of the things that I have to mention, Your Honor, about

1 the disparity in our society, working with people like Mr.  
2 Hansen is not easy work. It is probably as hard work as  
3 anybody can do, working with human beings who lack some  
4 capacity on judgment, who may have some behavioral issues  
5 that are significant. It is truly, truly hard work. We, as  
6 a society, don't recognize that.

7 Several years ago, I was -- I sound like I am  
8 bragging. I was given the Bernie Becker Award by the Bar  
9 Association. And I loved it because Bernie was my dear and  
10 deep personal friend, and he died. And I missed him  
11 greatly. And I was -- and I gave a little talk. And I  
12 talked about an Eighth Circuit decision that was written by  
13 a judge whose name I fortunately have forgotten. But, it  
14 was about the per diem, the cost of keeping residents in  
15 Minneapolis.

16 And I had been on the other side of porting  
17 residents on several occasions, got hollered at by the  
18 administrator. I wasn't there for them; but the Court, the  
19 Eighth Circuit dropped in a footnote that said something to  
20 the effect that it is certainly a program that has gone  
21 amuck when we are paying \$130 a day to take care of these  
22 people. And that is the same court that was willing to sign  
23 off on fee awards of 160, 170 or \$180 an hour. And I think  
24 we have to think as we look at our society as a whole how we  
25 value the people that provide services. And when you look

1 at the lodestar figure, Your Honor, please think of that.

2 I do have one other point. I could run for  
3 president at this point. I have 3, but now I have 4. There  
4 is little history here that I think you may or may not be  
5 aware of. West building at Faribault in the early -- in the  
6 thirties and the forties was a building that was for the  
7 more capable of bad actors, men. Faribault had a waiting  
8 list. And there was enormous pressure to allow people to be  
9 admitted there. So, the bad actors were moved to a new  
10 facility, to the annex for defective delinquents, which is  
11 the St. Cloud Reformatory. And they were put in prison.  
12 They were put in a prison, until Maynard Pirsig on a Bar  
13 Association Committee said, this has got to cease. And they  
14 closed the place.

15 There is always going to be enormous pressures for  
16 the narrowly-defined METO class, here. And that is going to  
17 take constant oversight. You know, is the Settlement fair  
18 and agreeable? Yeah, of course. Thank you, Your Honor.

19 THE COURT: Thank you.

20 I believe someone from Minnesota Disability Law  
21 Center would like to address? Is it Barnett Rosenfield?

22 MR. ROSENFELD: Yes.

23 THE COURT: I see Pamela was here earlier.

24 MR. ROSENFELD: She was here earlier. She had  
25 another appointment that she had to get to.



1 THE COURT: If you would please just state your  
2 name and kind of what capacity you appear, because I may  
3 know, but others may not. And then you can, of course,  
4 proceed as you wish.

5 MR. ROSENFELD: Sure. Thank you, Your Honor.  
6 Good morning, or good afternoon, I guess, at this point. I  
7 appreciate the opportunity to appear. My name is Barnett  
8 Rosenfield. I am a supervising attorney with the Minnesota  
9 Disability Law Center. And as you are probably aware at  
10 this point, the Minnesota Disability Law Center is a part of  
11 the Legal Aid Society of Minneapolis.

12 THE COURT: Yes.

13 MR. ROSENFELD: Which is the federally-funded,  
14 state-designated protection and advocacy system for people  
15 with disabilities here in the state of Minnesota. And I  
16 appreciate the opportunity to appear today just to add a few  
17 comments to those that have already been put on the record.  
18 And I appreciate going later so that I don't have to speak  
19 as much about some of the things that have already been  
20 covered well by the people that have preceded me.

21 I do want to say a few words to express the  
22 Disability Law Center's strong support for this Settlement  
23 and appreciate for the process that the parties and the  
24 Court have gone through to get the to this point.

25 As you know, part of the Disability Law Center's

1 core duties as the protection advocacy system in Minnesota  
2 is to investigate allegations of abuse and neglect. And  
3 consistent with that responsibility, MDLC staff had a long  
4 history, in particular, of working on issues relating to the  
5 use of restraints at METO. We conducted investigations  
6 there. We've done ongoing monitoring there. We represented  
7 individual clients, as Ms. Opheim referred to earlier, and  
8 we have done that not just on restraint-related issues, but  
9 on other conditions issues, on behavioral programming and  
10 intervention problems, and then ultimately on  
11 discharge-related problems.

12 Given that kind of background, we do appreciate  
13 the extensive work that was done in this lawsuit to address  
14 many of these long-standing issues, and to address a  
15 Settlement Agreement that not only looks backward to in some  
16 small way compensate people to recognize the harm that was  
17 done, but to move productively forward as we try to create a  
18 much better system that recognizes the basic humanity of  
19 people who are brought to places like METO, places that are  
20 intended to serve them in their best interest and to put  
21 them on, you know, a better position than when they enter.  
22 And it is a mission that we haven't always been able to  
23 accomplish, but I think with the provisions of the  
24 Settlement Agreement, we are in a better place now than we  
25 have been.

1 I wanted to mention a couple of the pieces of the  
2 settlement. We appreciate, the Disability Law Center  
3 appreciates, being written into the Settlement as a partner  
4 with the parties and other stakeholders, both in terms of  
5 the access to records provision that will allow us to assist  
6 in the monitoring efforts that we discussed, that has been  
7 discussed today; but, also with respect to the two  
8 committees that others had mentioned, the Olmstead Planning  
9 Committee and the Rule 40 Advisory Committee.

10 And to just make a couple of comments about each  
11 of those, I would like to echo what I think both Roberta  
12 Opheim and Steve Larson mentioned with respect to the  
13 Olmstead planning work. That is a big task. It is a  
14 necessary task. It is one that I think has been long  
15 overdue, and I am happy to see that it will be something  
16 that many people will be involved in from this point  
17 forward.

18 I do want to echo the sentiment that, from our --  
19 in our judgment, it is critical that that planning process  
20 look very broadly at what Olmstead means and to whom it  
21 means, that it encompasses persons with all kinds of  
22 disabilities, not solely intellectual or developmental  
23 disabilities, and that recommendations that ultimately come  
24 forward out of that process comprehensively address all  
25 kinds of services, not just residential services, per se,

1 but the behavioral programming services that we have  
2 discussed to some extent, the crisis services and  
3 intervention services that are also mentioned elsewhere in  
4 the Settlement Agreement, and also things like vocational  
5 and other employment-related services, that they look at the  
6 entire spectrum of services that people with disabilities  
7 need, require or are entitled to and receive throughout the  
8 state. Because to only look at one certain part of one  
9 discreet population is to do a disservice, I think, to the  
10 ultimate mission that we all are trying to move our programs  
11 toward; that is, to serve people with disability, not just  
12 in humane ways, but in the best, most integrated fashion  
13 that we can to help them live productive, enjoyable,  
14 independent lives.

15 THE COURT: In the community.

16 MR. ROSENFELD: In the community, and wherever  
17 they want to live, with whomever they want to live, however  
18 they want to live.

19 THE COURT: Exactly.

20 MR. ROSENFELD: Our review of the Settlement  
21 language, I think, supports the notion that this is what the  
22 parties intend, that they are expecting an Olmstead planning  
23 process to be very comprehensive and wide-ranging in scope.  
24 And we welcome the opportunity to be a part of that process.

25 And I would echo Mr. Larson's suggestion that we

1 make that process as open as possible and involve as many  
2 stakeholders and interested parties as we can.

3 With respect to the Rule 40 process, it is our  
4 hope that the state will look not just at modifying Rule 40,  
5 but at the development of a best practices model regarding  
6 all aversive practices. And a model that will ultimately  
7 seek, among other things, I think, to eliminate the use of  
8 restraints, entirely, in all settings. That should be the  
9 goal.

10 We look forward to working on both the Olmstead  
11 issues, on the monitoring issues, on the Rule 40 issues,  
12 consistent with our mission, as the protective advocacy  
13 agency. I expect that we will have a fruitful ongoing  
14 relationship with the parties in the room, we have in the  
15 past, and I am sure we will in the future; and with the  
16 other stakeholders, as well, both in the room and across the  
17 state.

18 And again, on behalf of the Disability Law Center  
19 and on behalf of our clients, I wanted to thank this Court  
20 for your efforts in making sure that this Settlement becomes  
21 a reality.

22 THE COURT: And I suspect, much like I asked Mr.  
23 Larson, consistent with your mission, you are going to be,  
24 for lack of a better phrase, you are going to be hanging  
25 around looking very -- with careful scrutiny of, well, is

1 the intent and spirit of this Settlement Agreement being  
2 carried out for the benefit of the individuals that it was  
3 intended to benefit? I suspect you and your -- the Center  
4 will be keeping a close and watchful eye.

5 MR. ROSENFELD: That is a good assumption, Your  
6 Honor. Thank you.

7 THE COURT: Thank you.

8 Mr. Brinker, do you care to address the Court,  
9 sir? And you can stand, if you wish, or we can lower this  
10 down and we will pull up a chair, there. It is up to you,  
11 sir.

12 MR. BRINKER: My name is James Brinker. I am a  
13 Plaintiff in the case here advocating for my son Thomas and  
14 my four special needs children I adopted through the state  
15 of Minnesota, and Washington, the state of Washington.

16 I am glad to be here today. I would like to thank  
17 the Minnesota Department of Human Services for their  
18 open-mindedness through this whole journey. It has been  
19 quite a journey. Personally, we have had quite a journey,  
20 too. And it started long before we went to METO.

21 By the time we got to METO after a year of court  
22 hearings and competency tests with our son Thomas, who  
23 violated a school policy, Thomas has always had a difficult  
24 life and we struggled very hard with fetal alcohol syndrome  
25 that he had, was born with, obviously.

1           And through his school journey he went from 12  
2 behaviors daily, to his senior year where he had one  
3 behavior the entire year. And that one behavior was where  
4 he threw paint on an individual that happened to be a  
5 substitute teacher. And that got him a citation that rolled  
6 into a court hearing, and then over into the mental health  
7 court, which eventually we showed up at the METO's front  
8 door.

9           By the time we got to METO, we were already  
10 exhausted. And shortly after that, my weaknesses turned  
11 into strengths when I saw what was happening with Thomas and  
12 some of the stories he told, told me, which didn't happen  
13 right away because he just doesn't have the ability to  
14 express those kind of things.

15           So, I am very glad that we're here and working  
16 nicely with the Department of Health and Human Services.  
17 And I think this is only really the beginning of a very  
18 large iceberg that we need to work with, not only with, you  
19 know, facilities, private group homes, and even the school  
20 systems who use seclusion rooms, and I'm not sure about  
21 restraints. But, I have other children that have  
22 experienced that in the school system, as well, and you have  
23 got to wonder if it is not being used for the right reasons.

24           THE COURT: I have had a couple of those cases,  
25 myself, independent actions here. So, I haven't been on

1 your journey, but I have some understanding that, yes, some  
2 of those seclusion rooms, in one case, it was they forgot to  
3 take the name off the door until the mother showed up when  
4 she didn't understand why her son wouldn't come to class.  
5 And they forgot to take the name janitor closet off of the  
6 door where they had this 20-year old young man. So, I have  
7 seen that side of it, that particular case. And why it was  
8 in two schools, one in western Minnesota, one in North  
9 Dakota, and I couldn't understand why in two schools they  
10 were using the same thing. It was on the advice, I would  
11 say misguided, inappropriate advice of a psychologist, of  
12 all people. But, anyway, we got it resolved in some ways,  
13 so I do know that -- I can confirm what you say, because I  
14 have had a couple of cases.

15 MR. BRINKER: And what Roberta said, too, with  
16 falling into patterns that you are not even aware of, too.  
17 You know, you just get into habits day after day after day,  
18 and it seems like there is normalcy in this. But, with all  
19 due respect, if we as parents did this kind of restraint at  
20 home, what would happen to us? And that was always my  
21 argument with myself, why is it okay here, but not okay  
22 here? You know, and you know I am not speaking of all of  
23 those cases at home, but -- so, I am very glad to be here  
24 and I know that we need to keep the public aware of people  
25 with disabilities, and always keep them in mind when we make



1 our decisions. So, thank you very much.

2 THE COURT: Thank you very much for making a  
3 statement, sir.

4 Other than Anne Barry who I am going to call on,  
5 is there anyone who -- I have tried to keep an updated list,  
6 and I believe I have called on everybody but Assistant  
7 Commissioner, Deputy Commissioner Anne Barry. Is there  
8 anyone else?

9 I didn't see Colleen Wieck's name on here, but I  
10 am not going to obligate anybody to step to the plate,  
11 either. So, Mr. O'Meara is encouraging somebody to come up.  
12 I wonder if that is -- I know very, very well who you are.  
13 But, if you could state your name?

14 MS. WIECK: Oh, sure.

15 THE COURT: And the capacity in which you appear?

16 MS. WIECK: Good afternoon.

17 THE COURT: In addition to having trained me over  
18 the years on trying to rid me of some of my stereotypes and  
19 ignorance, in addition to some of those things you have  
20 done -- not related to this case, but prior to this case --  
21 maybe you could introduce yourself and in what capacity you  
22 appear?

23 MS. WIECK: Good afternoon, Your Honor. My name  
24 is Colleen Wieck, W-i-e-c-k. And I am the Executive  
25 Director of the Governor's Council on Developmental

1 Disabilities. I am here today to speak in favor of this  
2 Settlement Agreement. And as noted earlier, our Council has  
3 been involved as consultants to this lawsuit. We have spent  
4 hundreds of hours reviewing proposed policies, various  
5 versions of the agreement. We participated in the mediation  
6 sessions with Judge Lebedoff. We worked with Roberta Opheim  
7 to contact people to assure that the claim forms were filed.  
8 And we are committed to working in the future with the  
9 Minnesota Department of Human Services to assure that the  
10 injunctive relief provisions are implemented. We look  
11 forward to serving on the Olmstead Committee and the Rule 40  
12 Committee and working with Anne Barry on any recommendations  
13 for the cy-pres funds.

14 We believe this agreement will move the state of  
15 Minnesota forward toward positive-behavioral supports,  
16 person-centered planning and self determination. We believe  
17 that the promise of most integrated setting, as described in  
18 the Americans with Disabilities Act, including the *Olmstead*  
19 decision, will help people with developmental disabilities  
20 achieve greater, productivity and inclusion in the  
21 community.

22 We want to raise the expectations of the public in  
23 terms of the strengths, gifts and capacities of this group  
24 of forgotten people. And in terms of concerns, we worked  
25 with the *Welch* case, in fact the Court monitor was housed in

1 our office back in 1981. And so, we know that there is no  
2 calling for court monitor master, and that is the need for  
3 the vigilance, and that is why you asked every person up  
4 here: Are you going to remain vigilant? And we know we  
5 have to track the details and the deadlines of the  
6 agreement.

7 I also concur with Steve Larson that both the  
8 Olmstead Committee and Rule 40 Committee should come under  
9 the provisions of the Open Meeting Law, Chapter 13D, because  
10 we want open, transparent process. And it is noteworthy  
11 that the U.S. Department of Justice is enforcing the  
12 integration mandate of the *Olmstead* decision. In 1999, the  
13 Supreme Court held that unjustified isolation is properly  
14 regarded as discrimination, based on disability.

15 And the U.S. Supreme Court wrote that  
16 institutional placement of people who can handle and benefit  
17 from community settings, perpetuates the unwarranted  
18 assumptions that people so isolated are incapable or  
19 unworthy of participating in community life.

20 We tried to bring class members here today. And  
21 two people declined at the last minute. And they said it  
22 was just something they didn't want to live through again.  
23 And we had to honor their wishes. So, I guess I am here to  
24 say on their behalf they were placed at METO one person was  
25 deaf. I was deaf I was never dangerous, I don't know why I

1       went there.

2               Other people have expressed cheering, and in fact  
3       agreement with this lawsuit, because they believe they won.  
4       They just simply should not have been placed there, in their  
5       opinions.

6               The U.S. Department of Justice issued an  
7       informational bulletin on the last anniversary of the  
8       Americans with Disabilities Act. And the Department of  
9       Justice stated that the goal of integration has yet to be  
10      fully realized, that so many people want to live, work and  
11      receive services in an integrated setting, yet they are  
12      still waiting for this promise, and it has gone unfilled.

13              The Department of Justice said that we have to  
14      take affirmative steps to remedy this history of prejudice  
15      and to ensure people have the opportunity to make informed  
16      choices. These steps include the benefits, and this is our  
17      work, to provide information to people so that they know the  
18      benefit of an integrated setting, to facilitate visits to  
19      community settings so people know what they are choosing,  
20      and to offer opportunities to meet with people who are  
21      living in those settings.

22              I would be remiss if I didn't say that the self  
23      advocates who have been interviewed about the METO case  
24      remind us that, really, there should be self-advocacy groups  
25      everywhere, that people should learn their rights, and speak

1 up for their rights.

2 The Department of Justice advises that the  
3 Olmstead plan should not be some vague assurance about the  
4 future, but the plan has to contain concrete, reliable  
5 commitments, measurable goals, be effective, be  
6 comprehensive, and include commitments that we will not  
7 segregate people. Thank you, Your Honor.

8 THE COURT: I would like to -- you will downplay  
9 your role in this and so much of what you do, but I would  
10 like to thank you, as I did Roberta. I know that the  
11 lawyers appreciate very much the role that you and Roberta  
12 and others have played.

13 Of course, your involvement in influencing the  
14 Federal Court in our disability initiatives with our pro se  
15 project are too numerous to mention. But, obviously, you  
16 expect us to carry this agreement out in spirit and intent.  
17 And you, like so many others here, will be knocking at my  
18 door and others if we don't. So, we will do our very best.  
19 And thank you for all you do.

20 MS. WIECK: Thank you, Your Honor.

21 THE COURT: One other thing. With respect to the  
22 two individuals that didn't -- whether it's the -- for the  
23 reason you said couldn't be here, I would be glad to, if I  
24 haven't met them already, to have them come to the  
25 courthouse or come into my chambers at anytime and chat with

1       them.   So --

2               MS. WIECK:   Thank you, Your Honor.   I will make  
3       sure they know that.   Thank you.

4               THE COURT:   All right.   Other than Deputy  
5       Commissioner, I hope I have the right title and description  
6       of Anne Barry, is there anyone else I overlooked that I  
7       don't have on my list, here?   Otherwise, I will call on  
8       Commissioner Barry.

9               MS. BARRY:   Thank you, Your Honor.   My name is  
10       Anne Barry and I am the Deputy Commissioner with the  
11       Minnesota Department of Human Services.   And it really is my  
12       pleasure to be standing before you today representing  
13       Commissioner Lucinda Jesson.

14              THE COURT:   I can't -- I must say that I have  
15       known Commissioner -- even though she is relatively new as a  
16       Commissioner, I have known her for some time.   And one of  
17       the reasons I am so optimistic about this is going to do  
18       what people hope and intend it to be, I have the highest  
19       regard for Commissioner Jesson.   So --

20              MS. BARRY:   I will bring that back to the  
21       Commissioner.   Thank you.

22              THE COURT:   All right.

23              MS. BARRY:   So, on behalf of the Commissioner and  
24       the entire Department of Human Services, we are here to tell  
25       you that we are in full support of this Settlement

1 Agreement.

2 Please allow me just an opportunity to give a  
3 couple of personal thanks, first to Ken Kohnstamm and Steve  
4 Alpert from the Attorney General's Office. Their wisdom and  
5 guidance have been exceptional, and their support really  
6 foundational to the Department.

7 I also want to thank Shamus O'Meara and Colleen  
8 Wieck simply for trusting us, and their willingness to work  
9 with us to reach this Settlement. You have heard it said  
10 before by others before me, but this truly was a partnership  
11 in reaching many of the terms in this agreement.

12 As you are aware, we have begun to address many of  
13 the issues that were raised in this action, and we are  
14 poised to make progress for all parts of this settlement as  
15 Assistant Attorney General Steve Alpert has said, this will  
16 make a difference in people's lives.

17 Most importantly, we are inside of the agency  
18 leading with an approach that moves us towards preventing  
19 institutional placement in the first place. That we are  
20 really moving to get upstream, that people with disabilities  
21 can and should live in their communities, really, within the  
22 *Olmstead* Court decision.

23 And in those cases where disabled clients are  
24 committed to our care, they will be treated with respect and  
25 with dignity. It is our mission and it is our

1 responsibility.

2 Let me finally address a couple of the issues that  
3 have been raised recently, and even raised here today.

4 First of all, on the issue of clients placed at the  
5 Minnesota Security Hospital, we in the spirit of -- well,  
6 first of all, it is prohibited in the Settlement Agreement.  
7 But, we also in the spirit of this agreement understand that  
8 what is happening is that diagnoses are being changed or  
9 altered so that they meet the commitment requirements of the  
10 security hospital.

11 It is our interest in working closely with Roberta  
12 Opheim of the Office of the Ombudsman to get upstream and to  
13 take what might be just a couple of cases and stop this  
14 before it becomes a pattern in the community, so we will  
15 work closely with the County, the County Attorney's Office,  
16 to make sure that everybody understands the resources that  
17 are available through this Settlement to prevent  
18 institutional placement.

19 And I also want to address the issues raised by  
20 Steve Larson. First of all, we fully expect that  
21 watchfulness and scrutiny. We are in the business of public  
22 service, so we understand we will be watched. We expect  
23 that we will be watched. And these meetings, both Rule 40  
24 and the Olmstead Committee will be open meetings. They  
25 would be required under the statute, but it is the right



1 thing to do, and they will have a broad and comprehensive  
2 scope.

3 THE COURT: So, we now have the answer out there,  
4 so there we are. They will be subject to the -- they will  
5 be open meetings. So --

6 MS. BARRY: And in addition to that, we would want  
7 to provide notice so that as many people were aware of what  
8 is happening -- there will be designated committee members,  
9 but that doesn't mean the participation in this process  
10 shouldn't be as broad as people have suggested it should be.

11 So, finally, we look forward to implementing all  
12 of the terms of the Settlement and taking the positive steps  
13 that we believe are a part of it. And most importantly,  
14 meeting people where they live so that they can live in the  
15 community -- disabled people, so that they can live in the  
16 community, live in dignity and achieve their highest  
17 potential. Thank you, Your Honor.

18 THE COURT: Thank you so much. Have I missed  
19 anyone, who whether they are on our list -- and by list, we  
20 kind of tried to -- we didn't hold to strict rules of any  
21 notice before today. We tried to work with everyone here  
22 this morning. You know, have I missed anyone? If you would  
23 please raise your hand or come forward?

24 Mr. O'Meara, I will hear from you. Anything  
25 further?

1 MR. O'MEARA: Nothing further, Your Honor.

2 THE COURT: On behalf of the good doctor, Counsel?

3 MR. ORBOVICH: Nothing further, Your Honor.

4 THE COURT: The Department of Human Services?

5 MR. ALPERT: Nothing further, Your Honor.

6 THE COURT: Mr. Hashmall? Do you have anything  
7 you would like to state, Counsel?

8 MR. HASHMALL: I just thank the Court for all of  
9 its time and counsel.

10 THE COURT: All right. What I will say, the  
11 lawyers in the room that do this work know this and  
12 nonlawyers likely would not. But, at this point, usually it  
13 is in the courtroom, unless a Judge has to take something  
14 under advisement, I will be making a ruling now, making  
15 certain findings that the law requires me to make.

16 It will be followed by, in addition to this being  
17 a public hearing, it will be reduced to a formal order, but  
18 it will be effective as of now, and then an Order will be  
19 filed that is available, as the Settlement Agreement and all  
20 of the other documents are. There are certain, what we call  
21 redactions, of names of individuals to protect their privacy  
22 and dignity. And, of course, what they say to others,  
23 whether they were here or not, is up to them.

24 I will make a couple of formal -- which I am  
25 required to do, I have a couple of comments -- but I will

1 make a couple of formal findings and then I have a couple of  
2 observations. I first find without any reluctance that the  
3 best interests of just not the Class Members, but the  
4 communities where these Class Members live and reside will  
5 be served by the Court accepting this Settlement in all  
6 respects.

7 I find it to be fair, reasonable and adequate and  
8 will also serve the public interest, as well as the  
9 interests of the Class Members. Of course that carries with  
10 it, and you could pick that up as the lawyers know full well  
11 by some of the questions I have asked some of the speakers  
12 today, because it carries with it a responsibility on the  
13 parties and the public has a right to hold the Court to its  
14 responsibility to follow its oath and to make this Agreement  
15 mean something with the jurisdiction of the Court.

16 And obviously, enough people have spoken today, so  
17 it is not surprising that, obviously, many of you will have  
18 a watchful eye and careful scrutiny to see to it that this  
19 does what it says it is going to do, and what it is intended  
20 to do, and just isn't words on a legal document.

21 And of course, by the agreement, the Court, by an  
22 agreement of all of the parties, the Court does reserve  
23 continuing jurisdiction for a minimum of a two-year period  
24 to enforce compliance with the provisions of the Agreement  
25 and the Judgment, as well as a couple of unusual steps which

1 I will address at this time on the proper distribution of  
2 the settlement payments. And I will address those at this  
3 time.

4 The way this will work, and I will be specific, I  
5 will first find that the attorney fees are reasonable and  
6 fair, but I want to say why. One, given the complexity of  
7 the case, the efforts of Class Counsel, the benefits as I  
8 see them to all individuals with intellectual and  
9 developmental disabilities in the state of Minnesota. And  
10 as a couple of you have mentioned elsewhere, it should be  
11 noticed that within those costs approved by the fees are not  
12 just all of the costs that have been incurred up to today,  
13 but it is, under the agreement, it is the responsibility of  
14 Plaintiffs' Counsel and the Court to carry out the financial  
15 pieces of this Agreement, which I will address in a moment.

16 And as I mentioned earlier today, there is no  
17 separate fund, hidden or otherwise, for what is typically  
18 called in Multi-District Litigation cases and Class Actions,  
19 claim administration costs. Those are within all of those  
20 costs, and those are absorbed by the firm. And so, whether  
21 it is issuance of checks, whether it is assisting the Court  
22 in securing counsel, as I intend to use our pro se program  
23 which relies heavily on many private pro bono specialist  
24 lawyers in the community so I can preserve the additional  
25 \$50,000 set-aside so we can use that additionally in public

1 education to address head-on a lot of the stereotype issues  
2 that have driven much of the misdeeds over the years in this  
3 country and the discrimination against those with  
4 disabilities. They will work hand-in-hand with me.

5 And as the Agreement, itself, states, the Class  
6 Counsel is required to be available to not just Class  
7 Members or many of the individuals and their agencies who  
8 talked -- who addressed the Court today. So, the Court  
9 looking just not at this case and the unique features of it,  
10 but the similarly-situated cases, although there aren't so  
11 many, has no reservation at all in finding those fair and  
12 reasonable.

13 Moving on to the settlement, itself, the Court has  
14 agreed, and as part of the agreement the Court finds the  
15 settlement, itself, with respect -- even though I agree with  
16 what has been said, that the injunctive relief and the  
17 prospective relief is clearly the most significant thing  
18 that I believe will serve just not the interests of the  
19 Class Members, but will serve the greater community and all  
20 of those with kind of the system-wide changes that are set  
21 forth and contemplated in this agreement.

22 And again, I have a responsibility because my name  
23 goes on the bottom of the Order, to not only see that that  
24 is carried out, but to assure not just the proper  
25 distribution of the settlement payments -- and that is a

1 two-part process unique to a case like this. One is, that  
2 the money goes to -- because there are going to be awards as  
3 small as a few hundred dollars and as high as in excess of  
4 \$300,000; that the money goes where it was intended for the  
5 benefit of the individual class member, and that is part of  
6 my responsibility, separate from the eligibility issue. And  
7 I will mention both just very briefly.

8 The Court has agreed to take in all of the funds  
9 into the Court and work with Class Counsel in seeking a  
10 commitment from -- first of all, to see where the money is  
11 going to go, depending upon the status of guardianships, if  
12 any, and whether or not anything ranging from a trust is  
13 needed, or who the designated individuals are.

14 And I will get to the eligibility issue in just a  
15 moment. And so, I will be individually involved in that  
16 with an account here at the Court to seek assurance that it  
17 goes to where it is intended.

18 But, frankly speaking, more than any case I have  
19 been involved in, the larger concern by many Class Members  
20 that were related to me and counsel directly and indirectly,  
21 whether it was personal visits, call-ins or likewise: Well,  
22 how will this affect my eligibility? Will it affect my  
23 grants? And the state has agreed to see to it that their  
24 programming -- they have agreed it will not affect their  
25 state-funded eligibility programs. We haven't reached out

1 to have that formal request from other agencies, including  
2 the federal agencies.

3 And so what I do, and the Order will reflect as  
4 follows, I find at this time both legally, and as a matter  
5 of equity and fairness, that the settlement amounts going to  
6 each individual Class Member is not a resource, and will not  
7 affect in any way a Class Member's eligibility for  
8 disability benefits or related benefits, or otherwise  
9 jeopardize their benefits or programming.

10 This agreement contemplates that if any agency or  
11 entity or individual, private or public, contemplates that  
12 either the Court is without jurisdiction to make this  
13 finding, both as a matter of law and equity; or, if it is  
14 their view that, well, even if the Court has jurisdiction,  
15 we will show that it does affect it, they must come to me.  
16 Because I make the finding that it shall not and is not a  
17 resource and shall not affect the individual recipients or  
18 jeopardize receipt in any way.

19 So, the agreement does contemplate, and my Order  
20 contemplates that if someone is of the view that it is  
21 erroneous, they must approach the Court, which means, of  
22 course, everyone would have notice of that.

23 Separate from that mechanism I have set up, I have  
24 agreed, and I have been asked for this commitment from  
25 counsel, and that is why it is in the agreement; and this is

1 from all counsel; that with or without this provision I have  
2 just ordered, that we will not issue these checks until we  
3 are assured and I am assured and I have received some type  
4 of assurance that I know where the money is going and I know  
5 that it will not affect an unintended consequence, or  
6 whether a trust is needed. And so, I have agreed, also, to  
7 secure the assistance of counsel, if need be, if someone  
8 contacts Class Counsel or the Court saying, we are not sure  
9 what to do.

10 It is my strong view that none of their funds  
11 should be used to make that determination. And so that with  
12 or without the volunteer program, the lawyers have agreed to  
13 up to \$50,000 can be expended.

14 And obviously, Luther Granquist and others have  
15 talked about how crucial that is. And in an ideal world, we  
16 shouldn't have to spend that money. That will be my goal,  
17 because we have an extraordinary pro se person that we rely,  
18 on many active private specialist lawyers in the community,  
19 and the lawyers here have agreed to suggest names to me if  
20 we get into that situation. Because I have made a  
21 commitment to do my very best to see: One, as I said, the  
22 money goes where it is designed to go; and two, it does not  
23 affect the eligibility of the individual receipt of the  
24 Settlement proceeds.

25 And I was reluctant to get this detailed only



1 because I don't want to leave the impression it's the  
2 prospective relief that I believe is the most significant  
3 part of this agreement. So, I am going to enter judgment  
4 consistent with this, the Agreement, because I find it fair  
5 and reasonable.

6 I want to leave you with a couple of comments.  
7 And I promised the lawyers, much like other cases, that  
8 they will get to take a look at the Order to make sure it  
9 reflects -- because one or two Orders will go out today.  
10 There is a number of people in the Class that have asked,  
11 that asked me to look at the records under the Agreement. I  
12 have the discretion to look at that to see if the award  
13 should be increased in any way. That will be done in the  
14 next few weeks with the input from the appropriate parties.

15 First, and a couple of the lawyers have mentioned  
16 it, and a couple of the people making statements have said  
17 so today -- and I apologize for keeping people this long,  
18 but a couple of things need to be said. I want to commend  
19 the lawyers because when all is said and done, many lawyers  
20 are zealous advocates for their client and will go to the  
21 mat, and that probably goes without saying.

22 However, sometimes, and people have to reach down  
23 inside themselves and do what they believe is right under  
24 the law, and for the best interests of the community,  
25 without compromising their individual clients' rights. That

1 is why this case, I believe, has got settled with some of  
2 the system-wide dictates that are required. And even if  
3 some of those aren't in a strict sense legally obligated in  
4 the sense that I can start holding people in contempt of  
5 court, if there is to be integrity to the Agreement,  
6 integrity to me and to this case, those things will be done.  
7 And if these lawyers said they would be done, and they did,  
8 and I am familiar enough with some of the clients to know  
9 that they would not misrepresent these things. And it is  
10 just not window dressing in a case. I believe they will be  
11 done. And it is because of the lawyers and how they've  
12 worked together. And they were able to come together and  
13 say, well, we will represent our client, but we have a  
14 policy on what is the right thing to do in the interests of  
15 the public and the interests of justice.

16 I will leave you with something that wasn't  
17 related to this case, but sums up the theme of many of the  
18 individuals who spoke today, both Ms. Myhr, Mr. Rutzen, and  
19 I am sorry if I mispronounced your name, and others  
20 individuals. Many individuals I have invited to the  
21 courthouse over the years with intellectual developmental  
22 disabilities, because it is their courthouse, too. And so  
23 we have college groups, elementary school kids, college  
24 children, graduates, students, law students.

25 The most insightful answers I have received to the

1 following question, which is a theme that runs through this  
2 and maybe it was the whole point of the *Olmstead* case, was  
3 when I had a group of people, self advocates and people with  
4 intellectual and developmental disabilities when I asked  
5 them the question here in this courtroom, the same question  
6 that we ask law students, med students, college students,  
7 the difference is they gave the best answers, without  
8 hesitation, much like you heard today from Ms. Myhr and Mr.  
9 Rutzen.

10 I said, what are the most important rights to you?  
11 And they hadn't read the Uniform Declaration of Human Rights  
12 that the U.N. has passed years ago, but they captured it.  
13 They turned to me without any hesitation, and one after  
14 another, and I will give some direct quotes, because it is  
15 still here and here. I want to live in the community with  
16 my friends and family like everybody else, end of quote.

17 I want to be believed as a sexual assault victim  
18 and domestic violence victim like everybody else. I want to  
19 live independently like other people. I want a job where I  
20 can use my brain. I want to live and work with my friends  
21 and have fun. I want to be an American.

22 And then one said to me as if he had been to law  
23 school, I just want to receive what is over that, you told  
24 us about, Judge, over that Supreme Court Building, "Equal  
25 Justice Under Law." I want to be the recipient of the

1 promise of the Constitution.

2 We are adjourned. I thank you all. I will enter  
3 the Order. Anything further on behalf of the Plaintiffs?

4 MR. O'MEARA: No, Your Honor. Thank you.

5 THE COURT: On behalf of any Defendants?

6 MR. ORBOVICH: No, Your Honor.

7 MR. KOHNSTAMM: No, Your Honor, thank you.

8 THE COURT: I am sorry for using up your noon  
9 hour, but we are adjourned. And thank you all for your  
10 presentations today. We are adjourned.

11 (Adjournment.)

12  
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14  
15 \* \* \*

16  
17  
18 I, Jeanne M. Anderson, certify that the foregoing  
19 is a correct transcript from the record of proceedings in  
20 the above-entitled matter.

21  
22  
23 Certified by: s/ Jeanne M. Anderson  
24 Jeanne M. Anderson, RMR-RPR  
25 Official Court Reporter