

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs; and others similarly situated,

Plaintiffs,

vs.

Minnesota Department of Human Services, an agency of the State of Minnesota; Director, Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Douglas Bratvold, individually, and as Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Scott TenNapel, individually and as Clinical Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; and State of Minnesota,

Defendants.

Court File No.: 09-CV-1775 DWF/FLN

**STIPULATED CLASS ACTION  
SETTLEMENT AGREEMENT**

This Stipulated Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Plaintiffs James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; and Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs (collectively, “Plaintiffs”), on their own behalf and as representatives of the Settlement Class, and Defendants Minnesota Department of Human Services, an agency of the State of Minnesota (“DHS” or “Department”); the State of Minnesota (“State”); Douglas Bratvold, individually and in his former official capacity (“Bratvold”) and Scott TenNapel, individually and in his former official capacity (“TenNapel”) (collectively, “Defendants”).

#### RECITALS

1. The State developed and operates Minnesota Extended Treatment Options (“METO”) to provide treatment and care for persons with developmental disabilities.
2. Plaintiffs Bradley J. Jensen, Thomas M. Allbrink, Jason R. Jacobs and others similarly situated were residents of METO.
3. In their Amended Complaint, Plaintiffs contend *inter alia* that the State and DHS unlawfully and unconstitutionally permitted METO to routinely impose seclusion and mechanical restraints upon residents, including Plaintiffs and others similarly situated, for which Plaintiffs claim damages and injunctive relief, including attorneys’ fees and costs, resulting from Defendants’ alleged conduct.
4. All Defendants deny Plaintiffs’ allegations in their entirety.

5. In order to avoid the burdens of litigation and resolve the claims in the above referenced lawsuit in a mutually agreeable manner, it is the intent and desire of the Parties to enter into this Agreement, contingent upon approval by the Court.

6. Plaintiffs' counsel have conducted substantial investigations and negotiations and, considering the benefits of the settlement and the risks of litigation, have concluded that it is in the best interest of the Plaintiffs and the Class Members to enter into this Agreement. The Plaintiffs believe that this settlement is fair, reasonable and adequate with respect to the interests of the Plaintiffs and the Class Members, and should be approved by the Court pursuant to Federal Rule of Civil Procedure 23. As set forth below, the parties do not object to approval by the Court pursuant to Federal Rule of Civil Procedure 23.

7. The State of Minnesota further declares, as a top concern, the safety and quality of life of the Residents of the Facility. The State agrees that its goal is to provide these residents with a safe and humane living environment free from abuse and neglect. The State also agrees that its goal is to utilize the Rule 40 Committee and Olmstead Committee process described in this Agreement to extend the application of the provisions in this Agreement to all state operated locations serving people with developmental disabilities with severe behavioral problems or other conditions that would qualify for admission to METO, its Cambridge, Minnesota successor, or the two new adult foster care transitional homes.

8. The State engaged the services of Defendant TenNapel in various capacities at METO either by employing him directly or by contracting with his employers, Provide

Care, Inc. and Karcher Foster Services, Inc., for his services. Defendant Bratvold was employed directly by the State at all relevant times, but has recently retired. The Parties agree that Defendants TenNapel and Bratvold currently have no official capacity with the State of Minnesota. As such, the provisions of this Agreement which call for commitments and modifications regarding either the operations of METO, including closure and transfers, or commitments to modify the rules governing aversive and deprivation procedures in Minnesota, bind the State, DHS and the Plaintiffs, and it is agreed that upon final approval of this Agreement, the Agreement imposes no duty on Defendants TenNapel and Bratvold with respect to implementing or enforcing those terms.

**NOW THEREFORE**, in consideration of the above Recitals and the respective covenants, promises, agreements and releases contained herein, which the parties agree constitute good and valuable consideration, and on the motion of the Plaintiffs for Court Approval of this Agreement, it is hereby **STIPULATED AND AGREED** as follows:

#### **I. INCORPORATION OF RECITALS**

Each and every Recital set forth above is incorporated herein by this reference as if set forth in their entirety.

#### **II. JURISDICTION AND VENUE**

A. The Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and related law, and has original jurisdiction over this matter pursuant to 28 U.S.C. § 1343(a)(3). Plaintiffs have commenced this action pursuant to 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation

Act, and related federal laws to recover damages, including the costs of this suit and reasonable attorneys' fees, claimed by Plaintiffs and the Class Members resulting from Defendants' alleged violations of federal law and for injunctive relief.

B. The Court has supplemental jurisdiction over the claims in this matter that arise under state law pursuant to 28 U.S.C. § 1367(a) because Plaintiffs' state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

C. Venue in the District of Minnesota is appropriate pursuant to 28 U.S.C. § 1391, as the conduct alleged herein occurred in this District.

### III. DEFINITIONS

A. *Agreement or Settlement Agreement:* Agreement or Settlement Agreement means this Stipulated Class Action Settlement Agreement.

B. *Facility:* Facility means the Minnesota Extended Treatment Options ("METO") program, its Cambridge, Minnesota successor, and the two new adult foster care transitional homes to which residents of METO have been or may be transferred.

C. *Resident:* Resident means a person residing at the Facility.

D. *Other Definitions:* Other definitions are set forth in this Agreement and its Attachments A, B and C.

E. *Best Practices:* Best practices means generally accepted professional standards.

F. *Scope:* The scope of DHS obligations regarding people with developmental disabilities in this Agreement pertain only to the residents of the Facility

, with the exception of the provisions of Recitals, Paragraph 7, and Section X, “Systemwide Improvements.”

#### **IV. CLOSURE OF THE METO PROGRAM**

The METO program will be closed by June 30, 2011. Any successor to METO shall: (1) comply with the U.S. Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999); (2) utilize person centered planning principles and positive behavioral supports consistent with applicable best practices including, but not limited to the Association of Positive Behavior Supports, *Standards of Practice for Positive Behavior Supports* (<http://apbs.org>) (February, 2007); (3) be licensed to serve people with developmental disabilities; (4) only serve “Minnesotans who have developmental disabilities and exhibit severe behaviors which present a risk to public safety” pursuant to METO’s original statutory charge under Minn. Stat. § 252.025, subd. 7; and (5) notify parents and guardians of residents, at least annually, of their opportunity to comment in writing, by e-mail, and in person, on the operation of the Facility.

#### **V. PROHIBITED TECHNIQUES**

A. Except as provided in subpart V. B., below, the State and DHS shall immediately and permanently discontinue the use of mechanical restraint (including metal law enforcement-type handcuffs and leg hobbles, cable tie cuffs, PlastiCuffs, FlexiCuffs, soft cuffs, posey cuffs, and any other mechanical means to restrain), manual restraint, prone restraint, chemical restraint, seclusion, and the use of painful techniques to induce changes in behavior through punishment of residents with developmental disabilities. Medical restraint, and psychotropic and/or neuroleptic medications shall not

be administered to residents for punishment, in lieu of adequate and appropriate habilitation, skills training and behavior supports plans, for the convenience of staff and/or as a form of behavior modification.

**B. Policy.** Notwithstanding subpart V. A. above, the Facility's policy, "Therapeutic Interventions and Emergency Use of Personal Safety Techniques," Attachment A to this Agreement, defines manual restraint, mechanical restraint, and emergency, and provides that certain specified manual and mechanical restraints shall only be used in the event of an emergency. This policy also prohibits the use of prone restraint, chemical restraint, seclusion and time out. Attachment A is incorporated into this Agreement by reference.

**C. Seclusion and Time Out from Positive Reinforcement.**

1. The Facility's use of seclusion is prohibited.
2. Seclusion means the placement of a person alone in a room from which egress is:
  - a. noncontingent on the person's behavior; or
  - b. prohibited by a mechanism such as a lock or by a device or object positioned to hold the door closed or otherwise prevent the person from leaving the room.
3. The Facility's use of Room Time out from positive reinforcement is prohibited.
4. Time out means removing a person from the opportunity to gain positive reinforcement and is employed when a person demonstrates a behavior identified

in the individual program plan for reduction or elimination. Room time out means removing a person from an ongoing activity to a room (either locked or unlocked).

D. **Chemical Restraint.** The Facility shall not use chemical restraint.

1. A chemical restraint is the administration of a drug or medication when it is used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement and is not a standard treatment or dosage for the resident's condition.

2. Orders or prescriptions for the administration of medications to be used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement shall not be written as a standing order or on an as-needed basis (PRN).

E. **Third Party Expert.** The Department shall establish a protocol to contact, on a rotating basis, a qualified Third Party Expert from a list of at least five (5) qualified Third Party Experts pre-approved by Plaintiffs and Defendants. The costs for the Third Party Expert shall be paid by the Department. This consultation shall occur as soon as reasonably possible upon the emergency presenting but no later than thirty (30) minutes after an emergency use of restraint consistent with the Facility's policy, *Therapeutic Interventions and Emergency Use of Personal Safety Techniques*, Attachment A to this Agreement. The Facility staff shall consult with the Third Party Expert in order to obtain professional assistance to abate the emergency condition, including the use of positive behavioral supports techniques, safety techniques, and other best practices. If the scheduled qualified Third Party Expert is not immediately available, DHS shall then utilize the Medical Officer Review protocol as described in subpart V. F, below. If the

parties cannot develop the qualified list of Third Party Experts within 30 days of final approval of this Agreement, DHS shall utilize the Medical Officer Review described in subpart V. F, below.

F. **Medical Officer Review.** No later than thirty (30) minutes after an emergency use of restraint begins, the responsible supervisor shall contact the Department's medical officer on call in order that the medical officer may assess the situation, suggest strategies for de-escalating the situation, and approve of or discontinue the use of restraint. The consultation with the medical officer shall be documented in the resident's medical record.

G. **Zero Tolerance for Abuse and Neglect.** The State affirms its commitment to comply with the reporting requirements relating to abuse of vulnerable persons pursuant to Minn. Stat. § 626.557 *et seq.* The State's goal is to achieve "zero tolerance" for abuse (including verbal, mental, sexual, or physical abuse) and neglect, whether from other residents or from staff. Any staff member who has committed staff on resident abuse or neglect shall be disciplined pursuant to DHS policies and the collective bargaining agreement, if applicable. Where appropriate, the State shall refer matters of suspected abuse or neglect to the county attorney for criminal prosecution.

## **VI. RESTRAINT REPORTING AND MANAGEMENT**

A. METO Form 31032 (Attachment C "Documentation of Implementation of Controlled Procedures") shall be completed by the end of the shift during which use is made of manual or mechanical restraint. Attachment C is incorporated into this Agreement by reference.

B. DHS shall undertake reasonable efforts to submit within twenty four (24) hours, but no later than one (1) business day, the completed METO Form 31032 by electronic means, fax or personal delivery, to the following:

- a. Office of Health Facility Complaints (“OHFC”);
- b. Ombudsman for Mental Health and Developmental Disabilities;
- c. DHS Licensing;
- d. DHS Internal Reviewer;
- e. Client’s family and/or legal representative;
- f. Case manager;
- g. Plaintiffs’ counsel.

C. The reporting requirements in this Section VI shall not replace any other applicable requirement for incident reporting, investigation, analysis and follow up.

## **VII. INTERNAL AND EXTERNAL REVIEW OF THE USE OF RESTRAINTS**

In order to monitor the Facility’s use of manual and mechanical restraints, the Department will utilize one of its qualified employees as an internal reviewer and shall fund the costs of the external reviewer within the Office of Health Facility Complaints.

### **A. Internal Reviewer.**

1. The Department shall designate one employee with responsibility for monitoring the Facility’s use of restraints (“internal reviewer”). Presently this is Richard S. Amado, Ph.D., Director of the Department’s Office for Innovation in Clinical

and Person Centered Excellence, whose duties include a focus on the elimination of restraints.

2. The Facility shall complete METO Form 31032 and provide it to the internal reviewer, and all others listed in Section VI. B., above, within twenty four (24) hours of the use of manual or mechanical restraint.

3 The internal reviewer shall consult with staff at the Facility in order to assist eliminating the use of manual and mechanical restraints.

**B. External Reviewer.**

1. The external reviewer will be approved by Plaintiffs and Defendants before hire and will be an employee of the Office of Health Facility Complaints, Minnesota Department of Health and shall have full enforcement authority consistent with the Office of Health Facility Complaints, as set forth in Minn. Stat. § 144A.53, *et. seq.*

2. DHS will fund the costs of the external reviewer.

3. The external reviewer will have the following credentials:

- a. Ph.D. in psychology, education, clinical social work, or a related field;
- b. Certification or eligible for certification as a Board certified Behavior Analyst at the Doctoral level;
- c. Experience in person centered planning;
- d. Experience using the integration of diagnostic findings, assessment results and intervention recommendations across disciplines in order to create an individual program plan;

- e. Experience and demonstrated competence in the empirical evaluation of mood and behavior altering medications.

4. Every three (3) months, the external reviewer shall issue a written report informing the Department whether the Facility is in substantial compliance with this Agreement and the policies incorporated herein. The report shall enumerate the factual basis for its conclusion and may make recommendations and offer technical assistance. The external reviewer shall provide Plaintiffs and the Department with a draft report. The Plaintiffs and the Department will have fifteen (15) business days to provide written comment. The external reviewer's final report shall be issued to Plaintiffs and the Department thereafter.

5. The external reviewer shall issue quarterly reports to the Court for the duration of this Agreement. The reports shall describe whether the Facility is operating consistent with best practices, and with this Agreement. The external reviewer's reports shall be filed on the Court's public electronic court filing system, or any successor system, with appropriate redaction of the identities of residents or other personal data information that is statutorily protected from public disclosure.

6. The external reviewer shall not be a "Special Master" nor "Court Appointed Monitor." The external reviewer shall have full enforcement authority consistent with the Office of Health Facility Complaints' authority set forth in Minn. Stat. § 144A.53, *et. seq.*

7. In addition to the external reviewer's authority described above, the following shall have access to the Facility and its records, including the medical records

of residents for the purpose of ascertaining whether the Facility is complying with this Agreement:

- a. The Office of Ombudsman for Mental Health and Developmental Disabilities, consistent with its authority under Minn. Stat. § 245.94. This Settlement Agreement shall be deemed adequate basis for the Office of Ombudsman to exercise its powers under Minn. Stat. § 245.94, subd. 1.
- b. The Disability Law Center, consistent with its authority under 42 U.S.C. § 15043. This Settlement Agreement shall be deemed adequate basis for the Disability Law Center, as the designated Protection and Advocacy organization in Minnesota, to exercise its authority under 42 U.S.C. § 15043.
- c. Plaintiffs' counsel, upon notice to and coordination with, the Minnesota Attorney General's Office and pursuant to the Protective Order in this case.

#### **VIII. TRANSITION PLANNING**

The State shall undertake best efforts to ensure that each resident is served in the most integrated setting appropriate to meet such person's individualized needs, including home or community settings. The State shall actively pursue the appropriate discharge of residents and provide them with adequate and appropriate transition plans, protections, supports, and services consistent with such person's individualized needs, in the most integrated setting and where the individual does not object. Each resident and the resident's family and/or legal representative shall be permitted to be involved in the team evaluation, decision making, and planning process to the greatest extent practicable, using whatever communication method he or she prefers. To foster each resident's self-determination and independence, the State shall use person centered planning principles at each stage of the process to facilitate the identification of the resident's specific interests, goals, likes and dislikes, abilities and strengths, as well as support needs. Each

resident shall be given the opportunity to express a choice regarding preferred activities that contribute to a quality life. The State shall undertake best efforts to provide each resident with reasonable placement alternatives. It is the State's goal that all residents be served in integrated community settings with adequate protections, supports, and other necessary resources which are identified as available by service coordination. This paragraph shall be implemented in accord with the U.S. Supreme Court's decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999).

**IX. OTHER PRACTICES AT THE FACILITY.**

A. The Facility treatment staff shall receive training in positive behavioral supports, person centered approaches, therapeutic interventions, personal safety techniques, crisis intervention, and post crisis evaluation. The training is explained more fully in Attachment B which is incorporated into this Agreement by reference. All training shall be consistent with applicable best practices, including but not limited to the Association of Positive Behavior Supports, *Standards of Practice for Positive Behavior Supports* (<http://apbs.org>) (February, 2007).

B. 1. Staff at the Facility shall receive the specified number of hours of training subsequent to September 1, 2010 and prior to December 31, 2011:

Therapeutic interventions	8
Personal safety techniques	8
Medically monitoring restraint	1

Staff at the Facility shall not be eligible to impose restraint until the above specified training has been completed, and then only certain restraints in an emergency as

set forth in Attachment A to this Agreement, Therapeutic Interventions And Emergency Use Of Personal Safety Techniques.”

2. Staff at the Facility shall receive the specified number of hours of training subsequent to September 1, 2010 and prior to March 31, 2012:

Person centered planning and positive behavior supports (at least sixteen (16) hours on person centered thinking/planning)	40
Post Crisis Evaluation and Assessment	4

C. **Visitor Policy.** The State and DHS shall permit residents unscheduled and scheduled visits with immediate family and/or guardians, at reasonable hours, unless the Interdisciplinary Team (IDT) reasonably determines the visit is contraindicated. Visitors shall be allowed full and unrestricted access to the resident’s living areas, including kitchen, living room, social and common areas, bedroom and bathrooms, consistent with all residents’ rights to privacy. Residents shall be allowed to visit with immediate family members and/or guardians in private without staff supervision, unless the IDT reasonably determines this is contraindicated.

D. Upon Court approval of this Agreement, the State and DHS will discontinue any marketing of, recruitment or publicity inconsistent with the mission of the Facility.

E. Pursuant to Minn. Stat. § 144.652, subd. 1, the Facility shall continue to post the Health Care Bill of Rights, the name and phone number of the person within the Facility to whom inquiries about care and treatment may be directed, and a brief

statement describing how to file a complaint with the Office of Health Facility Complaints, including the address and phone number of that office.

## **X. SYSTEM WIDE IMPROVEMENTS.**

### **A. Expansion of Community Support Services.**

1. The provisions below on long term monitoring, crisis management, and training represent the Department's goals and objectives; they do not constitute requirements. State Operated Community Support Services ("CSS") will be expanded in an effort to deliver the right care at the right time in the most integrated setting for individuals with developmental disabilities. The expansion of this service will allow for the provision of assessment, triage, and care coordination to assure persons with developmental disabilities receive the appropriate level of care at the right time, in the right place, and in the most integrated setting in accordance with the U.S. Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999).

a. **Long term monitoring.** CSS will identify and provide long term monitoring of individuals with clinical and situational complexities in order to help avert crisis reactions, provide strategies for service entry changing needs, and prevent multiple transfers within the system. Approximately seventy five (75) individuals will be targeted for long term monitoring.

b. **Crisis management.** Intervention and technical assistance will be provided where the consumer lives, strengthening the capacity for the clinic to serve clinically complex individuals in their homes. CSS mobile wrap-around response teams will be located across the state for proactive response to maintain living

arrangements. The maximum time for CSS to arrange a crisis intervention will be three (3) hours from the time the parent or legal guardian authorizes CSS' involvement. CSS will partner with Community Crisis Intervention Services to maximize support, complement strengths, and avoid duplication. CSS will provide augmentative training, mentoring and coaching.

c. **Training.** CSS will provide staff at community based facilities and homes with state of the art training encompassing person centered thinking, multi-modal assessment, positive behavior supports, consultation and facilitator skills, and creative thinking. Mentoring and coaching as methodologies will be targeted to prepare for increased community capacity to support individuals in their community.

2. Expansion of CSS will begin in February of 2011 with an estimated completion date of June 30, 2011. This increase will be an additional fourteen (14) full time equivalent positions which will equate to fifteen (15) people. The proposed positions are as follows:

Two (2) Behavior Analyst 3 positions;

One (1) Community Senior Specialist 3;

Two (2) Behavior Analyst 1;

Five (5) Social Worker Specialist positions; and

Five (5) Behavior Management Assistants.

Total cost of salaries for these staff is estimated by DHS to be eight hundred twenty three thousand dollars (\$823,000). The estimated cost of equipment and space is estimated by DHS to be one hundred seven thousand eight hundred dollars (\$107,800).

The term “behavior analyst” refers to individuals with requisite educational background, experience, and credentials recognized by national associations such as the Association of Professional Behavior Analysts.

**B. *Olmstead* Plan**

1. Within sixty (60) days of the Court’s approval of this Agreement, the Department will establish an *Olmstead* Planning Committee which will issue its public recommendations within ten (10) months of the Court’s Order approving this Agreement. Within eighteen (18) months of the Court’s approval of this Agreement, the State and the Department shall develop and implement a comprehensive *Olmstead* plan that uses measurable goals to increase the number of people with disabilities receiving services that best meet their individual needs and in the “Most Integrated Setting,” and is consistent and in accord with the U.S. Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999).

2. The *Olmstead* Planning Committee must be comprised of no less than fifteen (15) members with demonstrated understanding of the spirit and intent of the *Olmstead* decision, best practices in the field of disabilities, and a longstanding commitment to systemic change that respects the human and civil rights of people with disabilities. The Committee must be comprised of stakeholders, including parents, independent experts, representatives of the Department, the Ombudsman for Mental Health and Developmental Disabilities, Minnesota Governor’s Council on Developmental Disabilities, Minnesota Disability Law Center, Plaintiff’s counsel, and others as agreed upon by the parties.

**C. Rule 40.**

1. Within sixty (60) days from the date of the Order approving this Agreement, the Department shall organize and convene a Rule 40 (Minn. R. 9525.2700-.2810) Advisory Committee (“Committee”) comprised of stakeholders, including parents, independent experts, DHS representatives, the Ombudsman for Mental Health and Developmental Disabilities, the Minnesota Governor’s Council on Developmental Disabilities, Minnesota Disability Law Center, Plaintiffs’ counsel and others as agreed upon by the parties, to study, review and advise the Department on how to modernize Rule 40 to reflect current best practices, including, but not limited to the use of positive and social behavioral supports, and the development of placement plans consistent with the principle of the “most integrated setting” and “person centered planning, and development of an ‘*Olmstead Plan*’” consistent with the U.S. Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 582 (1999). The Committee’s review of best practices shall include the Arizona Department of Economic Security, Division of Developmental Disabilities, Policy and Procedures Manual, Policy 1600 Managing Inappropriate Behaviors.

2. Within sixty (60) days from the date of the Court’s approval of this Agreement, a public notice of intent to undertake administrative rule making will be issued.

3. DHS will not seek a waiver of Rule 40 for the Facility.

**D. Minnesota Security Hospital.**

1. Within sixty (60) days upon Court approval of this Agreement, the State shall undertake best efforts to ensure that there are no transfers to or placements at the Minnesota Security Hospital of persons committed solely as a person with a developmental disability. No later than July 1, 2011, there shall be no transfers or placements of persons committed solely as a person with a developmental disability to the Minnesota Security Hospital. This prohibition does not apply to persons with other forms of commitment, such as mentally ill and dangerous, mentally ill, chemically dependent, psychopathic personality, sexual psychopathic personality and sexually dangerous persons. Nor does this prohibition pertain to persons who have been required to register as a predatory offender under Minn. Stat. § 243.166 or 243.167 or to persons who have been assigned a risk level as a predatory offender under Minn. Stat. § 244.052.

2. There shall be no change in commitment status of any person originally committed solely as a person with a developmental disability without proper notice to that person's parent and/or guardian and a full hearing before the appropriate adjudicative body.

3. No later than December 1, 2011, persons presently confined at Minnesota Security Hospital who were committed solely as a person with a developmental disability and who were not admitted with other forms of commitment or predatory offender status set forth in paragraph 1, above, shall be transferred by the Department to the most integrated setting consistent with *Olmstead v. L.C.*, 527 U.S. 581 (1999).

**E. Anoka Metro Regional Treatment Center.**

Persons committed solely as a person with a developmental disability may be transferred to AMRTC only if they have an acute psychiatric condition. Within thirty (30) days of the Court's approval of this Agreement, any AMRTC resident committed solely as a person with a developmental disability who does not have an acute psychiatric condition will be transferred from AMRTC. The transfer shall be to the most integrated setting consistent with *Olmstead v. L.C.*, 527 U.S. 581 (1999).

F. DHS shall substitute the term "developmental disabilities" for the term "mental retardation" where it appears in any DHS policy, bulletin, website, brochure, or other publication, at the next printing or revision of the publication, provided the change does not directly conflict with federal law, jeopardize receipt of federal funds, or impair the health care billing process. DHS also agrees to draft a bill for the Minnesota Legislature that will require the replacement of terms such as "insane," "mentally incompetent," "mental deficiency," and other similar inappropriate terms that appear in Minnesota statutes and rules.

## XI. CLASS CERTIFICATION

A. For settlement purposes only, Plaintiffs may request and Defendants do not object to the Court entering a Hearing Order (attached as Class Action Exhibit 4 and incorporated into this Agreement by reference) granting provisional certification of the Settlement Class, subject to final findings and ratification in the proposed Judgment (attached as Class Action Exhibit 5 and incorporated into this Agreement by reference), and appointing Plaintiffs' Counsel as Class Counsel and representatives of the Settlement Class.

B. Plaintiffs and Defendants do not consent to certification of the Settlement Class for any purpose other than to effectuate this Agreement. If this Settlement Agreement is terminated or voided pursuant to its terms, the Order certifying the Settlement Class and all preliminary and/or final findings regarding the Court's provisional class certification order shall be automatically vacated upon notice to the Court of the termination of the Settlement Agreement, and the Action shall proceed as though the Settlement Class had never been certified and such findings had never been made, without prejudice to any party to either request or oppose class certification on any basis.

C. "Plaintiffs' Counsel," "Settlement Class Counsel," and/or "Class Counsel" mean the following:

Shamus P. O'Meara, Attorney at Law;  
as well as the law firm of  
Johnson & Condon, P.A.  
7401 Metro Blvd. Suite 600  
Minneapolis, MN 55439

D. Plaintiffs agree to recommend approval of this Agreement by the Court and to recommend participation in the settlement by Class Members. Plaintiffs and Defendants agree to undertake their best efforts, including all steps and efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Agreement and to secure the Court's approval.

E. The "Class," "Class Member" or "Settlement Class" shall be defined as follows:

All individuals who were subjected to the use of any aversive or deprivation procedures, including restraints or seclusion while a resident at the Minnesota Extended Treatment Options program at any time(s) from July 1, 1997 through May 1, 2011. Settlement Class or Class Member does not include any individual who has properly and effectively requested exclusion from the Settlement Class.

F. The Class Period is from July 1, 1997, through May 1, 2011.

## **XII. ENTRY OF HEARING ORDER AND NOTICES TO THE SETTLEMENT CLASS.**

A. Promptly upon execution of this Settlement Agreement, the Parties in the Action shall apply to the Court for entry of a Hearing Order ("Hearing Order") substantially in the form of Class Action Exhibit 4 (attached and incorporated into this Agreement by reference):

1. Approving the form of the Notice of Pendency and Proposed Settlement of Class Action, Request for Exclusion ("Opt-Out"), and Claim Form (attached as Class Action Exhibits 1, 2, and 3 respectively), and ordering that these documents be disseminated substantially in the manner set forth in the Hearing Order;
2. Finding that the requirements for certification of the Settlement Class have been provisionally satisfied, provisionally appointing the Plaintiffs as

representatives of the Settlement Class and the attorneys listed at Section XI. C. as Settlement Class Counsel, and preliminarily approving the Settlement as being within the range of reasonableness such that notice thereof should be given to members of the Settlement Class;

3. Approving the form of Judgment substantially in the form of Class Action Exhibit 5 (attached and incorporated into this Agreement by reference);
4. Providing that each member of the Settlement Class who does not, in accordance with the terms of the Settlement Notice, file a valid and timely Request for Exclusion from the Settlement Class, be bound by the Judgment dismissing the Action on the merits and with prejudice;
5. Finding that the form and method of the Notice of Pendency and Proposed Settlement of Class Action and Claim Form be given in accordance with the terms of the Hearing Order; that the notice provided for constitutes the best notice practicable under the circumstances and constitutes valid, due and sufficient notice to all members of the Settlement Class, complying fully with the requirements of the Rule 23 of the Federal Rules of Civil Procedure and the Constitutions of the State of Minnesota and the United States, and any other applicable law.
6. Providing that upon entry of the final Court Judgment, DHS will reimburse Settlement Class Counsel for the reasonable costs associated with the notice and publication of the proposed Settlement to the Class Members, in the form approved by the Court, as required by Federal Rule of Civil Procedure 23(e). In that regard, Plaintiffs and Defendants will recommend to the Court that notice of the proposed Settlement Agreement will be provided by sending written notice by United States certified mail (return card requested), to all Class Members, their guardians, if any, and, a contact person or family member, if known, at the addresses found on the individual Class Members' records in the possession of METO and DHS, electronic verification of which has been provided to Plaintiffs' Counsel, or other address provided by the Post Office, the Class Member, or otherwise as described in relevant records.
7. Scheduling a hearing (the "Fairness Hearing") to be held by the Court to consider and determine whether the requirements for certification of the Settlement Class have been met, whether the proposed final Settlement Agreement should be approved as fair, reasonable and adequate; whether Settlement Class Counsel's request for attorneys' fees and reimbursement of costs and disbursements incurred in this case should be approved and

whether the Judgment approving the settlement and dismissing the Action on the merits and with prejudice should be entered;

8. Providing that the Fairness Hearing may, from time to time and without further notice to the Settlement Class (except those members of the Settlement Class who file timely and valid objections), be continued or adjourned by order of the Court;
9. Providing a procedure for members of the Settlement Class to request exclusion from the Settlement Class or to file comments on the fairness of the Settlement with the Court;
10. Providing that any objections by any Settlement Class Member to: (i) the certification of the Settlement Class, the proposed Settlement Agreement described in the Settlement Notice, and/or the petition for payment of attorneys' fees and reimbursement of costs and disbursements, and/or (ii) entry of the Judgment, shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if, on or before the date (or dates) to be specified in the Hearing Order, such objector verifies that he/she is a Settlement Class Member, states in writing the specific basis for such objection(s), and mails copies of the foregoing and all other papers in support of such objections to the Court and to counsel for the parties identified in the Settlement Notice by the date set by the Court in the Hearing Order; and
11. Establishing a date (or dates) by which Plaintiff and Defendants shall file and serve all papers in support of or opposition to the application for final approval of the settlement, the petition for payment of attorneys' fees and expenses, and/or in response to any valid and timely objections received by the designated counsel for the parties identified in the Settlement Notice.

B. Settlement Class Counsel shall provide the Notice of Pendency and Proposed Settlement of Class Action and Claim Form in accordance with the Hearing Order, substantially in the form of Class Action Exhibits 1 to 3 to the Settlement Agreement, by sending written notice by United States certified mail (return card requested), to all Class Members, their guardians, if any, and, a contact person or family member, if known, at the addresses found on the individual Class Members' records in

the possession of METO and DHS, electronic verification of which has been provided to Plaintiffs' Counsel, or other address provided by the Post Office, the Class Member, or otherwise as described in relevant records.

C. The Notice of Pendency and Proposed Settlement of Class Action shall provide Settlement Class Counsel's website address, e-mail address and links to the Notice of Pendency and Proposed Settlement of Class Action, Request for Exclusion ("Opt-Out") and Claim Form, as well as the Settlement Agreement.

### **XIII. ENTRY OF THE JUDGMENT.**

A. If, at or after the Fairness Hearing, the Settlement Agreement is finally approved by the Court, Settlement Class Counsel shall promptly submit to the Court the Judgment ("Judgment") (attached at Class Action Exhibit 5):

1. Ratifying the certification of the Settlement Class and approving the Settlement Agreement, judging its terms to be fair, reasonable, adequate and in the best interests of the Settlement Class Members, directing its consummation in accordance with its terms, and retaining jurisdiction for the time period set forth in Section XVIII below to enforce compliance with the provisions of the Settlement Agreement and the Judgment;
2. Dismissing this Action and all claims released in the Agreement against the state and its agencies as well as Defendants Douglas Bratvold and Scott TenNapel, in their official and individual capacities, with prejudice and without costs to any party.
3. Permanently barring and enjoining Settlement Class Members, or Plaintiffs from asserting, commencing, prosecuting or continuing any of the claims which were brought or could have been brought.

B. After notice is provided to the Class as described above, and the time period for Class Member opt-outs, objections and comments has expired, Plaintiffs will

petition the Court for final approval of this Agreement, and Plaintiffs and Defendants will use their best efforts to obtain such approval. If any person objects to this Agreement, the parties will use their best efforts to meet such objection. If any person appeals the Court's order of final approval of the Agreement, the parties will use their best efforts to defeat the appeal.

C. The terms of this Agreement are subject to the Court's final approval and, in the event the Court's order granting final approval is appealed, the approval of all applicable appellate courts. If the Court or any appellate court enters an order altering this Agreement in a way that materially and adversely affects a Party, that party may void the Agreement within ten (10) business days from the date the trial court or appellate court enters such an order by giving written notice of intent to void the settlement to the opposing parties' counsel.

#### **XIV. SETTLEMENT AMOUNT**

A. As a compromise settlement of this lawsuit, and in exchange for the releases and covenants described in this Agreement, the State, DHS and Scott TenNapel agree to pay a total of Three Million and No/100 Dollars (\$3,000,000), which includes attorneys' fees, costs, and disbursements, in full settlement of all claims (collectively, "Settlement Amount"). Of the Settlement Amount, the State and DHS shall pay Two Million Eight Hundred Thousand and No/100 Dollars (\$2,800,000), and Scott TenNapel shall pay, in accordance with Section XVII, Two Hundred Thousand and No/100 Dollars (\$200,000). The Settlement Amount includes attorneys' fees associated with the administration of the Class. However, DHS agrees to reimburse Class Counsel for the

reasonable costs and disbursements associated with the notice and publication of the proposed settlement to the Class Members, in a form approved by the Court, as required by Federal Rule of Civil Procedure 23(e), as well as appointment of a Special Master, if deemed necessary by the Court, to recommend apportionment of individual Class Member settlement amounts. The Settlement Amount may be paid as follows:

1. Subject to Court approval, Plaintiffs James and Lorie Jensen, collectively, as parents, guardians and next friends of Bradley J. Jensen shall be apportioned a minimum of Seventy-Five Thousand Dollars (\$75,000.00) in total; James Brinker and Darren Allen, collectively, as parents, guardians and next friends of Thomas M. Allbrink shall be apportioned a minimum of Seventy-Five Thousand Dollars (\$75,000.00) in total; and Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs, shall be apportioned a minimum of Seventy-Five Thousand Dollars (\$75,000.00) in total. These payments are compensation for serving as class representatives as well as compensation to Plaintiffs' children for damages.
2. Subject to Court approval, Settlement Class Counsel may request the sum of one million dollars (\$1,000,000) be paid to Plaintiffs' Counsel as combined fees and costs. From this amount Plaintiffs' Counsel, serving as Settlement Class Counsel, will pay all of the class costs, including the costs incurred in preparing and adjudicating the lawsuit, including any appeals, the costs incurred in providing staff to answer inquiries from Class Members and interested parties, and the costs of disbursing the settlement proceeds to all persons making a claim. The attorneys' fees and costs herein is the total amount that will be paid by Defendants for all attorneys' fees and costs in connection with the above entitled lawsuit and this Agreement, regardless of whether any Class Member or other person engages separate or additional legal counsel or incurs separate or additional attorneys' fees or costs.
3. After payment as set forth in subparts 1 and 2, above, the Court shall apportion an amount from remaining settlement proceeds to individual Class Members, taking into account the documented total based upon the following schedule:

Number of Documented Times Restrained/Secluded:	Apportioned Amount
1-25	\$ 200 to \$ 5,000
26-50	\$ 5,000 to \$10,000
51-75	\$10,000 to \$15,000
76-100	\$15,000 to \$20,000
101-150	\$20,000 to \$30,000
151-200	\$30,000 to \$40,000
201-250	\$40, 000- \$50,000
251 or more	\$50,000 to \$300,000

The Court may also utilize other factors for apportionment which in the interest of justice it believes should be considered, including, but not limited to, demonstrated serious physical injury.

4. To the extent any portion of the Settlement Amount, less amounts for attorneys fees, costs and disbursements, are not distributed to the Plaintiffs and the Class, such portion shall be distributed equally to three programs for people with developmental disabilities and their families, to be jointly recommended to the Court by Colleen Wieck, Executive Director, Minnesota Governor’s Council on Developmental Disabilities, and Anne Barry, Deputy Commissioner, DHS.

B. The Settlement Amount paid pursuant to Section XIV will be reduced by an amount equal to two hundred dollars (\$200) multiplied by the number of uses of restraint and/or seclusion documented in DHS records for all individuals who timely request exclusion from the Settlement Class pursuant to the procedures for exclusion specified in the Settlement Notice approved by the Court.

C. This Agreement is not intended to affect the rights of Plaintiffs or Class Members for any disability benefits or related benefits or funding they are receiving or for which they may qualify. The parties agree that the Court's order approving this Agreement will include a provision that to the extent of this Court's authority, the Settlement Amount paid to Plaintiffs and Class Members shall not jeopardize any disability benefits or related benefits or funding they are receiving or for which they may qualify.

D. The parties agree that the Court's order approving this Agreement shall preclude the State and DHS from seeking to recover any of the Settlement Amount from Plaintiffs and the Class Members for cost of care charges for residing at METO or participation in any other State program involving people with developmental disabilities, or any other attempt by the State or DHS to recover any of the Settlement Amount from Plaintiffs or Class Members, and that the State and DHS shall be relieved of any obligations to initiate any proceedings to recover any of Settlement Amount from Plaintiffs and Class Members.

E. For any class member that is receiving a payment pursuant to this Agreement and who claims to have sustained a personal injury as a result of any restraint or seclusion covered by the scope of this Agreement, the state Defendants, based on the class member's notice of claim and other available information known to the state Defendants, shall identify any class member whose treatment for those injuries was covered and paid for by the Medicare program, 42 U.S.C. § 1395. As to any such class member, the settlement payment shall be deposited in trust with the Court and shall be

released only after the Court determines that any lien, obligation, or claim of any kind or nature relating to Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b) of the Social Security Act, and corresponding federal regulations, 42 C.F.R. 411.20, *et seq.*, or any obligation of any kind to establish or fund a Medicare Set-Aside or similar arrangement, has been satisfied or extinguished, whether pursuant to an administrative proceeding afforded by Medicare which is exercised by such class member, or otherwise. Settlement payments deposited with the Court pursuant to this paragraph XIV. E. shall not be released without prior notice and an opportunity for all parties to be heard.

F. In order to further assure that class members do not lose eligibility for any government benefits to which they may be entitled, class members scheduled to receive three thousand dollars (\$3,000) or more shall have their settlement amounts deposited with the Court. Before said funds are released, the Court will ascertain whether the class member or legal guardian has taken appropriate steps to safeguard eligibility for government benefits satisfactory to the Court including consideration of financial accounting and estate or trust planning issues involved. Upon the Court's request, the parties shall submit the names of one or more attorneys or law firms whom they know to specialize in government benefits involving people with developmental disabilities, special needs trusts or pooled trusts. The Court may hire one or more of such counsel for the purpose of advising class members and the Court. The Court may pay such advising counsel from the settlement proceeds up to fifty thousand dollars (\$50,000) total for this purpose.

G. The Settlement Amount shall be due within 14 days of the Court's entry of the Final Order and Judgment in the form set forth in the Class Action Exhibit no. 5. The Settlement Amount shall be paid to plaintiffs' counsel who shall pay, deposit and administer it in accordance with this section XIV.

#### **XV. RELEASE.**

In consideration of the terms and conditions of this Agreement, including but not limited to the payment of the Settlement Amount, the sufficiency of which is hereby

acknowledged, upon final approval of this Agreement, Plaintiffs and Class Members hereby fully and forever release and unconditionally discharge Defendant Bratvold, Defendant TenNapel, the State of Minnesota and its agencies, or any alleged agencies, including, but not limited to, the Minnesota Department of Human Services, State Operated Services, METO, and all of their respective present and former employees, officials, agents and attorneys, in their official and individual capacities, which agents include Defendant TenNapel's employers, Provide Care, Inc. and Karcher Foster Services, Inc., and their respective insurers, Riverport Insurance Co. and Colony Insurance Co (referred to as "Releasees") from all claims, liability, actions, causes of action, and demands for all known or unknown, foreseen or unforeseen, contemplated or un contemplated mental, emotional, or bodily conditions or injuries, and consequences thereof, including unforeseen consequences of known or unknown conditions or injuries whether alleged or that could have been alleged by Plaintiffs and Class Members arising out of, in consequence, or on account of the allegations in Plaintiffs' Amended Complaint, or the use of restraints and/or seclusion of any kind for any reason on Plaintiffs and Class Members at the Facility from July 1, 1997 through the date of this Agreement. Further, the Plaintiffs and Class Members release all claims, as against the Releasees, for attorneys' fees, expenses, interest and costs and disbursements, and for actual, compensatory, consequential, punitive and exemplary damages for injuries of any kind, all claims for services, loss of services or consortium and all derivative claims and causes of action which currently exist and/or could exist now or in the future, which in any way arise out of or relate to the allegations in Plaintiffs' Amended Complaint, or the

use of restraints and/or seclusion of any kind for any reason on Plaintiffs and Class Members at the Facility from July 1, 1997 through the date of this Agreement whether or not any such claim is known to Plaintiffs and Class Members.

#### **XVI. RELEASES AMONG DEFENDANTS**

A. In consideration of the terms and conditions of this Section, Defendant TenNapel and his affiliated entities, including Provide Care, Inc., Karcher Foster Services, Riverport Insurance Co. and Colony Insurance Co. (“the TenNapel Affiliates”) hereby release and forever discharge the Minnesota Department of Human Services, METO and the State of Minnesota and its agencies, and all of their respective affiliated entities, present and former employees, officials, agents and attorneys, in their official and individual capacities (hereinafter referred to as “State Defendants”) from any and all actions, causes of action, claims, demands, damages, costs, expenses, and compensation of every known kind and nature that the TenNapel Affiliates could assert against the State Defendants arising from *Jensen v. METO*, or in any other action, including any demands for contribution, indemnification and defense or arising from the State Defendants’ demand that the TenNapel Affiliates contribute to the Settlement Award, whether or not such claim is known to the TenNapel Affiliates. This release does not apply to any claim for contribution, defense or indemnification which the TenNapel Affiliates may have against the State or which the State may assert against the TenNapel Affiliates, arising from and limited to claims asserted by members of the putative class who opt out. Provided that this release shall not apply if the Court, pursuant to Section XVII, voids the participation of Defendant TenNapel.

B. In consideration of the terms and conditions of this Section, the State Defendants hereby release and forever discharge the TenNapel Affiliates and all of their respective affiliated entities, present and former employees, officials, agents and attorneys, in their official and individual capacities, from any and all actions, causes of action, claims, demands, damages, costs, expenses, and compensation of every known kind and nature that the State Defendants could assert against the TenNapel Affiliates arising from *Jensen v. METO*, or in any other action, including any claim or request for indemnification, defense or contribution, whether or not such claim is known to State Defendants. This release does not apply to any claim for contribution, defense or indemnification which the State may have against the TenNapel Affiliates, or which the TenNapel Affiliates may assert against the State, arising from and limited to claims asserted by members of the putative class who opt out. Provided that this release shall not apply if the Court, pursuant to Section XVII, voids the participation of the State Defendants.

**XVII. CONTRIBUTIONS AND COURT MODIFICATIONS.**

A. The parties recognize that Defendant TenNapel's engagement as Clinical Director at METO changed during the period pertaining to the claims, that he held positions at METO through various defined arrangements with DHS, and that the contributions under sections (B) and (C) below are premised upon a full and complete release from all claims, whether held by the Plaintiffs, the State Defendants or putative Class members.

B. On behalf of Defendant Scott TenNapel and his former employer Provide Care, Inc., Riverport Insurance Co. will contribute one hundred thousand dollars (\$100,000) toward the Settlement Award, unless the Court modifies this contribution pursuant to section (F) below;

C. On behalf of Defendant Scott TenNapel and his former employer Karcher Foster Services, Inc., Colony Insurance Co. will contribute one hundred thousand dollars (\$100,000) toward the Settlement Award, unless the Court modifies this contribution pursuant to section (F) below;

D. The contributions at (B) and (C) are conditional. If none of the putative class exercise the right to opt out of the Settlement, the contributions under (B) and (C) and all provisions of this Settlement Agreement regarding Defendant TenNapel become final.

E. If any individuals exercise the right to opt out from this Settlement, then within seven (7) days of any opt-out notification, the State Defendants shall provide to Defendant TenNapel, under the Protective Order approved by the Court in this action,

access to the treatment files and information pertaining to the restraint or seclusion of each opt-out claimant, if that evidence has not been produced to Defendant TenNapel previously. Defendant TenNapel and his counsel hereby agree to and shall abide by the Protective Order.

F. Plaintiff's counsel shall alert the parties and Court to any Requests for Exclusion as they are received. After the Court has an opportunity to discuss the Settlement with any individual who returns a Request for Exclusion ("Opt-Out"), the Court will ascertain the final list of Opt-Outs and provide the final list to the parties. Within thirty days thereafter, Defendant TenNapel may move the court, consistent with non-dispositive motion briefing under the local rules, for an Order under section (1) below, to modify his obligations under this Settlement Agreement or under section (2) below to void his participation in this Settlement Agreement.

(1) Motion for Reduction: Defendant TenNapel may move for an Order which reduces, but does not eliminate, either or both of the contributions that would otherwise be made on his behalf under sections (B) and (C). In evaluating any requested reduction, the Court shall balance the interests of, and consider the fairness and reasonableness to, all settling parties. The Court shall consider whether the requested reduction may be attained by allocating a portion of the carve-out at Section XIV. B. to Defendant TenNapel's contributions and the extent to which Defendant TenNapel was involved in the care and treatment of the individual(s) who opt out. Any named party may oppose Defendant TenNapel's Motion for Reduction.

(2) Motion to Void Participation: In the alternative, Defendant TenNapel may move the Court for an Order to remove him from the Settlement and render null and void all provisions of the Settlement Agreement which establish his rights or obligations, including those requiring contributions on his behalf and those which provide releases pertaining to the TenNapel Affiliates. For the purpose of Defendant TenNapel's motion, the September 13, 2010 Mediated Settlement Agreement is not superseded, integrated or merged into this Settlement Agreement. The Court shall determine whether Dr. TenNapel is required by the terms of the September 13, 2010 Mediated Settlement Agreement to participate in and agree to the terms of this Settlement Agreement. Any named party may oppose Defendant TenNapel's Motion.

G. Should Defendant TenNapel move to void participation under subsection F (2) above, the State Defendants may move the Court for an Order to render null and void all provisions of the Settlement Agreement which obligate the State Defendants to pay damages and attorneys' fees to Plaintiffs, Class Members and their counsel and which obligate State Defendants to pay contribution or provide releases. However, the State may not seek the termination of its obligations to provide prospective relief. For the purpose of the State's motion, the September 13, 2010 Mediated Settlement Agreement is not superseded, integrated, or merged into the Settlement Agreement. The Court shall determine whether the State is required by the terms of the September 13, 2010 Mediated Settlement Agreement to participate in and agree to the terms of this Settlement Agreement. Any named party may oppose the State Defendants' motion. Plaintiffs may oppose the State Defendants' Motion, or, alternatively, move the Court for an order

rendering null and void all provisions of the Settlement Agreement and all obligations of Plaintiffs and Plaintiffs' counsel thereunder and returning the action to the Court's calendar for timely adjudication.

H. Any motion brought under Section XVII shall be heard by the trial judge and brought consistent with the rules for non-dispositive motion briefing under the local rules, except that the Movant shall serve and file the Motion and moving papers twenty one (21) days before the hearing, and any opposing party shall serve and file their response within fourteen (14) days thereafter, and reply briefs may be served and filed three (3) days before the day of the hearing. The motion must be preceded by a meet and confer amongst counsel at which the parties attempt to resolve their differences.

I. In the event that the Court grants the request of Defendant TenNapel to void the Settlement Agreement as to him and the State Defendants do not seek to void this Settlement Agreement, all provisions as between Plaintiffs and the State Defendants shall remain in full force and effect, including the State's payment of two million eight hundred thousand dollars (\$2.8 million) and Plaintiffs shall provide the State Defendants a *Pierringer* release in the form shown in Attachment D (attached and incorporated into this Agreement by reference) which shall include the discharge of any State liability for the conduct of Defendant TenNapel.

#### **XVIII. DISMISSAL AND RETENTION OF JURISDICTION**

A. If no named party gives notice of intent to void the settlement, the parties to this Agreement shall execute the Stipulation for Entry of Final Order, proposed Final

Order, and Judgment (attached as Class Action Exhibit 5 and incorporated into this Agreement), and file the same with the Court.

B. The Court shall retain jurisdiction over this matter for two (2) years from its approval of this Agreement for the purposes of receiving reports and information required by this Agreement, or resolving disputes between the parties to this Agreement, or as the Court deems just and equitable. Should Plaintiffs believe a pattern and practice of substantial non-compliance with Attachment A exists, the State and Plaintiffs shall meet and confer in an effort to resolve any such concerns. The meet and confer shall be held no later than sixty (60) days prior to the two year anniversary of the Court's approval. Should Plaintiffs continue to believe a pattern and practice of substantial non-compliance with Attachment A exists, Plaintiffs may, within thirty (30) days thereafter, file a motion with the Court to extend the reporting requirements to the Court under this Agreement for an additional one (1) year. The motion shall be filed consistent with the local federal rules for dispositive motions, with notice to the Attorney General's Office and copies of all submissions consistent with the local federal rules.

C. The August 2, 2010 Protective Order in the above-entitled action shall remain in effect according to its terms until final dismissal of this action.

D. Plaintiffs shall provide the Minnesota Attorney General's Office written notice at least twenty one (21) days prior to any filing or court hearing of any enforcement proceeding. The notice shall specify the section of the Agreement subject to the enforcement action, the factual basis for the action and the relief being sought. At least seven (7) days prior to any court hearing of an enforcement action, plaintiffs'

counsel shall make a good faith effort to confer with defense counsel and resolve the matter without court action.

E. This Agreement shall terminate at the same time as the court's jurisdiction ends under paragraph B above, provided that the Department shall continue to fund the fifteen (15) Community Support Services positions, the External (OHFC) Reviewer and the Third Party Experts through Fiscal Year 2015 (ending June 30, 2015) and provided further that the releases contained herein shall remain in effect, except to the extent any party's participation is voided by the court pursuant to a defendant's Motion to Void Participation under either Section XVII. F. 2 or XVII. G., or a plaintiff's Motion to render null and void all provisions of the Settlement Agreement under Section XVII. G.

#### **XIX. REPRESENTATIONS, WARRANTIES AND AGREEMENTS**

Plaintiffs and Defendants represent and warrant as follows:

A. The parties have each received independent legal advice from their respective attorneys with respect to the advisability of executing this Agreement.

B. Prior to the execution of this Agreement by the parties, each party or its attorneys reviewed the Agreement at length and made all desired changes.

C. This Agreement is the result of negotiations between the parties, each of which has participated in the negotiating and drafting of this Agreement through their respective attorneys. The language of this Agreement shall not be presumptively construed in favor of or against any of the parties.

D. Except as expressly stated in this Agreement, the parties have not made any statement or representation to any other party to this Agreement regarding any fact

relied upon by such other party in entering into this Agreement, and the parties specifically do not rely upon any statement, representation, or promise of any other party in executing this Agreement, except as expressly stated in this Agreement.

E. There are no other agreements or understandings between the parties relating in any way to the claims or this Agreement except as stated in this Agreement.

F. The parties, together with their attorneys, have made such investigation of the facts pertaining to this Agreement and its provisions as they deem necessary.

G. The parties have been represented by their respective attorneys during the negotiation, drafting and execution of this Agreement.

H. This Agreement has been carefully read by, the contents hereof are known and understood by, and it is signed freely and voluntarily, and without inducement, threat or promise, by each person executing this Agreement.

I. Each party to this Agreement has duly authorized the execution and performance of this Agreement by all appropriate and necessary action. Each signatory to this Agreement has the power and authority to enter into and perform this Agreement.

J. Each party to this Agreement agrees that such party will not take any action which would interfere with the performance of this Agreement by any other party to this Agreement or that would adversely affect any of the rights provided for in this Agreement.

## **XX. SEVERABILITY**

It is understood and agreed by the parties that if any of the provisions hereof should contravene applicable law, or be held void, voidable, unenforceable, or invalid,

the remaining portions hereof shall remain in full force and effect, and shall be construed as if not containing the particular provision or provisions held to be in contravention of applicable law, or void, voidable, unenforceable or invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

#### **XXI. GOVERNING LAW AND JURISDICTION**

This Agreement shall be construed and enforced in accordance with applicable federal and Minnesota laws.

#### **XXII. INTEGRATION**

This Agreement constitutes a single, integrated, written contract expressing the entire agreement of the parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by the parties, except as specifically set forth herein. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Agreement, except as expressly provided herein.

#### **XXIII. SUCCESSORS**

This Agreement shall be binding and enforceable upon the successors and assigns of the parties.

#### **XXIV. EXECUTION IN COUNTERPARTS**

A. Counterparts. This Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument and agreement.

B. Originals. The parties shall execute five (5) originals of this Agreement, with one fully executed and complete original being provided to each Plaintiff, the State/DHS, Scott TenNapel, Douglas Bratvold and to the Court.

#### **XXV. LANGUAGE OF THE AGREEMENT**

The use of the singular in this Agreement includes the plural, and vice versa.

#### **XXVI. ADMISSIONS**

A. It is understood that by agreeing to this settlement, Defendants in no way admit fault or liability of any kind to Plaintiffs. Nothing in this Agreement shall be construed as an acknowledgement, admission or evidence of liability of the Defendants and nothing in this Agreement may be used as evidence of liability in any administrative, civil or criminal proceeding.

#### **XXVII. MODIFICATION**

This Agreement may only be modified with the written consent of the parties, such consent not to be unreasonably withheld.

#### **XXVIII. EFFECTIVE DATE**

This Agreement shall become effective upon final approval by the Court.

#### **XXIX. NOTICE TO U.S. DEPARTMENT OF JUSTICE**

Within ten (10) days of final approval of this Agreement, Plaintiffs' counsel shall send a letter to the United State Department of Justice, Civil Rights Division, stating that a class action settlement has been reached in the above-entitled lawsuit, and providing a copy of the executed Agreement and Court Order(s) approving the Agreement.

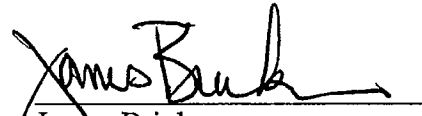
Dated: June 3, 2011

James Jensen  
James Jensen  
Plaintiff

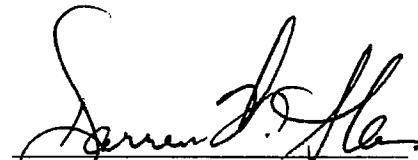
Dated: June 3, 2011

Lorie Jensen  
Lorie Jensen  
Plaintiff

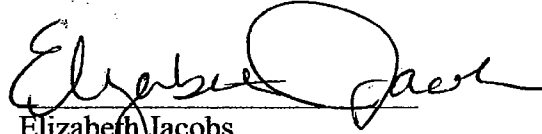
Dated: 6-1-2011

  
James Brinker  
Plaintiff

Dated: 6-1-2011

  
Darren Allen  
Plaintiff

Dated: 6-1-11

  
Elizabeth Jacobs  
Plaintiff

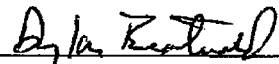
7

Defendants State of Minnesota  
and Minnesota Department of  
Human Services

Dated: \_\_\_\_\_

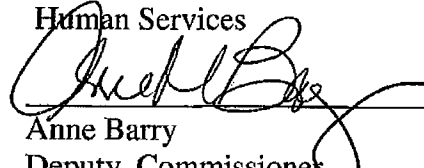
\_\_\_\_\_  
Anne Barry  
Deputy Commissioner

Dated: 6-16-11

  
\_\_\_\_\_  
Douglas Bratvold  
Defendant

Dated: June 16, 2011

Defendants State of Minnesota  
and Minnesota Department of  
Human Services

  
\_\_\_\_\_  
Anne Barry  
Deputy Commissioner

Dated: \_\_\_\_\_

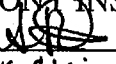
\_\_\_\_\_  
Douglas Bratvold  
Defendant

Dated: June 17, 2011

Scott TenNapel  
Scott TenNapel  
Defendant

Except for the releases to and by it in Sections XV and XVI, and the contribution made on behalf of Defendant TenNapel in Section XVII. C., Colony Insurance Co. is not a party to this Agreement, but executes this Agreement with respect to those releases and contribution.

COLONY INSURANCE CO.

By 

Its Sr. Claims Examiner

Date 6/20/11

Except for the releases to and by it in Sections XV and XVI, and the contribution made on behalf of Defendant TenNapel in Section XVII. B., Riverport Insurance Co. is not a party to this Agreement, but executes this Agreement with respect to those releases and contribution.

RIVERPORT INSURANCE CO.

By Robert A. Weiswood

Its Vice President-Claims

Date 6/20/11

Except for the releases to and by it in Sections XV and XVI, Provide Care, Inc. is not a party to this Agreement, but executes this Agreement with respect to those releases.

PROVIDE CARE, INC.

By 

Its C.F.O.

Date 6-20-2011

Except for the releases to and by it in Sections XV and XVI, Karcher Foster Services, Inc. is not a party to this Agreement, but executes this Agreement with respect to those releases.

KARCHER FOSTER SERVICES, INC.

By 

Its President

Date 6-20-2011

AG: #2839111-v1