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January 25, 2021

VIA EMAIL ONLY

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

Re: *James and Lorie Jensen, et al. v. Minnesota Department of Human Services, et al.*
U.S. District Court File No. 09-CV-01775-DWF-BRT

Dear Judge Frank:

State Defendants write in response to the Court's email sent on January 20, 2021, which forwarded an undated letter sent to the Court by Senators John Hoffman and Jim Abeler, requesting an order directing the disposition of funds recently returned. Although the Minnesota Department of Human Services ("DHS") appreciates any effort to return its previously deposited funds¹ to it, it notes that an Order by this Court requiring those funds to go to DHS or to be used for a particular purpose would be contrary to applicable law and therefore must object. State Defendants request permission to file the letter from Senators Hoffman and Abeler, the Court's email, and this response via CM/ECF.

In their letter, Senators Hoffman and Abeler reference the Court's recent return of money previously deposited by DHS that remained in the Court's registry account in this matter (*see* [Doc. 902](#)). The Senators note that under state law, that money will be returned to the general fund rather than to DHS. The Senators also report that they "have cosponsored legislation to ensure this money stays within [DHS]," but they are unsure whether that legislation will be successful. Given this uncertain outcome, the Senators instead ask that this Court issue an order requiring that the returned money "be used for innovative grants to serve persons with disabilities." In its January 20, 2021 email, the Court asked whether "the parties have any objection to the Court entering an additional order as requested."

¹ The registry account contains funds previously deposited by DHS and used primarily to pay the Court Monitor. (Docs. 224, 227, 286, 820.)

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While DHS supports the return of these funds to it, it believes an order by this Court affecting the disposition of those funds would be contrary to legal authority for at least the following four reasons:

First, the Court's jurisdiction in this case ended on October 24, 2020. ([Doc. 879](#).) It is well settled that courts lack authority where they lack jurisdiction. *Steel Co. v. Citizens for a Better Env't*, [523 U.S. 83, 94–95](#) (1998) (“The requirement that jurisdiction be established as a threshold matter ‘spring[s] from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’”) (internal citation omitted).

Second, federal courts lack the authority to direct state officials not to comply with state law² except, as a general matter, upon a holding that the state law at issue violates federal law, which no one here appears to allege.³ *Kokkonen v. Guardian Life Ins. Co. of Am.*, [511 U.S. 375, 377](#) (1994) (“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.”) (internal citations omitted).

Third, under state law, Minnesota Management and Budget (“MMB”) is the entity that controls the expenditure of state funds, Minn. Stat. § 16A.055, subd. 1(a)(1) (stating the commissioner of MMB shall “receive and record all money paid into the state treasury and safely keep it until lawfully paid out”), and the Court lacks authority to order non-party MMB to expend state funds in a particular manner.⁴ See *In re A.P.I., Inc.*, [331 B.R. 828, 856](#) (Bankr. D. Minn. 2005) (noting the “threshold requirement that there be a ‘Case’ under federal law or a ‘Controversy’ between parties, before the federal judicial power may be invoked and applied.”); [Fed. R. Civ. P. 65\(d\)](#) (injunction may only bind “the following who receive actual notice of it by personal service or otherwise: (A) the parties; (B) the parties’ officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).”).

² Minnesota Statutes, section 16A.151, subdivision 1(c), governs the disposition of funds received by state officials in litigation and requires they “must be deposited in the general fund.” The Senators also note “statute requires all such monies be returned to the general fund.” See also *Ninetieth Minnesota State Senate v. Dayton*, [903 N.W.2d 609, 620](#) (Minn. 2017) (“Article XI, Section 1 of the Minnesota Constitution does not permit judicially ordered funding . . . in the absence of an appropriation.”).

³ And, even if state law did *not* require the returned money to go to the general fund, the Eleventh Amendment forecloses the Court from resolving such a dispute. *Pennhurst State Sch. & Hosp. v. Halderman*, [465 U.S. 89, 106](#) (1984) ([I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.”).

⁴ DHS informs me that MMB's position is that it lacks authority to return these funds to DHS.

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Finally, nothing in the Settlement Agreement (Doc. 136-1) or any of the Court's prior orders requires disposition of the funds for the purpose suggested, or gives the Court authority to place conditions on the money's use prior to or upon return, regardless of where the money is routed. *See, e.g., Doc. 286* ("Upon the Court's order determining that the Court Monitor's work under its orders has concluded, any balance remaining in the Registry account shall promptly be returned to the Minnesota Department of Human Services.").

Accordingly, as much as DHS would like to receive the over \$600,000 returned from the registry, (Docs. 902, 905, 905-1), it understands that Minnesota Statutes, section 16A.151, subdivision 1(c) requires the money to return to the general fund unless the Minnesota Legislature, as the branch of government with defined authority to do so, acts to exempt these funds from that statutory requirement. *See S.F. 17, 92nd Legis. (2021)*. State Defendants therefore must respectfully object to the issuance of any order regarding the routing or use of the money recently disbursed from the Court's registry account.

Sincerely,

s/ Scott H. Ikeda

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