

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

**NOTICE OF PENDENCY AND PROPOSED
SETTLEMENT OF CLASS ACTION**

TO: 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 AND THEIR REPRESENTATIVES, INCLUDING GUARDIANS OR FAMILY.

RE: CIVIL RIGHTS LAWSUIT AGAINST THE MINNESOTA DEPARTMENT OF HUMAN SERVICES.

I. PURPOSE OF THIS NOTICE

This notice is given to you pursuant to an Order of this Court and Rule 23 of the Federal Rules of Civil Procedure. You have received this Notice because you, or a relative or member of your household, are or were a resident of the Minnesota Extended Treatment Options (“METO”) program and, while there, may have been subjected to the use of restraints or seclusion methods. Or, you may be the legal guardian of a current or former METO resident. The Court ordered this Notice because you have the right to know about a proposed settlement (the “Proposed Settlement”) of a class action lawsuit before the Court decides whether to approve the Proposed Settlement.

This Notice will provide information about the class action lawsuit in which you or your ward or family member may be a member, the rights you will have as a class member, and how to request exclusion from that litigation if you do not wish to participate. It will also describe the Proposed Settlement of class-action litigation, your rights with regard to the Proposed Settlement, and the steps that you must take to obtain benefits of the Proposed Settlement in the event it is approved by the Court.

II. DESCRIPTION OF THE LITIGATION

In July 2009, the parents, guardians, and next friends of Bradley J. Jensen, Thomas M. Allbrink, and Jason R. Jacobs (“Plaintiffs”) brought a federal court lawsuit against the Minnesota Department of Human Services, the Director and Clinical Director of METO, and two individuals, Douglas Bratvold and Dr. Scott TenNapel, who served as the former Director and Clinical Director of METO, respectively (“Defendants”). The lawsuit alleged that the Defendants had inappropriately used aversive and deprivation procedures, including improper use of seclusion and restraint techniques.

The Plaintiffs alleged that Defendants had (a) violated the rights of Plaintiffs under the Eighth (right to be free from cruel and unusual punishment) and Fourteenth Amendments (rights under Due Process clause of freedom from unreasonable restraint) of the U.S. Constitution, as enforced by 42 U.S.C. § 1983; (b) violated the Constitutional rights of Plaintiffs under Art. I, Sec. 5 (right to be free from cruel and unusual punishment) and Art. I, Sec. 7 (rights under Due Process Clause of freedom from unreasonable restraint); (c) violations of rights protected by the Americans with

Disabilities Act, Section 504 of the Rehabilitation Act, and the Minnesota Human Rights Act to be free of discrimination on the basis of disability; (d) negligence, false imprisonment, assault, battery, and intentional infliction of emotional distress relating to the use of aversive and deprivation procedures, including seclusion and restraint; (e) fraud, misrepresentation, negligent misrepresentation, and violations of the Minnesota Consumer Fraud and Deceptive Trade Practices Act for failing to disclose information relating to the use of aversive and deprivation procedures, including seclusion and restraint. Plaintiffs sought compensation in the form of money damages, attorneys' fees, costs, disbursements, interest, and costs of investigation. Plaintiffs also sought to enjoin Defendants from the use of seclusion and restraint techniques and to require Defendants to establish "lawful and humane" conditions of confinement for METO patients. Finally, Plaintiffs sought to have certain rules and laws¹ relating to the use of aversive and deprivation techniques declared void and unconstitutional.

Defendants deny any wrongdoing or liability and contest all claims that have been asserted. Defendants contend that the use of aversive and deprivation procedures were lawful and appropriate, and that Defendants acted reasonably and in good faith. Defendants have also raised several constitutional defenses. Specifically, Defendants argue that certain claims by Plaintiff are barred by the Eleventh Amendment of the U.S. Constitution, that Defendants are protected from monetary damages by official and qualified immunity, that the Court lacks jurisdiction over some or all claims and that Plaintiffs lack appropriate standing to bring their lawsuit.

The last page of this notice includes sources of additional information, including a website link to the proposed settlement.

III. DESCRIPTION OF THE CLASS

In a class action, one or more people or entities (in this case, the parents and guardians of Bradley J. Jensen, Thomas M. Allbrink, and Jason R. Jacobs), seek to sue as class representatives on behalf of people and entities who are similarly situated. These similarly situated people and entities are called a Class or Class Members, if the Court determines that the lawsuit should proceed as a class action. One Court resolves the issues for all Class Members.

Class Members are not required to do anything to be included in the Class. You are automatically included in this litigation unless you request exclusion ("opt-out") of the lawsuit (the procedure for which is described below). For the purposes of the Proposed Settlement, the parties have agreed to certify a Class defined as follows:

¹ Specifically, Minn. Stat. § 245.825 and Minn. R. 9525.2700-28.10.

Class: All individuals who were subjected to the use of any aversive or deprivation procedures, including restraints of any kind for any reason and/or any type of seclusion method 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.

If you are a member of the Class and wish to receive payment under this Proposed Settlement, you must submit your Claim as described in Section XII on page 10.

IV. YOUR RIGHT TO PARTICIPATE IN THE CLASS

As a member of the Class, you will be bound by all orders and judgments of the Court, whether favorable or unfavorable.

If your circumstances fit and satisfy the definition of the Class quoted above, you are not required to do anything further at this time to be included in the Class. If you are a member of the Class or acting on behalf of a Class Member, and wish to receive payments for the Class Member under this Proposed Settlement, however, YOU MUST submit your Claim Form as described in Section XII below.

If you are in the Class, that means you cannot sue or be part of any other lawsuit against the Defendants about the legal issues in this case. If you wish to sue or be part of another lawsuit, you need to request exclusion (opt-out) from this case.

The Court will exclude from the Class any member who requests exclusion. If you wish to be excluded from the Class, you must complete and mail a signed copy of the attached Request to be Excluded form to Plaintiffs' lawyers at the following address:

Shamus P. O'Meara
Johnson & Condon, P.A.
7401 Metro Boulevard, Suite 600
Minneapolis, MN 55439-3034
(952) 806-0438

THE REQUEST TO BE EXCLUDED FORM MUST BE POSTMARKED NO LATER THAN September 1, 2011. A first-class self-addressed stamped envelope is included for your convenience.

V. YOUR LEGAL REPRESENTATION

If you choose to remain a Class Member, your interests will be represented by counsel for Plaintiffs. Plaintiffs' counsel are:

Shamus P. O'Meara
Johnson & Condon, P.A.
7401 Metro Boulevard, Suite 600
Minneapolis, MN 55439-3034
(952) 806-0438

Plaintiffs' attorneys have conducted this litigation without yet receiving compensation for their services. You will not be charged for these lawyers. The Proposed Settlement provides for payment of attorneys' fees, as set forth in Section IX below.

As a Class Member, you may enter an appearance through your own attorney if you so desire. **If you want to be represented by your own lawyer, you may hire one at your own expense.**

VI. THE PROPOSED SETTLEMENT

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a Proposed Settlement to avoid the costs and risks of a trial. The Plaintiffs and their counsel have concluded, after extensive investigation and formal exchange of facts, research and assessment of the legal issues, that the Proposed Settlement is fair, reasonable and adequate and in the best interests of the Class. The Proposed Settlement avoids the uncertainties and delay in the continued prosecution of this complex case while securing for the Class a substantial monetary recovery and prospective relief.

Defendants have denied, and continue to deny, that they have committed or aided and abetted in the commission of any violation of law or engaged in any of the wrongful acts alleged by the Plaintiffs, and expressly maintain that they diligently and scrupulously acted in good faith and complied with their legal duties. Defendants entered into the Proposed Settlement because it would eliminate the burden, expense and risk of further litigation.

The terms and conditions of the Proposed Settlement, which will become effective only if approved by the District Court, are set forth in detail in the Stipulated Class Action Settlement Agreement, which has been filed with the District Court. The principal terms are summarized below.

VII. SETTLEMENT TERMS

The METO program will close by June 30, 2011. The State and DHS agree to immediately and permanently discontinue the use of prohibited techniques at the Facility, including 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 except that certain identified restraints may be used only in cases of a qualifying emergency. A non-DHS expert will be consulted during or immediately after the use of restraint. Person centered planning principles and positive behavioral supports consistent with best practices will be used in an effort to reduce the use of restraints. The Minnesota Department of Health will make quarterly reports on the facility’s use of restraints.

The Defendants agree to pay Three Million dollars (\$3,000,000) (the “Settlement Fund”) in full settlement of all claims. This amount includes attorneys’ fees, costs, and disbursements, and awards to the named Plaintiffs Jensen, Allbrink, and Jacobs as described in Section IX below. Approximately \$1,775,000 is reserved for Class Members, which shall be apportioned by the Court to the individual Members, taking into account the documented total number of times a resident has been restrained and/or secluded during their residency consistent with a schedule providing for approximately two hundred dollars (\$200) for each documented use of restraint and/or seclusion at METO:

<u>Number of Documented Times Restrained/Secluded:</u>	<u>Apportioned Amount</u>
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 sustained by a Class member as a result of a documented restraint or seclusion.

Payments to individual Class Members that are three thousand dollars (\$3,000) or more, as well as payments made to persons whom Medicare might have a lien or subrogation claim, will be paid into one or more special accounts established with the Court and will be further distributed to the Class Member upon such terms and conditions as the Court may further direct, as set forth in Section XIV. F. of the Agreement.

The Settlement Fund has been calculated based on the understanding that no member or members of the Class will timely file a Request for Exclusion and thereby opt out to pursue a monetary claim on their own.

To the extent there are funds remaining after distributions for attorneys fees, costs and disbursements, and awards to the named Plaintiffs and the Class Members, those funds will be distributed equally to three programs for people with developmental disabilities and their families.

In addition to these monetary payments, Defendants have agreed to make a number of changes to its programs to ensure that proper and appropriate treatment are provided to individuals with disabilities. The State and DHS will also utilize a zero-tolerance policy for instances of abuse and neglect in accordance with the requirements of the State's Vulnerable Adults Act and Maltreatment of Minors Act. The State and DHS further agree to fully document for individuals governed by the Proposed Settlement all instances of uses of manual and mechanical restraint and implement both internal and external review of the use of restraints.

The State also agrees to undertake long-term system-wide improvements, including expansion of community support services, long-term monitoring, crisis management, increased training, community integration, engagement with the parents and guardians of people with developmental disabilities, and with stakeholder input, review of best practices and rules governing the provision of services to people with developmental disabilities. People with developmental disabilities will no longer be transferred to Minnesota Security Hospital or Anoka Metro Regional Treatment Center solely for reasons of such disability.

You may not Request to be Excluded from the system-wide improvements that will result if the Court approves the Proposed Settlement. You may only Request to be Excluded from your participation in the Settlement Fund's proposed monetary award.

VIII. RELEASE

In return for the payments and other program changes described above, Plaintiffs, including members of the Class, agree to release the State, Mr. Bratvold and Dr. TenNapel, and their predecessors, executors, successors, assigns, directors, administrators, officers, employees, agents, attorneys, employers and insurers from all claims, demands, damages, actions, rights of action of whatever kind or nature which Plaintiffs (including members of the Class) now have or may hereinafter have arising out of, in consequence of, or on account of the claims settled under the Settlement Agreement, including all known and unknown damages, whether developed or undeveloped, and all anticipated and unanticipated consequences of all such damages.

IX. ATTORNEYS' FEES, COSTS, AND SEPARATE AWARDS TO NAMED PLAINTIFFS

As noted above, Plaintiffs' counsel have not been compensated for their services. If the Court approves this Proposed Settlement, Plaintiffs' counsel will file an application for an award of attorneys' fees and for reimbursement of the costs and expenses incurred in the prosecution of this litigation, including all of the class costs, 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. Plaintiffs' counsel will seek a total of one million dollars (\$1,000,000.00) as the combined sum of attorneys' fees for their work, costs of the litigation, and interest. Attorneys' fees will be awarded and costs and expenses reimbursed only as approved by the District Court as fair and reasonable. This amount is the total that will be paid for all attorneys' fees and costs in connection with this lawsuit settlement, regardless of whether any Class Member or other person engages separate or additional legal counsel or incurs separate or additional attorneys' fees or costs.

Plaintiffs' counsel also will ask the District Court to make separate monetary awards of a minimum of seventy-five thousand dollars (\$75,000.00) to each of the three Named Plaintiffs as the apportionment of their claims and for efforts in this litigation. If awarded by the District Court, attorneys' fees, costs and expenses and separate awards to named Plaintiffs will be paid from the Settlement Fund.

X. SETTLEMENT SUBJECT TO DISTRICT COURT APPROVAL

The Proposed Settlement as a whole is subject to the approval of the District Court. If the Court does not approve the Proposed Settlement, or if it does not become effective for any reason, the Proposed Settlement will be nullified and the Parties will retain the rights they had prior to signing the Stipulation of Settlement, and the pre-settlement status of the Litigation will be restored.

XI. FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Proposed Settlement (“Fairness Hearing”). You may attend and you may ask to speak, but you don’t have to. Any Member of the Class who objects to the settlement, or who otherwise wishes to be heard, may appear in person or by counsel, at your own expense, at the Fairness Hearing and show cause why the settlement should not be approved.

The Court has directed that the Fairness Hearing on the proposed Settlement be held on December 1, 2011, before The Honorable Donovan W. Frank, United States District Judge, in the United States District Court, 724 Federal Building, 316 North Robert Street, St. Paul, MN 55101, commencing at 10:00 A.M. to: (a) determine whether the proposed settlement of this lawsuit on the terms and conditions provided for in the Settlement should be given final approval as fair, reasonable and adequate, (b) determine whether judgment dismissing this Litigation with prejudice should be entered, (c) determine Plaintiffs’ and Plaintiffs’ counsel’s request for an award of attorneys’ fees, costs and expenses and for separate awards to Named Plaintiffs, and (d) determine distribution of the Settlement Fund in accordance with the terms of the Settlement. Without further notice, the Court may adjourn and reconvene the Fairness Hearing from time to time by oral announcement, and may approve the Settlement and enter a judgment dismissing the Litigation.

If you are satisfied with the matters described in this notice, you need not attend the hearing or take any steps with regard to the hearing.

Objections to the Settlement may be submitted to the Court in writing at least ten (10) days prior to the scheduled hearing, with a copy to Class Counsel. If you wish to appear at the Fairness Hearing, you must file a Notice of Intention to Appear with the Court at least ten (10) days prior to the scheduled hearing, with a copy to Class Counsel.

XII. SUBMITTING CLAIMS TO SHARE IN SETTLEMENT PAYMENTS

If you are a member of the Class and wish to receive the described Settlement payment, you, your guardian, or representative must complete and mail by September 15, 2011, a Claim Form that satisfies all of the requirements set forth in the Claim Form which accompanies this Notice. A first-class, self-addressed stamped envelope is included for your convenience. A website link to the Claim Form as well as the Settlement Agreement and Request for Exclusion (Opt-Out) Form is provided in the last section (“Further Information”) of this Notice.

XIII. FURTHER INFORMATION

This Notice and its content have been authorized by the federal District Court, the Honorable Donovan W. Frank, United States District Court Judge. The Court takes no position regarding the merits of Plaintiffs' claims or Defendants' defenses.

If you, your family member, or legal guardian need help and assistance in deciding whether to file a Claim Form or a Request for Exclusion, or would like to be provided a copy of the Proposed Settlement, you may contact, at no expense, the attorney for Settlement Class Members, as follows:

Shamus P. O'Meara
Johnson & Condon, P.A.
7401 Metro Boulevard, Suite 600
Minneapolis, MN 55439-3034
(952) 806-0438
Fax: (952)-893-8338
Website link: www.johnson-condon.com

The website contains links to the Settlement Agreement, Claim Form, Exclusion Form, this Notice, and other pertinent information. In addition, although they cannot act as your legal counsel, the Minnesota Governor's Counsel on Developmental Disabilities is knowledgeable about the Proposed Settlement and you may contact them at (651) 296-9964.

Please do not contact the clerk of court regarding this notice.

Dated: June 24, 2011

s/Donovan W. Frank
Donovan W. Frank
Judge of United States District Court

CLASS ACTION EXHIBIT 1

AG: #2817602-v1