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21 **UNITED STATES DISTRICT COURT**

22 **DISTRICT OF ARIZONA**

23 J.K., a minor by and through R.K., et al., on
24 behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

WILL HUMBLE, in his official capacity as
Interim Director of the Arizona Department of
Health Services; DR. LAURA NELSON, in her
official capacity as Director, Division of
Behavioral Health Services, Arizona
Department of Health Services; THOMAS J.
BETLACH, in his official capacity as Director,
Arizona Health Care Cost Containment System,

Defendants.

No. CV-91-261 TUC JMR

**DEFENDANTS' MOTION TO
TERMINATE THE COURT'S
JURISDICTION AND TO DISMISS
THE CASE**

(Assigned to the Honorable
John M. Roll)

1 Defendants respectfully request the Court enter an order acknowledging the
2 termination of its jurisdiction over this matter. Pursuant to the terms of the Settlement
3 Agreement, as amended, (“Agreement”) entered into between the parties and approved
4 by the Court and adopted in its entirety, the Court’s jurisdiction over this case ended
5 effective February 1, 2011.¹ See Agreement, Dkt. 397. Paragraph 81 of the Agreement
6 required Plaintiffs to file a motion to dismiss this action without prejudice before
7 February 1, 2011. Plaintiffs failed to do so, thereby necessitating this motion.
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9 **I. RELEVANT PROCEDURAL HISTORY**

10 In accordance with paragraph 59 of the Agreement, Plaintiffs began the dispute
11 resolution process on March 6, 2009 when they delivered to Defendants a written
12 statement of the issues in dispute. The Agreement required the parties to attempt to
13 resolve these issues in a sequential dispute resolution process (collaborative negotiations,
14 mediation and then judicial involvement). See ¶¶ 56 through 70 of Agreement, Dkt. 397.
15 Accordingly, the parties participated in collaborative negotiations on April 2, 2009 and
16 then mediation in June, 2009, with no success. Plaintiffs then moved forward with the
17 judicial phase by filing their Motion for Enforcement of Settlement Agreement (“Motion
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20 ¹ See Agreement, Dkt. 397. See also January 1, 2007 Order (Dkt. 445), which approved a
21 stipulation between the parties to continue the term of the Agreement for a period of three
22 years. Specifically, the Agreement and the Court’s jurisdiction over same was originally
23 set to terminate on July 1, 2007 for any matters not submitted to dispute resolution, and
24 by February 1, 2008 for any pending issues timely submitted to dispute resolution. The
January 10, 2007 Order continued these dates to July 1, 2010 and February 1, 2011,
respectively.

1 to Enforce”) almost five months later on November 13, 2009. See ¶¶ 68 and 69 of
2 Agreement, Dkt. 397. Defendants filed a Cross-Motion to Dismiss along with their
3 response to the Motion to Enforce on December 31, 2009. Plaintiffs filed their Reply in
4 Support of the Motion to Enforce on February 2, 2010, and Defendants filed their Reply
5 in Support of the Cross-Motion on February 26, 2010. On September 24, 2010, the Court
6 denied all of the pending motions, ordered the parties to submit new motions addressing
7 all pending issues, and set oral argument for November 22, 2010. See September 24,
8 2010 Order, Dkt. 516.

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10 On October 15, 2010, Plaintiffs re-filed their Motion to Enforce and Defendants
11 re-filed their Cross-Motion to Dismiss as well as a Motion to Transfer Venue from
12 Tucson to Phoenix. Plaintiffs filed their Reply in Support of the Motion to Enforce and
13 the Opposition to the Motion to Transfer on October 28, 2010. Defendants filed their
14 replies supporting the Cross-Motion as well as the Motion to Transfer on November 12,
15 2010. Oral argument was held on November 22, 2010, where Judge Roll, in pertinent
16 part, again denied all of the pending motions, narrowed the issues to be determined by the
17 mediator, granted Defendants’ request that the parties again participate in mediation, and
18 expressed his intention to assign the case to a special master if it was not resolved
19 through mediation. See November 29, 2010 Order, Dkt. 530.
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1 The parties again participated in mediation on February 14, 2011.² When it
2 became clear that an agreement between the parties that resolved Plaintiffs' issues was
3 not forthcoming, the parties agreed to stay mediation to allow Defendants to file one or
4 more motions to resolve certain legal issues. The parties further agreed that once the
5 motion(s) were resolved by the Court they would advise the mediator whether or not the
6 mediation would reconvene.

7 **II. LEGAL ANALYSIS**

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9 When analyzing settlement agreements and consent decrees, courts treat those
10 documents like contracts in that they only (i) look to what is contained within the four
11 corners of the document and (ii) turn to extrinsic evidence to resolve ambiguities if they
12 exist. *U.S. v. Asarco Inc.*, 430 F.3d 972, 980 (9th Cir. 2005); *Marisol v. Giuliani*, 157
13 F.Supp.2d 303, 306 (S.D.N.Y. 2001); *Stewart v. O'Neill*, 225 F. Supp.2d 6, 8 (D.D.C.
14 2002); *E.E.O.C. v. Local 40*, 76 F.3d 76, 79-80 (2nd Cir. 1996). It is well settled that
15 “[I]f the agreement is clear, courts must take care not to alter or go beyond the express
16 terms of the agreement, or to impose obligations on the parties that are not mandated by
17 the unambiguous terms of the agreement itself.” *Marisol*, 157 F.Supp. at 306 (internal

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20 ² Defendants recognize that mediation occurred after the termination date of the
21 Agreement. Defendants, however, moved forward with mediation given their
22 commitment to the Court at the November 22, 2010 oral argument to attempt to resolve
23 the disputed issues through negotiation and collaboration. Had the parties been
24 successful in resolving the disputed issues through mediation, this Motion would not be
necessary and Plaintiffs would have presumably filed a Motion to Dismiss in
conformance with paragraph 81 of the Agreement. See Dkt. 397. However, given the
parties' inability to reach an agreement, it is now appropriate and necessary for
Defendants to file the instant Motion.

1 citations and quotations omitted); *E.E.O.C.*, 76 F.3d at 79- 80. To do other wise would
2 deprive the parties of the benefits they ba rgained for when ente ring into a settlement
3 agreement. *Id.* at 81.

4 The enforcement of a settleme nt agreement is more than just a continuation or
5 renewal of a dism issed suit and therefore requires its own ba sis for jurisdiction.
6 *Hospitality House, Inc. v. Gilbert*, 298 F.3d 424, 430 (5th Cir. 2002). “In the presence of
7 the decree’s termination clause, the district court does not have i ndeterminate power to
8 ensure compliance with its term s. A court does not ha ve inherent power to enforce an
9 order that has expired. In this case, the court’s enforcement authority expired when the
10 decree expired.” *E.E.O.C.* at 80. The same is true here.

12 Consent decrees and settlement agreemen ts are not intended to operate in
13 perpetuity. *J.G. v. Bd. of Educ. of the Rochester City Sch. Dist.*, 193 F.Supp.2d 693, 699
14 (W.D.N.Y. 2002) (c onsent decree gover ning the provision of educational services to
15 children in a statutorily and constitutionally acceptable manner in a 22 year-old case
16 expired by its own term s without request from any party for extension, which divested
17 the court of jurisdiction); see also *Labor/Community Strategy Ctr. v. Los Angeles County*
18 *Metro. Transp. Auth.*, 564 F.3d 1115, 1123 (9th Cir. 2009) (federal court intervention in
19 state institutions is a temporary measure that may extend no longer than necessary to cure
20 constitutional violations). It is well settled th at any motions requesting an extension of
21 time or to enforce a s ettlement agreement must be made pr ior to the expiration of the
22 court’s jurisdiction. *Cherry v. City Coll. of San Francisco*, 2011 WL 11471, 3 (N.D. Cal.
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1 2011). The filing a motion to terminate jurisdiction by Defendants does not open the
2 door for the Plaintiffs to argue that jurisdiction did not expire nor does it provide a basis
3 for the Court to invoke its jurisdiction after the date of expiration. *Id.*, at 4.

4 The relevant case law supports our position. In *Labor/Community Strategy*
5 *Center*, 564 F.3d at 1123, the Ninth Circuit Court of Appeals affirmed the district court's
6 denial of plaintiff's motion to extend the duration of the court's jurisdiction prior to
7 expiration of consent decree because defendant substantially complied with the
8 settlement terms. The Court reasoned that although every last wish and hope of the
9 decree was not achieved, the decree accomplished its essential purpose and the situation
10 improved greatly. This decision was consistent with the principle that federal court
11 intervention in state institutions is a temporary measure and may extend no longer than
12 necessary to cure constitutional violations. See also *Cherry*, 2011 WL 11471 (Stipulated
13 judgment provided that the court might approve an extension of time for good cause
14 shown, however that option required that the motion be filed prior to expiration, which
15 was not done. As a result, the court's jurisdiction over the case ended); *Stewart*, 225
16 F.Supp.2d 6 (If the party(s) had wanted the district court to take appropriate steps to
17 retain jurisdiction over the enforcement of the settlement agreement they could have
18 made such a request before the expiration date. No such request was timely made. As a
19 result, the court found that its jurisdiction had expired); *Lipman v. Dye*, 294 F.3d 17 (1st
20 Cir. 2002) (Plaintiffs' motion to enforce settlement agreement was denied because the
21 court lacked jurisdiction to grant it and the plaintiffs had failed to move the court to take
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1 appropriate steps to retain jurisdiction over the enforcement of the terms of the settlement
2 agreement); *E.E.O.C.*, 76 F.3d 76 (Consent decree expired under its own unambiguous
3 terms); and *Morris v. City of Hobart*, 39 F.3d 1105, 1110 (10th Cir. 1994) (District Court
4 did not have ancillary jurisdiction to enforce settlement agreement, where language of
5 administrative closing order demonstrated intent to dismiss action without retaining
6 jurisdiction and dismissal was not conditioned on compliance with settlement
7 agreement).

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9 The Agreement provides a limited closed-ended period of time to address issues
10 submitted to dispute resolution by Plaintiffs. See Sections IX and XIV of Agreement,
11 Dkt. 397. During the prior two years the parties have been continuously involved in the
12 dispute resolution process - participating in collaborative negotiations once, mediation
13 twice, and the judicial phase twice. Couple this with the fact that during this period of
14 time the Defendants remained responsible for paying to Plaintiffs all of their reasonable
15 and appropriate attorneys' fees and costs incurred in the dispute resolution process, which
16 are substantial. Based on the foregoing alone the Agreement should be terminated. Here,
17 however, the issue is much simpler. The Agreement expressly and unambiguously
18 provides that the Court's jurisdiction over this matter terminated effective February 1,
19 2011. *Id.*, ¶ 80. Plaintiffs chose not to file a motion with the Court asking that it
20 continue the date of termination before this date, and they cannot file such a motion after
21 the fact. This matter must be dismissed.
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1 **III. CONCLUSION**

2 Based on the foregoing, Defendants respectfully request the Court enter an order
3 acknowledging the termination of its jurisdiction over this case and dismissing it without
4 prejudice.

5 RESPECTFULLY SUBMITTED this 4th day of March 2011.

6
7 THOMAS C. HORNE
8 Attorney General

9 s/Gregory Honig
10 Gregory Honig, 018804
11 Assistant Attorney General for ADHS

12
13 s/Paul Steen
14 Paul Steen, 011111
15 Attorney for AHCCCS

CERTIFICATE OF SERVICE

I hereby certify that on March 4th, 2011, I electronically transmitted the attached

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to the Clerk's Office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

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