

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

J.K., a minor by and through R.K., et al.,)
on 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-AWT

ORDER RE MOTIONS:

- (1) TO TERMINATE THE COURT'S JURISDICTION;
and**
- (2) FOR ATTORNEYS' FEES**

Pending before the Court are Defendants' Motion to Terminate the Court's Jurisdiction and to Dismiss the Case (Doc. 540) and Plaintiffs' Motion for Attorneys' Fees (July 1 through September 30, 2009 and October 1 through December 31, 2009) (Doc. 548). For the reasons stated, Defendants' Motion to Terminate (Doc. 540) will be denied and Plaintiffs' Motion for Attorneys' Fees (Doc. 548) will be granted in part and denied in part.

I. Defendants' Motion to Terminate the Court's Jurisdiction

1 Defendants argue that, pursuant to the terms of the Settlement Agreement (Doc.
2 397) (the “Agreement”) entered into by the parties, approved by the Court and adopted in
3 its entirety, the Court’s jurisdiction over this case ended effective February 1, 2011.
4 Paragraph 81 of the Agreement, as amended, required Plaintiffs to file a motion to
5 dismiss the action without prejudice before February 1, 2011, but Plaintiffs did not file
6 such a motion.

7 Plaintiffs respond that an order dismissing the case has not been entered and that
8 there is a pending dispute over whether Defendants have violated the Agreement and, if
9 so, whether the terms of the Agreement should be extended. Plaintiffs argue that the
10 Court has subject matter jurisdiction to decide whether Defendants’ alleged non-
11 compliance entitles Plaintiffs to an extension of the Agreement and the process to be
12 followed to resolve the disputed issues.

13 **A. Background**

14 A fairness hearing was held on June 26, 2001, and “[p]ursuant to statements made
15 on the record, ORDERED Settlement Agreement is approved and adopted in its entirety”
16 (Doc. 397). At the time of its approval and adoption, the Agreement set forth certain
17 deadlines concerning resolution of pending disputes and termination of Defendants’
18 obligations and the Court’s jurisdiction (*Id.*, Agreement XIV ¶¶ 79-81).

19 In January 2006, Plaintiffs invoked the Agreement’s dispute resolution procedures,
20 a three-stage process involving collaborative negotiation, mediation and judicial process
21 (Doc. 443 at 2; Doc. 397, Settlement Agreement IX). On November 21, 2006, the parties
22 filed a Stipulation stating they wished to resolve their dispute without litigation and had
23 agreed to extend applicable dates in the Agreement (Doc. 443). On January 10, 2007, the
24 Court approved the parties’ stipulated amendments to the Agreement (Doc. 445). The
25 Agreement’s terms were modified to provide that the Agreement would terminate on July
26 1, 2010, except the parties would continue through February 1, 2011, to resolve any
27 pending disputes initiated before February 1, 2010; from July 1, 2010, to February 1,

1 2011 the Court's jurisdiction would be limited to resolving any pending disputes; through
2 February 1, 2011, the Court was authorized to enter appropriate relief, if the parties were
3 unable to resolve a dispute by agreement; and the Court's jurisdiction would end on
4 February 1, 2011 (*Id.*; *see* Doc. 543 at 6). The Agreement also was modified to provide a
5 deadline for Plaintiffs to file a motion to dismiss upon termination of Defendants'
6 obligations under the Settlement Agreement (Doc. 443; Doc. 397, Agreement XIV ¶ 81).

7 In March 2009, Plaintiffs again invoked the Agreement's dispute resolution
8 process, alleging Defendants' non-compliance in six areas (Doc. 543 at 6-7). When the
9 parties' attempt at mediation failed to resolve the dispute, Plaintiffs in November 2009
10 filed a motion to enforce the Settlement Agreement, seeking, *inter alia*, another extension
11 of the term of the Agreement (Doc. 473; Doc. 491 at 3).¹ Defendants filed a cross-motion
12 to dismiss Plaintiffs' motion to enforce or, in the alternative, to remand for dispute
13 resolution pursuant to the Settlement Agreement (Doc. 483). On September 10, 2010,
14 pursuant to a Court Order (Doc. 514), the parties reported their disputes had not been
15 resolved or rendered moot (Doc. 515). On September 24, 2010, the Court denied the
16 parties' motions (Doc. 491 & 483), set oral argument for November 22, 2010, and
17 directed the parties to brief the issues (Doc. 516).

18 In October 2010, Plaintiffs filed a motion to enforce the Settlement Agreement
19 (Doc. 518) and Defendants filed a cross-motion to dismiss Plaintiffs' motion to enforce
20 or, in the alternative, to remand for dispute resolution pursuant to the Settlement
21 Agreement (Doc. 522). During oral argument held on November 22, 2010, the parties
22 discussed the disputed issues, with the Court commenting that their dispute would be
23 referred to a mediator and possibly to a special master (Doc. 535 at 23, 25). At the
24 conclusion of the hearing, the Agreement's potential expiration was discussed with the
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26 ¹ Plaintiffs' motion to enforce was lodged on November 13, 2009 (Doc. 473) and
27 filed on December 2, 2009 (Doc. 491).

1 goal of mediation by the end of January and possibly a status conference by that same
2 time after the parties agreed on a mediator (Doc. 535 at 25-26).² The Court remarked, “if
3 the parties, after considering everything, stipulate to a specific extension of the
4 agreement, I would certainly consider that, of course” (Doc. 535 at 26).

5 On November 29, 2010, the Court denied the parties’ October 2010 motions
6 (Docs. 517, 518, 522), referred the matter to a mediator to attempt a settlement of the
7 issues, and listed the issues to be determined by the mediator (Doc. 530). The Order
8 provided in part that “[t]he parties shall submit to the Court a stipulation regarding a date
9 until which the Settlement Agreement, and the Court’s jurisdiction over it, needs to be
10 extended” (Doc. 530 at 2). The Order gave the parties “notice that should this matter not
11 be resolved through the mediation process, it will be referred to a Special Master under
12 Fed.R.Civ.P.53” (Doc. 530 at 2-3).

13 The matter proceeded to a two-day mediation on February 14, 2011, but the
14 mediation lasted only one day with the disputed issues not resolved (Doc. 540 at 4; Doc.
15 543 at 9). The parties agreed to suspend mediation to allow Defendants to file a motion
16 to resolve legal issues (Doc. 540 at 4; Doc. 543 at 9 & Ex. 3). On March 4, 2011,
17 Defendants filed their pending motion to terminate and dismiss (Doc. 540). Plaintiffs did
18 not file a motion, and the parties did not file a stipulation, to extend the Settlement
19 Agreement or the Court’s jurisdiction.

20 **B. Discussion**

21 The Agreement provides that none of its provisions “limit, in any way, the Court’s
22 authority, power, or jurisdiction to enforce this Settlement Agreement during its
23 pendency” (Doc. 397, Agreement XIV ¶ 83). It further provides that “[t]his Agreement
24 may be amended, modified or supplemented only by a duly executed writing which has
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26 ² Defense counsel commented during the discussion, “I think the only issue is,
27 which we don’t need to address today, obviously, is the potential expiration of the settlement
28 agreement, which I know the Court probably isn’t inclined to enforce” (Doc. 535 at 25).

1 been presented to and approved by this Court” (*Id.*, XV ¶ 84). The Court approved and
2 adopted the Settlement Agreement (Doc 397). The Court, however, is not a party to the
3 Agreement.

4 The district court’s approval of a settlement agreement along with its retention of
5 jurisdiction has been held to be the functional equivalent of a consent decree which the
6 district court has the authority to modify and interpret in light of changed circumstances.
7 *See Am. Disability Ass’n, Inc. v. Chmielarz*, 289 F.3d 1315, 1320-21 (11th Cir. 2002); *see*
8 *also United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990) (“A consent decree is
9 essentially a settlement agreement subject to continued judicial policing.”) (internal
10 quotation marks omitted). Where a decree contains an express expiration date for the
11 court’s retention of jurisdiction, any change to that date involves a modification of the
12 decree. *Labor/Community Strategy Ctr. v. L.A. Cnty. Metro. Transp. Auth.*, 564 F.3d
13 1115, 1120 (9th Cir. 2009). Even in the absence of express authorization in the decree or
14 request from the parties, the power to modify in appropriate circumstances is inherent in
15 the equity jurisdiction of the court. *Keith v. Volpe*, 784 F.2d 1457, 1461 (9th Cir. 1986)
16 (citation omitted); *see also Nehmer v. U.S. Dep’t of Veterans Affairs*, 494 F.3d 846, 860
17 (9th Cir. 2007) (“It is well established that the district court has the inherent authority to
18 enforce compliance with a consent decree that it has entered in an order, to hold parties in
19 contempt for violating the terms therein, and to modify a decree.”).

20 Plaintiffs gave notice of the pending dispute prior to the amended Agreement’s
21 February 1, 2010, deadline and moved for an extension of the Agreement, which the
22 District Court later denied. Nonetheless, the Court and the parties contemplated resolving
23 the present dispute. The discussion during the November 2010 hearing reveals the
24 parties’ disagreement regarding the scope of the Agreement and whether and to what
25 extent Defendants had complied with the Agreement’s terms (Doc. 535 at 5-23). The
26 parties and the Court were aware of the Agreement’s February 1, 2011, deadline because
27 they discussed setting mediation and a status conference by the end of January 2011. The
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1 Court's Order expressly directed the parties to submit a stipulation to extend the
2 Agreement's termination deadline and the Court's jurisdiction (Doc. 530). Additionally,
3 the Court's Order identified disputed issues and notified the parties that the dispute would
4 be referred to a special master if not resolved by mediation (*Id.*). The parties did not
5 object and, in fact, proceeded to mediation after the termination deadline. Implied in the
6 Court's Order is the finding that a dispute existed regarding substantial compliance, that
7 jurisdiction to ensure compliance was extended, and the Agreement would be modified
8 accordingly pursuant to the parties' stipulation. *See Thompson v. Enomoto*, 915 F.2d
9 1383, 1389 (9th Cir. 1990) (implicit in the court's order directing the parties to negotiate
10 modifications to the decree was the ruling that jurisdiction to assure compliance was
11 extended).

12 With respect to judicial process to resolve disputes, the Agreement provides that
13 "[t]he Court will resolve the matter in a manner consistent with the purposes and goals of
14 the Settlement Agreement" (Doc. 397, Agreement IX ¶ 70). The Agreement further
15 provides that "[t]he parties understand and agree that until such time as this action is
16 dismissed pursuant to paragraph 81, the Court's jurisdiction will continue for the purpose
17 of enforcing, should it become necessary, the obligations of the parties under the
18 Settlement Agreement" (*Id.*, Intro.). The Agreement also states that no party "may
19 engage in activities which delay, prolong or frustrate performance of the obligations of
20 this Agreement with the aim of taking advantage of the time-limited nature of this
21 Settlement Agreement" (*Id.*, Agreement XIV ¶ 82). The Court's determination to extend
22 the Agreement and its jurisdiction is consistent with the Agreement's terms and goals.
23 *See, e.g., Keith*, 784 F.2d at 1460 (consent decree may be modified if experience with its
24 administration shows the need for modification to accomplish its goals) (citation
25 omitted); *Labor/Community Strategy Ctr.*, 564 F.3d at 1120-21 (a party's failure of
26 substantial compliance with a consent decree's terms can qualify as a significant change
27 in circumstances that would justify the decree's temporal extension). Allowing
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1 Defendants to terminate the Agreement, and the Court's jurisdiction, would permit
2 Defendants to frustrate performance of the Agreement's obligations with the aim of
3 taking advantage of the Agreement's time limits, even though the Court's November
4 2010, Order made clear that the parties were to stipulate as to an extension of the Court's
5 jurisdiction. In light of the present dispute, Defendants' obligations cannot be said to
6 have terminated and the Court's jurisdiction continues for the purpose of enforcing the
7 Agreement.

8 Finally, the Court notes that a settlement agreement is treated as a contract for
9 purposes of interpretation. *United Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962
10 F.2d 853, 856 (9th Cir. 1992) (citing *Adams v. Johns-Manville Corp.*, 876 F.2d 702, 704
11 (9th Cir. 1989)). Its construction and enforcement are governed by principles of local law
12 that apply to contract interpretation generally even though the cause of action is federal.
13 *Id.* A party to a contract by express agreement or by his own course of conduct may
14 waive his legal right to insist on strict performance of the contract's terms. 13 *Williston*
15 *on Contracts* § 39:27 (4th ed. 2011). In Arizona, an essential element of waiver is the
16 intention to waive the right involved "and where not expressed, one's conduct must be
17 such as to warrant the inference of such intention." *Ariz. Title Guar. & Trust Co. v.*
18 *Modern Homes, Inc.*, 330 P.2d 113, 114 (Ariz. 1958) (citation omitted). To infer a
19 waiver of right, such right must exist at the time the claimed waiver occurred. *Id.* "There
20 also must be an opportunity of choice between the relinquishment and the enforcement of
21 the right in question." *Id.* Given the content of the Court's November 2010, Order,
22 Defendants' participation in mediation after February 1, 2011, constitutes a course of
23 conduct that waived their right to insist on strict performance of the termination date in
24 the Agreement.

25 For the reasons set forth above, Defendants' Motion to Terminate the Court's
26 Jurisdiction and Dismiss the Case (Doc. 540) is denied.

27 **II. Plaintiffs' Motion for Attorneys' Fees**

1 Plaintiffs seek attorneys' fees for the calendar quarters July 1 through September
 2 30, 2009; and October 1 through December 31, 2009 (Doc. 548). The parties' Third
 3 Stipulation As To Court Award of Attorneys' Fees to Plaintiffs (Doc. 450), approved by
 4 the Court on December 19, 2007 (Doc. 451, Order), governs the payment of attorneys'
 5 fees to Plaintiffs for the relevant time periods (*see* Doc. 548 at 3; Doc. 450 at 3 ¶ 7). The
 6 Third Stipulation provides for a general quarterly cap on Plaintiffs' attorneys' fees at
 7 \$58,000 for work performed to monitor implementation of Court orders and for additional
 8 fees under certain circumstances (Doc. 450 at ¶¶ 7-12; Doc. 548 at 3). Plaintiffs seek a
 9 total of \$102,197.50 in uncapped attorneys' fees resulting from their dispute resolution
 10 efforts over the two identified periods. Except as noted, the parties have been unable to
 11 resolve their dispute regarding these uncapped fees (Doc. 548 at 4-5).

12 **A. Time Spent on "Court Involvement"**

13 Plaintiffs seek fees for time spent by counsel on "court involvement" after
 14 September 8, 2009. Plaintiffs argue they informed Defendants' counsel on August 20,
 15 2009, that they planned to file a motion to enforce the Agreement and that they filed their
 16 motion on November 13, 2009. Having carried through their intention, Plaintiffs contend
 17 they are entitled to attorneys' fees (Doc. 548 at 6-7). Defendants argue that attorneys'
 18 fees should be awarded only for work on "court involvement" during the twenty-day
 19 period of August 20 to September 8, 2009 because Plaintiffs did not file their motion
 20 within twenty days of their August 20, 2009, notice as Defendants assert is required by
 21 the Third Stipulation's terms (Doc. 549 at 5-7).³

22 As set forth in the Third Stipulation and Order, if any party invokes the dispute
 23 resolution provision set forth in Section IX of the Settlement Agreement, fees and
 24 expenses incurred for court involvement may be billed separately notwithstanding the cap

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 26 ³ Defendants also object to fees for mediation after June 20, 2009 (Doc. 549 at
 27 4-5) but this issue has been resolved as Plaintiffs have clarified they are seeking only fees for
 28 "court involvement" after August 20, 2009 (Doc. 552 at 2).

1 amount (Doc. 450 at ¶ 12; Doc. 451 at ¶ 4). The beginning and ending time frames for
 2 billing purposes are described as follows:

- 3 (b) Attorneys' fees and expenses incurred for court involvement shall
 4 begin on the day either party informs the other party of their
 5 intention to file an appropriate motion with the U.S. District Court to
 6 enforce the terms of the Settlement Agreement. If no motion is filed,
 7 attorneys' fees and expenses incurred for court involvement shall
 8 end twenty (20) days from the date a party informs the other party in
 9 writing of their intention to file a motion in . . . Court. If a motion is
 10 filed, attorneys' fees and expenses incurred for court involvement
 11 shall end on the day the . . . Court enters a final order resolving the
 12 dispute.

13 (Doc. 450 at ¶ 12(b); Doc. 451 at ¶ 4(b)).

14 Defendants construe this provision as meaning that Plaintiffs are entitled to
 15 recover fees for "court involvement" work as of August 20, 2009, when notice was
 16 provided, and for a period of 20 days thereafter, that is, until September 8, 2009, because
 17 Plaintiffs did not file their motion to enforce until November 13, 2009 (Doc. 549 at 6).
 18 According to Plaintiffs, Defendants have conceded that Plaintiffs are entitled to fees for
 19 time spent on "court involvement" after Plaintiffs filed their November 2009 motion to
 20 enforce (Doc. 548 at 8). Based on the plain meaning of the cited provision, it cannot be
 21 construed as providing for a twenty-day expiration window unless the party giving notice
 22 does not actually file a motion. Plaintiffs did in fact file a motion to enforce, and
 23 pursuant to the cited provision, attorneys' fees are recoverable from the notice date until
 24 the date on which the Court rules. Defendants' objection is overruled and Plaintiffs'
 25 request for attorneys' fees is granted.

26 **B. Karen Bower's Fees**

27 Plaintiffs seek \$17,610 in fees for 58.7 hours of work performed by attorney Karen
 28 Bower between August 20 and December 31, 2009, securing supporting declarations for
 Plaintiffs' motion to enforce the Settlement Agreement (Doc. 548 at 5, 8). Defendants
 object that Plaintiffs failed to provide notice of their intent to submit billing statements for
 lawyers other than those named in the Third Stipulation prior to their quarterly request at

1 issue (Doc. 549 at 7-9). Plaintiffs argue they provided notice of attorney Bower in a fee
2 request for a prior period (April through June 2009), the parties stipulated to the amount
3 paid (citing a July 9, 2010 stipulation (Doc. 511 at 2-3)), and the matter of attorney
4 Bower's hourly rate was resolved (Doc. 552 at 5). Plaintiffs contend that on August 2,
5 2009, one of Plaintiffs' attorneys notified a defense attorney by letter of Plaintiffs' intent
6 to seek fees for attorney Bower at \$300 per hour (Doc. 548 at 8-9). Plaintiffs concede
7 they have been unable to locate a signed copy of the purported letter (Doc. 548 at 9) and
8 Defendants claim the letter was not received (Doc. 549 at 9 & Ex. B).

9 Paragraph 11 of the Third Stipulation, as adopted by the Court's Order, provides
10 that "Plaintiffs shall have the sole discretion to determine what lawyers should submit
11 billing statements and in what amounts," followed by specified billing rates for four
12 named Plaintiffs' attorneys. It also provides that "[i]f other lawyers are to be included in
13 the quarterly billings, Plaintiffs shall notify Defendants of their intent to submit billing
14 statements for the other lawyers and propose the hourly rate for such lawyers prior to
15 submitting a request for fees and expenses" (Doc. 450 at ¶ 11; Doc. 451, Order at ¶ 3).

16 Plaintiffs' alleged notice in a prior quarter and their failure to produce a signed
17 letter sent to defense counsel in a manner noting receipt is insufficient to comply with the
18 Third Stipulation's notice requirement. Plaintiffs' request for a fees award for work
19 performed by attorney Bower is therefore denied.

20 **C. Time Securing Expert Declarations**

21 Plaintiffs request attorneys' fees for time spent securing declarations from Linda
22 Redman and John Vandenberg, two "consultants/experts" previously employed by the
23 Arizona Department of Health Services ("ADHS") (Doc. 548 at 10). Plaintiffs offered
24 these declarations in support of their November 2009 motion to enforce (Doc. 491) and
25 February 2010 reply (Doc. 493) (*see* Doc. 491, Ex. 5 [Redman Declaration]; Doc. 494,
26 Ex. 2 [Redman Supplemental Declaration]; & Doc. 493, Ex.1 [Vandenberg Declaration]).
27 Defendants object because Redman and Vandenberg, who both parties agree are experts

1 in their respective behavioral health fields, had an employment relationship with ADHS
2 that included work on the present case and in an ongoing state court case against several
3 state defendants, including ADHS, that concerns the adult behavioral health system in
4 Maricopa County (Doc. 549 at 10). Redman and Vandenberg each were paid in excess of
5 \$600,000 by ADHS for their work in their respective areas of quality management and
6 training over a five-year period (Doc. 549 at 11-14 & Ex. C). Plaintiffs argue in their
7 reply that Defendants have not offered any evidence that the contracts between these two
8 experts and ADHS precluded a consulting arrangement with Plaintiffs or that Redman
9 and Vandenberg relied on confidential information in their declarations (Doc. 552 at 5-6).

10 Defendants have not moved to strike the Redman and Vandenberg declarations⁴
11 and have not produced evidence showing the consulting arrangements were not allowed
12 or that confidential information has been revealed. Plaintiffs' request for attorneys' fees
13 for work securing the Redman and Vandenberg declarations will be denied, but without
14 prejudice subject to Defendants moving to strike the declarations.

15 **D. "Incomplete Entries"**

16 Defendants object to "incomplete entries" for time billed by attorney Barkoff
17 (Doc. 549 at 14-16) but according to Plaintiffs' reply, Defendants' concern was satisfied
18 when Plaintiffs explained that the entries referred to telephone calls (Doc. 552 at 6-7).
19 Plaintiffs have submitted with their reply a corrected printout of attorney Barkoff's time
20 statement showing that each "incomplete" entry refers to a telephone call (Doc. 552 at 7
21 & Ex. 1). This dispute appears to be resolved. To the extent Defendants further object to
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25 ⁴ In their motion to transfer venue (Doc. 517) filed on October 15, 2010, Defendants
26 discussed that Redman and Vandenberg were potential witnesses and indicated in a footnote
27 that if the case is not dismissed or remanded to collaborative negotiations/mediation,
28 Defendants anticipated moving to strike Vandenberg and Redman as expert witnesses for
Plaintiffs (Doc. 517 at 7 n.3).

1 the timeliness of Plaintiffs' disclosure of the time records, Defendants' objection is
2 overruled.

3 **E. Time Spent on the "Horne Briefs"**

4 Defendants object to \$725 in fees for 2.9 hours of work performed by attorney
5 Barkoff referring to "Horne briefs." Defendants contend Plaintiffs have not explained
6 how this research aided counsel regarding claims advanced in dispute resolution since the
7 time was billed in December 2009 while Plaintiffs' motion to enforce was pending and
8 none of the parties were seeking relief from or dismissal of the Settlement Agreement
9 (Doc. 548 at 11; Doc. 549 at 16-17). Defendants urge that fees should not be awarded
10 because Plaintiffs have not timely provided justification for the request (Doc. 549 at 17).
11 Plaintiffs have explained that the entries refer to *Horne v. Flores*, 557 U.S. 433, 129 S.Ct.
12 2579 (2009), which concerned relief from court orders and it was unknown whether
13 Defendants would seek relief from the Settlement Agreement when the work was
14 performed (Doc. 548 at 11; Doc. 552 at 7). Plaintiffs' explanation lacks sufficient detail
15 to justify a fees award; therefore, their request is denied.

16 **F. Defendants' Request for Fees**

17 Defendants request that the Court award ADHS its reasonable attorneys' fees
18 incurred in filing its response to Plaintiffs' motion for attorneys' fees and deny Plaintiffs'
19 counsel the right to request attorneys' fees incurred in filing their motion and reply (Doc.
20 549 at 18). Defendants' request is denied without prejudice to the right of either party to
21 file appropriate motions on the matter.

22 **III. Conclusion**

23 For the reasons set forth above,

24 **IT IS HEREBY ORDERED:**

- 25 1. Defendants' Motion to Terminate the Court's Jurisdiction and Dismiss the
26 Case (Doc. 540) is **denied**.

2. Plaintiffs' Motion for Attorneys' Fees (Doc. 548) is **granted in part** and **denied in part** as set forth above in this Order.
3. The parties shall submit to the Court a stipulation regarding a date until which the Settlement Agreement, and the Court's jurisdiction over the pending dispute, needs to be extended within **fourteen (14) days** of this Order.
4. A status conference will be held on **March 19, 2012** at **2:00 p.m.** at the Evo A. De Concini United States Courthouses, 405 W. Congress, Tucson, Arizona. The parties should be prepared to discuss the referral of this matter to a Special Master under Fed. R. Civ. P. 52. The parties may file briefs on this issue; if they elect to file such briefs, they shall be filed by March 12, 2012.

DATED this 27th day of February, 2012.



A. Wallace Tashima
United States Circuit Judge
Sitting by Designation