

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DISABILITY SUPPORT
ALLIANCE, on behalf of its members;
and SCOTT SMITH,

Plaintiffs,

v.

CCRE, LLC,

Defendant.

Case No. 15-CV-03713-MJD-BRT

**PLAINTIFF DISABILITY SUPPORT ALLIANCE'S RESPONSE OPPOSING JOINT
MOTION TO DISMISS**

Plaintiff Disability Support Alliance, by and through its counsel, hereby files its Response Opposing Plaintiff Scott Smith's and Defendant CCRE, LLC's Joint Motion to Dismiss. This Response is based on the attached Memorandum of Law and Exhibits, along with the record, arguments of counsel, and equitable relief as the Court deems just. Plaintiff Disability Support Alliance requests the Court deny the Joint Motion to Dismiss.

DATED: December 28, 2016

Respectfully Submitted,

By: /s/ Jennifer L. Urban
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UNITED STATES DISTRICT COURT
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**MEMORANDUM OF LAW OPPOSING JOINT MOTION TO DISMISS
DISABILITY SUPPORT ALLIANCE'S CLAIMS**

Plaintiff Disability Support Alliance (hereinafter "DSA") opposes the joint Motion to Dismiss brought by Plaintiff Scott Smith (hereinafter "Scott Smith") and Defendant CCRE, LLC (hereinafter "CCRE"). While Scott Smith and CCRE have reached a settlement, DSA was left out of all settlement negotiations, and, in fact, DSA is a victim of a crime perpetrated by Scott Smith, his counsel, and his former counsel, Paul Hansmeier, which, as the facts will demonstrate, contractually and equitably prohibit Scott Smith from recovering any settlement proceeds in this case. As such, law and equity require this Motion to Dismiss to be denied.

FACTS & BACKGROUND

DSA is a nonprofit corporation with a purpose of eliminating disability discrimination and promoting the betterment of those in the community living with

disabilities. See *Exhibit A*, DSA Articles of Incorporation, Article III. DSA, through its Board Chair, Eric Wong, hired this firm as its corporate counsel on December 7, 2015 for two (2) reasons: A.) to finish the entity formation process that Paul Hansmeier, the organization's former ADA counsel, started, including attaining 501(c)(3) tax-exemption and addressing certain compliance problems, and B.) to investigate a suspected internal theft and report it to the authorities. The firm has not yet had a chance to focus on item A.); however, the firm was, unfortunately, able to substantiate theft of charitable assets. Criminal complaints were filed (and are on-going) against Scott Smith and Aaron Dalton with Burnsville Police, an ethics complaint was filed (and is on-going) against Paul Hansmeier with the Office of Lawyers Professional Responsibility, and DSA has been named a victim of a federal crime by the FBI and is cooperating with the on-going federal criminal investigation/prosecution of Paul Hansmeier. *Exhibit B*, FBI Crime Victim Letter. Additionally, criminal complaints must still be made against Melanie Davis and Zachary Hillesheim in the proper jurisdiction(s).

During its investigation, the firm discovered there were a series of cash withdrawals starting in January 2016 and ending in February 2016 all from the same ATM machine in Burnsville. A police report was filed, and, ultimately, Detective Jeff Klingfus was assigned to the case. It was determined from the ATM camera that the individual who made these thirty-five (35) withdrawals totaling \$6,900 was Scott Smith, DSA's then Finance Director, and the Plaintiff in this case. In addition, in February 2016, a \$4,400 cash withdrawal was made at Affinity Bank in Lakeville. Bank camera photos captured Aaron Dalton, another of DSA's then Director/Officers, as the

individual making the unauthorized cash withdrawal. After withdrawing the cash, Aaron Dalton proceeded to send it to a woman in Pennsylvania, unconnected with DSA. With the help of Detective Klingfus, DSA was able to retrieve the \$4,400. The \$6,900 withdrawn by Scott Smith was never recovered.

After examining DSA's bank account in detail and comparing it to DSA's litigation schedule in order to determine legitimacy, it became obvious that Scott Smith, Aaron Dalton, Melanie Davis, and Zachary Hillesheim used DSA's bank account(s) as their own personal source of funds and DSA's charitable assets as if they were personal assets. DSA's Profit and Loss demonstrated the following:

- Unauthorized fuel total: \$1,525.43 (DSA does not own an automobile)
- Unauthorized automobile other total: \$7,865.65 (DSA does not own an automobile, and, NOTE: Scott Smith admitted to Detective Jeff Klingfus during an interrogation that these expenses were for his personal van.)
 - Includes: Maaco Collision Repair - \$5,541.65
 - Includes: Maaco Collision Repair - \$802.09
 - Includes: Meineke of Burnsville - \$1,521.91
- Unauthorized cash withdrawals: \$7,379.80
- Unauthorized meals-entertainment: \$4,231.56
- Unauthorized travel: \$7,620.35
- Unauthorized unknown expenses: \$6,070.68
 - Includes: Mara Tonka Townhomes - Deposit for Zach/Mel's Townhome (as noted on check) - \$600.00
 - Includes: Marion Davis - (Melanie Davis' mother) Reimbursement for Nursing License - \$105.00
 - Includes: Macy's, Old Navy, Pier 1, Herbergers, Gavidae Commons
- TOTAL unauthorized transactions: \$34,693.47

In addition, the investigation uncovered that Scott Smith, Aaron Dalton, Melanie Davis, and Zachary Hillesheim stole settlement proceeds from DSA litigation efforts, with the help of DSA's former ADA attorney, Paul Hansmeier. Let me explain further

their scheme to defraud the organization, which continues with the current case and Padraigin Brown, Paul Hansmeier's wife.

The first component of the scheme is the "DSA Member Assignment of Litigation Proceeds" Agreement (hereinafter "Member Assignment Agreement"). The purpose of the Member Assignment Agreement was two-fold: 1.) to protect DSA and ensure it received the income from all ADA-related litigation initiated to further the nonprofit purpose; and 2.) to protect the member "testers" who were participating in DSA's programming and assigning the income to DSA. Eric Wong, Melanie Davis, Zachary Hillesheim, Scott Smith, and Aaron Dalton are all disabled, and all collect disability benefits from the federal government (SSI) and the State of Minnesota. Disability benefits are income dependent, so any income earned or money received reduces the members' disability benefits. This is one of the primary reasons the Member Assignment Agreements were drafted and executed - so that DSA could have member litigants, called "testers," and the member litigants would not have any income that jeopardized their disability benefits. All income (settlements or verdicts) from the litigation, by contractual agreement, was assigned to DSA to be used for its charitable purposes: eliminating disability discrimination and promoting the betterment of those in the community living with disabilities. So, in essence, the litigation monies are supposed to be used by DSA to stop ADA violations, educate the community about disability discrimination and its prevention, and assist efforts to reform ADA laws, and the member "testers" are supposed to be able to continue collecting their disability benefits without risk of disruption.

The second component of the scheme is based on the Class Justice PLLC retainer agreement. Paul Hansmeier was entitled to payment from DSA upon one of two circumstances: 1.) litigating a case to verdict and having a court award him attorney's fees; or 2.) billing at \$350/hour and submitting an invoice for payment. The retainer agreement between DSA and Class Justice PLLC stated, in relevant part:

Attorney's Fees: Client understands that Attorney will pursue the Claims under Title III of the Americans with Disabilities Act ("ADA"), which if litigated to a verdict does not provide for direct recovery of damages to Client but instead allows for (a) injunctive relief to stop violations of the law, and (b) an award of attorney's fees to ensure adequate compensation for attorneys who benefit the public by successfully bringing ADA lawsuits. Attorney's hourly rate from cases brought under Title III of the ADA is \$350/hour. A court will only award Client a fee recovery if the case is successful, and a court retains the discretion to reduce a fee recovery based on a variety of case-specific factors.

Exhibit C, Class Justice PLLC Retainer Agreement with DSA. Based on all knowledge and belief, Hansmeier never litigated a case to verdict for DSA (Hansmeier litigated only one (1) case to a successful verdict, but this case was initiated prior to the prior to the formation of DSA and before the execution of the retainer agreement with DSA), and Eric Wong swears and affirms that Paul Hansmeier never submitted an invoice to DSA for payment. Moreover, after examining the case files tendered by Hansmeier to DSA, no settlement agreements can be found that award attorney fees of any sort to Paul Hansmeier or his firm. All that can be found in the case files and docket reports are voluntary dismissals (with prejudice) filed by Hansmeier without any further explanation. Despite the retainer agreement, lack of invoicing, and non-existent

settlement agreements, Paul Hansmeier was paid at least \$312,218.28 from the Class Justice PLLC trust account between July 2014 and June 2016. This represents 71.4% of the revenues generated from DSA litigation matters.

Burnsville Police sought and received two (2) warrants for Class Justice PLLC's trust accounts. Upon my review of the warrant productions, \$8,000 was the original balance and a total of **\$429,308.33 was deposited** into the Class Justice PLLC trust account based on DSA litigation matters, creating a total of \$437,308.33. Of the money deposited:

- 1.) **Approximately \$312,218.28 (71.4%) went to Paul Hansmeier:**
 - a. Mr. Hansmeier transferred approximately \$304,718.28 (69.7%) from the trust account. This money was either moved from the trust to the operating account through account-to-account bank transfer or by a check.
 - b. Mr. Hansmeier took an extra \$7,500 of client money (1.7% above and beyond 100%) by depositing a check intended for DSA directly into the Class Justice PLLC operating account instead of the trust account (and instead of tendering the check to DSA).
- 2.) **Approximately \$78,750 (18%) went to DSA.**
- 3.) **Approximately \$30,982.66 (7%) was diverted to Melanie Davis, Zachary Hillesheim, Scott Smith, and Aaron Dalton.**
- 4.) **\$23,349.39 (5.3%) remained in the Class Justice PLLC trust account at the end of June 2016.**

As you can see, most of the litigation proceeds collected never got to DSA. Records demonstrate that the vast majority of litigation revenues (settlements and verdicts) were retained by Paul Hansmeier and by four (4) of the member "testers" (primarily with the help of Paul Hansmeier), who knowingly violated their Member Assignment Agreements. This includes Scott Smith, who is attempting to continue collecting litigation proceeds in this case, in breach of his Member Assignment Agreement. See *Exhibit D*, Scott Smith Member Assignment Agreement.

What follows is a breakdown, based on Class Justice PLLC's trust account bank statements, cancelled checks, and deposits slips:

- Associated Bank – July 2014: Started and ended with \$0
 - Beginning balance: \$8,000 (unsure of origin); total deposits on behalf of DSA litigation: \$2,000
 - \$0 transferred to operating account
 - Check #2009 – \$8,000 – no check detail provided by bank, but no corresponding deposit in DSA's records. Presumption is that this check was written to Class Justice PLLC operating account.
 - Check #2010 – \$1,000 – no check detail provided by bank, but there is a deposit in DSA's bank account correlating with this amount. Presumption is that this check was written to DSA.
 - Check #2011 – \$1,000 – written to Class Justice PLLC operating account
 - \$0 to other "clients"
- Associated Bank – August 2014: Started and ended with \$0
 - Total deposits on behalf of DSA litigation: \$4,800
 - \$0 transferred to operating account
 - Check #2012 – \$2,000 – written to Class Justice PLLC operating account
 - Check #2013 – \$2,800 – written to Class Justice PLLC operating account
 - \$0 to DSA
 - \$0 to other "clients"
- Associated Bank – September 2014: No activity; started and ended with \$0
- Associated Bank – October 2014: No activity; started and ended with \$0
- Associated Bank – November 2014: No activity; started and ended with \$0
- Associated Bank – December 2014: Started and ended with \$0
 - Total deposits on behalf of DSA litigation: \$9,500
 - \$4,500 transferred to operating account (cash withdrawal deposited into Class Justice PLLC operating account)
 - Check #2014 – \$2,000 – written to DSA
 - Check #2016 – \$3,000 – written to Class Justice PLLC operating account
 - \$0 to other "clients"
- Associated Bank – January 2015: Started and ended with \$0
 - Total deposits on behalf of DSA litigation: \$7,500
 - \$0 transferred to operating account
 - \$0 to DSA
 - \$0 to other "clients"

- Check #2017 - \$7,500 - written to Class Justice PLLC operating account
- Associated Bank - February 2015: Started and ended with \$0
 - Total deposits on behalf of DSA litigation: \$9,000
 - \$0 transferred to operating account
 - \$9,000 check #2018 written to DSA
 - \$0 to other "clients"
- Associated Bank - March 2015: Started with \$0 and ended with \$3,500
 - Total deposits on behalf of DSA litigation: \$3,500
 - \$0 transferred to operating account
 - \$0 to DSA
 - \$0 to other "clients"
- Associated Bank - April 2015: Started with \$3,500 and ended with \$0
 - Total deposits on behalf of DSA litigation: \$0
 - \$0 transferred to operating account
 - Check #2019 - \$3,500 - written to DSA
 - \$0 to other "clients"
- Associated Bank - May 2015: Started with \$0 and ended with \$2,000
 - Total deposits on behalf of DSA litigation: \$2,000
 - \$0 transferred to operating account
 - \$0 to DSA
 - \$0 to other "clients"
 - \$7,500 in DSA funds deposited into Class Justice PLLC operating account instead of trust account (client funds)
- Associated Bank - June 2015: Started with \$2,000 and ended with \$0
 - Total deposits on behalf of DSA litigation: \$5,000
 - \$0 transferred to operating account
 - Check #2020 - \$2,000 - written to DSA
 - Check #2021 - \$5,000 - written to Class Justice PLLC operating account
 - \$0 to other "clients"
- Associated Bank - July 2015: Started with \$0 and ended with \$1,416.67
 - Total deposits on behalf of DSA litigation: \$19,666.67
 - \$0 transferred to operating account
 - Check #2022 - \$8,250 - written to DSA
 - Check #2023 - \$10,000 - written to Class Justice PLLC operating account
 - \$0 to other "clients"
- Associated Bank - August 2015: Started with \$1,416.67 and ended with \$19,100
 - Total deposits on behalf of DSA litigation: \$54,416.67
 - \$36,833.34 transferred to operating account
 - \$0 to DSA

- \$0 to other “clients”
- Associated Bank – September 2015: Started with \$19,100 and ended with \$14,600
 - Total deposits on behalf of DSA litigation: \$29,500
 - \$17,500 transferred to operating account
 - Check #2024 – \$17,000 – written to DSA
 - \$0 to other “clients”
- Associated Bank – October 2015: Started with \$14,600 and ended with \$14,172.67
 - Total deposits on behalf of DSA litigation: \$34,916.67
 - \$28,344 transferred to operating account
 - Check #2025 – \$7,000 – written to DSA
 - \$0 to other “clients”
- Associated Bank – November 2015: Started with \$14,172.67 and ended with \$15,000
 - Total deposits on behalf of DSA litigation: \$44,516.66
 - \$29,689.33 transferred to operating account
 - Check #2026 – \$14,000 – written to DSA
 - \$0 to other “clients”
- Associated Bank – December 2015: Started with \$15,000 and ended with \$4,783.34
 - Total deposits on behalf of DSA litigation: \$10,983.34
 - \$6,200 transferred to operating account
 - Check #2027 – \$15,000 – written to DSA
 - \$0 to other “clients”
- Associated Bank – January 2016: Started with \$4,783.34 and ended with \$18,933.34
 - Total deposits on behalf of DSA litigation: \$22,150
 - \$8,000 transferred to operating account
 - \$0 to DSA
 - \$0 to other “clients”
- Associated Bank – February 2016: Started with \$18,933.34 and ended with \$100
 - Total deposits on behalf of DSA litigation: \$23,450
 - \$35,533.34 transferred to operating account (\$10,000 of this was a cash withdrawal deposited into operating account)
 - \$0 to DSA
 - \$6,750 to other “clients”
 - check #2028 – \$2,500 – written to Aaron Dalton
 - check #2029 – \$1,250 – written to Melanie Davis
 - check #2030 – \$3,000 – written to Zachary Hillesheim

- Associated Bank – March 2016: Started with \$100 and ended with \$100.40
 - Total deposits on behalf of DSA litigation: \$19,500
 - \$13,749.60 transferred to operating account
 - \$0 to DSA
 - \$5,750 to other “clients”
 - check #2031 – \$4,250 – written to Zachary Hillesheim
 - check #2034 – \$1,500 – written to Scott Smith
- Associated Bank – April 2016: Started with \$100.40 and ended with \$0
 - Total deposits on behalf of DSA litigation: \$0
 - Account Closed - \$100.40 withdrawn in cash
 - \$0 to DSA
- U.S. Bank – March 2016: Started with \$0 and ended with \$9,916.66
 - Account opened with DSA deposits
 - The \$100.40 in cash from prior trust account did not get deposited into the new trust account
 - Total deposits on behalf of DSA litigation: \$30,916.66
 - \$21,000 transferred to operating account
 - \$0 to DSA
 - \$0 to other “clients”
- U.S. Bank – April 2016: Started with \$9,916.66 and ended with \$10,516.66
 - Total deposits on behalf of DSA litigation: \$27,666.66
 - \$16,900 transferred to operating account
 - \$0 to DSA
 - \$10,166.66 to other “clients”
 - check #5001 – \$1,000 – written to Scott Smith
 - check #5004 – \$2,166.66 – written to Scott Smith
 - check #5005 – \$5,500 – written to Zachary Hillesheim
 - check #5008 – \$1,500 – written to Melanie Davis
- U.S. Bank – May 2016: Started with \$10,516.66 and ended with \$11,350.00
 - Total deposits on behalf of DSA litigation: \$29,325.00
 - \$27,491.66 transferred to operating account
 - \$0 to DSA
 - \$1,000 to other “clients”: check #5002 – \$1,000 – written to Aaron Dalton
- U.S. Bank – June 2016: Started with \$11,350.00 and ended with \$23,349.39
 - Total deposits on behalf of DSA litigation: \$39,000
 - \$19,676.61 transferred to operating account
 - \$0 to DSA
 - \$7,316 to other “clients”
 - Counter check – \$1,200 – written to Melanie Davis
 - Counter check – \$1,500 – written to Zachary Hillesheim
 - Counter check – \$1,866 – written to Aaron Dalton
 - Counter check – \$2,750 – written to Scott Smith

Paul Hansmeier's trust account records demonstrate that Melanie Davis, Zachary Hillesheim, Scott Smith, and Aaron Dalton personally profited at DSA's expense. What's more, Scott Smith and Aaron Dalton still have active Member Assignment Agreements in force - neither member terminated his Agreement in writing as would have been required by the Member Assignment Agreement. See *Exhibit D*. Melanie Davis and Zach Hillesheim only recently terminated their Member Assignment Agreements in writing on or about August 18, 2016. However, all parties involved know litigation proceeds from all cases filed while an active Member Assignment Agreement was in place are the property of DSA.

It could not be clearer that Paul Hansmeier, Melanie Davis, Zachary Hillesheim, Scott Smith, and Aaron Dalton have been personally benefitting at DSA's expense - systematically and criminally. Now, Hansmeier's wife, Padraigin Brown, has stepped into Hansmeier's shoes and is attempting to continue the crimes Hansmeier set in motion because Hansmeier was sanctioned by the Minnesota Supreme Court (losing his license to practice law) and has been indicted by U.S. Attorney Andrew Luger. See *Exhibit E*, Star Tribune Article from December 19, 2016. Paul Hansmeier was indicted in an 18-count indictment on or about December 14, 2016, for conspiracy to commit mail and wire fraud, conspiracy to commit and suborn perjury, and conspiracy to launder money. *Id.* The indictment was a result of Hansmeier's participation in Prenda Law, which included a multimillion-dollar porn-trolling/extortion fraud scheme that occurred between 2011 and 2014. In addition, Hansmeier could face further indictments for his actions as they relate to DSA and bankruptcy fraud.

And, depending on Paul Hansmeier's knowledge, there may also be conspiracy to commit tax evasion and disability benefits fraud as well. (If Melanie Davis, Zachary Hillesheim, Scott Smith, and Aaron Dalton keep the settlement distributions (and other assets) that belong to DSA but fail to make proper income disclosures to the government, the likely result is that they get caught falsifying income tax documents and failing to make income disclosures to federal and state disability benefits providers.) These five (5) individuals know exactly what they are doing, that there were Membership Assignment Agreements in place assigning all litigation proceeds to DSA when almost all of the ADA litigation suits were filed, and that accepting money and other benefits would jeopardize/terminate any disability benefits; however, each methodically drained the bank account of a nonprofit corporation as well as diverted charitable assets.

DSA is a nonprofit corporation that has a legitimate and charitable purpose to benefit the community; however, it is incredibly unfortunate that the acts of five (5) people have polluted its name and good works, and have ransacked and pillaged the nonprofit's assets for personal gain.

ARGUMENT

Scott Smith and CCRE argue that this case should be dismissed because: 1.) DSA is impermissibly proceeding with representation; and 2.) DSA no longer has standing to prosecute its claims. DSA disagrees with both assertions. Furthermore, DSA argues that law and equity require this Motion to Dismiss be denied.

I. DSA is NOT Impermissibly Proceeding Without Representation

Opposing counsel argues that a corporation may appear in the federal courts only through licensed counsel. As is evident by this response to the motion and a simultaneous notice of appearance, DSA has a licensed corporate counsel and that counsel is willing to represent DSA's corporate interests in this case. Accordingly, opposing counsel's first argument is moot and should be denied.

II. Equity Demands that this Motion to Dismiss be Denied

Opposing counsel argues that DSA no longer has standing to prosecute its claims in this case based on the holding of *Disability Support Alliance v. Heartwood Enterprises, LLC*, No. 15-CV-529 (PAM/FLN) (D. Minn., Feb. 24, 2016). However, this argument fails based on equitable concerns. To get equity, one must do equity.

In *DSA v. Heartwood Enterprises*, Heartwood Enterprises argued that neither Wong nor DSA had standing to bring its claims, and therefore the Court lacked jurisdiction to address the merits of the case. The *DSA v. Heartwood Enterprises* Court found Wong had individual standing to continue, but held DSA did not have associational standing, stating:

Plaintiffs have provided very little information about the DSA and its members. Plaintiffs simply state that the DSA "is a Minnesota nonprofit corporation," that "[i]ts members are people with disabilities," and that "[i]ts mission is to eliminate [disability] discrimination." ... At this stage of the proceedings, after discovery has closed, the Court knows no more about the DSA and its members than it did before discovery began. The extent of injury to individual DSA members requires individualized proof, because some disabled people may be able to access 889 Grand without the need for removal of architectural barriers. Plaintiffs have

not asserted that all DSA members depend on a wheelchair for mobility, nor whether all members are physically disabled, rather than disabled in some other way that does not affect mobility. The DSA has failed to meet the requirements for associational standing, and therefore has no right to sue Hartwood.

What's troubling is the irony of this argument and the equity problems it creates:

1.) Paul Hansmeier drafted the complaints in both *DSA v. Heartwood Enterprises* and this case; 2.) Paul Hansmeier litigated both *DSA v. Heartwood Enterprises* until its conclusion, as well as litigated this case until DSA informed him he was terminated on or about July 2016; and 3.) DSA did not have knowledge about the existence or status of this case. Starting in or about April 2016, DSA actively began trying to recover specific case file information, as well as a complete copy of its ADA file, from Paul Hansmeier.

However, Paul Hansmeier refused to tender to DSA its ADA case file materials until on or about August 3, 2016. And, to this date, my firm does not have a complete or accurate copy of DSA's ADA file - in fact, for this case, we do not have any materials other than Paul Hansmeier's unfiled drafts (and, now the filed Joint Motion to Dismiss). DSA has little to no knowledge about the cases that were filed by Paul Hansmeier and are now being prosecuted by Padraigin Brown.

DSA finds it curious and problematic that opposing counsel, Padraigin Brown, through Plaintiff Scott Smith, argues its co-plaintiff, DSA, has no standing when Plaintiff Scott Smith constructed the case with DSA in it, litigated the case thus far, and is the one who refused to tender any sort of accurate case information to DSA so DSA could have prevented this potential situation. It seems that if the Court determines

there are any issues with standing, that those issues belong to Plaintiff Scott Smith, the drafter, and DSA should be granted an equitable leave to amend the complaint and correct any perceived defect(s) and/or issue(s) caused by its co-plaintiff. Accordingly, this Joint Motion to Dismiss should be denied.

III. Law Demands that this Motion to Dismiss be Denied

Based on the Member Assignment Agreement, in order for Scott Smith to participate in this case, DSA must also participate because it must legally collect all proceeds. Each of DSA member “testers,” Eric Wong, Melanie Davis, Zachary Hillesheim, Scott Smith, and Aaron Dalton, signed a notarized contract aimed at assigning all ADA, MHRA, and similar litigation proceeds to DSA. See *Exhibit D*. Scott Smith signed the DSA Member Assignment of Litigation Proceeds on October 17, 2014. *Id.* His signature was notarized by Angela Kay Van Den Hemel, a former employee of Paul Hansmeier’s firm, Class Justice PLLC. *Id.* Scott Smith never terminated his assignment. *Id.* In fact, DSA never received written notice indicating Scott Smith wished to terminate either the Member Assignment Agreement or revoke Smith’s membership in DSA.

Opposing counsel argues Scott Smith terminated his Member Assignment Agreement by revoking his organizational membership in DSA; however, this argument is flawed because: 1.) DSA has no record of Scott Smith terminating either his Member Assignment Agreement or revoking his organizational membership; and 2.) terminating a Member Assignment Agreement obligation and revoking an organizational membership obligation requires two separate, contemplated actions

because they stem from two contracts (the Member Assignment Agreement and the DSA Bylaws) with two different sets of contractual requirements.

The Member Assignment Agreement states the following about termination:

I agree that this assignment will remain in effect and will apply to all cases I bring alleging violation of the ADA and/or MHRA, until such time as the DSA or I terminates the assignment. I agree that no termination of the assignment shall be effective unless the terminating party provides the other a written notice of the termination. I agree that any termination of this agreement will only be effective with respect to proceeds of lawsuits filed after the date that the terminating party terminates this agreement, and that all proceeds of existing cases commenced prior to the terminating will be subject to this assignment.

Exhibit D.

With respect to membership, DSA's Bylaws require the following for resignation and/or termination:

Article II - Membership

Section 1 - Membership: Membership shall consist of the board of directors

Article III - Board of Directors

Section 9 - Resignation, termination, and absences:
Resignation from the Board must be made in writing and received by the Chairperson. A board member shall be terminated from the board due to excess absences, more than two unexcused absences from board meetings in a year. A board member may be removed for good cause by a two-thirds vote of the remaining directors.

Exhibit F, DSA Bylaws.

While these contracts leave little for this Court to interpret, the primary goal in contract interpretation “is to ascertain and enforce the intent of the parties.” *Baker v. Best Buy Stores, LP*, 812 N.W.2d 177 (Minn. Ct. App., 2012) (quoting *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009)). If the contract is memorialized in a written instrument, the reviewing court determines the parties’ intent “from the plain language of the instrument itself.” *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004). Contract language is given its plain and ordinary meaning, read in the context of the instrument as a whole. *Brookfield Trade Ctr. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). “A contract must be interpreted in a way that gives all of its provisions meaning.” *Current Tech. Concepts, Inc. v. Irie Enters.*, 530 N.W.2d 539, 543 (Minn. 1995)).

Neither the Member Assignment Agreement nor the DSA Bylaws leave much ambiguity. To terminate under either agreement, Scott Smith would have needed to give DSA “written notice of the termination” with respect to the Member Assignment Agreement and/or resigned “from the Board ... in writing and received by the Chairperson” with respect to the DSA Bylaws. No written terminations or resignations were received by DSA from Scott Smith. As such, Scott Smith’s Member Assignment Agreement is still active, Scott Smith is still a member of the organization, and any litigation proceeds recovered by Scott Smith in this case are legally the property of DSA. Accordingly, DSA must not be dismissed as it has contractual interests that will persist.

IV. Conclusion

Scott Smith and CCRE argue that this case should be dismissed; however, DSA disagrees. While Scott Smith and CCRE have reached a settlement, DSA was left out of all settlement negotiations, and, in fact, DSA is a victim of a crime perpetrated by Scott Smith, his counsel, and his former counsel, Paul Hansmeier, which, contractually and equitably prohibit Scott Smith from recovering any settlement proceeds in this case. As such, law and equity require this Motion to Dismiss to be denied.

DATED: December 28, 2016

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