

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:08CV271
)	
v.)	
)	ORDER
STATE OF NEBRASKA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

Final judgment in this case was entered on July 2, 2008, pursuant to a settlement agreement between the parties ([filing 10](#)). An order related to the settlement agreement specifically stated that “the settlement agreement . . . shall constitute a final judgment the entry of which shall be deemed for all purposes to have occurred when the same is recorded on the Court’s CM/ECF system” and “the undersigned retains continuing jurisdiction over this case and the parties to construe and enforce the settlement agreement.” ([Filing 9.](#))

Seven years later, and after all parties have agreed that the defendants have satisfactorily complied with the terms of the settlement agreement, the parties have filed a Joint Motion to Dismiss ([filing 114](#)), supporting brief ([filing 115](#)), and appendices ([filing 116](#)) seeking “to terminate the Settlement Agreement (ECF No. 10, July 2, 2008) in this case and to dismiss the case with prejudice.” ([Filing 114.](#)) I construe the parties’ request to be a motion for relief from this court’s July 2, 2008, judgment (which consisted of the settlement agreement) because “applying [the judgment/settlement agreement] prospectively is no longer equitable.” [Fed. R. Civ. P. 60\(b\)\(5\)](#).¹

¹“The one-year limit applicable to some of the grounds for relief in Rule 60(b) does not apply to Rule 60(b)(5). All that is required is that the motion be made in a ‘reasonable time.’” [11 Charles Alan Wright & Arthur R. Miller, et al., Federal Practice and Procedure § 2863](#) (3d ed. Westlaw 2015) (footnotes omitted).

Rule 60(b)(5) allows “relief if it is no longer equitable for the judgment to be applied prospectively.” The rule “applies to any judgment that has prospective effect,” and it “refers to some change in conditions that makes continued enforcement inequitable.” A motion made pursuant to Rule 60(b)(5) “is addressed to the sound discretion of the court,” and “on an adequate showing the courts will provide relief if it no longer is equitable that the judgment be enforced, whether because of subsequent legislation, a change in the decisional law, or a change in the operative facts.” [*Federal Practice and Procedure* § 2863](#) (footnotes omitted).

The “critical question” in a Rule 60(b)(5) analysis is whether the objective of the judgment, consent decree, declaratory judgment order, injunction, or the like “has been achieved. If a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper.” [*Horne v. Flores*, 557 U.S. 433, 448, 450-51 \(2009\)](#) (noting that Rule 60(b)(5) is especially useful in “institutional reform litigation,” and the rule contemplates “a flexible standard that seeks to return control to state and local officials as soon as a violation of federal law has been remedied”).

The parties have submitted thorough documentation establishing that the State of Nebraska has fully complied with the settlement agreement. Therefore, continued enforcement of this court’s original judgment ([filing 10](#)), which incorporated the settlement agreement, is inequitable within the meaning of Rule 60(b)(5), and relief from that original judgment is warranted. Accordingly, I shall grant the parties’ Joint Motion to Dismiss ([filing 114](#)), terminate the settlement agreement ([filing 10](#)), dismiss this case with prejudice, and enter judgment by separate document.

IT IS ORDERED:

1. The parties’ settlement agreement, which constituted a judgment in this case ([filings 9 & 10](#)), is terminated pursuant to Fed. R. Civ. P. 60(b)(5);
2. The parties’ Joint Motion to Dismiss ([filing 114](#)) is granted;

3. This case is dismissed with prejudice; and
4. Judgment shall be entered by separate document.

DATED this 3rd day of August, 2015.

BY THE COURT:

s/ Richard G. Kopf

Richard G Senior United States District Judge

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