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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

KATIE A., et al.,

Plaintiffs,

v.

TOBY DOUGLAS, Director of the
California Department of Health Care
Services; et al.,

Defendants.

CV-02-05662 JAK (SHx)
**PLAINTIFFS' AND STATE
DEFENDANTS' JOINT REPORT
RE SPECIAL MASTER'S
PROGRESS REPORT FILED
JULY 26, 2013 ON THE
IMPLEMENTATION OF THE
KATIE A. PLAN**

Status Conf. Date: August 8, 2013
Time: 1:30 p.m.
Courtroom: 750 Royball Bldg.
Judge: Hon. John A. Kronstadt

Plaintiffs, Katie A. et al, and State Defendants, Toby Douglas, Director of the California Department of Health Care Services, and Will Lightbourne, Director of the California Department of Social Services, ("State Defendants") hereby file this joint report pursuant to the Court's order of May 29, 2013, granting the Special Master's request to continue the status conference from June 6, 2013, to August 8, 2013. In that order of May 29, 2013, the Court ordered the Special Master to submit an updated status report with respect to the progress on the *Katie A.*

1 Implementation Plan by no later than July 29, 2013. The May 29, 2013 order also
2 required that “[o]n or before August 1, 2013, the parties were to file a joint report in
3 which their collective and/or respective views are presented with respect to the
4 Special Master’s report.” The Special Master submitted his report on July 26, 2013.

5 This joint report is submitted after the parties have had an opportunity to
6 review the Special Master’s draft report and have met and conferred with the
7 Special Master and with each other, to discuss areas of concern regarding the
8 recommendations, and areas of those recommendations that could be agreed upon
9 jointly or collectively.

10 Based on those conversations, the parties agree with the Special Master’s
11 Report in Part I and Part II, sections I through VI, and with recommendations 1a.
12 and 3 in Part III of the Report. However, the State Defendants have concerns
13 regarding the Special Master’s summary comments and findings in the conclusion
14 of Part II of the Report and with recommendations number 1 b. through d., 2 and 4
15 of Part III, as more fully explained in the State’s attached written response.
16 Plaintiffs do not share any of these concerns and agree with these other parts of the
17 Special Master’s Report.

18 State Defendants were not able to provide Plaintiffs’ counsel in advance their
19 written responses to the Special Master’s Report because of the short time frames
20 provided to discuss and seek consensus on the dynamic and rather complex issues
21 related to the *Katie A.* Implementation Plan, and the Special Master’s comments,
22 conclusions, findings and recommendations of the Report. Plaintiffs in turn have
23 not had an opportunity to be informed as to the specific objections that State
24 Defendants are making herein to the Special Master’s recommendations and the
25 reasons for the objections. Consequently, the State Defendants and Plaintiffs will
26 not be replying to each other’s written responses but rather will be submitting their
27 respective views and comments and responses to the Special Master’s Report in
28 two exhibits attached to this joint report that will demonstrate where in particular

1 the views are similar and where they differ. The written responses of the State
2 Defendants and of the Plaintiffs are marked respectively as Exhibit A and Exhibit
3 B.

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EXHIBIT A

EXHIBIT "A"

STATE DEFENDANTS' STATEMENT IN RESPONSE TO REPORT

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4 State Defendants, Toby Douglas, Director of the California Department of
5 Health Care Services and Will Lightbourne, Director of the California Department
6 of Social Services, ("State Defendants") hereby file their respective response to the
7 Special Master's Progress Report on the Implementation of the Katie A. Plan,
8 which report was filed July 26, 2013 (Special Master's Report). The Court
9 previously ordered that the parties file a joint report on or before August 1, 2013,
10 "in which their collective and/or respective views are presented with respect to the
11 Special Master's [July 29, 2013] report, including as to what future dates should be
12 set in this matter with respect to the implementation of the settlement agreement."
13 After meeting and conferring with Plaintiffs' counsel and the Special Master, the
14 State Defendants hereby submit their response as part of the joint report to be filed
15 by the parties.

16 **INTRODUCTION AND SUMMARY OF THE STATE'S RESPONSE**
17 **TO THE SPECIAL MASTER'S REPORT FILED JULY 26, 2013**

18 The Special Master's Report consists of 53 pages and is separated into three
19 parts: Part I is the Introduction. Part II is the Special Master's observations and
20 comments on the progress being made on implementation of the court approved
21 plan. Part II also includes the Special Master's conclusion and overall summary
22 and findings, beginning at page 45. Part III is the Special Master's
23 recommendations to the Court, which consist of four recommendations with
24 subparts to some of the recommendations.

25 The State Defendants generally agree with -the Special Master's comments in
26 Parts I and II with respect to the State's extraordinary efforts and achievements in
27 implementation of the Katie A. settlement agreement (Settlement) and
28 Implementation Plan (Plan). As the Special Master notes in his introduction, the

1 initial implementation of the Plan is off to a “good start.” (Special Master Report
2 [SM Report], p. 3:18-19.) Accomplishments include not only the completed
3 manuals, and the completed state-wide orientations, but also that at least two
4 counties reported they have begun and, at the time of this writing, are already
5 providing and claiming/billing for the intensive care services of ICC and IHBS as
6 envisioned by the objectives of the Ssettlement and the Plan.

7 In his conclusion and overall summary, comments and findings section of Part
8 II of the Special Master Report, beginning at page 45, the Special Master lists the
9 activities and deliverables that the State has focused on and accomplished since the
10 March 13, 2013 status conference. These activities and accomplishments are
11 important and support the State’s view that the State is on its way to meeting the
12 objectives of the Ssettlement and the Plan. In fact, the State agrees with the Special
13 Master that these accomplishments support his finding that the initial
14 implementation effort has been successful. (SM Report, p. 46:24.) Moreover, the
15 Special Master appropriately finds commendable the extraordinary and extensive
16 interdepartmental collaboration underway between the Department of Social
17 Services (CDSS) and the Department of Health Care Services (DHCS) as a result of
18 the *Katie A.* implementation of the Ssettlement. As the Special Master observed:

19 The Special Master, in thirty-five years of experience in
20 California working in the child welfare and mental health field,
21 has never observed such a collaborative enterprise between the
22 state departments to be so successfully undertaken.

23 (SM Report, p. 47:11-14.)

24 However, despite the Special Master’s acknowledgment and commendation
25 on the successful progress of the State on various fronts of the Plan, it is surprising
26 to see that the Special Master devotes a large portion of his comments at the
27 conclusion of Part II and recommendations in Part III of his Report on specific
28 activities that he “finds” necessary to immediately address, and further states that if

1 not addressed by the State over the next three months will jeopardize the overall
2 success of the Plan. (SM Report, p. 47:22-24.) The State objects to the Special
3 Master’s “finding” as speculative and premature given the significant
4 accomplishments the Special Master has accurately described in his comments
5 preceding this finding. The State Defendants address specific points of concern
6 below.

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8 **SPECIFIC COMMENTS, FINDINGS AND OBSERVATIONS OF THE**
9 **SPECIAL MASTER’S REPORT ARE INCORRECT OR REQUIRE**
10 **CLARIFICATION AND CORRECTION**

11 **SM Report, p. 32:2-3**

12 The Special Master states that there is “continuing confusion” among the
13 counties regarding implementation of ICC and IHBS. He supports this conclusion
14 based on his observations of questions being asked directly or indirectly in county
15 and provider technical assistance (TA) calls, orientations, trainings, and less formal
16 meetings, as well as being reflected in the early analysis of the Service Delivery
17 Plans. The special master’s characterization of this process is inaccurate. From the
18 State’s perspective, these types of questions and discussions indicate that counties
19 are actively engaged in determining how to go about implementation, sooner rather
20 than later, which is a good thing. It is normal and expected that the counties will
21 ask questions at the initial stages of implementing a change in practice. These
22 questions have been, or will be addressed appropriately in the TA calls themselves,
23 and in other forums such as meetings with the appropriate associations, webinars
24 and other trainings. In addition, CDSS and DHCS will be posting a Frequently
25 Asked Questions (FAQ) feature on both of their departmental websites to respond
26 to ongoing questions from counties, and responding to emails sent to the DHCS and
27 CDSS Katie A. inboxes . The departments will also be issuing a joint letter to the
28

1 counties that set forth the requirements of the Katie A. Ssettlement and the steps
2 counties are expected to take going forward to implement ICC and IHBS.

3 **SM Report, p. 47:1- 48:12 .**

4 As discussed in the State Defendants' Introduction, the Special Master "finds"
5 that unless several specified "activities are addressed over the next 3 months, the
6 overall success of the plan is in jeopardy". The State objects to this purported
7 finding. As stated above, the Special Master's "finding" is speculative and
8 premature given the significant accomplishments the Special Master has accurately
9 described in his comments preceding this finding. By illustration, some of the
10 demanded items that are listed the State has already started, or are scheduled to
11 begin soon. And, other items go beyond what is in the Plan and/or misstates what
12 is in the Plan, resulting in new deliverables and deadlines that should not be
13 unilaterally imposed.

14 For example, with respect to identifying subclass members, the State has
15 provided the definition of the subclass to the counties and given suggestions as to
16 different methods the counties may use to identify the subclass (eg. use aid codes or
17 other data). Many counties have already started identifying subclass members. If a
18 county's service delivery plan doesn't articulate the identification of the subclass,
19 the State can contact the counties and include information if needed as part of a
20 webinar. However, to impose a requirement that the State provide instructions for a
21 process that counties have already started unnecessarily diverts State resources
22 better utilized in other implementation activities. In addition, regarding the
23 counties' Service Delivery Plans and Readiness Assessments, the Plan does not
24 require that the State provide direct feedback to every county on their readiness, nor
25 is such individual contact needed for every county. The State has been addressing
26 specific issues with counties as a group or individually as needed, through
27 Technical Assistance calls and other contacts such as with CWDA and CMHDA.

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1 The State Defendants are concerned with the Special Master’s suggestion
2 that the State provide within 90 days “clear guidance and/or standards that results
3 in capacity to ICC and IHBS being made available in every county in a timely
4 manner.” (SM Report, p. 48:17-19.) The State Defendants recognize the
5 importance of capacity-building and submit that capacity increases will result from,
6 and be indicated in, the other activities required under the Plan, such as the county
7 progress reports. The State is committed to providing technical assistance, as
8 informed by the Readiness Assessments and Service Delivery Plans, which will
9 ultimately result in capacity increases:

10 **SM Report, p. 48, lines 22-24**

11 The Special Master indicates implementation of the Ssettlement is “moving
12 forward slower than the Agreement contemplated and, in some cases, the Plan
13 specified and/or the Special Master expected.” State Defendants disagree with this
14 comment. As approved by this Court, the Plan by its own terms was always made
15 to be flexible and subject to change through its negotiation process. Moreover, the
16 parties and the Special Master know that implementation takes time as indicated in
17 the fully vetted and court approved Implementation Plan and Core Practice Model
18 Guide (CPM Guide) Chapter 3 of the CPM Guide describes “how to support the
19 development and delivery of a service structure that will ensure that the CPM is
20 implemented and supported in California counties as it is intended – that is, with
21 fidelity to the model.” It further states that “implementation science recognizes that
22 implementation does not and cannot occur all at once. Rather, implementation
23 occurs in stages and can take a number of years to complete.”

24 **SM Report, p. 48, line 25 to P. 50 line 26**

25 The Special Master indicates that Realignment, the Affordable Care Act, and the
26 former Department of Mental Health’s (DMH) transition to DHCS have created
27 problems for the State in meeting deadlines. Not so, the parties and the Special
28 Master were aware that the former DMH’s responsibilities would be assumed by

1 DHCS, and the Settlement Agreement makes note of it. Similarly, the Affordable
2 Care Act and Realignment were promulgated prior to, or at the time of, the
3 Settlement Agreement. Moreover, none of these events has resulted in the State not
4 meeting its deadlines. The State is on track with accomplishing the tasks required
5 under the Plan and this section creates a false impression that it is not.
6 Implementation is proceeding appropriately as the Special Master recognized by
7 citing the initial and continuing successful State efforts at implementation. Further,
8 the State objects to items listed on page 49, line 6 through page 50 line 18. It is
9 premature to characterize these as items that need to be “determined” prior to
10 December 2014.

11
12 **RESPONSE TO SPECIAL MASTER RECOMMENDATIONS**

13 **Recommendation 1**

14 **1. a. State Defendants agree with Recommendation 1.a.**

15 **1. b. -d.**

16 With regard Recommendation sections 1 b.-d. the State Defendants believe
17 these subsections b- d raise important operational and programmatic issues.
18 The State needs additional time to discuss these matters with Special Master,
19 Plaintiffs’ counsel and county associations. As drafted, the items may create
20 significant issues. For example, Recommendation 1(b) requires the counties
21 to report all subclass members receiving wraparound and full-service
22 partnership services to the State on a quarterly basis. This quarterly reporting
23 requirement could potentially create an unfunded mandate and will cause the
24 State to redirect existing resources and slow down its ability to meet the
25 Plan’s Phase II commitments.

26 The State and the Special Master and Plaintiffs have already had one
27 meeting where progress was made to reach consensus.
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Recommendation 2

The State objects to the language of Recommendation 2 as stated in the Special Master Report. The Special Master indicated that it will be necessary for DHCS to ensure that all County Mental Health Plans' information technology systems can submit ICC and IHBS claims to DHCS on or before November 1, 2013. As the State Defendants have explained to the Special Master, DHCS does not have a direct legal relationship with the counties' vendors, which are private businesses; the vendors' Memorandums of Understanding are entered into with the county MHP's, not the State.

Recommendation 3; The State agrees to this recommendation 3.

Recommendation 4

The State proposes that the next Status Conference be scheduled during the week of **November 18, 2013**. The State has deadlines that must be met at the end of October and/or November 1, 2013. For example, the data analysis is scheduled to be made public by October 31, 2013. The suggested date change will allow the Special Master and Plaintiffs' counsel adequate time to review all information set to be received from the State on or about November 1, 2013. The Special Master and the parties will be in a better position to report to the Court on the agenda items listed by the Special Master at a status Conference held in mid-November.

We seek to clarify recommendation 4 (e) and 4 (f) as follows:

Recommendation 4(e)

The State is merely seeking to clarify that there will not be a new deliverable for a written training model, but rather, a status update on the progress being made based on the training section already in the Plan. Consequently,

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“DHCS and CDSS will be prepared to report on the training efforts as set forth in the Implementation plan.”

Recommendation 4(f)

The State wishes to clarify that it can only invite CMHDA and CWDA to participate in future training sessions.

For the all of the above stated reasons, the State proposes the Special Master’s Report be modified to delete the objectionable findings and recommendations.

EXHIBIT B

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EXHIBIT "B"

PLAINTIFFS' STATEMENT IN RESPONSE TO REPORT

Before the Special Master filed his report and recommendations on July 26, 2013, he engaged in lengthy, interactive processes with all parties, both in person and by telephone conference calls. The Special Master discussed his recommendations at length, and went so far as to circulate a draft of his report to State Defendants and Plaintiffs on July 18, 2013, providing both parties with one full week to review and suggest proposed changes to the report. After that draft was shared with the parties, the parties also participated in a conference call with the Special Master on July 23, 2013, to discuss the draft recommendations and the parties' concerns.

The Special Master fully considered the State Defendants' concerns. The Special Master also explained his reasons for maintaining Recommendation 1 and other recommendations. Further, based upon suggestions made separately by both parties, the Special Master made some changes to the final Report filed on July 26, 2013, including to Recommendations 1(a), (c) & (d), 2, and 3.

In another telephone conference with the parties on July 26, 2013, the Special Master responded to proposed additional changes to the recommendations from State Defendants and further considered the objections stated by State Defendants. Again, the Special Master attempted to accommodate concerns that were raised and explained the basis for his proposed recommendations.

Consequently, nothing in the report and recommendations comes as a surprise to the State or to Plaintiffs, and all competing positions were aired and addressed. Nonetheless, shortly before this Joint Statement was due, the State Defendants indicated that they intended to file objections to Recommendations 1(b) and (c). However, State Defendants could not accommodate the request of Plaintiffs' counsel to provide them in advance with a draft of State Defendants' objections or their specific reasons for such objections. As a result, Plaintiffs have not had a

1 meaningful opportunity to respond to State Defendants' objections to the Special
2 Master's recommendations and other responses.

3 Plaintiffs are especially concerned that the State Defendants will downplay the
4 urgent need for implementation of Recommendations 1(b) and (c). In fact, these
5 measures are long overdue. This Settlement Agreement went into effect in
6 December 2011. Intensive Care Coordination (ICC) and In-Home Based Services
7 (IHBS) were supposed to be made available to members of the Katie A. subclass
8 beginning January 1, 2013. Yet, as of the end of July 2013, just three out of the 58
9 counties in California were reporting that any of these services were being provided
10 to subclass members. According to the assessments recently completed by the
11 counties in California, there are more than 13,000 members of the Katie A.
12 subclass. These children and youth cannot afford to wait for intensive mental health
13 services, such as ICC and IHBS, when those services are medically necessary.

14 Over the past 18 months, the Special Master has worked closely and
15 collaboratively with Defendants to resolve their implementation delays. He has
16 accommodated Defendants and has even recommended the deferral of deadlines in
17 the Implementation Plan in past reports. Far from being objectionable,
18 Recommendations 1(b) and (c) are reasonable measures to ensure that class
19 members finally receive the services that they are entitled to and that are at the heart
20 of this Settlement Agreement.

21 Plaintiffs are in full support of all of the recommendations contained in the
22 Special Master's report. These recommendations are not only supported by both the
23 Settlement Agreement and the Implementation Plan, they are critical to moving this
24 case forward so that the Settlement Agreement is implemented within the remaining
25 time of this Court's jurisdiction. There is no good reason to abandon or change
26 these recommendations. On the contrary, the Court should adopt them as proposed
27 as soon as possible.

28

CERTIFICATE OF SERVICE

Case Name: KATIE A., et al. v. BONTA, et al. No. CV-02-05662 JAK (SHx)

I hereby certify that on August 1, 2013, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**PLAINTIFFS' AND STATE DEFENDANTS' JOINT REPORT
RE SPECIAL MASTER'S PROGRESS REPORT FILED JULY
26, 2013 ON THE IMPLEMENTATION OF THE KATIE A.
PLAN**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On August 1, 2013, I have mailed the foregoing document by First-Class U.S. mail, postage prepaid, for delivery within three (3) calendar days to the following non-CM/ECF participants:

John F. Toole, Esq.
National Center for Youth Law
405 14th Street, 15th Floor
Oakland, CA 94612-2701

Kathleen R. Wolfe
Travis W. England
U.S. Department of Justice
950 Pennsylvania Ave NWNYA
Washington, DC 20530

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 1, 2013, at Los Angeles, California.

Veronica Sawers

Declarant

/s/Veronica Sawers

Signature