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10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA

12 KATIE A. by and through her next friend ) Case No. CV-02-05662 JAK (Shx)  
 13 Michael Ludin; MARY B. by and through )  
 14 her next friend Robert Jacobs; JANET C. by )  
 and through her next friend Dolores Johnson; ) PLAINTIFFS' RESPONSE TO  
 15 HENRY D. by and through his next friend ) SPECIAL MASTER'S OCTOBER  
 Gillian Brown; AND GARY E. by and ) 2014 PROGRESS REPORT  
 16 through his next friend Michael Ludin; )  
 17 individually and on behalf of others similarly )  
 situated, ) Further Status Conference

18 )  
 19 Plaintiffs, )

20 v. )

Date: October 16, 2014  
 Time: 1:30 p.m.  
 Dept.: 750  
 Hon. John A. Kronstadt

21 TOBY DOUGLAS, Director of California )  
 Department of Health Care Services; LOS )  
 22 ANGELES COUNTY; LOS ANGELES )  
 23 COUNTY DEPARTMENT OF )  
 CHILDREN AND FAMILY SERVICES; )  
 24 PHILIP BROWNING, Director of the Los )  
 Angeles County Department of Children and )  
 25 Family Services; WILL LIGHTBOURNE, )  
 26 Director of the California Department of )  
 Social Services, and DOES 1 through 100, )  
 27 Inclusive, )  
 28 )

Defendants. )

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1 Plaintiffs respectfully submit the following response to the Special Master's  
2 October 2014 Report on the Implementation of the Katie A. Plan (Dkt. No. 915):

3 Plaintiffs agree with the Special Master on the following:

4 ● The delivery of Intensive Care Coordination ("ICC") and Intensive  
5 Home Based Services ("IHBS") to Katie A. children is at "the heart" of the  
6 Settlement Agreement of this lawsuit (Dkt. No. 915 at 4);

7 ● "ICC and IHBS are Medi-Cal/Medicaid services that Medicaid  
8 eligible youth are entitled to under federal law, as medically necessary" (*id.* at 16);  
9 and

10 ● "[A]ll eligible subclass members for whom ICC and IHBS are  
11 medically necessary should be currently receiving these federally entitled services"  
12 (*id.* at 7; *see also id.* at 16).

13 Plaintiffs also agree with the Special Master's assessment regarding the  
14 number of subclass members who are receiving specialty mental health services in  
15 general and ICC and IHBS in particular. *Id.* at 5-7. No matter how one massages  
16 the data, the percentages of potential subclass members receiving these two mental  
17 health services "are still very low" (*id.* at 16), potentially as low as 17% for ICC  
18 and 13% for IHBS on a statewide basis with even lower percentages if Los  
19 Angeles County is not included.<sup>1</sup> *Id.* at 6-7. Furthermore, Special Master  
20 correctly finds that the rate of growth in subclass members "being provided ICC  
21 and IHBS is not acceptable." *Id.* at 16.

22 Noting that the "majority of counties have shown growth in providing both  
23 ICC and IHBS" during the past months, the Special Master expresses "hope that  
24 this growth trend be sustained through the end of the year and beyond into the next  
25 several years of implementation so that all eligible and entitled subclass children  
26

27  
28 <sup>1</sup> Plaintiffs are concerned that the numbers may be even worse. For example, the data for ICC and IHBS used by the Special Master reflects the cumulative total number of subclass members ever served, not the number of subclass members served by all the counties at any point in time.

1 and youth will receive medically necessary mental health services. . . .” *Id.* at 19.  
2 Class members are, however, entitled to more than hope. As the Ninth Circuit has  
3 affirmed in this case, “states have an obligation to cover every type of health care  
4 or service necessary for EPSDT [Early and Periodic Screening, Diagnosis and  
5 Treatment] corrective or ameliorative purposes that is allowable under [42 U.S.C.]  
6 §1396d(a)” and “states also have an obligation to see that the services are provided  
7 when screening reveals that they are medically necessary for a child.” *Katie A. ex*  
8 *rel. Ludin v. Los Angeles County*, 481 F.3d 1150, 1158 (9<sup>th</sup> Cir. 2007).

9 **Recommendations:**

10 Plaintiffs concur with the recommendations of the Special Master with the  
11 following modification to Recommendation 1. The Special Master’s  
12 Recommendation 1 is that the “Parties identify measurable growth trends as targets  
13 to motivate counties to continue developing intensive services and the CPM [Core  
14 Practice Model].” Dkt. No. 915 at 20. The California Departments of Health Care  
15 Services and Social Services are responsible respectively for the Medi-Cal  
16 program and child welfare services program in California. Plaintiffs accordingly  
17 believe that Recommendation 1 should be modified slightly to place the  
18 responsibility on the State alone, albeit with input from Plaintiffs, for identifying  
19 those “measurable growth trends” as targets for the counties before jurisdiction in  
20 the case ends. The State should also be directed to approach this task with the

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requisite sense of urgency given how few subclass members are currently receiving the medically necessary mental health services they are entitled to receive.

DATED: October 9, 2014

Respectfully submitted,

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By \_\_\_\_\_  
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*Kim Lewis*

By \_\_\_\_\_  
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