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 9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION
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 14 **KATIE A., et al.,**

15 Plaintiffs,

16 v.

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

19 Defendants.

Case No. 2:02-cv-05662 JAK (SHx)

**PLAINTIFFS' AND STATE
 DEFENDANTS' JOINT
 RESPONSE TO THE SPECIAL
 MASTER'S JUNE 16, 2014
 REPORT**

Date: July 18, 2014

Time: 2:00 p.m.

Crtrm: 750

Judge: Honorable John A. Kronstadt

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 22 Plaintiffs, Katie A. et al, and State Defendants, Toby Douglas, Director of the
 23 California Department of Health Care Services (DHCS), and Will Lightbourne,
 24 Director of the California Department of Social Services (CDSS), (the Parties)
 25 hereby file this joint response to the recommendations contained in the Special
 26 Master's June 16, 2014 Report. ECF No. 899.

27 The Parties have met and conferred in an effort to draft alternative
 28 recommendations that meet the objectives of the Special Master, yet better

1 compliment current implementation efforts. The Parties have reached consensus on
2 alternative language for recommendations one through ten, which they believe will
3 increase the delivery of Intensive Care Coordination (ICC) and Intensive Home
4 Based Services (IHBS) and advance implementation of Therapeutic Foster Care
5 (TFC). The Parties hereby submit this joint response that includes the alternative
6 recommendations for this Court's review and approval.

7 **Special Master Recommendation 1: Increase services to subclass**
8 **members in selected under-performing counties.**

9 County- and State-reported data indicate that about one-third of the counties
10 are providing very low levels of services to subclass members, in particular ICC
11 and IHBS as medically necessary. As Special Master, after examining numerous
12 factors drawn largely from the May 2014 County Semi-Annual Progress Reports, I
13 have identified 16 counties—nine large and seven medium size—that appear not to
14 be making sufficient progress in providing ICC and IHBS to subclass members.
15 This recommendation is intended to result in measurable, significant, and rapid
16 increases in ICC and IHBS to subclass members in these under-performing
17 counties.

18 As Special Master, I recommend that the Court order the State to select
19 by July 9, 2014, in consultation with the Plaintiffs and perhaps other stakeholders, a
20 minimum of ten of these 16 counties for immediate direct assistance, intervention,
21 and/or corrective action to increase their levels of ICC and IHBS to subclass
22 members. If the State does not make its selection by July 9, the Special Master will
23 choose the ten counties.

24 Under this recommendation, if so ordered by the Court, the State will
25 engage directly and intensively with each of the selected counties, guided by the
26 Katie A. Service Delivery Action Plan parts 1.1-1.6 (with emphasis on 1.6) and
27 Phase 2, Sec. IV, Service Delivery Rollout Action Plan parts 9. a. and 9.d. This
28 direct State action, which will likely require State in-person visits to the selected

1 counties, will include use of the State's compliance, corrective action, and sanction
2 authority, as necessary, to ensure significant performance improvement in each of
3 the ten selected counties.

4 The actions taken in each county must be tailored to the specific needs and
5 circumstances of the county and must put into place a substantial and action-
6 focused State-County plan that results in near-term and long-term measurable and
7 sustainable increases in ICC and IHBS to current and potential subclass members as
8 medically necessary. Each State-County plan must achieve sufficient measurable
9 increases in ICC and IHBS by November 1, 2014 to demonstrate that the county is
10 on a self-sustained trajectory toward providing ICC and IHBS to all subclass
11 members as medically necessary in the future. Each State-County plan will
12 prioritize action to increase ICC and IHBS to:

- 13 • Potential subclass members identified by the county but who are not
14 currently receiving medically necessary ICC and IHBS.
- 15 • Subclass members identified as receiving specialty mental health services
16 but who are not currently receiving medically necessary ICC and IHBS.

17 The State shall provide the Special Master with copies of each individual
18 State-County plan as described above within a reasonable amount of time that
19 allows for State review and consultation with the Parties and the county. All State-
20 County Plans shall be received—either complete or in progress—by the Special
21 Master no later than September 24, 2014 for discussion at the subsequent Status
22 Conference regarding County progress (current and future) in providing ICC and
23 IHBS to subclass members. The State will bear primary responsibility for
24 demonstrating to the Court and other Parties that its efforts to increase ICC and
25 IHBS services in the selected counties have been strenuous, practical, effective, and
26 sufficiently strong to create immediate and lasting increases and improvements in
27 ICC and IHBS to subclass members as medically necessary.

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1 **Parties' Recommendation 1: Increase Services To Subclass Members In**
2 **Selected Under-Performing Counties.**

3 The Special Master stated that his intent in submitting Recommendation 1 is to
4 attain “measurable, significant, and rapid increases in ICC and IHBS to subclass
5 members in these under-performing counties.” The State agencies are committed to
6 accomplishing that goal through implementation of the Service Delivery Rollout
7 Plan (ECF No. 899, Exhibit 1.4 to the Special Master’s June 2014 Progress Report).

8 To that end, DHCS and CDSS are taking action to address measurable and
9 timely increase in the availability and utilization of ICC and IHBS to subclass
10 members in lower-performing counties, consistent with the Service Delivery Action
11 Plan. The State will inform the Plaintiffs and Special Master by August 31, 2014 of
12 the actions the State is taking to achieve measureable and timely increases in ICC
13 and IHBS to subclass members in lower-performing counties. The actions include
14 the following:

- 15 • Sending a letter regarding expectations to the child welfare and mental
16 health agencies reminding them of their legal obligations and informing them that
17 the state will be taking actions to monitor roll out and provision of ICC and IHBS
18 services.
- 19 • Activities to address utilization of ICC and IHBS in the 12 counties with
20 the largest child welfare caseload, as well as the counties not yet providing services
21 (regardless of their size).
- 22 • Discussions, to be completed by August 15, 2014, with Plaintiffs
23 regarding specific action items identified by the parties that may need, or benefit
24 from, further development or greater specificity in order to achieve the goal of
25 increased availability and use of services in lower-performing counties.
- 26 • The State will provide updates to the Plaintiffs and Special Master on
27 progress.

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1 **Special Master Recommendation 2: Therapeutic Foster Care (TFC)**

2 **Implementation.**

3 As Special Master, I recommend that the Court order State DHCS and DSS to
4 implement Therapeutic Foster Care (TFC) by August 1, 2014 as indicated in the
5 TFC Work Plan (Exhibit 1.5) and that DHCS and DSS update the Court, Plaintiffs,
6 and Special Master weekly on the steps the State is taking to meet that date.

7 **Parties' Recommendation 2: TFC Implementation.**

8 State DHCS and CDSS will begin implementation of TFC by August 1, 2014,
9 subject to the approval of TFC by the Centers for Medicare and Medicaid Services
10 as a Medi-Cal covered service, as indicated in the TFC Work Plan. ECF No. 899-3,
11 Ex. 1.5. If federal approval has not been granted by August 1, 2014, DHCS will
12 begin implementation as soon as possible, once such federal approval is granted.
13 DHCS and CDSS will update the Plaintiffs and Special Master monthly, or more
14 frequently when significant developments occur.

15 **Special Master Recommendation 3: A Shared Management Structure**
16 **and Accountability, Communication, and Oversight System.**

17 As Special Master, I recommend that the Court order the State to develop, by
18 November 1, 2014, a written agreement or memorandum of understanding or
19 proposed legislation between the State DSS and DHCS establishing a Shared
20 Management Structure and an Accountability, Communication, and Oversight
21 System.

22 **Special Master Recommendation 4: Statewide Coordinated System**
23 **Improvement Improvement/ Performance Improvement Plan (SIP/PIP).**

24 As Special Master, I recommend that the Court order the State DHCS and
25 DSS to develop a plan by November 1, 2014, and implement a coordinated SIP/PIP
26 effort that incorporates practice improvement, Core Practice Model
27 implementation, timely access to Intensive Care Coordination and Intensive Home
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1 Based Services, and Katie A. class and subclass member referrals, access, and
2 service delivery.

3 **Parties' Recommendations 3 and 4: A Shared Management Structure**
4 **and Accountability, Communication, and Oversight System; Statewide**
5 **Coordinated System Improvement Plan/Performance Improvement Plan**
6 **(SIP/PIP).**

7 The Joint Management Taskforce (JMT) met on July 8, 2014, to review a
8 near-final draft of recommendations regarding (1) Shared Management Structure;
9 (2) Accountability, Communications and Oversight; and (3) Core Practice Model
10 fiscal strategies, as required under the Settlement Agreement and implementation
11 plans. The JMT plans to release its recommendations on or about July 25, 2014.
12 The recommendations included in the report will address the formal requirements
13 for establishing a Shared Management Structure that are the subject of the Special
14 Master's Recommendation 3. Additionally, the recommendations will provide a
15 comprehensive Accountability, Communications and Oversight framework that,
16 among other things, calls for an evaluation of the viability of implementing a
17 formally coordinated SIP/PIP effort, and encourages institutionalizing quality
18 assurance processes relating to practice improvement, Core Practice Model
19 implementation, and timely access to Intensive Care Coordination and Intensive
20 Home Based Services. These accountability and oversight recommendations are the
21 subject of the Special Master's Recommendation 4.

22 Within 90 days of receiving these recommendations, DHCS and CDSS will
23 provide to the Plaintiffs and Special Master their formal written response to these
24 recommendations, by accepting, declining to accept, or accepting with stated
25 amendments, each recommendation. The parties expect that by thus completing the
26 JMT process, the State will achieve the intents and purposes of the Special Master's
27 Recommendations three and four.

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1 **Special Master Recommendation 5: County and State Confidentiality**
2 **Barriers.**

3 Confidentiality continues to be a significant problem for a large number of
4 counties, particularly with regard to sharing data and information between child
5 welfare and mental health agencies for case planning, service delivery, cross system
6 utilization management, and quality assurance. As Special Master, I recommend
7 that the Court order State DHCS and DSS to pursue a solution to county-reported
8 confidentiality barriers, perhaps using the experience of Los Angeles County as a
9 model. The Federal Court was involved in assisting and approving a Los Angeles
10 County legal agreement and framework for sharing information between the
11 Departments of Mental Health and Children and Family Services, which removed
12 significant institutional data sharing and information exchange barriers between the
13 two departments.

14 It also has recently been determined that State DHCS cannot disclose county-
15 level mental health service data due to its interpretation of HIPAA restrictions on
16 the publication of mental health data. Consequently, the Court, the Parties,
17 children, youth, parents, counties, service providers, and other interested
18 stakeholders have no access to county-level mental health data and statistical
19 reports regarding Katie A. implementation or ongoing service delivery. This
20 creates enormous barriers to local and statewide planning, accountability,
21 performance improvement, service planning and delivery efforts, and overall
22 transparency for Katie A. which is essential and central to statewide
23 implementation and overall success of the Settlement Agreement. The significance
24 of this barrier to mental health information cannot be overstated. As Special
25 Master, I recommend that the Court order State DHCS to develop, by or before
26 November 1, 2014, a solution to information sharing that allows publication of
27 county-level Katie A. mental health data.

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1 **Parties' Recommendation 5: County and State Confidentiality Barriers.**

2 The number of counties currently reporting confidentially as a barrier to
3 sharing information between child welfare and mental health agencies has
4 decreased to only six counties. In addition, the State has again made publicly
5 available the Katie A. service utilization reports which also include most of the
6 county-level data. DHCS and CDSS agree to provide the Plaintiffs and Special
7 Master, on or before November 1, 2014, a solution to information sharing that
8 allows publication of county-level Katie A. mental health data and any solution to
9 the county reported confidentially barriers.

10 **Special Master Recommendation 6: Proposition 30 and EPSDT Updates.**

11 As Special Master, I recommend that the Court order State DHCS and DSS to
12 update the Court, Plaintiffs, and Special Master monthly, beginning August 1,
13 2014, on steps the State is taking to address county concerns regarding Proposition
14 30 and EPSDT, including any Proposition 30/EPSDT issues and resolutions that
15 have any bearing on the implementation of Katie A.

16 **Parties' Recommendation 6: Proposition 30 and Early Periodic**
17 **Screening, Diagnosis, and Treatment (EPSDT) Updates.**

18 CDSS, DHCS, and state leadership have been, and will continue to be,
19 actively engaged in dialogue with California Mental Health Directors' Association
20 (CMHDA) and other county representatives and stakeholders on a wide variety of
21 state/county funding issues, including those related to Proposition 30, both within
22 and beyond the EPSDT context. These types of funding discussions are a standard
23 feature of constructing annual state and county budgets, and the arguments made
24 and positions taken as part of this negotiation process should be read and
25 understood in this broad context. In regard to the narrower purpose of implementing
26 the Settlement Agreement, DHCS has received two separate unequivocal written
27 commitments from CMHDA, confirming that the counties will continue with
28 implementation of ICC and IHBS, notwithstanding any ongoing dialogue that the

1 counties may have with the State about funding. Further, to the extent that counties
2 may continue to raise funding concerns, the State will seek more specificity from
3 such counties on the nature of their funding concerns, which may include the
4 amount of funding needed, the services requiring additional funding, and the
5 population(s) needing to be served. Thus, with the foregoing in mind, DHCS and
6 CDSS will provide updates to the Special Master and Plaintiffs on any significant
7 developments when they occur, in addition to a general update on this issue, by no
8 later than September 15, 2014.

9 **Special Master Recommendation 7: Affordable Care Act—California’s**
10 **Implementation Updates.**

11 As Special Master, I recommend that the Court order State DHCS to update
12 the Court, Plaintiffs, and Special Master monthly, beginning August 1, 2014, on
13 steps the State is taking to address concerns regarding how the State is going to
14 distinguish the responsibilities of the Managed Care Plan (MCP) from the
15 responsibilities of the MHPs in terms of screening for and providing medically
16 necessary specialty mental health services to class members and subclass members,
17 coordinating Care (CPM), and how the State will collect and analyze the data
18 between the MCP and MHPs to determine what services are being provided to
19 class/subclass members.

20 **Parties’ Recommendation 7: Affordable Care Act – California’s**
21 **Implementation Update.**

22 Effective January 1, 2014, new Medi-Cal mental health services are available
23 through Medi-Cal Managed Care Plans and through the Medi-Cal fee-for-service
24 system. One of DHCS’ goals for successful implementation of these services is
25 that beneficiaries (children and adults) receive medically necessary mental health
26 services based on their diagnoses and level of impairment. DHCS continues to
27 monitor the implementation of the new mental health benefits and the coordination
28 of Managed Care Plans and Mental Health Plans.

1 State DHCS will update the Plaintiffs and Special Master by August 1, 2014,
2 on the steps the State is taking to ensure that Medi-Cal beneficiaries (which
3 includes the class members) receive timely, medically necessary mental health
4 services including the process in place for delineating responsibilities of both the
5 Managed Care Plans and the Mental Health Plans.

6 **Special Master Recommendation 8: Updating the Special Master and**
7 **Plaintiffs.**

8 As Special Master, I recommend that the Court order State DHCS and DSS to
9 update the Special Master and Plaintiffs, beginning August 1, 2014, on all actions
10 ordered by the Court during or following the July 2, 2014 Katie A. Status
11 Conference.

12 **Parties' Recommendation 8: Updating the Special Master and Plaintiffs.**

13 State DHCS and DSS will update the Special Master and Plaintiffs, beginning
14 August 1, 2014, on all actions ordered by the Court during or following the July 18,
15 2014 Katie A. Status Conference.

16 **Special Master Recommendation 9: The Special Master's Fiscal Year**
17 **2014-2015 Budget.**

18 As Special Master, I recommend that the Court approve the Special Master's
19 Fiscal Year 2014-2015 budget (Exhibit 9). The budget is for six months, pending
20 the Court's jurisdiction ending in December 2014.

21 **Parties' Recommendation 9: The Special Master's Fiscal Year 2014-2015**
22 **Budget.**

23 State DHCS and DSS will approve the Special Master's Fiscal Year 2014-
24 2015 budget, as provided in Exhibit 9 to the Special Master's Report. The budget
25 is for six months, pending the Court's jurisdiction ending in December 2014.

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1 **Special Master Recommendation 10: November, 2014 Katie A. Status**
2 **Conference.**

3 As Special Master, I recommend that the Court schedule a Katie A. Status
4 Conference in mid November 2014.

5 **Parties' Recommendation 10: November, 2014 Katie A. Status**
6 **Conference.**

7 The parties agree and request that the Court schedule a Katie A. Status
8 Conference with a proposed date of October 10, 2014, with the following
9 consultation and submission deadlines:

- 10 1, Special Master's completed draft report with any proposed
11 Recommendations (not filed) provided to the parties by no later than September 15,
12 2014;
 - 13 2. Special Master's Final report filed with the Court by no later than
14 September 26, 2014; to allow sufficient time for the parties and Special Master to
15 jointly discuss and, if necessary, propose revisions to any Recommendations;
 - 16 3. Parties to file their responses to the Special Master's September 26, 2014
17 report, by no later than October 3, 2014; and
 - 18 4. Status conference on October 10, 2014.
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Dated: July 11, 2014

Respectfully submitted,
KIMBERLY LEWIS
NATIONAL HEALTH LAW PROGRAM

/s/ Kimberly Lewis
Attorneys for Plaintiffs

Dated: July 11, 2014

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CERTIFICATE OF SERVICE

Case Name: KATIE A., et al. v. BONTA, et al. No. 2:02-cv-05662 JAK (SHx)

I hereby certify that on July 14, 2014, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

PLAINTIFFS' AND STATE DEFENDANTS' JOINT RESPONSE TO THE SPECIAL MASTER'S JUNE 16, 2014 REPORT

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 July 14, 2014, 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.
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

This declaration was executed on July 14, 2014, at Los Angeles, California.

M. Chacon
Declarant

/s/M. Chacon
Signature