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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

EMILY Q. et al.,	)	CASE NO. CV 98-4181 AHM (AJWx)
Plaintiffs,	)	APPOINTMENT OF RICHARD
	)	SALETTA AS SPECIAL MASTER
v.	)	
	)	
DIANA BONTÁ,	)	
Defendant.	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. In order to bring this prolonged litigation to a proper end, it is necessary for the Court to appoint a Special Master pursuant to Rule 53, Federal Rules of Civil Procedure. Judgment was entered in this matter on May 11, 2001. The Judgment requires defendant, the Director of the California Department of Health Care Services, and her agent, the California Department of Mental Health (CDMH), to ensure that members of the certified class have access to Therapeutic Behavioral Services (TBS), a mental health service for children and youth which has been found to have great benefit for class members. Among other aspects of the remedial

1 scheme, the Judgment required CDMH to identify county mental health plans  
2 (MHPs) with “disproportionately low TBS utilization” and take corrective actions.  
3 Judgment, ¶ 25. The Judgment contemplated that it might become necessary at  
4 some later time to appoint “a Special Master to oversee capacity and access issues.”  
5 Judgment, ¶ 21.E.

6 2. In January 2004, the Court found “many class members” were “not  
7 receiving the services to which they were entitled, . . . almost three years after the  
8 injunction first went into effect,” and that the purpose of the Judgment was not  
9 being fulfilled in a material respect. Interim Order Clarifying Judgment, Extending  
10 Jurisdiction and Directing the Parties to Collaborate Regarding Further Relief, filed  
11 January 29, 2004. Subsequently, the Court appointed a Special Master to facilitate  
12 resolution of disputes between the parties, review the status of compliance and make  
13 recommendations regarding additional compliance measures. Order Appointing  
14 Special Master, filed December 29, 2004. That Order was based on findings that the  
15 post-judgment matters in this case could not be addressed effectively and timely by  
16 this Court or the magistrate judge assigned to this case, that there was no viable  
17 alternative to appointment of a Special Master and that appointing a Special Master  
18 was cost-effective. *Id.* The Special Master filed a series of reports that included his  
19 recommendations and factual findings, before his resignation in December 2005.

20 3. Subsequently, the Court again found that “Defendant has not demonstrated  
21 full compliance with the [permanent] injunction.” Order, February 28, 2006 at 10.  
22 The Court found that “[d]efendant has presented little evidence showing that access  
23 to TBS has significantly increased since January 2004,” when the Court issued its  
24 earlier order. *Id.* at 14. These findings were affirmed by a unanimous panel of the  
25 Ninth Circuit on October 13, 2006.

26 4. On September 26, 2007, the Court again found that the defendant has  
27 failed to accomplish certain provisions and required objectives in the April 22, 2004  
28 Amended Judgment, particularly paragraphs 21 and 25. Order Extending

1 Jurisdiction and Approving Appointment of a Special Master, filed September 25,  
2 2007. The Court now orders that its jurisdiction over this case is extended until  
3 August 1, 2009.

4 5. Federal Rule of Civil Procedure 53 (a)(1)(C) provides that “a court may  
5 appoint a master . . . [to] address pre-trial and post-trial matters that cannot be  
6 addressed effectively and timely by an available district judge or magistrate judge of  
7 the district.” The Court reiterates its earlier findings that the post-judgment matters  
8 in this case cannot be addressed effectively and timely by this Court or the  
9 magistrate judge assigned to this case. First, the issues in the case are very  
10 technical, involving complicated facts and sociological and administrative problems  
11 in implementing mental health services which are difficult to evaluate, quantify, and  
12 administer. Second, more than nine years have passed since this case was filed and  
13 further delays in implementing this beneficial mental health service are against the  
14 public interest.

15 6. The Court further finds that there is no viable alternative to appointment of  
16 a Special Master at this time. The overburdened magistrate judge assigned to this  
17 case will be no better able than the District Court judge to address the technical  
18 disputes at issue. While a technical adviser or court-appointed expert could assist  
19 the Court with some of the technical aspects of the case, this will not relieve the  
20 Court, which is responsible for numerous other complex and pressing cases, of the  
21 time-consuming task of monitoring compliance and could result in more delay.

22 7. The Court remains persuaded that the appointment of Special Master will  
23 enable the parties to save both time and money, in the long run. The Court has  
24 considered the fairness of imposing the expense of a Special Master on the  
25 defendant and CDMH and the need to protect against unreasonable expense or  
26 delay. The Court finds that because the plaintiffs are a class of indigent, mentally ill  
27 children, they cannot share in any of the cost of the Special Master. Allocating the  
28 entire cost of the Special Master to defendant and CDMH is also reasonable.

1 because, even taking into account budgetary limitations and the difficulty of  
2 implementing significant changes, their failure to comply fully with the Judgment  
3 necessitates the appointment. The Court remains mindful of the importance of  
4 budgetary considerations in fashioning relief. However, given the long delay in  
5 securing compliance and the nature of the issues still in dispute, the Court concludes  
6 that appointment of a Special Master is necessary to ensure that the parties work  
7 together to secure the defendant's full compliance with the terms of Judgment.

8 8. Based on the foregoing, the Court finds that Richard Saletta should be  
9 appointed as Special Master in this case, with the duties set forth below. The  
10 appointment of Mr. Saletta shall become effective only upon his filing an affidavit  
11 disclosing that there is no ground for disqualification under 28 U.S.C. § 455.

12  
13 **DUTIES AND TERM OF THE SPECIAL MASTER**

14 9. The Special Master, as an agent of the court, shall function as the Court's  
15 representative and not on behalf of any party.

16 10. The Special Master shall serve until the expiration of the Court's  
17 jurisdiction, or until the Court terminates his appointment (whichever comes first).

18 11. The Special Master shall proceed with all reasonable diligence and shall  
19 commence his duties by not later than March 10, 2008.

20 12. No later than March 17, 2008, the Special Master shall submit to the court  
21 a proposed work plan, a timetable for completion of his/her duties, and a proposed  
22 annual budget. (The Court realizes that Mr. Saletta has already submitted such  
23 items to the Court in the selection phase, and he may simply modify those items to  
24 conform to this Order.)

25 13. The focus of the Special Master shall be on the need to specify a minimum  
26 TBS utilization rate or rates; the need to develop exit criteria; the need to develop a  
27 qualitative review process; and the need to assure compliance after this case has  
28 been terminated.

- 1       14. The Special Master shall perform his duties in the following manner:
- 2           a. The Special Master shall facilitate a joint stipulation by the parties to
- 3                 specify a minimum TBS utilization rate, or differing rates by county. If
- 4                 the parties cannot agree to a stipulated rate or rates, the Special Master
- 5                 shall recommend a rate or rates to the Court for adoption.
- 6           b. With the assistance of the parties, the Special Master shall develop
- 7                 clear performance measures and “exit criteria” to establish compliance.
- 8                 The Special Master shall attempt to develop criteria for doing so on the
- 9                 basis of the previous ten focused review reports, without conducting
- 10                additional focused reviews. (Such reviews are not contemplated at this
- 11                time.) To the maximum extent possible, the Special Master also shall
- 12                consider incorporating the defendant’s protocols for providing TBS and
- 13                achieving a satisfactory utilization rate. The performance measures
- 14                shall be flexible. (For example, standards need not necessarily be
- 15                uniform throughout the State; standards need not be uniform as
- 16                between counties; for any given county no standard should be
- 17                prescribed that is not feasible given the demographic features of that
- 18                county; perhaps defendant and CDMH might be authorized to achieve
- 19                partial satisfaction of their legal obligations and responsibilities on a
- 20                graduating basis, so that the administrative and fiscal resources
- 21                necessary to comply with the Amended Judgment might be reduced
- 22                before final compliance has been pronounced; etc.) The Special Master
- 23                shall not recommend exit criteria that may be ideal but not feasible.
- 24           c. With the assistance of the parties, the Special Master shall develop a
- 25                qualitative review method or process designed to measure whether the
- 26                TBS is being provided in a manner that makes it reasonably likely that
- 27                the intended benefits of mandating TBS will be substantially realized.
- 28           d. With the assistance of the parties, the Special Master shall propose
- measures to assure that compliance will be sustained after this case has

1           been dismissed. In doing so, he shall favorably consider as a possible  
2           basis the defendant's and CDMH's proposal set forth in Appendix 11  
3           to defendant's and CDMH's September 10, 2007 "Response" to this  
4           Court's questions.

- 5           e. The Special Master shall attach great priority to achieving agreement  
6           on disputed issues. In doing so, he shall take into account the  
7           legitimate concerns and views of both sides, as already amply  
8           articulated in their respective pleadings and papers.
- 9           f. The Special Master may meet directly with and may communicate  
10           directly with those representatives of defendant who are responsible for  
11           administering the TBS program within EPSDT, as well as with  
12           defendant's counsel and plaintiffs' counsel. Of course, the Special  
13           Master may not in any way violate any party's right under the attorney-  
14           client privilege to keep confidential her communications with her  
15           counsel nor encroach upon counsel's work product. This provision is  
16           without prejudice to the parties' rights to assert other applicable  
17           privileges (if any). If any party does assert a legal privilege to avoid  
18           providing information, the party shall do so in writing and if the other  
19           party or the Special Master chooses to contest that assertion, the  
20           Special Master shall forthwith file the parties' respective position  
21           papers with the Court.
- 22           g. The Special Master shall have access to all information and documents  
23           that he requires to perform his job. This access shall include, but not be  
24           limited to, access to all of the following: class members; defendant and  
25           employees of the Department of Health Care Services or CDMH; case  
26           records concerning class members and their representatives or families;  
27           TBS providers; Mental Health Plan staff, agents, and contractors and  
28           contractor's staff; budget and fiscal information including legislative  
          budget requests, annual operating budgets and revenue analysis by fund

1 source; results from focused reviews, proposed corrective actions and  
2 corrective action plans and related information, data, plans, and reports  
3 regarding focused reviews, unless any of the above-referenced  
4 documents or information are protected by privileges, other limitations  
5 on disclosure or any other provision of the Federal Rules of Civil  
6 Procedure. All information, data, plans, and reports submitted to the  
7 Special Master shall be made available to all parties to this action upon  
8 request. This paragraph is without prejudice to any party's right to  
9 assert applicable privileges (if any).

10 h. The Special Master shall file periodic reports with the Court every 120  
11 days. They shall be public documents. (The first report shall be due on  
12 or before July 7, 2008.) He may file interim reports as he sees fit. The  
13 reports should focus on the steps taken to achieve the objectives set  
14 forth in this paragraph 15. The reports should not be excessively  
15 statistic-laden or technical. (Nor is the Court intent on obtaining or  
16 receiving detailed accounts of who met with whom when, or  
17 inventories of the documents the Special Master received.) As part of  
18 his reports and at other times as the Special Master deems necessary,  
19 the Special Master may make recommendations to the Court regarding  
20 the need for and nature of additional measures to enforce the Judgment  
21 and the Court's subsequent orders. The Special Master may make  
22 recommendations only as to the matters that led the Court to issue its  
23 September 25, 2007 Order - - namely, failure to accomplish certain  
24 provisions and required objectives in Paragraphs 21 and 25 of the April  
25 22, 2004 Amended Judgment. Unless otherwise ordered by the Court,  
26 following the filing of any such report, the parties shall appear at a  
27 status conference, at which they will be given the opportunity to  
28 address the Special Master's findings and recommendations. The

1 status conference shall be held at 3:00 p.m. on the fourth Wednesday  
2 following the filing of the Special Master's Report. By not later than  
3 the preceding (third) Wednesday, the parties may file written responses  
4 to the report. **The report itself shall provide notice on the cover**  
5 **page of that hearing. See Local Rule 7-4.**

- 6 i. The Special Master shall make maximum use of the information,  
7 analyses, recommendations and insights obtained by the previous  
8 Special Master (Dr. Ivor Groves) and shall avoid duplicating his  
9 efforts.

10 15. Prior to the termination of his service, the Master shall also file proposed  
11 findings of fact, conclusions of law, recommendations, and proposed orders  
12 regarding the matters assigned to him. The Master shall take and consider evidence  
13 in preparing his proposed findings of fact and conclusions of law. The Master shall  
14 file with the court a complete record of the evidence considered in making or  
15 recommending his proposed findings of fact. The Court shall review *de novo* any  
16 proposed findings of fact and conclusions of law submitted by the Special Master  
17 and all objections by any party to these proposed findings of fact and conclusions of  
18 law. The Special Master shall not have the power to enforce his recommendations,  
19 the Judgment or the Court's subsequent orders.

20 16. (a) In order to carry out his duties, the Special Master may engage in *ex*  
21 *parte* communications with plaintiffs' counsel, plaintiff class members, defendant  
22 and employees of the California Department of Health Care Services, the California  
23 Department of Mental Health (CDMH), and defendant's and CDMH's counsel. The  
24 Special Master shall treat as confidential all information specifically disclosed to  
25 him in confidence, much like as if he were functioning as a mediator. As to joint  
26 sessions (*i.e.*, meetings or sessions where representatives of plaintiffs and defendant  
27 are present), the exchanges shall be subject to the provisions of Fed. R. Evid. 408.  
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1 (b) The Special Master also may engage in *ex parte* communications with  
2 the Court, but only under the following circumstances.

3 (i) Following any such communication, the Special Master and the  
4 Court will separately and independently memorialize the crux of their  
5 discussion in a memorandum, which each will preserve. Neither the Court  
6 nor the Special Master will provide his respective memorandum to the other.

7 (ii) In the reports that the Special Master files with the Court, he shall  
8 identify by date each such communication and its approximate duration.

9 (iii) Any party may request the Court to have both sets of memoranda  
10 disclosed, and if good cause is shown the Court will order their release.

11 (c) The Special Master shall not engage in communications with the press  
12 or media absent advance authorization from the Court. If any legislator or  
13 representative of the legislative branch seeks information or otherwise makes an  
14 inquiry, the Special Master shall notify the Court before responding.

15 17. The Special Master shall preserve all writings he or those employed by  
16 him generate in performing his duties under the terms of this order. "Writings"  
17 include, but are not limited to, correspondence; memoranda; records; reports; notes,  
18 including telephone conversations; work papers; drafts; bills; invoices; financial and  
19 accounting records; disks; emails; or other computer electronic or magnetic storage  
20 media; and all other printed recorded or photographic matter or sound reproductions.  
21 The Court may, but is not necessarily required to, grant a request by either party,  
22 based on a showing of good cause, that the Special Master produce such writings for  
23 inspection.

24 18. Compensation:

25 a. Defendant shall pay the Special Master's reasonable hourly fee (not to  
26 exceed \$150.00 per hour) and expenses. The Special Master's fees  
27 shall not exceed \$100,000 for the first twelve months. Payment shall  
28 be made directly to the Special Master. Reasonable expenses shall

1 include, but are not limited to, transcriptions, photocopy fees, mail and  
2 delivery costs. Pursuant to Mr. Saletta's proposal, travel and related  
3 incidental expenses are included in the foregoing amounts, not as  
4 additional items, except that travel and attendant expenses incurred in  
5 attending court proceedings or meeting with the Court may be  
6 reimbursed separately and without regard to the \$100,000 ceiling. The  
7 Special Master may also bill defendant for other professional services  
8 at a rate not to exceed \$85.00 per hour so long as the total bill for such  
9 services does not exceed \$27,500 for the first twelve months.

- 10 b. The Special Master may submit an application to exceed the maximum  
11 cap on compensation, should circumstances so require.
- 12 c. The Special Master shall submit bills for his hourly fees and expenses  
13 to defendant Department of Health Care Services on a monthly basis on  
14 a form to be provided by Health Services. Health Services shall  
15 approve payment within 30 days of receipt of the monthly billing. If  
16 Health Services disputes a bill from the Special Master, it shall have  
17 thirty days to review and submit objections and/or request additional  
18 clarifying information or documentation to the Special Master, with a  
19 copy served on plaintiffs. The Special Master shall have fifteen days in  
20 which to respond and to provide the additional information and/or  
21 documentation requested, with a copy served on plaintiffs. If within 45  
22 days of presentation of the Special Master's bill to Health Services,  
23 there is still a dispute, Health Services and the Special Master shall  
24 submit the dispute to the Court for resolution. The plaintiffs, defendant  
25 Health Services and the Special Master shall prepare a joint statement  
26 regarding the disputed payment for filing within 60 days of submission  
27 of the Special Master's bill to Health Services. If defendant Health  
28 Services disputes a bill in this fashion, defendant shall still be obligated

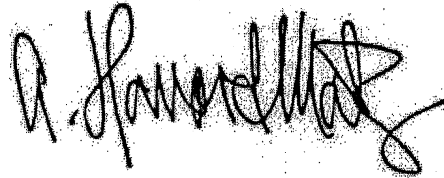
1 to approve reimbursement to the Special Master within 30 days of  
2 billing, unless the Court orders otherwise.

3 19. As to items that the Special Master is required to file, he may mail them  
4 directly to the Court's chambers, with proof of service on the counsel of record.

5 20. The parties are ORDERED to cooperate in good faith with the Special  
6 Master, pursuant to the foregoing provisions. In this regard, if to accomplish his  
7 duties the Special Master must undertake necessary measures not specifically  
8 referred to in the preceding provisions, the parties shall not object or resist merely  
9 because the measures were not specified.

10 IT IS SO ORDERED.

11  
12 Dated: February 21, 2008



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14 A. Howard Matz  
United States District Judge

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