

1 Melinda Bird, State Bar No. 102236
 Keith Sakimura State Bar No. 183307
 2 Margaret Roberts, State Bar No. 163981
 Protection & Advocacy, Inc.
 3 3580 Wilshire Blvd., Ste. 902
 Los Angeles, California 90010-2512
 4 Telephone: (213) 427-8747; Fax No.: (213) 427-8767

5 Robert D. Newman, State Bar No. 86534
 Western Center on Law & Poverty
 6 3701 Wilshire Blvd., Ste. 208
 Los Angeles, California 90010-2809
 7 Telephone: (213) 487-7211; Fax No.: (213) 487-0242

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8 Nancy Shea, State Bar No. 90286
 Jim Preis, State Bar No. 82690
 9 Mental Health Advocacy Services
 3225 Wilshire Blvd. Ste 902
 10 Los Angeles, California 90010
 Telephone: (213) 389-2077; Fax: (213) 389-2595

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Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

15 EMILY Q. et al.,
 16 Plaintiffs,
 17 v.
 18 DIANA BONTÁ,
 19 Defendant.
 20

CASE NO. CV 98-4181 AHM (AJWx)
 [PROPOSED]
 ORDER APPOINTING SPECIAL
 MASTER
 Honorable A. Howard Matz
 Courtroom: 14

22 FOR GOOD CAUSE SHOWN, based on the findings of fact and conclusions
 23 of law set forth below, the Court appoints Ivor Groves, Ph.D., as the special master
 24 in this action, with the duties and responsibilities described herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

RE: NEED FOR A SPECIAL MASTER

1. Judgment was entered in this matter on May 11, 2001. The Judgment

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1 requires defendant, the Director of the California Department of Health Services,
2 and her agent, the California Department of Mental Health (DMH) to ensure that
3 members of the certified class have access to Therapeutic Behavioral Services
4 (TBS), a mental health service for children and youth which has been found to have
5 great benefit for class members. Among other aspects of the remedial scheme, the
6 Judgment required DMH to identify county mental health plans (MHPs) with
7 “disproportionately low TBS utilization” and take corrective actions. Judgment,
8 ¶ 25. The Judgment contemplated that it might become necessary at some later time
9 to appoint “a special master to oversee capacity and access issues.” Judgment,
10 ¶ 21.E.

11 2. In November, 2003, plaintiffs filed a motion seeking modification of the
12 Judgment to include additional remedial measures based on evidence that defendant
13 had failed to comply with the Judgment. The Court made findings that utilization of
14 TBS had remained low even by defendant’s own standards, that TBS was
15 underutilized leaving thousands of class members without access to this service, that
16 defendant had failed to determine or demonstrate what constitutes an adequate TBS
17 approval rate or to take effective corrective actions against county mental health
18 plans where either no class members or a disproportionately low number of class
19 members have been approved for TBS as required by the Judgment, that many class
20 members were not receiving the services to which they are entitled and that the
21 purpose of the Judgment was not being fulfilled in a material respect. Interim Order
22 Clarifying Judgment, Extending Jurisdiction and Directing the Parties to Collaborate
23 Regarding Further Relief, filed January 29, 2004. The Court ordered changes in
24 DMH’s procedure for authorizing TBS, extended its jurisdiction over the Judgment
25 for an additional 18 months to November 11, 2005 and directed the parties to meet
26 and work together to develop a plan to increase TBS utilization and better monitor
27 compliance. *Id.*

28 3. Following the Court’s Order of January 29, 2004, the parties agreed on

1 some aspects of a plan to increase TBS utilization which were incorporated into a
2 second Order issued on July 29, 2004. The Court resolved additional disputes in a
3 subsequent Order filed on August 17, 2004. However, many more issues remain
4 unresolved, including the central issue of how defendant will determine which
5 MHPs have disproportionately low TBS utilization, as required by Paragraph 25 of
6 the Judgment.

7 4. At a hearing on August 5, 2004, the Court raised the need for a special
8 master and directed the parties to submit a proposal to present future disputed issues
9 to the Court and addressing whether to appoint a special master or court appointed
10 expert to assist the Court in better understanding the complexities of the issues
11 presented.

12 5. Federal Rule of Civil Procedure 53 (a)(1)(C) provides that "a court may
13 appoint a master . . . [to] address pre-trial and post-trial matters that cannot be
14 addressed effectively and timely by an available district judge or magistrate judge of
15 the district." After considering the submissions of the parties, the Court finds that
16 the post-judgment matters in this case cannot be addressed effectively and timely by
17 this Court or the magistrate judge assigned to this case. First, the issues in the case
18 are very technical, involving complicated facts and sociological and administrative
19 problems in implementing mental health services which are difficult to evaluate,
20 quantify, and administer. Second, the Court's docket contains so many other
21 pressing matters that there is insufficient time to devote to a case, such as this,
22 which presents complex and difficult issues regarding compliance with the
23 Judgment. Although the Court has already issued three orders within the past year
24 resolving more than a dozen disputes regarding compliance, more than a dozen
25 other issues remain and new disputes continue to arise between the parties. More
26 than eight years have passed since this case was filed and further delays in
27 implementing this beneficial mental health service are against the public interest.

28 6. The Court further finds that there is no viable alternative to appointment of

1 a special master at this time. The overburdened magistrate judge assigned to this
2 case will be no better able than the District Court judge to address the technical
3 disputes at issue. While a technical adviser or court-appointed expert could assist
4 the Court with some of the technical aspects of the case, this will not relieve the
5 Court of the time-consuming task of monitoring compliance and could result in
6 more delay. A special master will be better able to monitor the status of the case so
7 that progress does not become stalled, discuss the barriers to achieving compliance
8 and make recommendations for effective strategies to achieve compliance in the
9 future.

10 7. The Court has considered the fairness of imposing the expense of a special
11 master on the defendant and DMH and the need to protect against unreasonable
12 expense or delay. The Court finds that because the plaintiffs are a class of indigent,
13 mentally ill children, they cannot share in any of the cost of the special master.
14 Allocating the entire cost of the master to defendant and DMH is also reasonable
15 because, even taking into account budgetary limitations and the difficulty of
16 implementing significant changes, their failure to comply fully with the Judgment
17 necessitates the appointment. The Court remains mindful of the importance of
18 budgetary considerations in fashioning relief. However, given the long delay in
19 securing compliance and the nature of the issues still in dispute, the Court concludes
20 that appointment of a special master is necessary to ensure that the parties work
21 together to secure the defendant's full compliance with the terms of Judgment in the
22 most cost-effective manner possible.

23 8. The Court also finds that the special master should have expertise in
24 performance evaluation and outcome measurement in children's mental health
25 systems, and experience in serving as a master or court monitor in other similar
26 cases. Plaintiffs have proposed a candidate for appointment as a master - Dr. Ivor
27 Groves - who meets these qualifications. Defendants were aware since August
28 2004 that the Court was considering the appointment of a special master and have

1 not submitted the names of any alternative candidates; indeed, they have expressed
2 opposition to such an appointment and instead have represented that they are
3 seeking to identify possible technical advisers. Because so much time has already
4 passed, the Court finds that the master must be prepared to begin work promptly.
5 The Court concludes that Dr. Ivor Groves has the required expertise, and is uniquely
6 qualified to serve as a master in this matter. Further, Dr. Groves has submitted a
7 declaration disclosing that there is no ground for his disqualification under 28
8 U.S.C. § 455, as required by Fed. R. Civ. P. 53(b)(3), and is available to serve
9 promptly.

10 **DUTIES AND TERM OF THE SPECIAL MASTER**

11 **ACCORDINGLY**, the Court orders that the duties and term of the special
12 master shall be as follows:

- 13 1. The special master, as an agent of the court, shall be independent of the
14 parties.
- 15 2. The special master shall serve until this Court's jurisdiction ends on
16 November 11, 2005, or if the Court's jurisdiction is extended, until the expiration of
17 the Court's jurisdiction, or until the Court terminates his appointment (whichever
18 comes first).
- 19 3. The special master shall proceed with all reasonable diligence and shall
20 commence his duties immediately but no later than thirty days from the date of this
21 appointment. No later than January 24, 2005, the master shall submit to the court a
22 proposed work plan, a time table for completion of his duties and a proposed annual
23 budget.
- 24 4. The special master shall have the following duties:
 - 25 a. Recommending to the parties and the Court whether there is a need for
26 a minimum benchmark for utilization of Therapeutic Behavioral
27 Services (TBS) and if a benchmark is needed, determining what this
28 benchmark should be;

- 1 b. Overseeing the conduct of the focused reviews of Mental Health Plan
2 (MHP) performance, including determining a reasonable number of
3 reviews to be conducted, making recommendations to the Court and the
4 parties concerning the content and implementation of the review
5 protocol, the adequacy of the completed reports following a focused
6 review and the adequacy of the corrective action plans developed by
7 the MHPs in response to the reviews;
- 8 c. Recommending to the Court and the parties whether there is a need for,
9 and if so the adequacy of, corrective actions by MHPs which are not
10 subject to focused reviews, based on review of the data and
11 performance indicators developed through the agreement of the parties
12 and through other sources, such as complaints and grievances, and
13 through such other means as the master determines are necessary and
14 appropriate;
- 15 d. Making other recommendations to the Court and the parties on how to
16 improve delivery of TBS and effectuate the purpose of the Judgment,
17 including how to audit providers' performance without having an
18 adverse effect on TBS utilization; and
- 19 e. Recommending to the Court the appropriate resolution of any other
20 disputes which the parties cannot resolve.

21 5. The special master shall not have the power to enforce his
22 recommendations, the Judgment or the Court's subsequent orders. As part of his
23 quarterly reports and at other times as the master deems necessary, the master shall
24 make recommendations to the Court regarding the need for and nature of additional
25 measures to enforce the Judgment and the Court's subsequent orders.

26 6. The special master shall not engage in *ex parte* communications with the
27 Court. In order to carry out his duties, the special master may engage in *ex parte*
28 communications with defendants' counsel, plaintiffs' counsel, plaintiff class

1 members, defendant and employees of the California Department of Mental Health
2 (DMH) and the California Department of Health Services (DHS).

3 7. The special master shall file a report with the Court on a quarterly basis,
4 beginning on the 13th Monday after the entry of this Order and thereafter every 13
5 weeks. The special master's quarterly reports shall be public documents. Prior to
6 the termination of his service, the master shall also file proposed findings of fact,
7 conclusions of law, recommendations, and proposed orders regarding the matters
8 assigned to him. The master shall take and consider evidence in preparing his
9 proposed findings of fact and conclusions of law. The master shall file with the
10 court a complete record of the evidence considered in making or recommending his
11 proposed findings of fact.

12 8. The Court shall review *de novo* the master's proposed findings of fact and
13 conclusions of law and all objections to these proposed findings of fact and
14 conclusions of law.

- 15 9. The special master may, at his discretion:
- 16 a. Meet with the plaintiffs and defendant and DMH, together or
 - 17 separately, to discuss progress, barriers to progress, disputed issues and
 - 18 further measures needed to achieve compliance;
 - 19 b. Develop additional criteria for determining whether defendants have
 - 20 complied with the Judgment for consideration by the Court;
 - 21 c. Meet with stakeholders, including TBS providers, to discuss issues
 - 22 regarding compliance with the Judgment and strategies to increase TBS
 - 23 utilization;
 - 24 d. Make recommendations concerning strategies for increasing TBS
 - 25 utilization and methods and practices to be followed in utilizing TBS;
 - 26 e. Comment on the potential impact of proposed plans and budgets on
 - 27 compliance with the Judgment.

28 10. The special master shall have access to all information and documents that

1 he requires to perform his job. This access shall include, but not be limited to,
2 access to: class members; case records concerning class members and their families;
3 mental health plan staff, agents, and contractors and contractor's staff; budget and
4 fiscal information including legislative budget requests, annual operating budgets
5 and revenue analysis by fund source; results from focused reviews, proposed
6 corrective actions and corrective action plans and related information, data, plans,
7 and reports regarding focused reviews, unless any of the above-referenced
8 documents or information are protected by privileges, other limitations on disclosure
9 or any other provision of the Federal Rules of Civil Procedure. All information,
10 data, plans, and reports submitted to the master shall be made available to all parties
11 to this action upon request. The master and the defendant and DMH shall agree on
12 the information concerning compliance with the terms of the Judgment and
13 subsequent orders that shall be provided on a regular basis to the master.

14 **COMPENSATION**

15 11. Compensation:

- 16 a. Defendant shall pay the special master's reasonable hourly fee and
17 reasonable expenses. The special master's hourly fee shall be set at
18 \$150 per hour. Reasonable expenses shall include, but are not limited
19 to, travel expenses, transcriptions, telecopies, photocopy fees, mail and
20 delivery costs. The special master may also bill defendant for office
21 and clerical time at a rate of \$35.00 per hour so long as the total bill for
22 office and clerical time does not exceed \$500.00 per quarter.
- 23 b. The special master shall provide services in accordance with an annual
24 budget. The special master shall submit a proposed budget and work
25 plan to the Court no later than January 24, 2005.
- 26 c. Based on the proposed budget, the Court shall establish a maximum
27 cap that the master may recover per year, or for such other time period
28 as the Court may set. The special master may submit an application to

SCANNED

1 exceed the maximum cap on reimbursement, should circumstances so
2 require.

3 12. The special master shall submit bills for his hourly fees and expenses to
4 defendant Department of Health Services on a monthly basis on a form to be
5 provided by Health Services. Health Services shall approve payment within 30 days
6 of receipt of the monthly billing. If Health Services disputes a bill from the master,
7 it shall have thirty days to review and submit objections and/or request additional
8 clarifying information or documentation to the special master, with a copy served on
9 plaintiffs. The special master shall have fifteen days in which to respond and to
10 provide the additional information and/or documentation requested, with a copy
11 served on Plaintiffs. If within 45 days of presentation of the special master's bill to
12 Health Services, there is still a dispute, Health Services and the special master shall
13 submit the dispute to the Court for resolution. The plaintiffs, defendant Health
14 Services and the special master shall prepare a joint statement regarding the disputed
15 payment for filing within 60 days of submission of the master's bill to Health
16 Services. If defendant Health Services disputes a bill in this fashion, defendant
17 shall still be obligated to approve reimbursement to the special master within 30
18 days of billing, unless the Court orders otherwise.

19 **OTHER PROVISIONS**

20 13. If, after submission of his proposed budget and work plan, the special
21 master identifies the need for the participation of other staff or consultants, he may
22 request leave of Court to amend his budget and work plan to include the services of
23 these individuals.

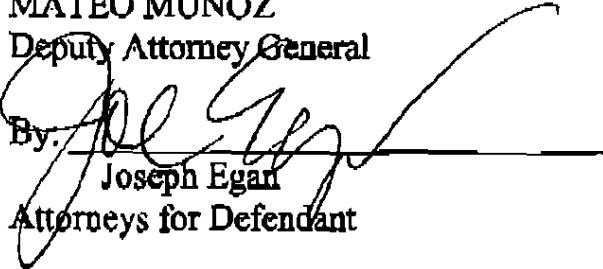
24 14. If counsel, defendant, the director or staff of the Department of Mental
25 Health or the director or staff of a county mental health plan requests that the special
26 master treat a particular *ex parte* communication as confidential, the special master
27 shall treat the conversation as confidential to the extent that doing so is consistent

28 / / / /

1 with the performance of his duties. Notwithstanding the proceeding, the master may
2 use and/or disclose any information relevant to compliance that he obtains in the
3 course of such a communication.


4
5 **APPROVED AS TO FORM:**

6 Dated: December 22, 2004 BILL LOCKYER
7 Attorney General of the State Of California
8 JOSEPH EGAN
9 Lead Supervising Deputy Attorney General
10 MATEO MUNOZ
11 Deputy Attorney General

12 By: 
13 Joseph Egan
14 Attorneys for Defendant

15 **IT IS SO ORDERED:**

16 Dated: 12/29/04

17 
18 A. Howard Matz
19 United States District Judge

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PROOF OF SERVICE

1 STATE OF CALIFORNIA) ss.
2 COUNTY OF LOS ANGELES)

3 I am over the age of eighteen years and not a party to the within action. I am employed in the
4 office of a member of the Bar of this Court in the County of Los Angeles, State of California.
5 My business address is 3580 Wilshire Boulevard, Suite 902, Los Angeles, California 90010.

6 On *December 22, 2004* I served the foregoing document(s) described as:

[Proposed] Order Appointing Special Master

7 on the interested party(ies) in this action by /placing the true copies thereof enclosed in sealed
8 envelopes addressed as stated on the attached mailing list /placing the original **XX**/placing a
9 true copy thereof, enclosed in sealed envelope(s) addressed as follows:


10 Mateo Muñoz
11 Deputy Attorney General
12 State of California Department of Justice
13 Office of the Attorney General
14 1300 I Street
15 P.O. Box 944255
16 Sacramento, CA 94244-2550
17 Fax: 916.324.5567

18 XX BY MAIL) I deposited such envelope(s) in the mail at Los Angeles, California. The
19 envelope(s) was mailed with postage thereon fully prepaid. I am "readily familiar" with the
20 firm's practice of collection and processing correspondence for mailing. It is deposited with the
21 U.S. Postal Service on that same date in the ordinary course of business. I am aware that on
22 motion of party served, service is presumed invalid if postal cancellation date or postage meter
23 date is more than one day after date of deposit for mailing in affidavit.

24 (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the
25 addressee as addressed above.

26 BY ELECTRONIC TRANSFER) I caused all of the pages of the above-entitled document
27 to be sent to the recipient(s) /noted above, /on the attached service list, via electronic transfer
28 (FAX) at the respective FAX number(s) /indicated above, /on the attached service list.

Executed on this *22nd of December, 2004*, at Los Angeles, California. I declare under penalty
of perjury under the laws of the State of California and the United States that the above is true
and correct.


Linda Daitsman, DECLARANT

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ADD NEW NOTICE PARTY (if sending by fax, mailing address must also be provided)
Name: <u>IVOR GROVES, PH.D.</u>
Firm:
Address (include suite or floor):
*E-mail:
*Fax No.:

* For CIVIL cases only

JUDGE / MAGISTRATE JUDGE (list below):

Initials of Deputy Clerk SMW