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12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 LESLIE NAPPER, JANET FISCHER,
15 JACQUIE EICHHORN-SMITH, TED
16 YANNELLO, and LYNDA MANGIO, on
17 behalf of themselves and all others similarly
situated,

18 Plaintiffs,

19 v.

20 COUNTY OF SACRAMENTO; BOARD OF
21 SUPERVISORS OF THE COUNTY OF
22 SACRAMENTO; County Supervisor ROGER
23 DICKINSON; County Supervisor JIMMIE
24 YEE; County Supervisor SUSAN PETERS;
25 County Supervisor ROBERTA
26 MACGLASHAN; County Supervisor DON
27 NOTTOLI; SACRAMENTO COUNTY
28 DEPARTMENT OF BEHAVIORAL
HEALTH SERVICES; ANN EDWARDS-
BUCKLEY, Director, Department of
Behavioral Health Services; MARY ANN
BENNETT, Mental Health Director,

Defendants.

Case No. 2;10-CV-01119-JAM-EFB

PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES RE
PARTIES' SETTLEMENT AND
ENTRY OF PROPOSED CONSENT
DECREE

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1 Plaintiffs Leslie Napper, *et al.* (“Plaintiffs”) respectfully submit this memorandum of
2 points and authorities setting forth the reasons why the parties’ Proposed Consent Decree in
3 this case can be entered without court approval, notice to putative class members or a
4 fairness hearing:

5 Rule 23(e) provides, in pertinent part, that “[t]he claims, issues, or defenses of a
6 *certified class* may be settled, voluntarily dismissed, or compromised only with the court’s
7 approval.” Fed. R. Civ. P. 23(e) (*italics added*). Among the procedures that “apply to a
8 proposed settlement, voluntary dismissal, or compromise” regarding a certified class are the
9 following:

- 10 (1) “The court must direct notice in a reasonable manner to all class members
11 who would be bound by the proposal”;
- 12 (2) “If the proposal would bind class members, the court may approve it only
13 after a hearing and on finding that it is fair, reasonable, and adequate”; and
- 14 (3) “The parties seeking approval must file a statement identifying any
15 agreement made in connection with the proposal.”

16 Fed. R. Civ. P. 23(e)(1)-(3).

17 The critical language in Rule 23(e) is “certified class.” In 2003 Rule 23(e) was
18 amended to resolve an “ambiguity” in the language of the former Rule 23(e) that
19 “could be — and at time was — read to require court approvals of settlements with
20 putative class representatives.” Adv. Comm. Notes to 2003 Amends. to Fed. R. Civ.
21 P. 23. “The new rule requires approval only if the claims, issues, or defenses of a
22 certified class are resolved by a settlement, voluntary dismissal, or compromise.” *Id.*
23 The 2003 amendments to Rule 23 did carry “forward the notice requirement of
24 present Rule 23(e)” that “notice is not required when the settlement binds only the
25 individual class representatives.” *Id.* The amendments to Rule 23 also confirmed
26 “the already common practice of holding hearings as part of the process of approving
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1 settlement, voluntary dismissal, or compromise that would bind members of a class.”

2 *Id.*

3 There is no certified class in this case. Plaintiffs previously brought a motion to
4 certify this lawsuit as a class action on behalf of “all current and future adult recipients of
5 Medi-Cal funded outpatient mental health services from the County of Sacramento.” *See,*
6 *e.g.*, Dkt. No. 96 at 2. On July 21, 2010, the Court denied this motion for class certification
7 as “premature.” Dkt. No. 108. Plaintiffs did not thereafter file another motion for class
8 certification in large part because this lawsuit only seeks injunctive and declaratory relief and
9 members of the putative class were already benefiting from the preliminary injunction in this
10 case. The preliminary injunction, among other things, enjoined Defendants from
11 implementing or enforcing the “Hybrid Plan,” which had been approved by the Sacramento
12 County Board of Supervisors on June 17, 2010, unless and until the Court had determined
13 that Plaintiffs and “all current and future adult recipients of Medi-Cal funded outpatient
14 mental health services in the County will continue to receive these outpatient mental health
15 services in the most integrated setting possible so as to avoid their unnecessary
16 institutionalization and/or treatment through hospital emergency rooms.” Dkt. No. 111 at 1.

17 The Proposed Consent Decree only resolves the five named Plaintiffs’ claims against
18 Defendants in this action. The Court accordingly need not give its approval to such a
19 settlement. *See* Schwarzer, Tashima & Wagstaffe, CAL. PRAC. GUIDE: FED. CIV. PRO.
20 BEFORE TRIAL (The Rutter Group 2011) ¶10:790 at 10-118 (“There is no requirement of
21 judicial approval for precertification dispositions”). Paragraph 2 of the Proposed Consent
22 Decree includes a proviso that “[a]ny claims in this lawsuit on behalf of a putative class of
23 all current and future adult recipients of Medi-Cal funded mental health services in the
24 County of Sacramento are hereby dismissed *without prejudice*” (italics added). Since the
25 Proposed Consent Decree is not binding on members of the putative class, the Court need not
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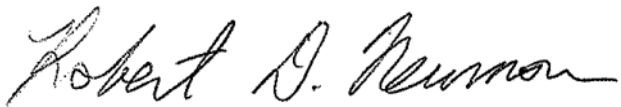
1 give notice of this settlement or hold a fairness hearing to determine whether the settlement
2 is fair, reasonable and adequate to members of the class.

3 Ultimately, members of the putative class will enjoy the best of both worlds. The
4 settlement of this case will have no binding effect on them. At the same time, they will
5 benefit from the Proposed Consent Decree even though there is not a certified class. For
6 example, Defendants have agreed to “not implement or enforce the ‘Hybrid Plan,’ either in
7 its entirety or major components thereof, under whatever designation or nomenclature”
8 through January 31, 2013. Proposed Consent Decree, ¶ 3. Defendants have also agreed that
9 no later than December 31, 2012, they shall develop plans to provide “a continuum of care
10 through the County-operated and funded adult outpatient mental health system” and to
11 “consolidate the two County outpatient clinics.” *Id.* at ¶ 4. By December 31, 2012,
12 Defendants shall additionally “consider and decide whether or not to” implement a number
13 of other changes to the adult mental health care system, such as “modify[ing] the intake
14 system so that existing providers can conduct intake assessments for easy access to services”
15 and “increas[ing] the use of the Wellness and Recovery model and provide training on this
16 model to existing contract and County providers.” *Id.* at ¶ 5.

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18 In sum, Plaintiffs Leslie Napper, *et al.*, respectfully submit that the Court should enter
19 the accompanying Proposed Consent Decree as soon as possible.

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21 DATED: January 23, 2012

Respectfully submitted,

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24 By: 
25 ROBERT D. NEWMAN
26 Attorneys for Plaintiffs
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