

## SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs brought this lawsuit entitled *Katie A. et al. v. Diana Bontá et al.* (the "*Katie A.* Litigation"), filed July 18, 2002, case no. 02-05662, seeking certification of a class and declaratory and injunctive relief against Diana Bontá, Director of California Department of Health Services; Rita Saenz, Director of the California Department of Social Services, (hereinafter collectively referred to as "the State" or "State Defendants") and against Los Angeles County; Los Angeles County Department of Children and Family Services ("DCFS"); Anita Bock, Director of the Los Angeles County Department of Children and Family Services (hereinafter collectively referred to as "the County" or "County Defendants") and Does 1 through 100, inclusive; and

WHEREAS, Marjorie Kelly is the successor-in-interest to Anita Bock as Director of DCFS and was substituted for her in her official capacity as a County Defendant herein by operation of law; and

WHEREAS, the County denies all wrongdoing alleged in this action and denies any liability whatsoever to Plaintiffs, and whereas the County asserts that it has meritorious defenses which it has asserted in this action, and asserts that it has entered into this Settlement Agreement ("Agreement") solely for the purpose of settling and compromising the claims of the Plaintiffs, in order to avoid the expense and diversion of its personnel caused by protracted litigation, and to terminate the claims asserted against the County; and

WHEREAS, the continued reform of the child welfare system and the best interests of the class will be substantially advanced by the settlement of the *Katie A.* litigation based on the novel and innovative resolution reflected in this Agreement, rather than by a trial on the merits;

NOW THEREFORE, in consideration of the covenants and undertakings set forth herein and intending to be legally bound thereby, it is stipulated and agreed by the Plaintiffs and the County, represented by their undersigned counsel, that all of Plaintiffs' claims for relief against the County which were asserted in the Complaint filed on July 18, 2002, or First Amended Complaint filed on December 23, 2003, including any claims against employees and officers of the County of Los Angeles, shall be resolved on the following terms as set forth in this Agreement and the accompanying Stipulated Order:

A. Jurisdiction and Authority of the Court.

1. The United States District Court has jurisdiction over the claims against all Defendants pursuant to 28 U.S.C. §§ 1331, 1343 and 1367. Venue is proper in the Central District of California pursuant to 28 U.S.C. § 1391(b).

2. After notice of and an opportunity to comment on the Agreement has been provided to the Plaintiff class and others thereby affected, the Court shall determine whether to approve this Agreement and the accompanying Stipulated Order as being a fair, reasonable and adequate settlement of the *Katie A.* Litigation. Except as otherwise noted, the terms of this Agreement and the accompanying Stipulated Order shall not take effect until the Court issues its order approving this Agreement.

3. This case shall be certified as a class action for purposes of all causes of action in Plaintiffs' Complaint against the County Defendants on behalf of a class of children and young adults who:

- (a) are in the custody of DCFS, or have been referred to or are subject to referral to DCFS;

- (b) have a behavioral, emotional, or psychiatric impairment; and
- (c) need individualized mental health services, including but not limited to professionally acceptable assessments, behavioral support and case management services, family support, crisis support, therapeutic foster care, and other medically necessary services in the home or in a home-like setting, to treat or ameliorate their disabilities or impairments.

Members of the class include children and young adults living with their parents or relatives or in any of a variety of placements, such as MacLaren Children Center, group homes or foster homes.

- 4. This Agreement settles all claims against the County Defendants in this lawsuit.
- 5. This is a binding and enforceable Agreement. It is not a Consent Decree.

B. Objectives.

- 6. The objectives of this Agreement are that the members of the class shall:
  - (a) promptly receive necessary, individualized mental health services in their own home, a family setting or the most homelike setting appropriate to their needs;
  - (b) receive the care and services needed to prevent removal from their families or dependency or, when removal cannot be avoided, to facilitate reunification, and to meet their needs for safety, permanence, and stability;
  - (c) be afforded stability in their placements, whenever possible, since multiple placements are harmful to children and are disruptive of family contact, mental health treatment and the provision of other services; and

- (d) receive care and services consistent with good child welfare and mental health practice and the requirements of federal and state law.

7. To fulfill the above objectives, the County Defendants agree, inter alia, to:

- (a) immediately address the service and permanence needs of the five named Plaintiffs;
- (b) improve the consistency of DCFS' decision making through the implementation of Structured Decision Making;
- (c) expand Wraparound Services;
- (d) implement Team Decision Making at significant decision points for a child and his/her family;
- (e) expand the use of Family Group Decision Making;
- (f) ensure that the needs of members of the class for mental health services are identified and that such services are provided to them;
- (g) enhance permanency planning, increase placement stability and provide more individualized, community-based emergency and other foster care services to foster children, thereby reducing dependence on MacLaren Children's Center (MCC). The County further agrees to surrender its license for MCC and to not operate MCC for the residential care of children and youth under the age of 18 (e.g., as a transitional shelter care facility as defined by Health & Saf. Code, § 1502.3). The net County cost which is currently appropriated to support MCC shall continue to be appropriated to the DCFS budget in order to implement all of the plans listed in this Paragraph 7.

C. State Support.

8. The County has tried to secure from the State Defendants the support and funding necessary to implement the plans set forth in Paragraph 7, above and will continue to do so. Plaintiffs, through their counsel of record agree to assist the County in obtaining the programming and financial support needed from the State Defendants and/or other state agencies to fulfill these objectives.

9. The County will implement the plans described in Paragraph 7 above to the fullest extent possible under current federal and state law and regulations and in light of juvenile dependency court orders. The County will give notice to Plaintiffs' counsel of any changes in laws or regulations that it believes affects its ability to implement the plans adopted pursuant to its obligations under Paragraph 7. If there is a reduction in the federal and state funds that the County receives for members of the class (e.g., child welfare funds or Medicaid funds), and this reduction in funds materially impairs the County's ability to implement any plan or plans adopted pursuant to Paragraph 7 of this Agreement, then the County may develop an alternative plan or plans to take account of this reduction in federal and/or state funds. The County shall not implement any alternative plan until the Advisory Panel has been given 30 days to provide comment and analysis and Plaintiffs' counsel has been given an additional 15 days thereafter to provide their comment and analysis. Any disputes over these alternative plans shall be resolved pursuant to the procedures described in Paragraph 24 below. In the event of any reduction in State funds, the County and Plaintiffs agree to seek from the State by all necessary means, including processes of this case, resources commensurate with the State's legal obligations towards members of the class. Any alternative plan implemented by the County pursuant to this Paragraph shall not be considered as mitigating the County's other obligations under

this Agreement (e.g., the objectives of Paragraph 6 or the conditions for dismissing the *Katie A.* Lawsuit under Paragraph 19).

D. Advisory Panel.

10. An Advisory Panel of experts in the child welfare field ("the Advisory Panel") has been selected and approved by the parties to monitor the County Defendants and undertake the various tasks specified in this Agreement. The Advisory Panel consists of the following members: Paul Vincent, Joe Loftus, Marty Beyer, Richard Clarke, William Jones and \_\_\_\_\_. In the event that any of these individuals cannot continue to serve on this Advisory Panel for the full two year period or any extension thereof, then Plaintiffs and the County Defendants shall mutually agree upon whether to replace that member of the Advisory Panel, and, if so, who should be his/her replacement. If the Plaintiffs or the County Defendants cannot agree upon either or both of these issues, then the Court shall decide whether to replace that member of the Advisory Panel and, if so, shall appoint a qualified person to serve as a replacement.

11. In the event that the Advisory Panel discovers state policies or funding mechanisms that impede the County's accomplishment of the goals of the Agreement, the Advisory Panel will identify those barriers and make recommendations for change.

12. The Advisory Panel shall have access to such information and documents in the County's possession as are reasonably necessary in the Advisory Panel's judgment to perform its responsibilities.

13. The Advisory Panel shall develop a process to conduct its affairs and to decide matters (e.g. whether to appoint a chairperson, whether to confer in person or by telephone, how often to confer as a group, whether to decide matters by consensus, majority rule or other means). Advisory

Panel members may communicate freely with each other, the parties or their counsel between meetings or conferences of the entire Advisory Panel. In consultation with the County and attorneys for the parties, the Advisory Panel shall develop procedures setting forth the nature and method of the Advisory Panel's communications with designated County representatives. Advisory Panel members shall act in a manner so as to minimize disruption to the routine operation of the County foster care system.

14. The County shall pay the reasonable costs of the services of members of the Advisory Panel according to the terms set forth in Exhibit A and incorporated herein by reference. The County shall assist with making available to the Advisory Panel the staff and secretarial personnel as needed to fulfill their responsibilities.

15. The Advisory Panel shall:

- (a) advise and assist the County in the development and implementation of the plans adopted pursuant to Paragraph 7;
- (b) determine whether the County plans are reasonably calculated to ensure that the County meets the objectives set forth in Paragraph 6;
- (c) determine whether the County has carried out the plans;
- (d) monitor the County's implementation of these plans;
- (e) determine whether the County has met the objectives set forth in Paragraph 6, and implemented the plans set forth in Paragraph 7.

16. The Advisory Panel shall make regular written reports to the parties of its findings and recommendations. In 2003-2004, these reports will be prepared quarterly. Following that, the

reports will be prepared at the discretion of the Advisory Panel provided that the Advisory Panel provides reports at least twice a year.

17. Thirty days prior to finalizing reports, the Advisory Panel shall provide a draft of the report to the respective parties to this Agreement. If requested by either the County Defendants or Plaintiffs, the Advisory Panel may, in its discretion, convene a meeting with the parties to this Agreement, as well as the appropriate DCFS and/or County officials, to give the parties an opportunity to discuss the Advisory Panel's tentative findings and conclusions. Following such meeting, the Advisory Panel may, at its discretion, revise its report.

The Advisory Panel (or the Plaintiffs and County Defendants jointly) shall file the final reports with the Court and provide copies to each party to the lawsuit. Any party to this Agreement may prepare and file with the Court a response to the Advisory Panel's report. A copy of any responsive reports filed by the parties to this Agreement must be served upon counsel of record for all other parties to this lawsuit on the date of the filing of the responsive report with the Court.

18. The parties acknowledge that a purpose of this Agreement is to avoid further litigation and disputes between the parties and to further improvements in child welfare in Los Angeles County. Nothing in this Agreement creates any rights for either party to utilize the Advisory Panel as, in effect, arbitrators or administrative law judges with respect to any disputes they may have with each other.

E. Duration of this Agreement.

19. The Court shall retain jurisdiction over the claims against the County Defendants in the instant lawsuit until such time as the Court finds that the County Defendants have fulfilled the objectives in Paragraph 6 and have met their obligations under Paragraph 7, and are likely to continue to do so for the following twelve months. For the purposes of this Agreement, the phrase "and are

likely to do so for the following twelve months" means that the County Defendants have systems in place that will continue to fulfill the objectives set forth in Paragraph 6 and meet the obligations set forth in Paragraph 7 for the upcoming twelve months.

Two years from the date the District Court approves this Agreement and enters the accompanying Stipulated Order, the Advisory Panel shall prepare a written report determining whether the County Defendants have fulfilled the objectives in Paragraph 6 and have met their obligations under Paragraph 7, and are likely to continue to do so for the following twelve months. The Advisory Panel's report shall also address whether there is a need for the Advisory Panel to continue to meet and, if so, set forth reasons therefor. The Court shall dismiss the complaint against the County Defendants and terminate its jurisdiction, and the Advisory Panel shall cease its operation if either:

- (a) the written report by the Advisory Panel concludes that the County Defendants have met the above-mentioned conditions and are likely to continue to do so for the following twelve months and the Court agrees with these conclusions; or
- (b) the Advisory Panel concludes that the County Defendants failed to meet these conditions, but the Court disagrees with the Advisory Panel and finds that the County Defendants have met the above-mentioned conditions and are likely to continue to do so for the following twelve months.

On the other hand, if the Advisory Panel concludes that the County Defendants have not complied with the above mentioned conditions and/or are not likely to continue to do so for the following twelve months and the Court agrees with these conclusions, or if the Court does not agree with the Advisory Panel's conclusions of satisfactory compliance with the above-mentioned

conditions and/or the County Defendants' likely continued compliance with these conditions for the following twelve months, then the County Defendants shall confer with the Advisory Panel to develop a plan to address all areas of non-compliance and to set deadlines for obtaining such compliance ("Plan").

Once the Plan has been developed, has been reviewed by the Advisory Panel, and has been approved by the Court, then:

- (a) the parties shall meet and confer on whether the Advisory Panel should continue to operate and any disagreement between the parties about the continued operation of the Advisory Panel shall be resolved by the Court; and
- (b) the Plaintiffs may apply to the Court at that time for any other remedies to enforce the terms of this Agreement.

After implementing the Plan, the County Defendants may seek dismissal of the instant lawsuit by the Court on the basis that they have fulfilled the objectives in Paragraph 6 and met the obligations under Paragraph 7 and are likely to continue to do so for the following twelve months.

Nothing in this Agreement prevents the County Defendants or the Plaintiffs from disagreeing with the conclusions in any written report by the Advisory Panel as to whether:

- (a) the County Defendants have fulfilled the objectives in Paragraph 6, have met their obligations under Paragraph 7, and are likely to continue to do so for the following twelve months; and
- (b) any Plan advanced by the County addresses all areas of noncompliance.

F. Covenants Not to Sue.

20. Until such time as the instant lawsuit has been dismissed against the County Defendants, Plaintiffs agree that they will not bring new lawsuits or join in existing lawsuits for systemic declaratory or injunctive relief against the County Defendants, their officers and employees in this Court or any other Court based on claims that have been asserted in the instant lawsuit. Plaintiffs are, however, not precluded from any efforts to enforce the terms of this Agreement pursuant to other provisions of this Agreement. This Agreement is also not intended to preclude any damage claims by Plaintiffs. Nor does this Agreement preclude an individual Plaintiff from bringing an action at any time for equitable relief tailored solely to the specific circumstances of that individual Plaintiff.

For purposes of this Agreement, the “claims that have been asserted in the instant lawsuit” are claims pertaining to the denial of medically necessary, mental health, behavioral support, and case management services based upon the Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT) requirements of the Medicaid Act, 42 U.S.C. § 1396 et seq., and its implementing regulations, 42 C.F.R. § 430 et seq., the Supremacy Clause of the U.S. Constitution, Art. VI, Cl. 2, Substantive Due Process under the 14th Amendment to the U.S. Constitution and Article I, Section 7(a) of the California Constitution, the Americans with Disabilities Act, 42 U.S.C. § 12132 (and its implementing regulations, 28 C.F. R. § 35.130), the Rehabilitation Act, 29 U.S. C. § 701 et seq., and the parallel California statutes and regulations (Gov. Code, § 11135 et seq.; 22 C.C.R. § 98000 et seq.), that the County Defendants:

- (a) have failed to promptly provide Plaintiff class members with individualized mental health services in their own home, a family setting or the most homelike setting appropriate to their needs;

- (b) have failed to appropriately assess the mental health needs of Plaintiff class members;
- (c) have failed to provide the care and services needed to prevent removal of Plaintiff class members from their families or, when removal cannot be avoided, to facilitate reunification and meet their needs for safety, permanence and stability;
- (d) have failed to provide Plaintiff class members with the care and services consistent with good child welfare and mental health practice and the requirements of federal and state law;
- (e) have failed to provide Plaintiff class members with Wraparound, therapeutic foster care services and/or case management services as a Medicaid benefit;
- (f) have over-relied on restrictive, congregate, institutional placements, including locked psychiatric hospitals and “emergency shelters” such as MacLaren Children’s Center;
- (g) have placed Plaintiff class members in multiple foster care placements which are harmful to children and are disruptive of family contact, mental health treatment and the provision of other services; and
- (h) have over-relied on the removal of Plaintiff class members from their families and placed them into foster care as opposed to providing necessary mental health services in the home, including individually tailored family preservation services where appropriate.

G. Nullification of the Agreement.

21. If, for any reason, the Court does not approve this Agreement as a fair, reasonable, and adequate settlement of the *Katie A.* Litigation as between the Plaintiffs and the County, or if an order approving this Agreement is not upheld on appeal, if any, this Agreement shall be null and void.

H. No Admission of Liability

22. The County expressly denies each and all of the claims and contentions alleged against it by the Plaintiffs in this action. This Agreement, anything contained herein, and any negotiations or proceedings hereunder shall not be construed as or deemed to be an admission, presumption, evidence of, or concession by the County of the truth of any fact alleged or the validity of any claim which has or could have been asserted in this action, or of the deficiency of any defense which has or could have been asserted in this action or of any wrongdoing or liability whatsoever.

23. This Agreement, the fact of its existence, and any term hereof shall not be construed as an admission by the County or used as evidence against the County in any civil, criminal, or administrative action or proceeding except as described below. Any reports, recommendations or findings by the Advisory Panel also shall not be construed as an admission by the County or used as evidence against the County in any civil, criminal, or administrative action or proceeding except as described below.

This Agreement, the fact of its existence, and any term hereof shall be admissible in evidence in any proceedings in the *Katie A.* Litigation. Any reports, recommendations or findings by the Advisory Panel also shall be admissible in any proceedings in the *Katie A.* Litigation and shall be considered prima facie evidence of the conclusions contained therein.

I. Dispute Resolution Process

24. Before filing any motion to enforce the terms of this Agreement, counsel for the moving party shall contact counsel for the opposing party to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution. Any such motion shall not be filed until twenty (20) days after the parties have conferred to discuss the motion unless either party is threatened with irreparable harm, in which case the motion can be filed in a shorter period of time. In connection with any motion to enforce, the parties may present evidence in support of and/or in rebuttal to any reports, recommendations or findings by the Advisory Panel.

J. Attorneys' Fees.

25. The County Defendants shall pay \$525,000 to Plaintiffs' counsel for:

- (a) the County Defendants' share of the attorneys' fees, costs, and expenses incurred by Plaintiffs' counsel for all work up until the signing of this Agreement and its approval by the District Court; and
- (b) subsequent work by Plaintiffs' counsel in monitoring and securing implementation by the County Defendants of the terms of this Agreement.

Within thirty days of the Court's approval of this Agreement, a warrant in the amount of \$525,000 made payable to the American Civil Liberties Union Foundation of Southern California on behalf of all Plaintiffs' counsel shall be issued and delivered to Mark Rosenbaum at the address set forth in Paragraph 34.

After this Agreement has been approved by the Court, Plaintiffs' counsel shall additionally be entitled to recover their reasonable attorneys' fees, costs and expenses under federal and state law as ordered by the Court for all work incurred when Plaintiffs are the prevailing parties on:

- (a) any motion which Plaintiffs brought;
- (b) any motion which the County Defendants brought; and
- (c) any appeals of the instant case by either Plaintiffs or County Defendants .

Before Plaintiffs' counsel files any such motion for additional attorneys' fees, costs and expenses, Plaintiffs shall follow the procedures in Paragraph 24 above. The County Defendants reserve the right to oppose any request or motion for additional attorneys' fees.

K. Other Provisions.

26. The parties to this Agreement and their respective counsel generally agree to support the planning and decision-making processes of the intensive service programs that the County implements under the terms of this Agreement (e.g., Wraparound services), to the extent consistent with their obligations to the named Plaintiffs and other members of the class.

27. Nothing contained herein shall be deemed to constitute a custom, policy or practice of the County of Los Angeles.

28. This Agreement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Agreement regarding the subject matter of this proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

29. Both parties to this Agreement have participated in its drafting and, consequently, any ambiguity shall not be construed for or against either party.

30. Each of the undersigned attorneys represents that he or she has been duly authorized to enter into this Agreement.

31. This Agreement may only be amended, modified, or supplemented by:

- (a) an agreement in writing signed by both the County and the Plaintiffs' counsel and approved by the Court; or
- (b) other order of the Court.

32. The parties recognize and acknowledge that this Agreement must be approved by the Court pursuant to paragraph 1 above. The parties agree to cooperate in good faith in the creation of all papers submitted to the Court to secure such approval.

33. This Agreement shall inure to the benefit of and be binding upon the legal representatives and any successor of Plaintiffs and the County.

34. Notice, when due to Plaintiffs or the County, shall be given by delivering it, in person or by United States certified first-class mail, to the parties' counsel in the litigation as follows:

To the Plaintiffs: Mark D. Rosenbaum, Esq.  
American Civil Liberties Union  
of Southern California  
1616 Beverly Boulevard  
Los Angeles, California 90026-5752

To the County: Catherine J. Pratt, Esq.  
Office of the County Counsel  
201 Centre Plaza Drive, Suite 1  
Monterey Park, California 91754-2143

35. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission which shall be deemed the same as an original signature.

Mark D. Rosenbaum  
Ben Wizner  
American Civil Liberties Union  
of Southern California  
Attorneys for Plaintiffs

by \_\_\_\_\_  
Mark D. Rosenbaum

Ira Burnim  
Bazelon Center for Mental Health Law  
Attorneys for Plaintiffs

by \_\_\_\_\_  
Ira Burnim

Lin Min Kong  
Laura Diamond  
Katrina McIntosh  
Center for Law in the Public Interest  
Attorneys for Plaintiffs

by \_\_\_\_\_  
Lin Min Kong

Ronald C. Peterson  
Carlyle W. Hall  
Heller Ehrman White & McAuliffe, LLP  
Attorneys for Plaintiffs

by \_\_\_\_\_  
Ronald C. Peterson

Melinda Bird  
Marilyn Holle  
Protection & Advocacy, Inc.  
Attorneys for Plaintiffs

by \_\_\_\_\_  
Marilyn Holle

Robert D. Newman  
Kimberly Lewis  
Western Center on Law & Poverty  
Attorneys for Plaintiffs

by \_\_\_\_\_  
Robert D. Newman

Carol Shauffer  
Alice Bussiere  
Youth Law Center  
Attorneys for Plaintiffs

by \_\_\_\_\_  
Carol Shauffer

Lloyd W. Pellman, County Counsel  
Ada Gardiner, Assistant County Counsel  
Catherine J. Pratt, Senior Deputy County  
Counsel  
Office of the County Counsel  
County Defendants

by \_\_\_\_\_  
Catherine J. Pratt

APPROVED AS TO FORM AND CONTENT

Miriam Krinsky, Executive Director  
Children's Law Center of Los Angeles

by \_\_\_\_\_  
Miriam Krinsky