Interim Agreement between the Litigants
in the Matter of *Napper, et al, v. County of Sacramento*

Leslie Napper, Janet Fischer, Jacquie Eichhorn-Smith, Ted Yanello, and Lynda Mangio (hereafter "the Plaintiffs") and the County of Sacramento (hereafter "the County") agree to the terms and conditions described below as part of the ongoing process to resolve the litigation regarding the proposed redesign of the County's adult mental health outpatient system. After mediation proceedings in which the parties voluntarily participated, the Plaintiffs and the County enter into this Agreement to further negotiations and recognize the parties' shared interests as they move towards a resolution.

The shared interests of the parties include, but are not limited, to the following:

- A commitment to serve the needs of mental health clients in Sacramento County;
- A commitment to follow the recovery model of outpatient mental health services;
- A recognition that the parties will benefit from outside expertise;
- A desire for a resolution to this matter to end uncertainty in the community about possible changes to the system;
- A recognition that it is desirable to operate and maintain a County mental health system that maximizes available revenue sources.

The Plaintiffs and the County believe that a resolution of the *Napper* lawsuit is possible because the parties share common interests in ensuring that the needs of the mental health consumers are met effectively and comprehensively. In due consideration of the aforementioned shared interests, the parties agree to the following terms and conditions:

1. (a) The County will retain an independent expert with expertise in adult outpatient mental health service delivery systems. The tasks of the expert will be:

- to review the current adult outpatient mental health service delivery system in Sacramento County and to identify the strengths and weaknesses of that system as they apply to the delivery of services to the adult Medi-Cal outpatient mental health consumer;

- to review and assess the effectiveness and capacity of the adult mental health outpatient system (consisting of outpatient and crisis residential services) as it exists at the time of execution of this Agreement. This system includes the County operated APSS and AfterCare clinics, the contracted services delivered by the four Regional Support Teams, HRC-TCORE, the Wellness and Recovery Centers and the crisis residential care provided by Turning Point; and

- to assess the feasibility of alternative adult outpatient mental health service delivery modalities, to identify the fiscal impacts of any alternatives that may be identified, and to assess any transition issues, including but not limited to the transaction costs associated with changing or eliminating providers, that would need to be addressed should the existing system be modified based on the expert's review and assessment.

(b) The expert will issue a Report on the adult mental health outpatient system which, among other things will 1) describe and assess the services that are currently provided by the system; 2) identify and assess the strengths and weakness of the current system providers, including both contractor and County providers, as they relate to client care; and 3) state the expert's opinion on how the system could be changed or altered to best ensure quality care to the adult Medi-Cal outpatient mental health consumers, including but not limited to different configurations of service providers, treatment modalities and similar issues.

(c) The County will be responsible, in its sole discretion, for the selection of such expert. It is the intent of the County, and the understanding of the Plaintiffs, that an expert will be selected who is generally respected in the mental health field and who has the necessary expertise in mental health service delivery systems. Prior to execution of any contract with an expert, the County shall notify the Plaintiffs of the name and qualifications of the expert. The Plaintiffs may provide comments to the County regarding their opinion of the expert and the expert's qualifications. The County shall consider any comments received from the Plaintiffs regarding such expert's qualifications. The Plaintiffs shall make any comments to the County regarding the expert within seven (7) calendar days of notice of the proposed expert. Notwithstanding the County's commitment to consider the Plaintiffs' comments on the specified expert, the County shall retain sole discretion as to whether it will ultimately contract with such expert, and the Plaintiffs shall in turn reserve their right to disagree with the qualifications and recommendations of the expert who has been unilaterally selected by the County.

2. The County shall provide any expert retained with, at a minimum, the same documents as were provided to the mediator in this matter. The Report shall also broadly identify by category the documents that were reviewed and relied upon by the expert in reaching any conclusions. Those documents shall be made available to Plaintiffs' counsel, upon request, upon completion of the Report.

3. The expert shall use his/her best efforts to complete the Report by close of business on January 21, 2011. If the Report is finalized prior to January 21, 2011 the County shall make the Report available to the Plaintiffs shortly after it is finalized. In the event that the expert appears to be unable to complete the Report by January 21, 2011, the County shall promptly notify Plaintiffs' counsel of this anticipated delay and the parties shall meet and confer on whether to extend the deadlines in this Agreement.

4. The Report created by the expert shall become a Public Record upon its completion. The Report will be shared upon its completion with the Plaintiffs, the Sacramento County Mental Health Board, the Mental Health Services Act Steering Committee, and other adult outpatient mental health system stakeholders. The Report will be shared with such stakeholders in order to encourage and solicit wide-reaching input and dialogue on the findings and recommendations of the Report.

5. The parties shall resume mediation/settlement discussions in accordance with the terms of the Status Conference Report that was filed with the District Court on September 24, 2010, within a reasonable time after the completion of the Report. Such discussions may occur prior to, or during the course of, the dissemination and discussion of the Report with the system stakeholders. The parties will discuss the findings and recommendations of the Report. The Report, along with the parties' shared interests, are intended to provide a framework for ongoing mediated discussions about the existing adult outpatient mental health delivery system and any proposed changes to that system.

6. Litigation activity in the case will be suspended in accordance with the terms of the Status Conference Report that was filed with the District Court on September 24, 2010. The District Court has approved the proposed suspension of litigation through the middle of February 2011.

7. The parties agree to defer discovery in accordance with the terms of the Status Conference Report that was filed with the District Court on September 24, 2010, and approved by the District Court.

8. The County shall continue to comply with the Preliminary Injunction issued by District Judge Mendez. Pending resolution of this litigation or dissolution of the Preliminary Injunction, the County will maintain the status quo at the time of execution of this Agreement, including contracts with existing service providers. The County will also continue to fund the existing service providers at least at Fiscal Year 2009-2010 levels through Fiscal Year 2010-11. The County, however, retains the right to terminate any current contracts with service providers in the event there is a breach of contract by such service provider. In the event that the County terminates any such current contracts with service providers, the Plaintiffs may terminate this Agreement upon giving notice of their intention to do so.

9. The parties agree that this Agreement may be publicly disseminated and its terms and purpose generally discussed at meetings with stakeholders, the community, advisory boards or similar settings. The parties agree that at such meetings they shall acknowledge and support that the terms and conditions expressed herein are mutually beneficial and supported by them. Nothing herein, however, is intended to otherwise modify or revoke the mediation and/or settlement privileges that were invoked by the parties for comments, information, positions, and exchanges otherwise made during the mediated/settlement meetings between the parties.

10. Nothing in this Agreement is intended as, or shall be used by either party as an admission of liability in the underlying litigation. This Agreement is solely and exclusively intended to provide a framework for discussion by the parties and the stakeholders of the diverse issues involved in a possible redesign or modification of the existing adult outpatient mental health services delivery system. Each party retains the right to agree with or disagree with any of the findings, assessments, opinions, or recommendations that may be identified by the expert in the Report. Nothing in this Agreement binds or commits the parties to agree with or implement the findings, assessments, opinions or recommendations of the expert.

11. The parties agree that they have entered this Agreement freely and voluntarily and that the person signing for each party has the authority to sign the Agreement.

12. This Agreement may be executed by facsimile transmittal and in counterparts and shall be valid and binding as if all Parties had signed the same copy.

13. Notice shall be send by e-mail. In the event a notice shall be needed an e-mail will be sent to:

For the County
Rick Heyer
e-mail address
heyer@saccounty.net

For the Plaintiffs
Stuart Seaborn
e-mail address
Stuart.Seaborn@disabilityrightsca.org

Robert Newman
e-mail address
rnewman@wclp.org

14. This Agreement, and the Joint Status Report, attached as Exhibit A to this Agreement, are the only promises and written agreements made to and between the parties on the contents of this document.

15. This Agreement shall be effective immediately upon execution by all parties. The parties will provide the Court with a copy of this Agreement.

Dated: _____

_____
Robert Newman
Western Center on Law & Poverty
Attorneys for Plaintiffs

Dated: _____

_____
Maureen Alger
Cooley LLP
Attorneys for Plaintiffs

Dated: _____

_____
Stuart Seaborn
Disability Rights California
Attorneys for Plaintiffs

Dated: Oct. 29, 2010

_____
Rick Heyer
Deputy County Counsel
Attorneys for County of Sacramento

EXHIBIT A

ROBERT A. RYAN, JR., County Counsel
MICHELE BACH, Supervising Deputy
[State Bar No. 88948]
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Attorneys for County of Sacramento

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF CALIFORNIA

LESLIE NAPPER, et al., **Plaintiffs,** **vs.** **COUNTY OF SACRAMENTO, et al.,** **Defendants.**	**Case No. 2:10-CV-01119-JAM-EFB** **SUPPLEMENTAL JOINT STATUS REPORT AND RULE 26(f) DISCOVERY PLAN** **Judge: Hon. John A. Mendez**

In their previous Joint Status Report and Rule 26(f) Discovery Plan, submitted on August 5, 2010, counsel for the Parties proposed that the Rule 26 disclosures and further decisions concerning discovery and future motions should be deferred pending settlement discussions between the parties. Since that time, the Parties have begun to discuss the possibility of reaching a settlement of the issues giving rise to this action. On August 30 and 31, 2010, counsel for the parties, with the aid of an agreed upon facilitator, met to discuss possible resolution of the case. The parties did not reach agreement over the

course of those meetings. However, the parties did agree to continue with facilitated discussions.

The parties subsequently meet on September 20 and 21, 2010. Despite the fact that the discussions were fruitful, the parties still did not come to a resolution of the matter. The parties did reach agreement in principle that settlement discussions should continue. In the upcoming months, the County will retain an expert to evaluate the current outpatient mental health system and make recommendations on the means to best serve the consumers of the services at issue. The expert will then prepare a report of the findings he or she has made. This report will be made available to all parties and will be a public record. The parties seek the consent of the Court to suspend litigation for approximately four-and-one half months (through the middle of February) so as to allow for preparation of this expert report and thereafter continued exploration of a settlement of this matter. Counsel for the Parties therefore respectfully submits this Supplemental Joint Status Report and Rule 26(f) Discovery Plan.

A. NATURE OF THE CASE AND PROCEEDINGS TO DATE

This is a civil rights class action lawsuit seeking declaratory and injunctive relief on behalf of thousands of low-income Medi-Cal recipients in Sacramento County. On July 27, 2010, the Court granted Plaintiffs' motion for preliminary injunction and, *inter alia*, enjoined the Defendants from implementing or enforcing the "Hybrid Plan" for the delivery of outpatient mental health services to current and future adult recipients of Medi-Cal funded outpatient mental health services in the County of Sacramento. The Court also denied Plaintiffs' motion for class certification without prejudice.

B. PROGRESS IN THE SERVICE OF PROCESS

All named Defendants have been properly served with the Summons and Complaint and have filed their Answer thereto.

C. POSSIBLE JOINDER OF ADDITIONAL PARTIES

Plaintiffs do not presently anticipate the joinder of additional parties. Defendants reserve the right to consider joinder of the State of California or one or more of its State agencies.

D. ANY EXPECTED OR DESIRED AMENDMENT OF PLEADINGS

Plaintiffs do not presently anticipate any amendment of their pleadings inasmuch as the preliminary injunction remains in effect and Defendants have not made any material changes in the existing system for providing outpatient mental health services to adult Medi-Cal recipients. Defendants may amend the pleadings to the extent of alleging claims against any parties they may decide to join, as set forth in (C) above.

E. JURISDICTION AND VENUE

Plaintiffs contend that this Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201, 2202 and 1343, and by Rules 57 and 65 of the Federal Rules of Civil Procedure. Plaintiffs' claims for violations of California state law concern the same actions and omissions that form the basis of Plaintiffs' claims under federal law such that they are all part of the same case or controversy. This Court therefore has supplemental jurisdiction over these state law claims pursuant to 28 U.S.C. § 1367.

Defendants contend that the matter of jurisdiction is at issue in that there is no actual "case in controversy."

The parties agree that, should this Court find that there is jurisdiction, venue is proper in the Eastern District of California pursuant to 28 U.S.C. § 1391(b), because the Defendants operate and perform their official duties therein and thus reside therein for purposes of venue, and because a substantial part of the events and omissions giving rise to the claims herein occurred in Sacramento County, which is in the Eastern District of California.

F. ANTICIPATED MOTIONS AND THE SCHEDULING OF MOTIONS

The Parties agree that the consideration and identification of any possible further motions should be deferred for approximately four-and-one-half months to allow the Parties to jointly explore settlement. Plaintiffs reserve the right to renew their motion for class certification at a future time.

G. ANTICIPATED DISCOVERY AND THE SCHEDULING OF DISCOVERY

(1) Rule 26(a) Disclosures

The Parties jointly propose that their initial Rule 26 disclosures should be deferred for approximately four-and-one-half months to allow the Parties to jointly explore settlement.

(2) Subjects, Timing and Phases of Discovery

On June 30, 2010, Magistrate Judge Brennan granted Plaintiffs' Application for an Ex Parte Order permitting Plaintiffs to take the depositions of two Defendants, Ann Edwards-Buckley and Mary Ann Bennett. Those depositions took place on July 8, 2010 and July 12, 2010.

On July 1, 2010, Defendants provided Plaintiffs certain documents in response to Plaintiffs' informal request.

The Parties jointly propose that further decisions concerning discovery should be deferred for approximately four-and-one-half months to allow the Parties to jointly explore settlement. The parties will hold a further Rule 26(f) conference within five months after the submission of this Supplemental Joint Status Report, at which time discovery may be addressed.

(3) Discovery Limitations and Changes Thereto

The Parties jointly propose that further decisions concerning discovery should be deferred until the further Rule 26(f) conference referenced above.

(4) Expert Witness Disclosures

The Parties jointly propose that decisions concerning expert witness discovery should be deferred until the further Rule 26(f) conference referenced above.

H. FUTURE PROCEEDINGS

The Parties jointly propose that further decisions concerning discovery should be deferred until the further Rule 26(f) conference referenced above.

I. APPROPRIATENESS OF SPECIAL PROCEDURES

The Parties do not currently anticipate any need for special procedures.

J. ESTIMATE OF TRIAL TIME

Plaintiffs currently believe that the presentation of their case in chief will require approximately 10 days. Defendants believe that the presentation of their defense will require 10 days.

K. MODIFICATION OF STANDARD PRETRIAL PROCEDURES

The Parties jointly propose that decisions concerning modification of standard pretrial procedures should be deferred until after further Rule 26(f) conference referenced above.

L. RELATED CASES

As far as the Parties are aware, this action is not related to any other action in any federal court.

M. SETTLEMENT CONFERENCE

The Parties have retained a third-party facilitator to assist them in settlement discussions. These discussions have not produced an agreed upon settlement. However, the parties do believe that the discussions have been helpful. The parties intend to continue these facilitated discussions with the aid of an expert report which will contain recommendations on the means to best serve the consumers of County Outpatient Mental Health Services. The Parties do not anticipate a need for a Court-sponsored settlement conference at this time.

N. OTHER MATTERS

The Parties are not presently aware of any other matters that should be brought to the attention of the Court at this time.

DATED: September 23, 2010

Respectfully submitted,

By: Robert D. Newman
ROBERT D. NEWMAN

Attorneys for Plaintiffs

DATED: September , 2010

ROBERT A. RYAN, JR., County Counsel
Sacramento County, California

By: _____
RICK HEYER
Deputy County Counsel

Attorneys for Defendants

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N. OTHER MATTERS

The Parties are not presently aware of any other matters that should be brought to the attention of the Court at this time.

DATED: September _ , 2010

Respectfully submitted,

By: _____
ROBERT D. NEWMAN

Attorneys for Plaintiffs

DATED: September 24, 2010

ROBERT A. RYAN, JR., County Counsel
Sacramento County, California

By: _____
RICK HEYER
Deputy County Counsel

Attorneys for Defendants

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