

1 EDMUND G. BROWN JR.  
 Attorney General of California  
 2 PAUL REYNAGA  
 Supervising Deputy Attorney General  
 3 MELINDA VAUGHN  
 Deputy Attorney General  
 4 State Bar No. 120446  
 1300 I Street, Suite 125  
 5 P.O. Box 944255  
 Sacramento, CA 94244-2550  
 6 Telephone: (916) 324-7873  
 Fax: (916) 324-5567  
 7 E-mail: Melinda.Vaughn@doj.ca.gov  
*Attorneys for Defendant*

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

<b>EMILY Q., et al.,</b>	Plaintiffs,
v.	
<b>DIANA BONTA, et al.,</b>	Defendant.

Case No.: CV 98-4181 AHM (AJWx)

**NOTICE OF LODGING OF  
 SPECIAL MASTER'S FIFTH  
 REPORT**

Courtroom: 14  
 Judge: The Honorable A. Howard  
 Matz

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF  
RECORD:**

**PLEASE TAKE NOTICE** that Defendant (on behalf of the Special Master) hereby lodges with the Court the attached Corrected Report: Fifth Report in Response to Court's Order Appointing Special Master Dated February 21, 2008.

Dated: November 24, 2009

Respectfully submitted,  
EDMUND G. BROWN JR.  
Attorney General of California  
PAUL REYNAGA  
Supervising Deputy Attorney General

/s/

MELINDA VAUGHN  
Deputy Attorney General  
*Attorneys for Defendant*

LA1998CV1047  
10513973.doc

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EMILY Q. et al.,	)	CASE NO. CV 98-4181 AHM (AJWx)
	)	<b>CORRECTED REPORT:</b>
Plaintiffs,	)	<b>FIFTH REPORT IN RESPONSE</b>
	)	<b>TO COURT'S ORDER APPOINTING</b>
v.	)	<b>SPECIAL MASTER, DATED</b>
	)	<b>FEBRUARY 21, 2008</b>
	)	
	)	
DIANA BONTA,	)	
	)	
Defendant.	)	Honorable A. Howard Matz
	)	Courtroom 14
	)	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**November 2009 – Emily Q Special Master's Report**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

**Table of Contents**

<b>Summary of Accomplishments – July to November 2009</b>	<b>4</b>
Settlement Team Activities	4
CDMH Implementation of Emily Q Nine Point Plan	5
Emerging TBS Utilization Data	5
<b>Special Master Observations</b>	<b>6</b>
California Context and Service Environment	6
Relationship between CDMH and CMHDA	7
The California County Conundrum	7
<b>January through June 2010 Budget Proposal</b>	<b>8</b>
<b>Special Master Recommendations to the Court</b>	<b>10</b>

1 This corrected report is being filed to address numerical typographical errors on pages 6  
2 and 7 of the original report.

3 As special master for the Emily Q matter, I am pleased to provide the Court with the  
4 following information that summarizes activities and accomplishments of the Emily Q  
5 Settlement Team and the California Department of Mental Health (CDMH) in  
6 implementing the Emily Q Nine Point Settlement Plan.

7  
8 **Summary of Accomplishments – July to November 2009**

9 Both the Emily Q Settlement Team and CDMH have helped promote implementation of  
10 the Emily Q Nine Point Plan. Their key accomplishments are summarized below.

11  
12 Settlement Team Activities

13 The Emily Q Settlement Team has continued to meet monthly to provide oversight,  
14 guidance, refinement, and support to CDMH during the Emily Q Nine Point Plan  
15 implementation phase.

16  
17 Specific key activities of the Settlement Team include:

- 18 • *Monthly daylong meetings in Sacramento* to review plan progress and provide  
19 support to CDMH staff in implementing the plan.
- 20 • *Team member attendance at several local county TBS accountability meetings* to  
21 promote and monitor county TBS rollout efforts.
- 22 • *Continued involvement with and support of CDMH in implementing the*  
23 *Coordination of Care (Point 5) effort.*
- 24 • *Reviewing and approving the work products of the TACT work group.* Settlement  
25 Team members have been deeply involved in overseeing completion of the TBS  
26 Documentation Manual version 2.0, which was released in October 2009, and  
27 have provided leadership and oversight to CDMH in developing an outline and  
28 early draft version of the TBS Coordination of Care and Best Practice Manual.
- 29 • *Alternative TBS services.* The Settlement Team helped CDMH and the special  
30 master complete guidelines that the special master will use to determine whether

1 or not non-TBS services delivered by the counties may provide an approach that  
2 is equivalent to TBS. Several counties have expressed interest in special master  
3 review of alternatives, and planning for review of San Diego County alternatives  
4 has begun.

5  
6 CDMH Implementation of the Emily Q Nine Point Plan

7 CDMH has submitted its *2009 Annual Assessment for Implementation of the Emily Q*  
8 *Nine Point Plan and County Mental Health Plan Therapeutic Behavioral Services*  
9 *Performance to the Court*. As special master, I worked alongside the department's  
10 senior staff as they prepared this annual report, and I concur with its findings. The  
11 Settlement Team reviewed several drafts of the 2009 Annual Assessment and has  
12 commented and offered suggestions through the final stages of completing it.

13  
14 The 2009 Annual Assessment speaks for itself and accurately describes the  
15 department's accomplishments. CDMH lead representative Sean Tracy, CDMH  
16 Director Dr. Stephen Mayberg, and their staff deserve a great deal of credit for  
17 implementing the Nine Point Plan and for sustaining progress toward the plan goals  
18 during a time of unprecedented fiscal and administrative difficulty. In my view, this  
19 continues to be a well-organized rollout effort and the department is making  
20 considerable effort to build successful TBS relationships with individual county MHPs  
21 and to increase the utilization of TBS statewide.

22  
23 Emerging TBS Utilization Data

24 In its 2009 Annual Assessment, CDMH makes note of very recent data that show  
25 modest increases in TBS utilization, which occurred subsequent to implementation of  
26 the Nine Point Plan in January. Because we are still within the first year of plan  
27 implementation, MHPs are only beginning to experience the benefits and incentives  
28 built into the new plan; consequently, measurable impacts are only beginning to  
29 emerge. Additionally, data delays associated with the ordinary process of transmitting  
30 service data from the MHPs to the state make it difficult to know what exactly is

1 occurring at the MHP level. As noted in the assessment, we expect to have captured  
2 sufficient data by March 2010 to support an empirical assessment of the level of  
3 progress being made. In this regard, I expect to include a more substantive  
4 assessment of progress in my report to the Court next Spring, 2010.

5

#### 6 **Special Master Observations**

7 In my role as special master to the Emily Q effort, I would like to report several key  
8 observations and findings regarding the Nine Point Plan rollout effort from July through  
9 November of 2009.

10

#### 11 California Context and Service Environment

12 As identified in previous reports, the California service delivery environment is  
13 experiencing significant, and in some cases unprecedented, difficulties that pose  
14 potential barriers to successful implementation of the Nine Point Plan.

- 15 • *Deteriorating state and local economies.* The severe economic downturn is  
16 having the dual effect of increasing overall demand for child and family services  
17 while significantly reducing revenues to provide these services. In spite of the  
18 economic situation, the Level II counties are committing time and resources to  
19 their efforts to increase TBS utilization among Emily Q class members.  
20 Additionally, as noted in the CDMH 2009 Annual Assessment, the state has  
21 taken steps to increase the amount of EPSDT funding available to the Emily Q  
22 class by approximately \$38 million for the current 2009/10 fiscal year.
- 23 • *Fiscal problems for public and private service agencies.* Agencies at all levels  
24 have eliminated staff and curtailed services to children and families; CDMH staff  
25 have been furloughed to reduce department costs. Staff reductions at CDMH  
26 have impacted the Nine Point Plan rollout effort, although Director Mayberg and  
27 Mr. Tracy have maintained sufficient staffing to continue the rollout without  
28 significant delays to the time line.
- 29 • *Reduction and loss of safety net programs.* As programs decline or fail in  
30 communities and counties throughout the state, and pressures on families



1 increase, the demand for TBS among Emily Q class members is expected to  
2 increase. In addition, peripheral programs that ameliorate the need for higher  
3 level foster placement are likely to be less available for the next few years,  
4 thereby increasing use of or need for foster group home placement and placing  
5 more pressure on local TBS efforts. The full impact of losing safety net programs  
6 is beginning to show, and it is likely that demand for TBS will increase and,  
7 correspondingly, utilization most likely also will increase.

#### 8 9 Relationship between CDMH and CMHDA.

10 In October, the California Mental Health Directors Association (CMHDA) committed to  
11 assigning one county children's mental health director and their corresponding county  
12 counsel to join the Settlement Team. It is my sincere hope that the association will  
13 follow through on their commitment, that their representatives will engage as partners in  
14 the Settlement Team and commit to promoting the Nine Point Plan, and that their  
15 renewed participation will improve and increase county MHP fulfillment of the plan to  
16 increase TBS utilization statewide.

#### 17 18 The California County Conundrum

19 County MHPs have had to face extraordinarily difficult cuts to service delivery due to the  
20 statewide financial downturn. It is anticipated that further cuts will be required for at  
21 least the next two fiscal years before revenue reductions end and state general funds  
22 bottom out; it is unknown when revenues might begin to rise and lost programs begin to  
23 be restored. It is within this service-slashing environment that MHPs have been  
24 instructed to increase TBS utilization per the Emily Q Nine Point Plan. Counties have  
25 asked how they can be expected to increase this single service when all other services  
26 are being reduced. As noted in the CDMH 2009 Annual Assessment, the state  
27 legislature has increased EPSDT funds available for TBS by up to \$38 million for the  
28 2009/10 fiscal year in response to the Nine Point Plan. While the resources have been  
29 made available, increased TBS will require a five percent match by the counties.  
30 Counties continue to need leadership and clarification and motivation to fulfill their

1 requirements under the plan. CDMH has done an admirable job of encouraging the  
2 MHPs. Unfortunately, the absence of CMHDA participation in the effort over the past  
3 ten months has held back some counties. It is hoped that the recent promise by  
4 CMHDA to re-engage with the Settlement Team will result in improved association  
5 leadership among the counties and, from this, increased TBS utilization among all  
6 MHPs.

7  
8 The Settlement Team has demonstrated remarkable cohesion throughout the effort,  
9 approaching the rollout tasks with optimism and commitment to each of the nine points  
10 and to the overall goal of increasing TBS utilization statewide. I am confident that  
11 CDMH, supported by the Settlement Team, can implement the plan and achieve the  
12 intended long-term results. While it is still too early to definitively measure the effects of  
13 the Nine Point Plan on TBS utilization and access, I am impressed with individual  
14 county MHP efforts to identify opportunities and to increase TBS access and utilization  
15 at the local level.

16  
17 **January through June 2010 Proposed Budget Amendment**

18 Budget Amendment: January 1–June 30, 2010 - \$59,000.00

19 The special master proposes the following budget amendment to the Special Master's  
20 Proposed Budget, including travel and incidental expenses, dated December 25, 2008  
21 and approved by the Court on February 9, 2009. This budget amendment will augment  
22 the special master 's existing budget to cover the remainder of fiscal year 2009-2010.  
23 This budget is developed after consultation with all parties.

24  
25 Special Master and Consultants: January 1–June 30, 2010 – \$56,000.00

26 The special master will conduct the following activities:

- 27
- 28 • Convene and oversee the Emily Q Settlement Team.
  - 29 • Visit and work with county departments of mental health/MHPs to implement the  
30 Nine Point Plan. This includes certification of a county MHP's 4% benchmark  
and/or TBS equivalent certification.

- 1 • Participate in meetings with CDMH, the Emily Q plaintiffs, and other
- 2 stakeholders.
- 3 • Provide technical assistance to CDMH.
- 4 • Monitor and advise SuperTACT, the combined Accountability Structure
- 5 Implementation Strategy, and Technical Assistance, Communications, Training
- 6 groups.
- 7 • Develop and submit quarterly reports to the Court.
- 8 • Appear in Court as required to report progress and account for the Emily Q effort.

9

10 Assistance and support from consultants to the special master:

- 11 • Co-facilitate the Settlement Team meeting and prepare written summaries.
- 12 • Co-facilitate SuperTACT group meetings.
- 13 • Provide technical assistance to CDMH/SuperTACT.
- 14 • Provide technical assistance to CDMH.
- 15 • Assist with county MHP certification of TBS equivalent services.
- 16 • Assist with Court reports.

17

18 This budget amendment will augment the existing Special Master's Budget approved by  
19 the Court on February 9, 2009. The special master will be reimbursed at \$150.00 per  
20 hour and consultants reimbursed at \$85.00 per hour.

21 Travel and Incidental Costs - January 1–June 30, 2010: - \$3,000.00

22 Special Master:

- 23 • I anticipate that Settlement Team meetings will continue to take place in
- 24 Sacramento, within one hour of my office. I will not be submitting an invoice for
- 25 this travel expense.
- 26 • I will be submitting an invoice for travel expenses associated with county MHP
- 27 visits and any required Court appearance. At this time, I estimate air travel to
- 28 Southern California five times for special master and consultant meetings with

1 county MHPs, and for Court appearances. Expenses will include airfare and  
2 parking.

3  
4 Parent and Practitioner Settlement Team participation:

- 5 • I will continue to reimburse the parent and practitioner members' travel expenses  
6 related to attending Settlement Team meetings (one meeting per month) or ad  
7 hoc task group meetings (two meetings total) during Year Two. As noted in  
8 earlier reports, their employers have donated these members' time – only their  
9 travel expenses are included in this request for additional funding.
- 10 • I will be submitting an expense invoice for the parent and practitioner  
11 participation with the Settlement Team.

12  
13 Please note that this budget amendment will augment the existing Special Master's  
14 Travel and Incident cost budget approved by the Court on February 9, 2009.

15  
16 **Special Master Recommendations to the Court**

17 In spite of the chaotic government environment that is currently dominating service  
18 delivery in every county throughout California, the planning partners continue to move  
19 the plan forward, and many county and local provider staffs are responding positively to  
20 the Nine Point Plan, helping shift plan implementation from the state to the local level.  
21 In this regard, I make the following recommendations to the Court at this time.

22  
23 Remain on course with the plan time line, continue to support CDMH and Settlement  
24 Team efforts, and watch and wait as the counties ramp up their TBS efforts.

25  
26 Approve the special master's January 1 through June 30, 2010 budget amendment.

27  
28 Provide advice or instruction to the special master from the Court regarding one  
29 element of the plan implementation effort: Point Nine of the plan identifies specific  
30 measures CDMH may take to encourage full MHP participation in the Nine Point Plan

1 effort. However, I am unclear about what precedent might exist regarding direct  
2 interaction the special master and/or the Court might engage in with an individual  
3 county MHP to further motivate its participation in the plan effort. I would appreciate  
4 guidance from the Court to clarify what, if anything, I might do in my role as special  
5 master, or the Court might do, with regard to increasing MHP performance.

6

7 In closing, I would like to again thank the Court for affording me the privilege of serving  
8 as special master for the Emily Q case.

9

10

11 Dated: November 9, 2009

Respectfully Submitted

12

13

/s/

14

15

Richard Saletta, LCSW

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Emily Q., et al. v. Diana Bonta, et al.**

Case No.: **CV 98-4181 AHM (AJWx)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 24, 2009, I served the attached **NOTICE OF LODGING OF SPECIAL MASTER'S FIFTH REPORT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Allison Wheeler  
Mental Health Advocacy Services Inc.  
3255 Wilshire Boulevard, Suite 902  
Los Angeles CA 90010

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 24, 2009, at Sacramento, California.

Patty Conway

Declarant

  
Signature