

1 Joseph Kanefield, General Counsel (State Bar #015838)
2 Christy Myers Smith, Deputy General Counsel (State Bar #020602)
3 OFFICE OF THE GOVERNOR
4 1700 W. Washington, 9th Floor
5 Phoenix, Arizona 85007
6 (602) 542-1586



COPY
MAR 08 2010
MICHAEL K. JEANES, CLERK
J. PEREZ, DEPUTY CLERK

Attorneys for Arizona Governor Janice K. Brewer

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

8 CHARLES ARNOLD, MARICOPA PUBLIC) Maricopa County
9 FIDUCIARY, as guardian and next friend on)
10 behalf of JOHN GOSS; NANCY E. ELLISTON, as)
11 guardian, Maricopa County conservator and next)
12 friend on behalf of CLIFTON DORSETT and as next)
13 friend on behalf of RICHARD SCHACHTERLE and)
14 SUSAN SITKO; TERRY BURCH; and on behalf of)
15 all others similarly situated,)

Plaintiffs,

v.

16 ARIZONA DEPARTMENT OF HEALTH)
17 SERVICES, ARIZONA STATE HOSPITAL,)
18 MARICOPA COUNTY BOARD OF)
19 SUPERVISORS, JANICE BREWER, GOVERNOR)
20 OF ARIZONA,)

Defendants.

No. C-432355

**JOINT STIPULATION TO STAY LITIGATION
DURING FISCAL BUDGET CRISIS**

(Honorable Karen L. O'Connor)

21 The Plaintiffs,¹ through undersigned counsel, and Defendants: Governor Janice K.
22 Brewer; Arizona Department of Health Services; and Maricopa County (collectively
23 "Defendants"), by and through undersigned counsel, hereby stipulate to the entry of an order
24 by the Court staying the litigation and enforcement of existing Court Orders in this case.²

¹ For purposes of this stipulation, "Plaintiffs" shall hereinafter refer to all current and future Plaintiff class-members.

² The "Court Orders" refer to any and all applicable orders agreed to by the parties and/or entered by the Court.

1
2 This Stipulation is supported by the following facts:

3 **I. THE STATE BUDGET CRISIS**

4 1. The State of Arizona (“State”) is currently experiencing one of the worst
5 recessions in State history.

6 2. Since this recession began in December 2007, State revenues have declined
7 for three consecutive years, and, for Fiscal Year (“FY”) 2010, they are projected to be 34%
8 less than FY 2007.

9 3. Despite making over \$1.09 billion in spending cuts over the past year, State
10 government must still currently resolve a \$1.4 billion shortfall and a projected \$3.2 billion
11 shortfall for FY 2011.

12 4. Even with these devastating spending cuts, State government will have to
13 borrow and defer \$1.5 billion in payments owed for FY 2010 and FY 2011.

14 5. The Arizona Legislature has called a special election for May 18, 2010, that
15 if passed by the voters, would impose a temporary one-cent increase in the transaction
16 privilege tax for primary and secondary education, health and human services, and public
17 safety, which is projected to generate additional State tax revenues at the rate of \$1 billion
18 per year.

19 6. Even if the voters pass the temporary transaction privilege tax increase at the
20 May 18, 2010 special election, State government is still facing a multi-billion dollar deficit
21 for the FY 2011 and FY 2012.

22 7. In order to preserve State government’s fiscal integrity and to ensure
23 Arizona’s long-term health, Governor Brewer has made a series of recommendations to
24 reduce state spending that are contained in her FY 2011 Executive Budget (available at
25 www.azgovernor.gov/Budget2011.asp).

1 8. The Governor has recommended as part of her FY 2011 Executive Budget
2 that services for approximately 14,000 Non-Title XIX seriously mentally ill (“SMI”)
3 statewide adults be reduced³. This reduction would potentially affect approximately 8,600
4 members of the Plaintiffs in Maricopa County. Consequently, the Governor has called for
5 statutory changes that would eliminate or modify the statutory requirements for the State to
6 serve SMI individuals, including the Plaintiffs, pursuant to the Court Orders currently in
7 place in this case. *See* FY 2011 Executive Budget Summary, at p. 20.

8 **II. THE STATE BUDGET’S IMPACT ON THIS CASE**

9 9. The current budget crisis facing the State has taken its toll on State-provided
10 services, including funding of services for certain Plaintiffs.

11 10. In 1998, Human Research Consultant Stephen Leff was directed by this
12 Court to conduct an analysis to determine the amount of funding needed to comply with
13 the Court Orders. This report, which was subsequently approved by the Court, is known as
14 the “Leff Report.” In the Leff Report Dr. Leff concluded approximately \$317 million was
15 needed for the Arizona Department of Health Services (“ADHS”) to achieve full
16 compliance for the approximate 12,000 Plaintiffs in the system at that time. In 2008,
17 ADHS adjusted Dr. Leff’s findings and, given the substantial increase in the number of
18 Plaintiffs and inflation, determined approximately \$800 million was needed to meet the
19 Leff Report. The cost to comply with the Leff Report would likely be even higher than
20 this amount given the increasing number of Plaintiffs and increasing healthcare costs. The
21 Arizona Legislature has never appropriated funding to Leff funding levels.

22 11. In FY 2009, funding for Title XIX-enrolled Plaintiffs totaled \$437.0 million
23 (\$125.6 million in State funds and \$311.4 million in federal funds). Funding for non-Title
24

25 ³ The Governor’s FY 2011 Budget also includes a proposal for Arizona voters to reduce the size of the Title XIX program, which if passed will result in a loss of coverage for an additional 3,000 SMI adults.

1 XIX Plaintiffs totaled \$130.5 million. This figure includes State, Maricopa County and
2 federal funds. Even assuming that it would still cost approximately \$800 million to
3 achieve full compliance with the Leff Report, the current funding shortfall is in excess of
4 the \$232.5 million needed. The terms of the Court's orders and the statute require the
5 State to provide services, including housing and residential services, to all Plaintiffs,
6 regardless of whether or not they qualify for Title XIX funding.

7 12. In the absence of an increase in non-State funding, this additional funding
8 can only come through legislative appropriation of State funds, most likely from the State
9 General Fund.

10 13. Due, in large part, to the State budget crisis, there is limited State funding
11 available to provide services necessary to comply with the Court Orders in this case.

12 14. The funding for services for Title XIX-enrolled Plaintiffs is currently limited
13 to State and federal funding provided through the Medicaid program, and does not include
14 non-Medicaid reimbursable services for Title XIX-enrolled Plaintiffs, such as housing.
15 There will likely be little or no increases in State funding for non-Medicaid reimbursable
16 services for these Plaintiffs in FY 2011.

17 15. On January 20, 2010, counsel for ADHS notified the Court Monitor and the
18 Plaintiffs, in accordance with ¶ 52 of the Exit Stipulation, of anticipated budget cuts to
19 ADHS' budget for Fiscal Years 2010 and 2011, which may impact Plaintiffs in this case.

20 **III. STAY OF LITIGATION**

21 16. In order to address the current budget crisis and its impact on the
22 Defendants' ability to comply with the Court Orders, the parties mutually agree to the
23 entry of a stay of the litigation and enforcement of the Court Orders through June 30, 2012.
24 This stay includes a stay of Title 9, Chapter 21, Article 3 of the Arizona Administrative
25 Code, to the extent compliance with those rules is compromised by the budget crisis. Any

1 party may request that the stay continue if the fiscal situation for the State of Arizona has
2 not substantially improved based on Joint Legislative Budget Committee forecasts. All
3 existing Court Orders, including the Appointment Order, and all enforcement, monitoring
4 and compliance activity in this case, are hereby stayed during such time. All activities of
5 the Office of the Monitor shall cease within ninety days of approval of this Stipulation.
6 The Court Monitor shall return all unspent monies, including any and all carry-forward
7 funds not included in her Court-approved annual FY 2010 budget, to ADHS and Maricopa
8 County by such date.

9 **IV. REVIEW AND REVISION OF ALL COURT ORDERS**

10 17. During the duration of this Stay, Defendants shall make their best efforts to
11 serve the Plaintiffs with all resources appropriated by the Arizona Legislature and
12 resources otherwise available to the State.

13 18. The parties agree and recognize that it is desirable and appropriate to revisit
14 and revise the Court Orders to (1) redefine the requirements that the Defendants must meet
15 in order to exit the case, (2) the services, supports, and benefits that must be provided to
16 Plaintiffs, and (3) how such obligations will be measured in the future in order for the
17 Defendants to exit the case.

18 19. The parties agree to negotiate in good faith revised Court Orders that
19 consider funding and, at a minimum, address the following:

20 a. Terms and conditions regarding the need for the appointment of a
21 Court monitor, including the selection process, funding and responsibilities of the
22 monitor;

23 b. Aligning compliance measures with recovery principles based on
24 outcomes rather than solely on process;

25 c. Incorporating nationally recognized professional standards in public
sector behavioral health systems into the compliance measurements;

1 d. Vesting ADHS with the primary responsibility to conduct compliance
2 audits, with appropriate safeguards that ensure reliability and accuracy. Audits,
3 reviews, surveys or any other measure that determine compliance must be objective,
4 reliable, accurate, flexible, cost-effective and data-driven;

5 e. Requiring any compliance measurement to be consistent with ADHS'
6 operations in order to ensure sustainability;

7 f. Requiring compliance measures, to be flexible in order to address
8 system transformation, new treatment modalities, promote consumer voice,
9 recovery principles and innovations in clinical practice and service delivery;

10 g. Including a mechanism to have regular and periodic review of Court
11 orders and ability to make adjustments as needed;

12 h. Measuring compliance by system performance standards, which may
13 include a case review component;

14 i. Providing a mechanism to include member and family input in both
15 the development of revised court orders and ongoing performance; and

16 j. Evaluating the current delivery system, the current array of
17 community-based services, the eligibility criteria for those services, and the funding
18 needed to meet agreed upon compliance measures for the system and services.

19 k. Revisions to the rules for Behavioral Health Services for Persons with
20 Serious Mental Illness may be necessary as a result of new court orders in
21 accordance with A.R.S. Title 41, Chapter 6.

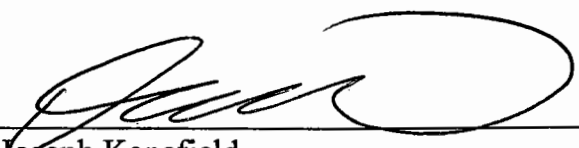
22 20. The parties commit to work diligently on proposed new court orders and/or
23 proposed revisions to the current Court Orders within twelve months of approval of this
24 Stipulation. If after twelve months the parties are unable to agree on proposed orders or
25 revisions to the current Court Orders, the Court shall appoint a mediator to help resolve
any differences. If the mediator is unable to help the parties' resolve their differences
within six months after appointment, any party may request that the Court issue new

1 orders or revisions to the current Court Orders. Notwithstanding the foregoing, in no
2 event shall the Stay be lifted prior to June 30, 2012, or as otherwise agreed to by the
3 parties and reflected in the revised Court orders.

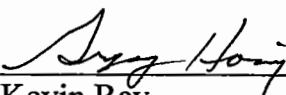
4 21. In the event the SMI statutes upon which this case is based are
5 fundamentally modified to eliminate or substantially reduce Defendants' obligations
6 thereunder, either party may request the Court vacate this Stipulation. In the event the
7 mandatory obligations of the statutes upon which this case is based are repealed, this
8 Stipulation is automatically vacated.

9 22. The parties anticipate that upon submission of new court orders the Court
10 will hold a fairness hearing and provide reasonable notice to class members pursuant to
11 Rule 23(d)(2), Arizona Rules of Civil Procedure.

12 **RESPECTFULLY SUBMITTED** this 3rd day of March, 2010.

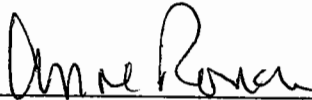
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14 
15 _____
16 Joseph Kanefield
17 Christy Myers Smith
18 OFFICE OF THE GOVERNOR
19 1700 W. Washington, 9th Floor
20 Phoenix, Arizona 85007

21 *Attorneys for Governor Janice K. Brewer*

22 
23 _____
24 Kevin Ray
25 Gregory Honig
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007
Gregory.Honig@azag.gov

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Attorneys for Arizona Department of Health Services

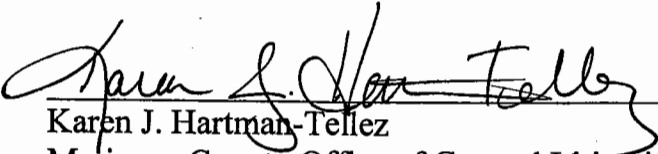


Anne C. Ronan
Arizona Center for Law In The Public Interest
202 East McDowell Road, Suite 153
Phoenix, Arizona 85004
aronan@aclpi.org

Edward L. Myers III
Arizona Center for Disability Law
5025 East Washington Street, Suite 202
Phoenix, Arizona 85034-7439
emyers@azdisabilitylaw.org

Steven J. Schwartz
Cathy E. Costanzo
Center for Public Representation
22 Green Street
Northampton, Massachusetts 01060
SSchwartz@cpr-ma.org

Attorneys for Plaintiffs



Karen J. Hartman-Tellez
Maricopa County Office of General Litigation Services
Maricopa County Administration Building
301 West Jefferson Street, Suite 3200
Phoenix, Arizona 85003-2143
GLS_Court_Minute_Entries@mail.maricopa.gov

Dennis I. Wilenchik
Wilenchik and Bartness, P.C.
2810 N. Third Street
Phoenix, Arizona 85004
diw@wb-law.com

*Attorneys for Maricopa County Board
of Supervisors*

1
2 **ORIGINAL** of the foregoing
3 filed this 3rd day of March,
4 2010, with:

5 Clerk of the Superior Court
6 201 W. Jefferson
7 Phoenix, Arizona 85003

8 **COPY** of the foregoing hand
9 delivered this 3rd day of
10 March, 2010, to:

11 Honorable Karen L. O'Connor
12 Superior Court of Maricopa County
13 125 W. Washington
14 Phoenix, Arizona 85003-2243

15 **COPY** of the foregoing mailed this
16 3rd day of March, 2010, to:

17 Gregory Honig
18 Kevin D. Ray
19 Joel Rudd
20 Office of the Attorney General
21 1275 W. Washington
22 Phoenix, Arizona 85007

23 *Attorneys for State Defendants*

24 Karen J. Hartman-Tellez
25 Maricopa County Office of
General Litigation Services
301 W. Jefferson Street, Suite 3200
Phoenix, Arizona 85003-2143

*Attorneys for Maricopa County
Board of Supervisors*

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25

Tami Johnson
Charles L. Arnold
Frazer, Ryan, Goldberg & Arnold
3101 N. Central Avenue, Suite 1600
Phoenix, Arizona 85012

Attorney for the Monitor

Nancy Diggs
Office of the Monitor
4201 N. 16th Street
Suite 160
Phoenix, Arizona 85016

Monitor

Dennis I. Wilenchik
The Wilenchik and Bartness Building
2810 N. Third Street
Phoenix, Arizona 85004

*Attorneys for Maricopa County Board
of Supervisors*

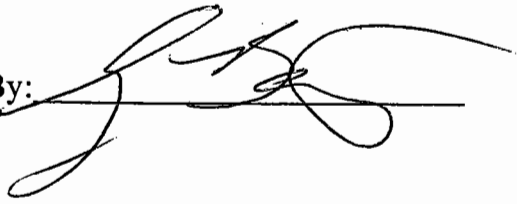
Edward L. Myers III
Arizona Center for Disability Law
5025 E. Washington Street, Suite 202
Phoenix, Arizona 85034

Steven J. Schwartz
Center for Public Representation
22 Green Street
Northampton, Massachusetts 01060

Anne Ronan
Arizona Center for Law in the Public Interest
202 E. McDowell Road, Suite 153
Phoenix, AZ 85004

Attorneys for Plaintiffs

By:

A handwritten signature in black ink, appearing to be 'J. H. K.', written over a horizontal line.

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