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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

J.K. a minor by and through R.K., et al.,

Plaintiffs,

v.

WILL HUMBLE, in his official capacity as
interim Director of the Arizona Department of
Health Services; DR. LAURA NELSON, in her
official capacity as Director, Division of
Behavioral Health Services, Arizona
Department of Health Services; THOMAS J.
BETLACH, in his official capacity as Director
of the Arizona Health Care Cost Containment
System,

Defendants

CASE NO. CIV-91-261-TUC-AWT

**NOTICE OF FILING DEFENDANTS'
PROPOSED ORDER REGARDING
REFERENCE TO A SPECIAL
MASTER AND OBJECTION TO
ONE OF PLAINTIFFS'
CANDIDATES FOR SPECIAL
MASTER**

1 The Defendants submit 1) the attached proposed order appointing a Special Master
2 pursuant to Rule 53 of the Federal Rules of Civil Procedure, in accordance with the
3 objections and briefing of this issue (Dkt. 569) and the discussion in court on March 19,
4 2012 (*See* transcript at Dkt. 577) and 2) their objection to consideration of former judge
5 Rebecca Albrecht as the special master.
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7 1. **Reference Order.** The Court's Order re: Motions to Terminate the Court's
8 Jurisdiction and for Attorneys' Fees (Dkt. 561) ("the Order") raised the subject of
9 referring this matter to a special master pursuant to Rule 53, Federal Rules of Civil
10 Procedure, and permitted the parties to file briefs on the subject. The Defendants filed a
11 brief (Dkt. 569) stating they did not object to the appointment of a special master for the
12 limited purpose of "determining 1) whether Plaintiffs must state with greater particularity
13 how they claim the Defendants have violated the terms of the Settlement Agreement; 2)
14 determining whether Plaintiffs state a claim; and, if so, 3) making a recommendation to
15 the Court as to how best to proceed, e.g. the mediation that has never been realistically
16 possible for lack of resolution of issues 1 and 2 or the extensive discovery that would be
17 necessary if the claims must be litigated." If discovery proves necessary, Defendants also
18 said they would consent to a special master to oversee discovery.
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22 As the Defendants explained, their position was consistent with Judge Roll's
23 comments on the subject in November 2010, which were:

24 Perhaps we should look to the use of a special master, who would be able to arrive
25 at exactly what the issues are in this case and then to advance some
26 recommendations to me as far as the interpretation of the agreement and what has
27 been accomplished so far and what would still need to be done, and maybe that
28 would position us then to go back to mediation or possibly to some settlement if
you had the benefit of that. . . .

1 [Responding to Defendants' counsel's argument that "we need the Court's help to
2 decide what issues are on the table for dispute resolution"] And I guess my view is
3 that perhaps that could be the great value of a special master, as far as having the
4 parties formulate exactly what the issues are as far as what remains to be done or
5 where the disputes are in that regard.

6 Transcript, November 22, 2010, Dkt. 535, pp. 12, 16.

7 Plaintiffs filed no brief. At the March 19, 2012 status conference, Defendants
8 reiterated their position. The Plaintiffs did not object or propose an expansion of the
9 scope. They even agreed there was a threshold issue that needed resolution. Dkt. 577,
10 pp. 4-5. This afternoon, however, Plaintiffs have lodged a proposed order characterizing
11 Defendants' claims, characterizing the prior history between the parties, authorizing the
12 special master to hire experts, authorizing the special master to try the case, allocating
13 themselves no part of the cost of the special master or his/her expenses, permitting *ex*
14 *parte* discussions between the special master and the parties, and raising other matters
15 far beyond the scope of anything discussed with the Court or that Defendants would ever
16 consent to.

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19 Defendants, by the attached proposed order, have reduced Plaintiffs' proposed
20 order to elements they would consent to and that were discussed with the Court.
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22 2. Even though they acknowledged on March 19, 2012 that the Defendants
23 had informed them former judge Rebecca Albrecht was unacceptable (Dkt. 577, pp. 11-
24 12), they have nonetheless proposed her as a possible special master in this case. Judge
25 Albrecht acted briefly as a mediator in this dispute in 2010 and therefore has already had
26 access to confidential information about the parties' settlement positions that may not be
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1 appropriate for a special master. The Defendants respectfully submit any special master
2 should address this case with a blank slate. Presumably, any of the other three qualified
3 candidates would do so. In addition, the undersigned was not counsel of record in 2010
4 when the parties agreed to Judge Albrecht's role as a mediator. AHCCCS would not
5 consent to her playing that role (or the role of special master) today.
6

7 **RESPECTFULLY SUBMITTED** this 20th day of April 2012.
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CERTIFICATE OF SERVICE

I, Logan Johnston, an attorney, hereby certify that on April 20, 2012, I electronically transmitted the foregoing Notice, using the ECF System for filing and transmittal of a Notice of Electronic filing and to ECF registrants. I further certify that a copy of the foregoing Motion was mailed this April 20, 2012, to the following:

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