

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is dated as of October 10, 2014, and memorializes an agreement to settle certain disputes by and between Petitioner Steve Barrow (Petitioner), and Respondents California Department of Public Health (CDPH) and Dr. Ron Chapman, in his official capacity as the Director of the Department of Public Health, (Respondents, and collectively with Petitioner, the Settling Parties).

RECITALS

A. On November 26, 2014, Petitioner filed an action in the Superior Court of California, County of San Diego, entitled, *Steve Barrow v. California Department of Public Health*, Case No. 37-2013-00077377-CU-MC-CTL (the Action).

B. Counsel for the Settling Parties have engaged in extensive discussions, including a face-to-face meeting on January 22, 2014, culminating in the Settlement Agreement set forth herein.

AGREEMENT

1. Publication of Information: The Settling Parties agree that by November 1, 2014, Respondents will post and maintain on the Kids’ Plates web page (<http://www.cdph.ca.gov/programs/Pages/KidsPlates.aspx>):

a. Appropriations to CDPH received from the Child Health and Safety Fund (the Fund); all expenditures made for the Kids’ Plates Program (the Program); and how the

expenditures have addressed the statutory requirements under California Welfare and Institutions Code section 18285 subdivision (e).

b. The list of criteria considered by CDPH in program planning for the Program prior to each funding cycle, including:

- (i) data analysis to describe and compare the burden of injury (e.g. number of deaths, the rate and severity of injuries, hospitalizations, and emergency room visits);
- (ii) the amount of available funding;
- (iii) the potential reach and impact of interventions;
- (iv) input from childhood injury prevention experts;
- (v) the ability of CDPH to combine and/or leverage Program resources with other state and/or local efforts to prevent childhood injury;
- (vi) the ability of applicants to deliver interventions in a cost-effective manner;
- (vii) the ability of applicants to measure and achieve outcomes of interventions in the required timeframe;
- (viii) sustainability of interventions over time; and
- (ix) operative guidance documents (e.g., relevant strategic plans, the public contract code, and the State Contract Manual).

c. Links to operative guidance documents considered in program planning prior to each funding cycle as referenced in paragraph 1, subpart (b) (ix);

d. The Request for Applications (RFAs) to be used by prospective applicants to apply for funding from the Program, that will include the statutory criteria outlined in California Welfare and Institutions Code section 18285, subdivision (e);

- e. The appeals process for applicants who are denied funding from the Program;
- f. The results of monitoring measures incorporated into the RFAs;
- g. The outcome evaluation results for projects funded by the Program; and
- h. The contact information (name, title, phone or e-mail) for the staff person responsible for administering the Program.

2. Maintenance of Posted Data and Information: The Settling Parties further agree that the data in paragraph 1, subpart a, shall be updated on the Kids' Plates web page on an annual basis. Nothing in this settlement agreement shall operate to limit the Respondents' ability to change their criteria for awarding grants or to consider new guidance documents or grant procedures. Should there be a change in any criteria, documentation, or procedures in paragraph 1, subparts b-h, Respondents shall promptly (*i.e.* within three (3) months) update the webpage to reflect the change(s).

3. Stipulated Motion for Entry of Judgment: In consideration of the Settling Parties' agreement to perform the obligations under this Settlement Agreement, Petitioner shall promptly file a stipulated motion for entry of judgment pursuant to the terms of this Settlement Agreement and agree to the cessation of the Action.

4. Dispute Resolution Process: The Settling Parties agree that before taking any action in court to enforce this Settlement Agreement, counsel for the moving party shall contact counsel for the opposing party to meet and confer, preferably in person, regarding the substance of the contemplated enforcement action and any potential resolution. If the Settling Parties mutually consent, they may seek to mediate the dispute with any mutually agreeable mediator. If the dispute cannot be resolved with the assistance of a mediator, then such action to enforce the

Settlement Agreement shall not be filed until thirty (30) days after the parties have met and conferred as noted.

5. Retention of Jurisdiction: Pursuant to California Code of Civil Procedure section 664.6, the Settling Parties further agree that the Court shall retain jurisdiction of this matter until sixty (60) months after execution of this Settlement Agreement, at which time the Court's jurisdiction will expire. This clause does not preclude enforcement of this Settlement Agreement through a separate suit after expiration of the Court's jurisdiction.

6. Scope of Agreement: The Settling Parties agree that this Settlement Agreement is limited to the scope of the issues raised in this lawsuit and addressed in this Settlement Agreement, and does not bind the Settling Parties with respect to issues beyond the scope of the issues raised in the lawsuit and addressed in this Settlement Agreement.

7. State Budget Act Contingency Clause: The Settling Parties mutually agree that if the Budget Act of the current year and/or any subsequent years covered by this Settlement Agreement reduces the total appropriation from the Fund (established pursuant to Section 18285 of the Welfare and Institutions Code) to CDPH to less than \$250,000, this Settlement Agreement shall be of no further force and effect. In this event CDPH shall no longer be obligated to perform any provisions of this Settlement Agreement and the Settlement Agreement is void for that fiscal year.

8. Mutual Negotiation: The Settling Parties agree that this Settlement Agreement is the product of their mutual negotiation and preparation, and accordingly, the Settlement Agreement shall not be deemed to have been prepared or drafted by either party. The Settling Parties further agree that any court seeking to interpret this Settlement Agreement shall construe it as the product of mutual negotiation and preparation.

9. No Admission of Liability: Respondents expressly deny each and all of the claims alleged against them by the petitioner in this action. This Settlement 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 Respondents of the truth of any facts 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 any wrongdoing or liability whatsoever.

10. Entire Agreement: It is further agreed by and between and among the Settling Parties that this document constitutes the sole, entire, and complete agreement to resolve the claims set forth in Petitioner's lawsuit and addressed in this Settlement Agreement.

11. Execution in Counterparts: This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same Settlement Agreement, binding all parties hereto notwithstanding that all of the parties are not signatory to the original or same counterpart.

12. Contractual Terms: The terms of this Settlement Agreement are contractual and not mere recitals.

13. Authority to Execute: The undersigned represent that they have the full power and authority to execute this Settlement Agreement on each of the party's respective behalf and to bind the parties.

14. Fees and Costs: Pursuant to the terms of this Settlement Agreement, each party shall bear their own attorneys' fees, expenses and costs of litigation arising from or in any way related to this Action.

IT IS SO STIPULATED AND AGREED.

Dated: October ___, 2014

STEVE BARROW
Petitioner

Dated: October ___, 2014

DR. RON CHAPMAN
DIRECTOR OF THE DEPARTMENT OF PUBLIC
HEALTH; AND
CALIFORNIA DEPARTMENT OF PUBLIC
HEALTH

BY: KATHLEEN J. BILLINGSLEY, RN
CHIEF DEPUTY DIRECTOR OF POLICY AND
PROGRAMS
CALIFORNIA DEPARTMENT OF PUBLIC
HEALTH