

**SETTLEMENT AGREEMENT**

*Center for Leadership, Equity, and Research v. County of Fresno, et al.*,  
Superior Court of the State of California in and for the County of Fresno,  
Case No.: 21-CECG-03154

This Settlement Agreement (“Agreement”) is entered into by the following parties: Plaintiff the Center for Leadership, Equity and Research (“CLEAR”), and the County of Fresno, a political subdivision of the State of California as defendant in the lawsuit titled *Center for Leadership, Equity, and Research v. County of Fresno, et al.*, currently pending in the Superior Court of the State of California in and for the County of Fresno, Case No.: 21-CECG-03154, (“Action”). In addition to the County of Fresno, CLEAR has named as defendants in this lawsuit the Fresno County Juvenile Justice Coordinating Council (“JJCC”), the Fresno County Realignment Subcommittee (“Realignment Subcommittee”), and Kirk Haynes in his official capacity as Chief Probation Officer of the County of Fresno. Collectively the County and all remaining named defendants are referred to herein as the “County.”

**I.**

**RECITALS**

A. CLEAR and the County are parties to the Action currently pending in Fresno County Superior Court.

B. In the Action, CLEAR alleged that the County violated the Ralph M. Brown Act with respect to the formation by the County of the Realignment Subcommittee and adoption of a Juvenile Justice Realignment Plan and sought in its complaint declaratory and injunctive relief.

C. The County denies CLEAR’s allegations in this Action. CLEAR sent a demand letter to the County on July 26, 2021, requesting that the County cure its past Brown Act violations. CLEAR then filed its Action against the County on October 21, 2021. Subsequent to the filing of the Action, the County informed Plaintiff’s counsel, on or about November 8, 2021, that the County had elected to hold all Subcommittee meetings pursuant to the Brown Act procedures starting in July of 2021. Furthermore, the County, through its Realignment Subcommittee on December 6, 2021, approved a formal letter of commitment to follow Brown Act procedures for all meetings of the Realignment Subcommittee. The JJCC ratified this decision on December 15, 2021. The letter was provided to Plaintiff’s counsel.

D. Without any admission of fault or wrongdoing, and without conceding or otherwise expressing any position on any legal issue or argument previously raised in this Action, the Parties wish to settle the Action and all disputes arising therein as among them, in order to avoid the cost, difficulty, and uncertainty associated with further litigation.

E. The Parties have negotiated in good faith and have agreed on the terms set forth in this Agreement in order to resolve this case short of trial.

## II.

### AGREEMENT

In consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Effective Date of Agreement: The Effective Date of this Agreement shall be the date of final execution of this Agreement by all the Parties. The Parties expressly recognize that by suing defendant Kirk Haynes in his official capacity as an officer of the County of Fresno, the County of Fresno is the real party in interest in the lawsuit and an appropriate party to this Agreement. The Parties agree that the County shall ensure compliance with this Agreement by all of its employees, officers and officials and is therefore the proper party to execute this Agreement on behalf of all named defendants in the Action. This Agreement shall not be effective until signed by the authorized representative of CLEAR and approved by the County Administrative Officer pursuant to his delegated authority from the Board of Supervisors.

2. Obligations of the County:

In consideration of the covenants and performances required by this Agreement, the County agrees as follows:

a. The Fresno County JJCC and the Fresno County Realignment Subcommittee will conduct all future business through open and public meetings, consistent with the Brown Act, codified at Government Code § 54950 et seq.

b. Notwithstanding the requirements set out in the Brown Act, the JJCC and the Realignment Subcommittee agree to do the following:

- i. Hold open and public meetings that are accessible to members of the public;
- ii. Post an agenda 72 hours before each meeting in a location that is freely accessible to members of the public and on Fresno County's Internet Web site, with the time and location of the meeting and a brief general description of each item of business to be transacted or discussed at the meeting, with the exception of items that may be added to the agenda under Brown Act provisions governing urgent or emergency matters;
- iii. Ensure that every agenda for regular meetings provides an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the body's consideration of the item, or of any that is within the subject matter jurisdiction of the body;
- iv. Publicly report any action taken;
- v. Take action only by a vote of the members, and publicly report the vote or abstention of each member present for the action;
- vi. For any teleconference meeting, take all votes by rollcall;

vii. Make available to the public and post on the Fresno County JJCC website any materials distributed to the legislative body or a majority of the members of the legislative body, including meeting agendas, meeting minutes, documents, and reports.

c. Outside of a meeting conducted pursuant to the Brown Act, a majority of the members of either the JJCC or the Realignment Subcommittee will not use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the body

d. Fresno County, in order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, hereby unconditionally commits that the JJCC and the Realignment Subcommittee will cease, desist from, and not repeat the challenged past action as described in the complaint filed in the above titled action. For as long as the County is required by law to maintain or does maintain the JJCC and/ or the Realignment Subcommittee, the County agrees that the JJCC and Realignment Subcommittee will abide by the Unconditional Commitments to cease and desist the alleged Brown Act violations, made in this Agreement and in the letter included as Attachment A. Further, the County waives its statutory right to rescind these commitments. However, in the event that meeting procedures different than those agreed to in this Agreement are created or changed by California law, the County will follow procedures as required by California law and will continue to follow the terms of this Agreement and the Unconditional Commitment letter to the extent that they do not conflict with California law.

e. The Parties acknowledge the Realignment Subcommittee consists of nine community members, as defined under Welfare and Institutions Code section 1995(b), and fourteen government agency representatives. The County will maintain no fewer than nine positions for community members on the Realignment Subcommittee. The County agrees to exercise good faith efforts to keep the nine positions filled by community members, but the Parties acknowledge that it may not be possible at all times to keep all nine community positions filled. If the number of government entity representatives in the Realignment Subcommittee is increased, the number of community member seats must be increased by the same number of seats.

f. Any decisions with respect to the membership of the Realignment Subcommittee, including the addition or subtraction of seats, or the selection or removal of individual members, will be done through a vote by the JJCC, at a publicly noticed and agendaized meeting of the JJCC. In making such decisions, the JJCC will adhere to the procedural requirements set out in the "Membership and Term of Office" section of the JJCC Bylaws, as they exist on the date of the execution of this agreement. The current version of the JJCC Bylaws is included as Attachment B.

g. The Realignment Subcommittee quorum shall require that both 51% of the total membership AND 51% of the community members then serving are present. No action shall be taken by the Realignment Subcommittee without a quorum as defined in this subsection.

h. The Realignment Subcommittee shall at a publicly noticed and agendized meeting make a determination annually, commencing no later than August of 2022, whether circumstances warrant a review, reconsideration, or supplementation of any part of Fresno County's Realignment Plan. If the Realignment Subcommittee determines that any portions of the Realignment Plan require review, reconsideration, or supplementation the Realignment Subcommittee will conduct further proceedings, including a vote whether to approve a revised plan. In addition, and notwithstanding any other provision in this Agreement and in compliance with the provisions of the California Juvenile Justice Realignment Act, the Realignment Subcommittee shall review the Realignment Plan every three years for review, reconsideration or modification. Following approval of the Realignment Plan by the Realignment Subcommittee, the Plan will be forwarded to the JJCC, which shall determine whether to accept any changes or modifications approved by the Realignment Subcommittee under either procedure described in this subsection.

i. The County will submit and recommend for approval by the JJCC changes to the existing JJCC Bylaws to incorporate certain terms of this Agreement as set forth in Attachment C to this Agreement. Whether or not said Bylaw changes are adopted by the JJCC, the Parties agree that the terms of this Agreement are binding and enforceable and the County will take all steps necessary to ensure compliance with all the terms of this Agreement.

3. Enforcement and Meet and Confer Process:

a. The terms of this Agreement may be enforced by CLEAR or by any person who is a member of the Realignment Subcommittee or the JJCC at the time of any alleged violation.

b. Enforcement may be by action in court and does not require exhaustion of administrative remedies provided in the Ralph M. Brown Act. However, the Parties shall meet and attempt to resolve any alleged violations as set forth in this section Number 3, prior to any such enforcement action being initiated.

c. If CLEAR or a member of the Realignment Subcommittee or JJCC entitled to enforce this Agreement believes any provision of this Agreement has been violated, said party or person will provide written notice to the Fresno County Chief of Probation and the Fresno County Counsel specifically stating the facts constituting the alleged violation(s). Said notice shall be sent by regular or registered mail, or similar carrier to:

Chief Probation Officer  
Probation Department  
3333 East American Avenue  
Building 701, Suite B  
Fresno, CA 93725

Attn: County Counsel  
County Counsel's Office  
2220 Tulare Street, Suite 500

Fresno, CA 93721

Notification in writing by email shall be sufficient if receipt is acknowledged by reply email by the recipient. For purposes of all time deadlines described in this section, the date of receipt shall be the earlier of the date of the confirmation of receipt or 3 days after the date of mailing.

d. Within 14 days of receipt of said notice of alleged violation, the County shall provide a written response. If an adequate response by the County requires additional time, this deadline can be increased by agreement between the County and CLEAR or the Subcommittee or JJCC member.

e. If the response of the County does not resolve the alleged violation, CLEAR or the Subcommittee or JJCC member shall request, utilizing the notice methods described in subsection 3.c., a meeting between the parties either in person or telephonically to discuss resolution of the matter. Said meeting shall occur as soon as practical but in no case longer than 14 days from the receipt of the request by the County.

f. If, following the meeting and such further meetings or communication to which the parties consent, the parties agree to a resolution of the alleged violation, said agreement will be reduced to writing signed by both parties. If, following the meeting and such further meetings or communication to which the parties consent, the parties cannot agree to a resolution of the alleged violation, the offended party shall notify the other party and may proceed with other available enforcement actions. Notwithstanding any provision of this Agreement, if the resolution agreed to by the parties during the process outlined in this subsection requires the official action of the Fresno County Board of Supervisors, the JJCC or the Realignment Subcommittee, no enforcement action may be commenced until after the proposed resolution has been submitted to said body for consideration at the next regularly scheduled meeting of said body which occurs at least 10 business days after the parties reach a resolution. If, however, the matter is not submitted to the Fresno County Board of Supervisors or other said body by that meeting an enforcement action may also be initiated after that meeting.

4. Dismissal of the Action: Within 15 days of the full execution of this Agreement or the submission by the County of the recommended Bylaw revisions provided in Attachment C to the JJCC, whichever is later, CLEAR will cause a request for dismissal with prejudice to be filed in the Action, dismissing all claims and causes of action alleged in its complaint, and terminating the Action. The parties agree to cooperate on any extensions of deadlines or communications to the Court concerning this settlement as may be reasonably necessary to effectuate this Agreement and the dismissal of the Action as provided in this Section.

5. Costs and Attorney's Fees: The County shall pay to counsel for CLEAR, within 30 days following the dismissal of the Action by the Superior Court, the amount of One Thousand Five Hundred Dollars (\$1,500.00), representing the costs incurred in filing the Action. With the exception of said payment, the Parties agree to each bear their own costs and attorney's

fees in this Action and no additional payment of any kind to or from any party is required by any term of this Agreement.

6. Public Statements: Neither Party will make any public statement or announcement or cause any third party to make a public statement or announcement, about this Agreement until it is fully executed, which the Parties estimate will be the end of the business day on January 28, 2022.

7. No Admission of Liability: This Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. By executing this Agreement, no Party admits liability or concedes any factual or legal allegation, claim, or contention asserted by any other Party in the Action.

8. Release of Claims:

a. General Release: Except for the obligations that are expressly set forth in this Agreement, CLEAR shall and hereby does release, compromise and forever discharge the County, its past or current board members, officers, employees, contractors, agents, successors and assigns, and all of them, as well as any and all persons acting or allegedly acting by, under, through or in concert with any of them (hereinafter "Released Parties"), against any and all claims, damages, actions, causes of action, liabilities, judgments, liens, contracts, agreements, rights, debts, suits, obligations, promises, acts, costs and expenses (including, but not limited to, attorneys' fees), damages and charges of whatsoever nature, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, fixed or contingent, or ever filed or prosecuted (hereinafter, collectively referred to as "Claims") which CLEAR may now have, or claims to have, or any time heretofore had, or claimed to have had, against the Released Parties as a result of things undertaken, said, stated, done or admitted to be done up to and including the Effective Date of this Agreement that relate in any way or manner to the matters alleged in CLEAR's complaint in the Action.

b. Waiver of Unknown and Unanticipated Claims: It is understood and agreed that the releases as referred to herein are full and final releases by CLEAR of the Released Parties, and that such full and final releases include, without limitation, all unknown and unanticipated claims, injuries, debts, or damages, as well as those now known or disclosed relate in any way or manner to the matters alleged in CLEAR's complaint in the Action. With respect to any claims by CLEAR against the Released Parties, CLEAR expressly waives the provisions of California Civil Code section 1542, which provides as follows:

**"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her must have materially affected his or her settlement with the debtor or released party."**

In that connection, the Parties hereto, and each of them, understand and acknowledge that one or more of the Claims may include losses sustained by CLEAR on account of the Released Parties that are presently unknown or unsuspected, and that such losses as were sustained may give rise

to additional losses and expenses in the future which are not now anticipated. Nevertheless, CLEAR acknowledges that this release has been negotiated and agreed upon, and that in consideration for the rights and benefits under this Agreement, CLEAR intends and hereby does release, acquit and forever discharge the Released Parties as set forth in Section 8.a of this Agreement, above.

c. CLEAR does not through this release waive rights under the Ralph M. Brown Act or any other law to enforcement with respect to alleged future and different violations of the Brown Act or any other law by the County, JJCC, or the Realignment Subcommittee that are not subject to the terms of this Agreement.

9. Construction: This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties agree that this Agreement shall be construed and interpreted without regard to the identity of the party drafting this Agreement, as though all Parties hereto participated equally in the drafting of this Agreement.

10. Advice of Counsel: The Parties represent that they know and understand the contents of this Agreement, and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations under this Agreement. The Parties acknowledge that they have executed this Agreement after independent investigation and without fraud, duress or undue influence.

11. Entire Agreement: No promise, inducement, understanding, or agreement not expressly stated herein has been made by or on behalf of the Parties, and this Agreement contains the entire agreement of the Parties related to the subject matter of this Agreement.

12. Amendments in Writing: This Agreement may not be altered, amended, modified, or changed in any way except by a writing duly executed by all Parties hereto.

13. Choice of Law and Jurisdiction: This Agreement shall be governed by the laws of the State of California. If any party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the County of Fresno, California.

14. Execution of Agreement: This Agreement may be executed in duplicate copies, each of which is deemed an original and each Party shall receive a fully executed version. The Parties agree that either fully executed version is an original and may be entered into evidence to prove the terms of this Agreement or for any other lawful purpose.

15. Severability: If any provision of this Agreement is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement which can be given full force and effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.

16. Representation and Warranties of Authority: Each Party to this Agreement has the authority to execute this Agreement, and this Agreement as so executed will be binding upon each Party and upon its agents, employees, attorneys, affiliates, representatives, heirs, executors,

conservators, successors, assigns, and those who they represent or whose rights they seek to protect in this Action. Each person signing this Agreement represents and warrants that they have the authority to sign and execute this Agreement on behalf of the Party for which they sign.

This Agreement consists of Recitals A – E, Paragraphs 1 – 16, and Attachments A-C.

DATED: 28 January 2022 | 19:21:22 GMT

The Center for Leadership, Equity, and Research

DocuSigned by:  
By Ken Magdaleno  
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Ken Magdaleno, Executive Director  
Center for Leadership, Equity, and Research

DATED: 28 January 2022 | 16:07:19 GMT

COUNTY OF FRESNO

DocuSigned by:  
By Paul Nerland, County Administrative Officer  
DFCD980AAF91458...  
Paul Nerland,  
County Administrative Officer  
County of Fresno