



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: County Counsel  
Department No.: 013  
For Agenda Of: December 14, 2021  
Placement: Administrative  
Estimated Time:  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors  
**FROM:** Department Rachel Van Mullem, County Counsel (805) 568-2950  
Director(s) *RV*  
Contact Info: Rachel Van Mullem, County Counsel (805) 568-2950  
**SUBJECT:** Adoption of a Resolution Authorizing County Counsel to Partially Settle the litigation *County of Santa Barbara v. Purdue Pharma, et al.* (Case No. 1:17-MD-2804)

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**County Council Concurrence**

As to form: Yes

Other Concurrence:

As to form: N/A

**Auditor-Controller Concurrence**

As to form: Yes

**Recommended Actions:**

- a) Adopt a Resolution (Attachment A) that approves and authorizes County Counsel or her designee to execute the following agreements to partially settle the litigation *County of Santa Barbara and the People of the State of California v. Purdue Pharma, et al.* (Case No. 1:17-MD-2804):
  - i. Settlement Participation Forms with opioid manufacturers and distributors Amerisource Bergen Corporation, Cardinal Health, Inc., McKesson Corporation, and Janssen Pharmaceuticals, doing business as Johnson & Johnson, and waive all claims against these defendants for their conduct complained of in the litigation (Attachments B and C);
  - ii. The California State Subdivision Agreement (Attachment B and C at Exhibit 1), which shall enable the County of Santa Barbara to receive and direct the use of a portion of settlement funds distributed to the State of California for approved opioid abatement activities; and
  - iii. The Backstop Agreements (Attachment B and C at Appendix 3), which will allow the County to pay the contingency fees of Outside Counsel Keller Rohrback from the recovered settlement funds in an amount not to exceed 15% of the County's recovery plus costs.
- b) Determine that the above action is not a project under the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15378(b)(4) and 15378(b)(5) because it consists

of government administrative or fiscal activities that will not result in direct or indirect physical changes in the environment.

**Summary Text:** This item is on the agenda for the Board of Supervisors to adopt a Resolution (Attachment A) authorizing partial settlement of the lawsuit filed on behalf of the County of Santa Barbara and the People of California against prescription opioid distributors and manufacturers Amerisource Bergen Corporation, Cardinal Health, Inc., McKesson Corporation, and Janssen Pharmaceuticals, doing business as Johnson & Johnson. Several other defendants are not part of this settlement and the lawsuit against those defendants will remain ongoing. Through execution of the Settlement Participation forms (Attachment B and C), the County would receive settlement funds via the California State Allocation Agreement (Attachment B and C at Exhibit 1). The Backstop Agreements (Attachment B and C at Appendix 3) also would authorize outside counsel to recover its attorneys' fees and costs first from a National attorneys' fees and costs fund and then, if outside counsel has not fully recovered from that fund, through the County-received funds.

**Background:**

At the Board of Supervisors' direction, the Office of County Counsel, with the assistance of outside counsel Keller Rohrback L.L.P., initiated litigation against distributors and manufacturers of prescription opioids to recover the County's damages from opioid drug misuse caused by the deceptive marketing and sale of prescription opioids, and to obtain other remedies to mitigate the problem going forward. The lawsuit, filed on February 15, 2019 and incorporated into the opioid Multi-District Litigation (MDL) in the Northern District of Ohio, alleges that defendants created a public nuisance, and violated California's Unfair Competition and the False Advertising laws by distributing large volumes of opioids in Santa Barbara County despite knowledge of the growing epidemic caused by opioid misuse, and by failing to prevent and report suspicious opioid orders as required by State and Federal law.

On July 21, 2021, Janssen Pharmaceuticals, doing business as Johnson & Johnson and three large distributors of prescription opioids, Amerisource Bergen Corporation, Cardinal Health, Inc., and McKesson Corporation (hereafter collectively referred to as "Settling Defendants") offered to settle the lawsuits against them (National Settlement) and the State of California thereafter accepted the offer to settle. The State of California is estimated to receive over \$2.2 Billion in opioid abatement funds. The State has agreed to remit 70% of the funds it receives to local jurisdictions to be used on approved future opioid remediation and high impact abatement activities and to remit an additional 15% of the funds to local jurisdictions that initiated litigation for approved abatement activities and to cover the fees and costs of that litigation. The County of Santa Barbara is estimated to receive between \$9.5 Million and \$22.6 Million over 18 years. In order for the County to receive funds directly from the National Settlement, it must "opt in" to the National Settlement through execution of Settlement Participation forms with the Settling Defendants and also execute the California State Subdivision Agreement before January 2, 2022.

The County's contingency fee agreement with Keller Rohrback allows for a 17% contingency fee. However, the U.S. District Court Judge overseeing the opioid MDL declined to presume that private counsel contingency fee agreements of more than 15% would be considered "reasonable." As a result, the National Settlement requires that any outside counsel who seeks recovery through the National Settlement Attorney Fee Fund and Cost Fund, must also agree to cap their contingency fees to 15%. If there are not sufficient funds in the National Settlement Attorney Fee Fund, outside counsel Keller Rohrback would be eligible to receive additional fees up to the 15% contingency fee limit from the additional settlement funds received by the County as a litigating jurisdiction under the Backstop Agreements.

**Performance Measure:**

Opioid Litigation – National Settlement

N/A

**Contract Renewals and Performance Outcomes:**

N/A

**Fiscal and Facilities Impacts:**

Budgeted: N/A **Fiscal Analysis:**

The Department of Behavioral Wellness would be running the approved abatement activities with funds received from the National Settlement. Annual receipt of funds will be dealt with through the County's annual budget process or through budget revisions, as applicable.

**Key Contract Risks:**

The County must prepare and file annual reports on the use of the funds it receives, which may be audited by the Department of Health Care Services, subject to a five-year statute of limitations from the date on which the expenditure of the funds is reported. The County must expend or encumber the National Settlement funds within 5 years of receipt, or 7 years for capital outlay projects, otherwise the funds will be transferred back to the State.

**Staffing Impacts:** None.

**Special Instructions:**

Please forward the Minute Order and a signed copy of the Resolution to Teresa Martinez at [tamartinez@countyofsb.org](mailto:tamartinez@countyofsb.org).

**Attachments:**

- A. Resolution
- B. Settlement Participation Form with AmerisourceBergen, Cardinal Health, and McKesson
- C. Settlement Participation Form with Janssen (Johnson & Johnson)

**Authored by:** Teresa Martinez, Senior Deputy County Counsel

**cc:** Behavioral Wellness