



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: July 12, 2022
Placement: Administrative
Estimated Time:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Rachel Van Mullem, County Counsel (805) 568-2950
Director(s)
Contact Info: Rachel Van Mullem, County Counsel (805) 568-2950
SUBJECT: Statewide Allocation Agreement regarding Mallinckrodt plc Bankruptcy Distributions (*In re Mallinckrodt plc*, Case No. 20-12522 (JTD)); *County of Santa Barbara v. Purdue Pharma, et al.* (Case No. 1:17-MD-2804)

County Counsel Concurrence

As to form: Yes

Other Concurrence:

As to form: N/A

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

- a) Approve and authorize County Counsel or her designee to negotiate and execute a Statewide Allocation Agreement with the State of California for local control of funds distributed from the Mallinckrodt plc *et al* bankruptcy (*In re Mallinckrodt plc*, Case No. 20-12522 (JTD)) to partially settle the prescription opioid litigation *County of Santa Barbara and the People of the State of California v. Purdue Pharma, et al.* (Case No. 1:17-MD-2804); and
- 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 delegate to County Counsel or her designee the authority to negotiate and execute a Statewide Allocation Agreement with the State of California regarding the distribution of funds from the Mallinckrodt plc *et al* bankruptcy. Mallinckrodt plc is a defendant in the litigation filed on behalf of the County of Santa Barbara and the People of California against prescription opioid distributors and manufacturers. Several other defendants are not part of this bankruptcy and the lawsuit against those defendants will remain ongoing. Through execution of the Statewide Allocation Agreement, the County would receive funds directly under Mallinckrodt's Bankruptcy Plan to be used for approved opioid remediation and abatement strategies. (Attachment A.)

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 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.

Defendant Mallinckrodt plc and its affiliate organizations (Debtors), filed for bankruptcy under Chapter 11 of the Bankruptcy Code in October 2020 (*In re Mallinckrodt plc*, Case No. 20-12522 (JTD)). The County holds a Class 8b – Municipal Opioid Claim against Debtors. Subject to Debtors Joint Plan of Reorganization as amended, County’s claim is subject to the National Opioid Abatement Trust II Agreement and Trust Distribution Procedures absent a Statewide Allocation Agreement. The default distribution of funds under the Trust Distribution Procedures provides that a California county with a population of less than 750,000 does not qualify for a direct distribution. Instead, funds not directly distributed to counties would be apportioned regionally by the State of California to address opioid abatement with input from local governments.

The Trust Distribution Procedures allow states to alter the default distributions through a Statewide Allocation Agreement. The California Attorney General’s Office is currently negotiating a Statewide Allocation Agreement with litigating local governments. The Statewide Allocation Agreement must be filed within 60 days of June 16, 2022, the Plan’s effective date. The current draft of the Statewide Allocation Agreement includes terms by which litigating entities, including the County of Santa Barbara, would be able to receive direct distributions of Mallinckrodt bankruptcy funds to be expended on approved opioid remediation and abatement strategies. Given the Board’s summer recess, County Counsel is bringing this item now to obtain delegated authority to negotiate and execute the State Allocation Agreement in order to gain local control of opioid abatement funds for the benefit of County residents.

Performance Measure:

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 Mallinckrodt bankruptcy. Annual receipt of funds will be dealt with through the County’s annual budget process or through budget revisions, as applicable.

Key Contract Risks:

If the County receives direct distributions from the Mallinckrodt bankruptcy, the County must prepare and file annual reports on the use of the funds it receives. The County shall only expend the funds on approved opioid remediation and abatement strategies.

Staffing Impacts: None.

Special Instructions:

Please forward the Minute Order to Teresa Martinez at tamartinez@countyofsb.org.

Attachments:

- A. Mallinckrodt Bankruptcy – Approved Abatement Strategies

Authored by: Teresa Martinez, Senior Deputy County Counsel

cc: Behavioral Wellness