



Contra
Costa
County

To: Board of Supervisors
From: Mary Ann Mason, County Counsel
Date: October 11, 2022

Subject: In re National Prescription Opiate Litigation U.S.D.C., Northern District of Ohio 1:17-md-02804-DAP

RECOMMENDATION(S):

APPROVE AND AUTHORIZE actions by the County Administrator, or her designee, in the case *In re National Prescription Opiate Litigation*, to execute, on behalf of Contra Costa County, agreements which will allow attorneys' fees to be paid from settlement funds from the National Opioid Settlement and cap fees owed by the County up to Five Percent (5%) of settlement funds received, approve bankruptcy plans of certain defendants, file a complaint against McKinsey & Co., approve settlement with Special Districts, and take related actions.

FISCAL IMPACT:

Contra Costa County's obligation to pay attorneys' fees will be reduced from 18% to 5% of settlement funds. The County may receive additional funds from defendants' bankruptcy plans, and possible settlements with McKinsey & Co. and Special Districts.

BACKGROUND:

This litigation was brought by the County and other public entities in California against opioid manufacturers and distributors to recover costs incurred from the opioid epidemic. Two settlement agreements have been reached with national distributors and one

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **10/11/2022** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: October 11, 2022

Monica Nino, County Administrator and Clerk of the Board of Supervisors

By: Antonia Welty, Deputy

Contact: County Counsel

cc:

manufacturer. Payments from the settlements will begin this year and continue over 18 years.

BACKGROUND: (CONT'D)

On August 6, 2021, the U.S. District Court issued an order which allows outside counsel to apply to the National Settlement Fund for partial reimbursement of attorneys' fees incurred in bringing the litigation. In light of the order, the County's outside counsel has agreed to reduce its contingency fees owed by the County from Eighteen Percent (18%) to Five Percent (5%) of settlement funds received. To effect this change, the County must sign a Backstop Agreement. The Backstop Agreement also allows the County to use funds that it receives from the settlement to pay outside counsel. This action will also allow the County Administrator, or her designee, to authorize the Claims Fund Administrator to withhold 5% of settlement funds to be set aside for attorneys' fees.

Some defendants in the litigation are in bankruptcy proceedings. In the future, the County will need to approve the recommended bankruptcy plans in order to receive funds from those defendants.

McKinsey & Co., a national management consulting firm, played a role in the opioid crisis by advising manufacturers and distributors on increasing sales of opioids. Public entities which have sued McKinsey have obtained settlements. Filing suit against McKinsey will allow the County to receive additional settlement funds.

Two healthcare districts in California did not sign the settlement agreement with the national distributors, which reduced the overall recovery by the State and the counties from the national settlements. Some public entities are contemplating a settlement with those healthcare districts by which they would join the national settlement, thus increasing the funds to all counties. Joining that settlement will increase funds to the County.

CONSEQUENCE OF NEGATIVE ACTION:

The County will not be able to use Opioid settlement funds to pay its attorneys' fees. The County may be obligated to pay fees up to 18% of the amount recovered pursuant to its contract with outside counsel. The County will not receive possible additional funds from defendants' bankruptcies and settlements with other parties.