



County of Fresno

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Legislation Text

File #: 21-1200, **Version:** 1

DATE: November 16, 2021

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel

SUBJECT: Settlement of Cases Against Distributor Defendants and Defendant Johnson & Johnson in the federal multidistrict National Prescription Opiate Litigation

RECOMMENDED ACTION(S):

- 1. Approve and Authorize Chairman or County Counsel to execute and submit all necessary settlement documents and the intrastate allocation agreement to resolve the County's claims against the Distributor Defendants in the National Prescription Opiate Litigation, U.S. District Court for the Northern District of Ohio, Case No. 1:17-md-02804.**
- 2. Approve and Authorize Chairman or County Counsel to execute and submit all necessary settlement documents and the intrastate allocation agreement to resolve the County's claims against Janssen (Johnson & Johnson) in the National Prescription Opiate Litigation, U.S. District Court for the Northern District of Ohio, Case No. 1:17-md-02804.**

The recommended actions will allow the Board Chairman or County Counsel to execute settlement/participation agreements and intra-state allocation agreements, along with all other required documentation in two partial settlements involving opioid Distributor Defendants and Defendant Janssen (Johnson & Johnson) an opioid manufacturer in the multidistrict federal litigation In Re National Prescription Opiate Litigation, currently pending in the United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804. The County is part of a California Consortium of approximately 35 counties and some cities who have experienced damages resulting from the opioid addiction process.

ALTERNATIVE ACTION(S):

The Board of Supervisors could decline to approve the proposed settlements in which case the County of Fresno would not receive the payments called for under the settlement agreements and its litigation against the defendants would continue.

FISCAL IMPACT:

The exact settlement amounts that will be paid to the County of Fresno under both settlements is difficult to calculate as the total amount to be paid by the defendants is dependent on certain bonus tiers based on participation by local governmental entities as described in this report. However, it is expected based on the current estimates of participating entities that the County will receive between \$17 million and \$22 million over the 18 year payout period provided for in the settlement. While a small portion of these funds are available to reimburse past county expenses the bulk is restricted to expenditure on county opioid abatement and treatment purposes.

DISCUSSION:

In 2017, the Board of Supervisors authorized the County of Fresno joining in the federal multidistrict litigation against a group of manufacturers, distributors and providers of prescription opioid products who are alleged to have contributed to the opioid addiction crisis in the United States. The federal case is consolidated in the In Re National Prescription Opiate Litigation, currently pending in the United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804. The County is part of a California Consortium of approximately 35 counties and some cities who have experienced damages resulting from the opioid addiction process. The Consortium is represented by private outside counsel Baron & Budd, and filed complaints alleging various causes of action including nuisance and RICO claims.

Following extensive litigation efforts by private counsel and the addition of threatened claims by most state attorney generals, including the California Attorney General's Office, negotiations were commenced over the past year and a half resulting in two settlements, one with a group of Distributor Defendants and one with Janssen a manufacturer of prescription opioids owned by Johnson & Johnson. The settlements call for payment by the defendants up to approximately \$26 Billion nation-wide over an 18 year payment period. Approximately \$2.2 Billion will be distributed in California pursuant to allocation agreements negotiated between the California Attorney General's Office and the litigating counties and cities in California, which allocation agreements will be made part of the final settlement documents.

The settlement agreements provide for different levels of payment based on the number of local governmental entities, both litigating and non-litigating over 10,000 population that elect to join in the settlement through the execution of participation agreements. Attached to this report are charts from the National Opioid Settlement that explain the basic settlement terms and the settlement tier structure. The total amounts are then put through a formula developed over the course of the national litigation to determine the impact on each locality based on various factors such as numbers of prescriptions and opiate overdose deaths. While these variables make it difficult to determine with precision the exact amounts that will be paid out to the County, the current best estimate is that between \$17 million and \$22 million will be paid to the County over the 18 year payment period. The amounts paid to the County (and other eligible local entities in California) results from the negotiation of the intra-state allocation agreements with the California Attorney General's Office which resulted in much higher direct payments to local entities than would otherwise have been obtained under the default allocations in the settlement. The allocation agreements in both the Distributor and Janssen cases provide that 15% of California's recovery goes to the State of California to be used for abatement purposes, 15% goes to the litigating entities for costs and past damages, and 70% goes directly to participating local entities including both litigating and non-litigation local entities to be spent solely on opioid abatement programs as defined in the settlements.

The multi district litigation will continue against remaining defendants, although several of the major defendant manufacturers have declared bankruptcy. The California Consortium of counties and cities is pursuing negotiated settlements in those bankruptcy matters.

REFERENCE MATERIAL:

National Opioid Settlement Website at www.nationalopioidsettlement.com

ATTACHMENTS INCLUDED AND/OR ON FILE:

National Opioid Settlement Maximum Payment Flow Chart
National Opioid Settlement Base and Incentive Payments Chart
On file with Clerk - Distributor Settlement Agreement
On file with Clerk - Distributor Participation Agreement
On file with Clerk - Distributor California Intra-State Allocation Agreement & Signature Page
On file with Clerk - Distributor California Intra-State Allocation Agreement Appendices

On file with Clerk - Janssen Settlement Agreement
On file with Clerk - Janssen Participation Agreement
On file with Clerk - Janssen California Intra-State Allocation Agreement & Signature Page
On file with Clerk - Janssen California Intra-State Allocation Agreement Appendices

CAO ANALYST:

Moises Mendoza