

DECEMBER 16, 2021

CLOSED SESSION REPORT OF FINAL ACTION

Date of Meeting: *Thursday, December 16, 2021*

Affirmative Litigation Negotiations

NAME OF ACTION:

The People of the State of California, acting by and through Santa Clara County Counsel James R. Williams, Orange County District Attorney Tony Rackauckas, Los Angeles County Counsel Mary C. Wickham, and Oakland City Attorney Barbara J. Parker v. Purdue Pharma L.P.; Purdue Pharma Inc.; The Purdue Frederick Company, Inc.; Teva Pharmaceutical Industries, Ltd; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-Mcneil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen
Orange County Superior Court Case No. 30-2014-00725287-CU-BT-CXC

In re National Prescription Opiate Litigation
MDL Master Docket No. 1:17-MD-2804

This matter is listed as **Item No. 1(g)** on the Closed Session Agenda:

The council authorized the City Attorney to: release the City’s potential claims as necessary to join the national Distributor Settlement Agreement, the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds—Distributors, the national Johnson & Johnson (a.k.a. Janssen) Settlement Agreement, and the California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds—Janssen.

These cases arose out of incidents (the “opioid crisis”) occurring in Oakland, across the state of California, and nationally.

FACTS/ISSUES: In May 2014, the Santa Clara County Counsel’s Office and the Orange County District Attorney’s Office filed the first lawsuit in the nation brought by government entities against major opioid manufacturers (“Manufacturers”) for the companies’ roles in creating and perpetuating the opioid crisis. In 2018, Oakland and Los Angeles County, in the name of the People of the State of California, joined that lawsuit. The lawsuit was and is distinct from the settlements before the Council in this Closed Session Report, but the City Attorney’s participation in that lawsuit has put the City of Oakland in its current position to authorize the City Attorney to accept the terms of either or both of the national opioid settlements as a “litigating entity.”

The national Distributor Settlement Agreement and the national Johnson & Johnson Settlement Agreement arose from federal litigation by innumerable state and local governments across the country, challenging the conduct of a wide variety of opioid industry actors for the roles they played in the opioid crisis. Those cases were consolidated years ago into a single “Multi-District Litigation” (“MDL”) proceeding, and these settlements would resolve all relevant claims in the MDL 2804.

Both settlements are structured in a “tiered” fashion: each state must decide to participate, and once it does, its local subdivisions (e.g., counties, cities) decide whether to participate. California has decided to participate in both. Local participation is then subject to a “State Allocation Agreement,” or a division of settlement funds between the state and its local governments. To participate in the *national* agreement, a local government in California must also participate in the *State* Allocation Agreement. Because the Oakland City Attorney sued opioid defendants, Oakland is eligible to participate in both settlements as a “litigating entity” and to therefore receive the maximum settlement amounts available to the city under both agreements. Local governments have until January 2, 2022 to release their claims and join either or both settlements.

Motion Made by: **Councilmember Fife**

Motion Seconded by: **Councilmember Kalb**

AYES: Fife, Gallo, Kalb, Kaplan, Reid, Taylor, Thao and President Fortunato Bas= 8

NOES: Fife, Gallo, Kalb, Kaplan, Reid, Taylor, Thao and President Fortunato Bas=

ABSENT: Fife, Gallo, Kalb, Kaplan, Reid, Taylor, Thao and President Fortunato Bas=

ABSTENTIONS: Fife, Gallo, Kalb, Kaplan, Reid, Taylor, Thao and President Fortunato Bas=