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Settlement of Opioid Lawsuit against Kroger Co., by recommending adoption of the following:

A RESOLUTION

WHEREAS, in adopted File No. 17-722, the Milwaukee County Board of Supervisors previously authorized Milwaukee County (the County) to enter into an engagement agreement with Baron & Budd and other counsel (the Law Firms) to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the Opioid Defendants) in an effort to hold the Opioid Defendants financially responsible for the County’s expenditure of vast money and resources to combat the opioid epidemic; and

WHEREAS, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants; and

WHEREAS, the Law Firms filed similar lawsuits on behalf of other State of Wisconsin (the State) counties and all Wisconsin cases were coordinated with thousands of other lawsuits filed against the same or substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned *In re: Opioid Litigation*, MDL 2804 (the Litigation); and

WHEREAS, since the inception of the Litigation, the Law Firms have coordinated with counsel from around the country to prepare the County’s case for trial, and engage in extensive settlement discussions with the Opioid Defendants; and

WHEREAS, the settlement discussions with The Kroger Co. (the Settling Defendant) resulted in a tentative agreement as to settlement terms pending agreement from the County and other plaintiffs involved in the Litigation; and

WHEREAS, copies of the settlement agreement relating to the Settling Defendant (Settlement Agreement) representing the terms of the tentative Settlement Agreement with the Settling Defendant is provided with this Resolution and is available at: <https://nationalopioidsettlement.com/wp-content/uploads/2024/05/Kroger-Multistate-Settlement-Agreement-Circulated-to-States-March-25-2024.pdf>; and

WHEREAS, the Settlement Agreement provides, among other things, for the payment of certain sums to Participating Subdivisions, as defined in the Settlement Agreement upon the occurrence of certain events detailed in the Settlement Agreement; and

44 WHEREAS, the County is a Participating Subdivision in the Settlement
45 Agreement and has the opportunity to participate in the benefits associated with the
46 Settlement Agreement provided the County:

- 47
- 48 (a) approves the Settlement Agreement
 - 49 (b) approves the Addendum Two to the Memorandum of Understanding
50 allocating proceeds from the Settlement Agreement (MOU) among the
51 various Wisconsin Participating Subdivisions, a copy of which is attached
52 to this Resolution (Addendum Two)
 - 53 (c) the Legislature's Joint Committee on Finance approves the terms of the
54 Settlement Agreement

55
56 ; and

57
58 WHEREAS, pursuant to Section 12 of the State-Local MOU entered into between
59 the State Participating Subdivisions and the State Attorney General (AG), the State AG
60 has provided notice that the terms of the State-Local MOU shall apply to the Settlement
61 Agreement and all proceeds of such Settlement Agreement; and

62
63 WHEREAS, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin
64 State Statutes (State Statutes) relating to the settlement of all or part of the Litigation;
65 and

66
67 WHEREAS, pursuant to Section 165.12(2), State Statutes, the Legislature's Joint
68 Committee on Finance is required to approve the Settlement Agreement; and

69
70 WHEREAS, pursuant to Section 165.12(2), State Statutes, the proceeds from any
71 settlement of all or part of the Litigation are distributed 70 percent to local governments
72 in the State that are parties to the Litigation and 30 percent to the State; and

73
74 WHEREAS, Section 165.12(4)(b)2, State Statutes, provides the proceeds from
75 the Settlement Agreement must be deposited in a segregated account (the Opioid
76 Abatement Account) and may be expended only for approved uses for opioid
77 abatement as provided in the Settlement Agreement; and

78
79 WHEREAS, Section 165.12(7), State Statutes, bars claims from any State local
80 government against the Opioid Defendants filed after June 1, 2021; and

81
82 WHEREAS, the definition of Participating Subdivisions in the Settlement
83 Agreement recognizes a statutory bar on claims such as that set forth in Section
84 165.12(7), State Statutes, and, as a result, the only Participating Subdivisions in the
85 State are those counties and municipalities that were parties to the Litigation (or
86 otherwise actively litigating a claim against one, some, or all of the Opioid Defendants)
87 as of June 1, 2021; and

88

89 WHEREAS, the State Legislature’s Joint Committee on Finance is not statutorily
90 authorized or required to approve the allocation of proceeds of the Settlement
91 Agreement among State Participating Subdivisions; and
92

93 WHEREAS, the State Participating Subdivisions previously negotiated and
94 approved the allocation of proceeds among themselves, which allocation is reflected in
95 Exhibit A to the MOU, which is an agreement between all of the entities identified in the
96 Allocation MOU as to how the proceeds payable to those entities under the Settlement
97 Agreements will be allocated; and
98

99 WHEREAS, the County and all other State Participating Subdivisions agreed to
100 and entered into that certain Addendum to the MOU (Addendum One) that provided for
101 allocation of settlement proceeds from previous settlements with certain pharmacies
102 and manufacturers according to the same percentages as that provided in the MOU;
103 and
104

105 WHEREAS, the County has been informed as to the deadlines related to the
106 effective dates of the Settlement Agreement, the ramifications associated with the
107 County’s refusal to enter into the Settlement Agreement, the form of Addendum Two,
108 and an overview of the process for finalizing the Settlement Agreements, and such
109 information, together with additional resources, related to the settlement can be found at
110 <https://nationalopioidsettlement.com/kroger-co-settlement/>; and
111

112 WHEREAS, the County, by this Resolution, shall deposit the proceeds of the
113 Settlement Agreement consistent with the terms of this Resolution and Section
114 165.12(4)(b), State Statues; and
115

116 WHEREAS, pursuant to the County’s engagement agreement with the Law
117 Firms, the County shall pay up to an amount equal to 25 percent of the proceeds from
118 successful resolution of all or part of the Litigation, whether through settlement or
119 otherwise, plus the Law Firms’ costs and disbursements, to the Law Firms as
120 compensation for the Law Firms’ efforts in the Litigation and any settlement; and
121

122 WHEREAS, the Law Firms anticipate making application to the national fee fund
123 established in the Settlement Agreement seeking payment, in whole or part, of the fees,
124 costs, and disbursements owed the Law Firms pursuant to the engagement agreement
125 with the County; and
126

127 WHEREAS, it is anticipated the amount of any award from the fee fund
128 established in the Settlement Agreements will be insufficient to satisfy the County’s
129 obligations under the engagement agreement with the Law Firms; and
130

131 WHEREAS, the County, by this Resolution, and pursuant to the authority granted
132 the County in the applicable Order emanating from the Litigation in relation to the
133 Settlement Agreement and payment of attorney fees, shall authorize and direct the
134 escrow agent responsible for the receipt and distribution of the proceeds from the
135 Settlement Agreement to establish an account for the purpose of segregating funds to
136 pay the fees, costs, and disbursements of the Law Firms owed by the County (the
137 Attorney Fees Account) in order to fund a local “backstop” for payment of the fees,
138 costs, and disbursements of the Law Firms; and
139

140 WHEREAS, in no event shall payments to the Law Firms out of the Attorney
141 Fees Account and the fee fund established in the Settlement Agreement exceed an
142 amount equal to 25 percent of the amounts allocated to the County by virtue of the
143 Addendum Two (Exhibit A to the MOU); and
144

145 WHEREAS, the intent of this Resolution is to authorize the County to enter into
146 the Settlement Agreement, the Addendum Two, and continue to use the County’s
147 Opioid Abatement Account and the Attorney Fees Account; and
148

149 WHEREAS, the County, by this Resolution, shall authorize the County’s
150 corporation counsel to finalize and execute any other document or agreement
151 necessary to effectuate the Settlement Agreement and the other agreements
152 referenced herein; and
153

154 WHEREAS, the Committee on Judiciary, Law Enforcement, and General
155 Services, at its meeting of July 23, 2024, recommended adoption of File No. 24-627
156 (vote 5-0); and
157

158 WHEREAS, the Committee on Finance, at its meeting of July 25, 2024,
159 recommended adoption of File No. 24-627 (vote 6-0); now, therefore,
160

161 BE IT RESOLVED, the Milwaukee County Board of Supervisors (County Board)
162 hereby approves:
163

- 164 1. The execution of the Settlement Agreement and any and all documents
165 ancillary thereto and authorizes the County Board Chairperson to execute
166 same
167
- 168 2. The final negotiation and execution of Addendum Two in form substantially
169 similar to that presented with this Resolution and any and all documents
170 ancillary thereto and authorizes the Board Chairperson to execute same
171 upon finalization provided the percentage share identified as allocated to
172 the County is substantially similar to that identified in the Addendum Two
173 provided to the Board with this Resolution
174

175 3. The execution by the Board Chair of any additional documents or
176 agreements for the receipt and disbursement of the proceeds of the
177 Settlement Agreement
178

179 ; and

180
181 BE IT FURTHER RESOLVED, all proceeds from the Settlement Agreement not
182 otherwise directed to the Attorney Fees Account shall be deposited in the County's
183 existing Opioid Abatement Account, and the Opioid Abatement Account; and
184

185 BE IT FURTHER RESOLVED, the Opioid Abatement Account shall be
186 administered consistent with the terms of this Resolution, Section 165.12(4), Wisconsin
187 State Statutes and the Settlement Agreement; and
188

189 BE IT FURTHER RESOLVED, the County hereby authorizes that the escrow
190 agent shall deposit a sum equal to up to, but in no event exceeding, an amount equal to
191 20 percent of the County's proceeds from the Settlement Agreement into the existing
192 Attorney Fees Account; and
193

194 BE IT FURTHER RESOLVED, if the payments to the County are not enough to
195 fully fund the Attorney Fees Account as provided herein because such payments are
196 made over time, the Attorney Fees Account shall be funded by placing up to, but in no
197 event exceeding, an amount equal to 20 percent of the proceeds from the Settlement
198 Agreement attributable to Local Governments (as that term is defined in the
199 Memorandum of Understanding) into the Attorney Fees Account for each payment.; and
200

201 BE IT FURTHER RESOLVED, funds in the Attorney Fees Account shall be
202 utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to
203 the engagement agreement between the County and the Law Firms provided, however,
204 the Law Firms shall receive no more than that to which they are entitled under their fee
205 contract when considering the amounts paid the Law Firms from the fee fund
206 established in the Settlement Agreement and allocable to the County; and
207

208 BE IT FURTHER RESOLVED, the Law Firms may make application for payment
209 from the Attorney Fees Account at any time and the County shall cooperate with the
210 Law Firms in executing any documents necessary for the escrow agent to make
211 payments out of the Attorney Fees Account; and
212

213 BE IT FURTHER RESOLVED, all actions heretofore taken by the County Board
214 and other appropriate public officers and agents of the County with respect to the
215 matters contemplated under this Resolution are hereby ratified, confirmed, and
216 approved.
217

218 Adopted by the Milwaukee County Board of Supervisors this ____ day of _____,
219 2024.

220

221

222

County Clerk

223

224

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ars

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07/25/24

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