

*Resolution Authorizing Cobb County to Enter Into the Settlement Agreements with McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., Agree to the Terms of State of Georgia and Local Governments: Memorandum of Understanding Concerning National Distributor and Johnson & Johnson Opioid Settlements, and Authorize Entry Into that MOU with the State of Georgia*

**WHEREAS**, in 2018, the County Board of Commissioners authorized Cobb County (the “County”) to enter into an engagement agreement with Crueger Dickinson LLC, Simmons Hanly Conroy LLC and von Briesen & Roper, s.c. (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 impact on of the Opioid Epidemic on the County and resources necessary to combat the opioid epidemic;

**WHEREAS**, on behalf of the County, the Law Firms filed a lawsuit against the Opioid Defendants in 2018 and have been litigating against the Opioid Defendants since that time;

**WHEREAS**, negotiations to settle claims against several of the Opioid Defendants, specifically McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the “Settling Defendants”) have been ongoing for several years;

**WHEREAS**, negotiations with the Settling Defendants have resulted in proposed nationwide settlements of state and local government claims involved in the Litigation;

**WHEREAS**, copies of the proposed terms of those proposed nationwide settlements have been set forth in the Distributors Master Settlement Agreement and the J&J Master Settlement Agreement (collectively “Settlement Agreements”);

**WHEREAS**, copies of the Settlement Agreements as well as summary of the main terms of the Settlement Agreements, the deadlines for submitting the Participation Agreements to the Settlement Agreements and the MDL Court’s Order setting deadlines for any Plaintiff who declines to enter into the Settlement Agreements have been provided to the County prior to the execution of this Resolution;

**WHEREAS**, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in Georgia including to the State of Georgia and Participating Subdivisions, as that term is defined in the Settlement Agreements, upon occurrence of certain events as defined in the Settlement Agreements (“State Opioid Funds”);

**WHEREAS**, the Law Firms have engaged in extensive discussions with counsel for other Participating Subdivisions and the State Attorney General’s Office (“AGO”) as to how the State Opioid Funds will be allocated, which has resulted in the proposed State of Georgia and Local Governments: Memorandum of Understanding Concerning National Distributor and Johnson &

Johnson Opioid Settlements (“Allocation MOU”), which is an agreement between all of the entities identified in the Allocation MOU (“Parties”);

**WHEREAS**, a copy of the Allocation MOU has been provided with this Resolution;

**WHEREAS**, the Parties shall file a Petition in the Superior Court of Gwinnett County, Georgia, seeking to establish a Qualified Settlement Fund within the meaning of 26 C.F.R. § 1.468B-1, titled the “Georgia Opioid Crisis Abatement Trust.” The Georgia Opioid Crisis Abatement Trust shall receive (1) the State Opioid Funds set forth under this Allocation MOU; (2) funds from public or private sources, including gifts, grants, donations, rebates, or other settlements received by the State and designated to the Trust; and (3) any interest earned by these amounts.

**WHEREAS**, under the terms of the Allocation MOU, the Commissioner of an agency of the Executive Branch of the State, or his or her designee or other designee of the Executive Branch of the State, shall be appointed to act as Trustee.

**WHEREAS**, under the Terms of the Allocation MOU, the Trustee shall make disbursements of State Opioid Funds, administrative expenses, and attorneys’ fees and costs as identified in the Allocation MOU;

**WHEREAS**, the Allocation MOU divides the State Opioid Funds with seventy percent (75%) to the State (“State Share”); twenty five percent (25%) to the Participating Local Governments (“LG Share”);

**WHEREAS**, of the State’s 75% share, the State shall expend at least 40% of those funds on a regional basis (“Regional Distribution”). Each county with a population of at least 400,000 persons (“Qualifying Block Grantee”) shall be counted as a separate Region. The County qualifies as a Qualifying Block Grantee. Each Qualifying Block Grantee shall receive State Regional expenditures via a direct block grant so long as it certifies that it has sufficient infrastructure to provide Opioid Abatement services. The State shall assign initial regional allocation percentages to the Regions based on the allocation model available at [www.opioidnegotiationclass.info](http://www.opioidnegotiationclass.info) implemented in In re: National Prescription Opiates Litigation, MDL No. 2804 (N.D. Ohio) (the “Negotiation Class Allocation Model”). Every three years, the Trustee shall recalculate the regional allocation percentages to the Regions based upon the following severity metrics: (1) the number of fatal opioid overdoses within the Region; (2) non-addiction treatment morphine milligram equivalents (MME) shipped into the Region; and (3) addiction treatment MME shipped into the Region.

**WHEREAS**, with the exception of administrative expenses and funds set aside for attorneys’ fees and costs for Local Government’s outside counsel pursuant to the Allocation MOU, all of the County’s share of the Regional Distribution (“Regional Share”) and the County’s LG Share (collectively the “County Share”) shall be used for Approved Purposes. “Approved Purposes” shall mean those uses identified in the List of Opioid Remediation Uses, attached as Exhibit E to the National Distributor Settlement, and those uses identified as “Approved Opioid Abatement Uses” in Schedules A and B to Exhibit G to the Notice of Filing of Eighth Plan Supplement

Pursuant to the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors, In re: Purdue Pharma L.P., et al., Case No. 19-23649-RDD, Dkt. 3121 (Bankr. S.D. N.Y. July 8, 2021).

**WHEREAS**, the County has been given a copy of Exhibit E to the National Distributor Settlement and Schedules A and B to Exhibit G to the Notice of Filing of Eighth Plan Supplement Pursuant to the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors, In re: Purdue Pharma L.P., et al., Case No. 19-23649-RDD, Dkt. 3121 (Bankr. S.D. N.Y. July 8, 2021) prior to the entry of this Resolution.

**WHEREAS**, the County Share is to primarily (no less than 70 percent) be used for future abatement purposes. Funds used to reimburse the Parties for past abatement expenses may not be used to reimburse past Medicaid expenses or any other expense that would be subject to a federal clawback, recoupment, or similar mechanism.

**WHEREAS**, County has contracted with the Law Firms for representation in the Litigation and the Law Firms have been representing those entities since 2018 and in consideration for the Law Firms' representation, the County entered into a contract with the Law Firms for a 25% contingency fee applied to County's total recovery from any settlement.

**WHEREAS**, the Settlement Agreements provide for the payment of attorney's fees and legal expenses owed by States and Participating Local Governments to outside counsel retained for Opioid Litigation. To effectuate this, the Court in the MDL Litigation has established a fund to compensate attorneys representing plaintiffs in the Litigation (the "National Attorney Fee Fund").

**WHEREAS**, the Law Firms intend to make application to the National Attorney Fee Fund. However, because there is still uncertainty regarding what counsel for litigating local governments will recover as compensation for the large volume of work done and the large out of pocket expense of the Litigation, and whereas the Parties to the Allocation MOU desire to fairly compensate outside counsel for the work done on behalf of the Participating Local Governments in Georgia, the Allocation MOU provides that a fund be created from 15% of the LG Share to compensate outside attorneys for Participating Local Governments ("Counsel") called the Local Government Cost and Fee Fund ("LGCFF");

**WHEREAS**, the LGCFF is meant to compensate outside counsel for participating local governments only for amounts not recovered at the National Fee Fund attributable to their Georgia clients;

**WHEREAS**, to be eligible for the LGCFF, the Law Firms must first seek payment from the National Attorneys' Fees Fund and may not recover amounts attributable to Counsel's representation of the County received at the National Attorneys' Fees Fund from the LGCFF.

**WHEREAS**, the County, by this Resolution, agrees to the creation of the LGCFF in the amount of 15% of the LG Share in order to fund a state-level "backstop" for payment of the fees, costs, and disbursements of the Law Firms;

**WHEREAS**, in no event shall the total of the amounts received by the Law Firms at the National Attorney’s Fees Fund related to the County and the amount received at the LGCFE exceed the amount the Law Firms would have been entitled to pursuant their fee contract with the County;

**WHEREAS**, estimated payments to the County, including estimates net attorneys’ fees and costs, under the Allocation MOU have been provided to the County;

**WHEREAS**, the County, by this Resolution, shall establish an account for the receipt of the County Share consistent with the terms of this Resolution (“the Opioid Abatement Account”);

**WHEREAS**, the County’s Opioid Abatement Account shall be separate from the County’s general fund, shall not be commingled with any other County funds, and shall be dedicated to funding opioid abatement measures as provided in the Settlement Agreements and the Allocation MOU;

**WHEREAS**, the County must comply annually with the reporting requirements in the Allocation MOU.

**WHEREAS**, the if the County elects to become a Participating Subdivision in the Settlement Agreements it will receive the benefits associated with the Settlement Agreement and the Allocation MOU, provided the County (a) approves the Settlement Agreements; (b) executes the Participation Agreements stating the County’s intention to be bound by the Settlement Agreements; (3) approves the Allocation MOU; (4) executes the Acknowledgement and Agreement to be Bound to Memorandum of Understanding necessary to execute the Allocation MOU;

**WHEREAS**, the intent of this Resolution is to authorize the County to enter into the Settlement Agreements by executing the Participation Agreements and to enter into the Allocation MOU by executing the Acknowledgement and Agreement to be Bound to Memorandum of Understanding necessary to execute the Allocation MOU;

**NOW, THEREFORE, BE IT RESOLVED:** the County Board of Commissioners hereby approves and authorizes the settlement and release of the County’s claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements, Allocation MOU and all exhibits thereto, and directs County Attorney, H. William Rowling, Jr., to execute the following documents:

1. The Participation Agreement to the Distributors Settlement Agreement and any and all documents ancillary thereto.
2. The Participation Agreement to the Janssen Settlement Agreement and any and all documents ancillary thereto.
3. The Allocation MOU by executing the Acknowledgement and Agreement to be Bound to Memorandum of Understanding.

**BE IT FURTHER RESOLVED:** the County hereby establishes an account separate and distinct from the County’s general fund which shall be titled “Opioid Abatement Account” to receive the County Share from the Settlement Agreements.

**BE IT FURTHER RESOLVED:** that all actions heretofore taken by the Board of Commissioners and other appropriate public officers and agents of the County with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

Adopted by the Cobb County Board of Commissioners this \_\_\_\_ day of November, 2021.

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Lisa N. Cupid, Chairwoman

ATTEST:

\_\_\_\_\_  
County Clerk