



MARIPOSA COUNTY

County Counsel • (209) 966-3222



RESOLUTION - ACTION REQUESTED 2018-192

MEETING: May 1, 2018

TO: The Board of Supervisors

FROM: Steve Dahlem, County Counsel - Interim Human Resources Director

RE: Resolution Authorizing Participation in the California Counties Opioid Consortium and Approving Agts

RECOMMENDATION AND JUSTIFICATION:

Adopt a Resolution Authorizing Participation in the California Counties Opioid Consortium; Approving a Professional Services Agreement Between the County of Mariposa and Baron & Budd, PC, et al, for Legal Services Related to Opioid Litigation; and Authorizing County Counsel to Sign the Agreement and Related Documents

The Professional Services Agreement is funded solely from the recovery of monies, if any, as result of the proposed litigation and would be paid only if and when the litigation successfully concludes. The General Fund and various department budgets may be positively impacted, and a budget amendment will be brought to the Board of Supervisors when any funds are received. There is no charge to the County for attorneys' fees or costs if the County does not recover anything from the litigation.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Counties are on the front lines of the opioid crisis. Several states and over 100 counties nationwide have filed federal multi-district opioid litigation ("MDL") against manufacturers and distributors of opioids to recover the costs of prevention efforts, treatment and services, as well as costs associated with jailing residents addicted to prescription painkillers and heroin. The types of damages being sought include employee costs, including overtime, health insurance, and workers compensation costs; criminal justice services, including medical examiner costs, toxicology lab costs, police services, corrections costs, and Narcan/naloxone training; health and human service costs, including addiction counseling, substance abuse services, public health response and education, child protective services and other public assistance costs; court-related costs, including public defense services, prosecutions, probation, specialized drug courts, juvenile courts and detention, and DUI services. Through this litigation, counties can potentially recover damages for costs incurred over the past several years as well as monies for programs that will be needed in the future to address the ongoing impacts of the opioid epidemic. Staff is supportive of this effort.

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Mariposa County has a unique opportunity to join a recently formed consortium of California counties for the purpose of joining in the MDL ("Consortium"). To date, approximately 18 California counties have committed to this Consortium, including the counties of Placer, El Dorado, Yuba, Sutter, Shasta and Butte. Members of the consortium agree to work together as a team using the same firm, the same general master complaint and the same general litigation strategy. The Consortium's efforts will be led by a team of 3-5 attorneys from member counties who will serve as a liaison between the Consortium and the selected firm, provide general leadership for the litigation and help ensure that member counties receive regular updates.

This approach allows counties to consolidate their collective resources, use their collective "buying power" to get a proverbial "seat at the table" in this litigation and make it as easy and efficient as possible for counties, especially the smaller ones, to participate in this nationwide litigation effort. At the same time, consistent with California law, County Counsel retains complete control over the course and conduct of our individual County's case, veto power over any decision made by outside counsel, and will be involved in overseeing the litigation of our case.

To participate in this type of large-scale litigation, the County must hire a highly specialized national firm with the resources to handle the unique demands of the litigation. On March 16, 2018, several other counties interviewed three major firms who specialize in this type of litigation and are already working on the MDL. While all of these firms were well-respected, qualified and capable of representing the Consortium's interests, Baron & Budd was ultimately selected to represent the consortium counties. Particularly impressive was Baron & Budd's specialized and unique experience representing public entities in this type of litigation, its positioning and leadership within the MDL, its established and well developed client support structure for handling everything from discovery to closed sessions, and its solid and sophisticated understanding of the State-County relationship and the strategies that might be employed to help protect our County's interests. While Baron & Budd is our primary counsel and point of contact, Baron & Budd is also coordinating with the consortium of private firms identified in the Professional Services Agreement which means we will also benefit from the combined expertise, skills and resources of multiple national firms in this litigation. At the request of RCRC, the core counties extended the Consortium opportunity to their counties, primarily the smaller rural counties. We have been overwhelmed by the significant interest in this approach and by how rapidly the consortium has grown in a very short period of time.

As a one-time offer to consortium members, Baron agreed to reduce its contingency fee from 25% (the normal rate for counties with populations of less than 1M) to 18%. This rate is slightly lower than the 20% initially offered by the two other firms interviewed. Baron & Budd will advance and cover all litigation costs and attorneys' fees and its only right to recovery will be against any monies the County receives as a result of this litigation. If the County does not prevail for any reason, or if the County



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determines that it is no longer in our best interests to continue with the litigation, the County may withdraw with no obligation to pay any attorneys' fees or costs.

Due to the Consortium's commitment to filing all complaints on the same day and the desire to file before an early May settlement conference, it is necessary that interested counties have Board approval of the Professional Services Agreement no later than May 1, 2018.

I recommend that you approve participation in the California County Opioid Consortium, approve the Professional Services Agreement in substantially the form attached, and authorize County Counsel to execute all documents necessary to participate in and work with the Consortium for purposes of participating in the MDL.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not authorize participation in the California Counties Opioid Consortium and forego the opportunity to recover the costs of prevention efforts, treatment and services, as well as costs associated with jailing residents addicted to prescription painkillers and heroin.

FINANCIAL IMPACT:

None

ATTACHMENTS:

Opioid Consortium Formal Res (DOC)

CA Counties Consortium Opioid Professional Services Agreement_v.8 (DOC)

Opioid Fact Sheet (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Merlin Jones, District II Supervisor

SECONDER: Miles Menetrey, District V Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey

MARIPOSA COUNTY RESOLUTION NO. 18-192

RESOLUTION AUTHORIZING PARTICIPATION IN THE CALIFORNIA COUNTIES OPIOID CONSORTIUM, APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF MARIPOSA AND BARON & BUDD, PC, ET AL., FOR LEGAL SERVICES RELATED TO OPIOID LITIGATION, AND AUTHORIZING COUNTY COUNSEL TO EXECUTE THE AGREEMENT

WHEREAS, several states and over 100 counties nationwide have filed federal multi-district litigation (“MDL”) against manufacturers and distributors of opioids to recover the costs of prevention efforts, treatment and services, as well as costs associated with jailing residents addicted to prescription painkillers and heroin; and

WHEREAS, the County has a unique opportunity to join a recently formed consortium of California counties for the purpose of joining the MDL; and

WHEREAS, the California Counties Opioid Consortium (“Consortium”) has agreed to work together as a team using the same firm, the same general master complaint and the same litigation strategy, and to be assisted by a litigation management team of attorneys from representative member counties; and

WHEREAS, the Consortium has selected the firm of Baron & Budd, PC, and the consortium of private firms associated with Baron & Budd, to represent its member counties (collectively “Baron & Budd”); and

WHEREAS, Baron & Budd has specialized and unique experience representing public entities in large scale mass litigation, a strong leadership position within the MDL, an established and well developed client support structure and a solid, sophisticated understanding of State-County relationships, and is very well qualified to represent both the County’s and the Consortium’s interests in this litigation; and

WHEREAS, the parties desire to enter into a Professional Services Agreement for said litigation services on a contingency fee basis, based on the findings, terms and conditions contained in said Agreement; and


WHEREAS, Baron & Budd has agreed to advance and cover all litigation costs and attorneys’ fees, and that its only right of recovery will be against any monies the County receives as a result of this litigation.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Mariposa County that County Counsel, on behalf of the County of Mariposa, is hereby authorized to participate in the California Counties Opioid Consortium for purposes of joining the federal multi-district opioid litigation and to execute all documents necessary to work with the Consortium.

BE IT FURTHER RESOLVED that the Professional Services Agreement Between the County of Mariposa and Baron & Budd, PC, et al., for legal services related to the federal multi-district opioid litigation, on a contingency fee basis, be and hereby is approved in the form attached hereto as Exhibit A, and that County Counsel is hereby authorized to execute the Agreement in substantially the form attached hereto.

PASSED AND ADOPTED by the Mariposa County Board of Supervisors this 1st day of May, 2018 by the following vote:

AYES: SMALLCOMBE, JONES, LONG, CANN, MENETREY
NOES: NONE
ABSENT: NONE
ABSTAINED: NONE


ROSEMARIE SMALLCOMBE, Chair
Board of Supervisors

ATTEST:


RENE LAROCHE, Clerk of the Board

APPROVED AS TO FORM:


STEVEN W. DAHLEM, County Counsel