



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** November 7, 2019

Staff Contact: Jason Woodbury, Carson City District Attorney

Agenda Title: For Possible Action: Discussion and possible action regarding whether to opt out of the Negotiation Class established in the National Prescription Opiate Litigation pending in the United States District Court for the Northern District of Ohio Eastern Division. (Jason Woodbury, jwoodbury@carson.org)

Staff Summary: On September 11, 2019, an order of United States District Judge Dan Aaron Polster created a "Negotiation Class" in the National Prescription Opiate Litigation, which is litigation concerning the nation's opioid crisis. Judge Polster's order includes all counties and cities throughout the United States in the Negotiation Class. If a settlement on behalf of the Negotiation Class was approved, counties and cities that did not opt out of the Negotiation Class would receive a predetermined allocation of settlement funds, and further claims against the settling defendants would be barred. According to the official informational website about the Negotiating Class, <http://opioidsnegotiationclass.info>, Carson City's allocation of a hypothetical \$1 billion settlement would be \$229,411. A county or city does not need to take any action to remain in the Negotiation Class. But a county or city must submit an "Exclusion Request Form" by November 22 to opt out of the Negotiation Class.

Agenda Action: Formal Action / Motion **Time Requested:** 15 mins

Proposed Motion

I move to opt out of the Negotiation Class and to authorize the Mayor to execute the Exclusion Request Form.

Board's Strategic Goal

N/A

Previous Action

On May 3, 2018, Carson City engaged the law firm of Eglet Adams (formerly Eglet Prince) to seek recovery of monetary damages and injunctive relief to compensate Carson City for the substantial negative impact opioids have actually and proximately caused to Carson City.

Background/Issues & Analysis

On September 11, 2019, an order of United States District Judge Dan Aaron Polster created a "Negotiation Class" in the National Prescription Opiate Litigation, which is multidistrict litigation concerning the nation's opioid crisis. Multidistrict litigation refers to a procedure that permits civil lawsuits pending in different federal district courts to be transferred and consolidated for pretrial proceedings before one judge. Judge Polster's order includes all counties and cities throughout the United States in the Negotiation Class. If a settlement on behalf of the Negotiation Class was approved, counties and cities that did not opt out of the Negotiation Class would receive a predetermined allocation of settlement funds, and further claims against the settling defendants would be barred. According to the official informational website about the Negotiating Class,

<http://opioidsnegotiationclass.info>, Carson City's allocation of a hypothetical \$1 billion settlement would be \$229,411. A county or city does not need to take any action to remain in the Negotiation Class. But a county or city must submit an "Exclusion Request Form" by November 22 to opt out of the Negotiation Class.

At this time, Eglet Adams has not filed an action on behalf of Carson City concerning the opioid crisis. Judge Polster has included Carson City and all counties and cities throughout the United States in the Negotiation Class as part of a class action within the multidistrict litigation for negotiation purposes only.

Further Background, Issues, and Analysis is confidential and privileged as attorney/client communications or as attorney work product.

Applicable Statute, Code, Policy, Rule or Regulation

NA

Financial Information

Is there a fiscal impact? No

If yes, account name/number:

Is it currently budgeted?

Explanation of Fiscal Impact:

Alternatives

Take no action, which will result in Carson City remaining in the Neogtiation Class created in the National Prescription Opiate Litigation.

Attachments:

[Exclusion Request Form.pdf](#)

[Order Certifying Negotiation Class and Approving Notice..pdf](#)

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

**IF YOU WANT TO EXCLUDE YOUR COUNTY OR CITY
YOU MUST ACT BY NOVEMBER 22, 2019**

EXCLUSION REQUEST FORM

Read this page carefully then turn to Page 2 if you want to sign and send

Complete this form ONLY if your County or City does NOT want to remain a Class Member and does not want to share in any potential negotiated Class settlement. If your County or City does not complete and submit this form, it will be deemed to be a Class Member so long as it is a County or City in the United States as those terms are described in the Class Notice and is on the list of Class Members found at www.OpioidsNegotiationClass.info.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

_____	X	
	:	
In re NATIONAL PRESCRIPTION	:	1:17-md-2804 (DAP)
OPIATE LITIGATION	:	
_____	X	

Class Notice Administrator
NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727

Dear Class Notice Administrator:

My County or City does **NOT** want to be a member of the Negotiation Class certified in the *In re National Prescription Opiate Litigation*. I understand that by completing the information requested on page 2, signing, and submitting a copy of this form by email (to the email address on page 2) sent on or before **November 22, 2019** OR by first-class U.S. mail (to the mailing address on page 2) post-marked on or before **November 22, 2019**, I am opting my County or City out of the Negotiation Class and it will **NOT** be a Class Member. I understand that by timely submitting this form, my County or City is foregoing the right to share in any Class settlement that may be obtained. I understand that my County or City is **NOT** guaranteed an opportunity to opt back in if there is a Class settlement, so this is our final decision. I also understand that by opting out, my County or City will not be bound by any judgment entered as part of any Class settlement.

I understand that if my jurisdiction is a Class Member and wants to remain a Class Member, it does not need to do anything now. I understand that I should **NOT** return this Exclusion Request Form if my jurisdiction wants to remain a Class Member.

I understand that, if I have any questions, I may contact Class Counsel at **1-877-221-7468**, or visit www.OpioidsNegotiationClass.info **BEFORE** I mail this form to you and **BEFORE November 22, 2019**.

**TURN TO PAGE 2 IF YOU WANT TO SIGN EXCLUSION/OPT-OUT FORM
AND FOR EMAIL AND MAILING ADDRESSES**

**IF YOU WANT TO EXCLUDE YOUR COUNTY OR CITY
YOU MUST ACT BY NOVEMBER 22, 2019**

EXCLUSION REQUEST FORM
Read Information on Page 1 carefully before signing

Having read and understood the information on page 1, the County or City (**circle one**) entitled _____ in the State of _____ hereby excludes itself from the Negotiation Class certified by the United States District Court in the Northern District of Ohio in *In re National Prescription Opiate Litigation*, MDL 2804. Under penalty of perjury and in accordance with 28 U.S.C. § 1746, I declare that I am an official or employee authorized to take legal action on behalf of my County or City.

Signature: _____

Print name: _____

Title: _____

City or County Represented: _____ (Circle one): City / County

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Date: _____

BY NOVEMBER 22, 2019

EMAIL TO:

**OR SEND BY
FIRST CLASS MAIL TO:**

info@OpioidsNegotiationClass.info

NPO Litigation
P.O. Box 6727
Portland, OR 97228-6727

4. The Class is defined as:

All counties, parishes, and boroughs (collectively, “counties”); and all incorporated places, including without limitation cities, towns, townships, villages, and municipalities (collectively “cities”).

A complete list of Class Members is available on the Opioids Negotiation Class website, www.opioidsnegotiationclass.info.

5. By separate Memorandum Opinion, the Court has found:

- that the class is so numerous that joinder of all members is impracticable; that there are questions of law and fact common to the class; that the claims of the representative parties are typical of the claims of the class; and that the representative parties will fairly and adequately protect the interests of the class, as required by Fed. R. Civ. P. 23(a)(1)–(4);
- that questions of law and fact common to class members predominate over any questions affecting only individual members with respect to a RICO claim arising out of the alleged Opioid Marketing Enterprise, as against five (5) named sets of Defendants (Purdue, Cephalon, Janssen, Endo, and Mallinckrodt), and as to a RICO claim arising out of the alleged Opioid Supply Chain Enterprise, as against eight (8) named Defendants (Purdue, Cephalon, Endo, Mallinckrodt, Actavis, McKesson, Cardinal, and AmerisourceBergen), and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy, as required by Rule 23(b)(3); and
- that questions of law and fact common to class members predominate over any questions affecting only individual members with respect to two specific issues related to the obligations of 13 sets of Defendants (Purdue, Cephalon, Endo, Mallinckrodt, Actavis, Janssen, McKesson, Cardinal, AmerisourceBergen, CVS Rx Services, Inc., Rite-Aid Corporation, Walgreens, and Wal-Mart) under the Controlled Substances Act, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy with respect to these issues, as required under Rule 23(c)(4), as interpreted by the Sixth Circuit in *Martin v. Behr Dayton Thermal Prod. LLC*, 896 F.3d 405 (6th Cir. 2018), *cert. denied*, 139 S. Ct. 1319 (2019).

The Court accordingly certifies the two RICO claims against the five and eight Defendants, respectively, under Rule 23(b)(3), and the two CSA issues against the 13 identified Defendants

under Rule 23(c)(4). The accompanying Memorandum Opinion clarifies that these 13 identified Defendants encompass families of companies.

6. In its Memorandum Opinion, the Court specifically found the 49 proposed Class Representatives' claims to be typical of those of the Class and found that these proposed Class Representatives will adequately represent the class. The Court accordingly appoints these 49 entities to serve as the Negotiation Class's Class Representatives:

(1) County of Albany, New York; (2) City of Atlanta, Georgia; (3) Bergen County, New Jersey; (4) City of Baton Rouge/East Baton Rouge Parish, Louisiana; (5) Broward County, Florida; (6) Camden County, New Jersey; (7) Cass County, North Dakota; (8) City of Chicago, Illinois; (9) Cobb County, Georgia; (10) City of Concord, New Hampshire; (11) Cumberland County, Maine; (12) City of Delray Beach, Florida; (13) Denver, Colorado; (14) Escambia County, Florida; (15) Essex County, New Jersey; (16) County of Fannin, Georgia; (17) Franklin County, Ohio; (18) Galveston County, Texas; (19) County of Gooding, Idaho; (20) City of Grand Forks, North Dakota; (21) County of Hennepin, Minnesota; (22) City of Indianapolis, Indiana; (23) County of Jefferson, Alabama; (24) Jefferson County/ City of Louisville, Kentucky; (25) Jersey City, New Jersey; (26) Kanawha County, West Virginia; (27) King County, Washington; (28) City of Lakewood, Ohio; (29) City of Los Angeles, California; (30) City of Lowell, Massachusetts; (31) City of Manchester, New Hampshire; (32) Maricopa County, Arizona; (33) Mecklenburg County, North Carolina; (34) The Metropolitan Government of Nashville and Davidson County, Tennessee; (35) Milwaukee County, Wisconsin; (36) Monterey County, California; (37) City of Norwalk, Connecticut; (38) County of Palm Beach, Florida; (39) Paterson City, New Jersey; (40) City of Phoenix, Arizona; (41) Prince George's County, Maryland; (42) Riverside County, California; (43) City of Saint Paul, Minnesota; (44) City of Roanoke, Virginia; (45) County of Rockland, New York; (46) City and County of San Francisco, California; (47) County of Smith, Texas; (48) County of Tulsa, Oklahoma; and (49) Wayne County, Michigan.

7. In its separate Memorandum Opinion, and the prior Interim Class Counsel Orders (Doc. #: 2490, 2493), the Court has found that lawyers Jayne Conroy, Christopher Seeger, Gerard Stranch, Louise Renne, Zachary Carter, and Mark Flessner meet the requirements to serve as Negotiation Class Counsel, as required by Rule 23(g). The Court accordingly appoints Jayne Conroy and Christopher Seeger to serve as Co-Lead Negotiation Class Counsel and Gerard

Stranch, Louise Renne, Zachary Carter, and Mark Flessner to serve as Co-Negotiation Class Counsel.

8. Class Counsel and only Class Counsel are authorized to (a) represent the Class in settlement negotiations with Defendants; (b) sign any filings with this or any other Court made on behalf of the Class; (c) assist the Court with functions relevant to a class action, such as but not limited to maintaining the Class website and executing a satisfactory notice program; and (d) represent the Class in Court.

9. As explained in the accompanying Memorandum Opinion, the Court finds that there is no bar to Class Counsel working with the MDL Negotiation Committee members in negotiating with Defendants, nor is there any bar to these MDL lawyers seeking to apply to share Class Counsel responsibilities in the future should their representational situations change. However, as noted above, only Class Counsel can bind the Class and thus Class Counsel must independently approve all final decisions concerning any Class-based settlement and be the sole signatories on behalf of the Class of all Class-based term sheets, settlement agreements, or similar documents.

10. In its Memorandum Opinion, the Court analyzed the scope of the claims and issues proposed for certification with reference to the complaints filed by Summit County, Ohio, Doc. #: 513, 1466; these complaints also served as the basis for the Court's Order adopting a short-form complaint process in this MDL. Doc. # 1282. The Summit County, Ohio case number is accordingly attributed to this class action going forward and all matters in the class action will utilize the caption on this Order. For administrative convenience, the Clerk may assign a different

case number within the *Summit County* case for Class Action filings, to distinguish these from the individual filings in that case.

11. As explained in the accompanying Memorandum Opinion, the Court has found that the proposed Class Action Notice program submitted by Interim Class Counsel on September 10, 2019, Doc. #: 2583, meets the requirements of Rule 23. Accordingly, the proposed Class Action Notice program is approved for mailing to the whole Class, for posting on the Opioids Negotiation Class website, www.opioidsnegotiationclass.info, and for emailing to those members of the Class with email addresses known to the Notice provider. The Class Action Notice, Doc. #: 2583-1, shall be mailed to all entities listed as Class members on www.opioidsnegotiationclass.info as soon as possible. Epiq Global is hereby approved to serve as Class Notice provider, is authorized and directed to effectuate first-class mail and email notice to the Class, and is ordered to provide a Report to this Court, no later than December 1, 2019 on the completion of the Class Notice program.

12. As explained in the accompanying Memorandum Opinion, the Court has found that the proposed plan for enabling Class Members to exclude themselves from the class, submitted by Interim Class Counsel on September 10, 2019, Doc. #: 2583, 2583-2, meets the requirements of Rule 23. Specifically, Class Members wishing to exclude themselves from – or “opt out” of – the class must request exclusion by signing the Exclusion Form, under penalty of perjury, and sending it via email to <info@OpioidsNegotiationClass.info> or via first-class mail to NPO Litigation, P.O. Box 6727, Portland, OR 97228-6727. This request must be signed by an official or employee authorized to take legal action on behalf of the County or City requesting exclusion. If the Class Member returns the Exclusion Request Form via email attachment, the email must be sent on or

before November 22, 2019. If the Class Member returns the Exclusion Request Form via mail, it must use first-class U.S. mail and the mailing must be postmarked on or before November 22, 2019.

13. The Order does not certify the Negotiation Class for any purpose other than to negotiate for the class members with the thirteen (13) sets of national Defendants identified above. Accordingly, this Order is without prejudice to the ability of any Class member to proceed with the prosecution, trial, and/or settlement, in this or any court, of an individual claim, or to the ability of any Defendant to assert any defense thereto. This Order does not stay or impair any action or proceeding in any court, and Class members may retain their Class membership while proceeding with their own actions, including discovery, pretrial proceedings, and trials. In the event a Class Member reaches a settlement or trial verdict, it may proceed with its settlement/verdict in the usual course without hindrance by virtue of the existence of the Negotiation Class. Such Class Member may not, however, collect on its individual settlement/judgment and also participate in any Class settlement fund.

14. This Order is without prejudice to any party's ability to oppose the certification of this or any other class, proposed for litigation or settlement, with respect to any opioids-related claim, defense, issue, or question. Accordingly, no class member or any party, or counsel to a party, to this proceeding may cite this Order or the accompanying Memorandum Opinion as precedent or in support of, or in opposition to, the certification of any class for any other purpose in any opioids-related litigation by or against any party thereto. Persons not parties to this proceeding are informed that this Order and the accompanying Memorandum Opinion are not

intended to serve as a precedent in support of, or in opposition to, any motion for class certification of any type pursued in any court on opioid-related matters.

15. This Order does not alter existing law with respect to the relationship between any State and its political subdivisions. As already ordered in appointing Interim Negotiation Class Counsel, Doc. #: 2490, Negotiation Class Counsel are authorized to negotiate settlements with Defendants on behalf of the putative class but are ***not*** authorized to negotiate on behalf of Class members within a given State against their State government should allocation disputes arise during or following State settlements.

16. This Order does not approve, or commence the approval process for, any specific settlement or proposed settlement. Any settlement reached with the Negotiation Class must and will be subject to the specific settlement approval process of Rule 23(e).

17. The Court adopts by reference as applicable to Class Counsel the time-keeping guidelines, spending limitations, and other requirements of its Order Regarding Plaintiff Attorney's Fees and Expenses entered in this MDL, Doc. #: 358.

18. If any settlement is reached under this process, supported by the Class, and approved by the Court, no attorney's fees of any kind will be distributed from the class's recovery or any other source except according to the procedures sets forth in Rule 23(h). This includes Class Counsel's fees, fees for attorneys representing litigating entities (as described in the Memorandum Opinion, for whom 10% of any recovery is set aside), fees for MDL common benefit work, fees for objectors, or any other fee requests.

19. This Order applies to the previously-identified 13 sets of national Defendants. None of these Defendants is required by this Order to engage with the Negotiation Class. This is

a voluntary mechanism developed to address the unique circumstances of this litigation, which the Court hopes will directly or indirectly facilitate the voluntary, fair, adequate and reasonable resolution of the cities' and counties' claims pending in these MDL No. 2804 proceedings and in related state court litigation, and promote the overall resolution of the litigation.

20. In light of its purpose to facilitate settlement, the Negotiation Class will terminate five (5) years from the date below, except as necessary to enable then-ongoing settlement negotiations, approval processes, enforcement and administration to be completed.

/s/ Dan Aaron Polster

DAN AARON POLSTER
UNITED STATES DISTRICT JUDGE

Dated: September 11, 2019