

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

July 23, 2024

FROM

TOM BUNTON, County Counsel

SUBJECT

National Opioid Settlement with The Kroger Co.

RECOMMENDATION(S)

1. Approve the Subdivision Participation and Release Form (**Agreement No. 24-675**) for San Bernardino County's participation in the National Opioid Settlement with The Kroger Co.
2. Approve the Proposed California State-Subdivision **Agreement No. 24-679** Regarding Distribution and Use of Settlement Funds – Kroger Settlement.
3. Authorize the Chief Executive Officer to electronically execute the Subdivision Participation and Release Form and the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Kroger Settlement.
4. Direct the Chief Executive Officer to transmit the Subdivision Participation and Release Form and the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Kroger Settlement to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Tom Bunton, County Counsel, 387-5455)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of the participation in the settlement and related agreements will not result in the use of Discretionary General Funding (Net County Cost) as the agreements will result in an estimated amount of up to \$3.5 million to be received by the County over 11 years. The estimated amount of \$3.5 million is a best-case scenario and the actual amount that will be received by the County is dependent on a number of variables, including, but not limited to, the number of California cities and counties participating, whether or not cities later sue The Kroger Co. (Kroger), whether the cities decide to allocate their share of the settlement funds to the County, and certain actions that may be taken by the State of California. Additionally, there are significant restrictions on the use of the settlement funds, in accordance with the terms of the settlement documents.

BACKGROUND INFORMATION

On July 19, 2018, San Bernardino County filed a lawsuit in the United States District Court for the Central District of California and shortly thereafter, it was transferred to become part of the national opioid multidistrict litigation (MDL) in Ohio. The MDL consists of thousands of cases involving numerous counties, cities and several states as plaintiffs. The cases all arise out of

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the plaintiffs' allegations that the defendants, consisting of opioid manufacturers, distributors, and pharmacies engaged in unlawful conduct causing the national opioid crisis.

The Plaintiffs' Executive Committee (consisting of various plaintiffs) for the MDL have reached a tentative national settlement with Kroger. A copy of the settlement agreement with Kroger is attached as Attachment A. The total payout amount under the settlement with Kroger is contingent upon various factors, including the number of cities and counties participating, with a maximum payout of \$1.2 billion over 11 years. Approximately 10.19% of the total amount will be allocated to California, its counties, cities, and special districts. The actual amount that will be received by the County is dependent on a number of variables, including, but not limited to, the number of California cities and counties participating, whether or not cities later sue Kroger, whether the cities in the county allocate their share of the settlement funds to the County, and certain actions that may be taken by the State of California. By participating in the settlement, the County would be dismissing all of its claims in the lawsuit against Kroger.

Approval of Recommendation No. 1 would authorize the County to participate in the settlement with Kroger on the terms and conditions of the settlement agreement. Approval of Recommendation No. 2 would approve an agreement with the State of California on the distribution and use of settlement funds, consistent with the Kroger settlement agreement. This agreement is set forth on Attachment B. Approval of Recommendation No. 3 would authorize the Chief Executive Officer to execute all documentation necessary to participate in the settlement. All required documentation must be electronically executed and submitted through DocuSign. The documents to be executed consist of the Subdivision Participation and Release Form for the Kroger settlement and the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Kroger Settlement.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Supervising Deputy County Counsel, 387-5455), on June 10, 2024; Finance (Carl Lofton, Administrative Analyst, 387-5404) on July 2, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on July 3, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 23, 2024



cc: County Counsel - Magana w/ agrees for sign
 Contractor - c/o County Counsel w/ agree
 File - w/ agree
JLL 07/30/2024