

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

September 14, 2021

FROM

MICHELLE D. BLAKEMORE, County Counsel

SUBJECT

Consent to Representation and Waiver of Potential Conflict of Interest

RECOMMENDATION(S)

1. Approve a consent to representation and waiver of potential conflict of interest arising out of the representation of Walgreen Company by von Briesen & Roper with respect to personal injury matters.
 2. Authorize the County Counsel or a Principal Assistant County Counsel to execute the consent to representation and waiver of potential conflict of interest.
- (Presenter: Michelle D. Blakemore, County Counsel, 387-5455)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of the consent to representation and waiver of potential conflict of interest ("Consent and Waiver") item will not impact Discretionary General Funding (Net County Cost).

BACKGROUND INFORMATION

San Bernardino County (County) filed a complaint in 2018 in the National Opioid Litigation as one of the thousands of public entities nationwide suing in an effort to hold manufacturers, distributors and dispensers of pharmaceutical opioids responsible for their role in causing or contributing to the opioid epidemic. The County is represented by three law firms in the National Opioid Litigation: Simmons Hanly Conroy, Crueger Dickinson, and von Briesen & Roper. A group of pharmacies was identified as defendants in the initial complaints filed, but Walgreen Company (Walgreen) was not one of those pharmacies. Since that time, it has been determined that Walgreen engaged in conduct our counsel believe make the company potentially liable to the County. As a result, an amended complaint has been filed naming Walgreen as a defendant.

One of the firms representing the County, von Briesen & Roper, currently represents Walgreen on two personal injury matters occurring in the company's stores. The two matters are completely unrelated to any matter involving Walgreen's involvement with the opioid epidemic or any claims advanced against Walgreen on the County's behalf. Under the Rules of Professional Conduct, and out of an abundance of caution, the situation has been identified as a conflict of interest requiring consent from the County in order to waive the conflict of interest. Walgreen has agreed to waive the conflict of interest and the von Briesen firm has established an "ethical

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wall” so that the attorneys working on behalf of Walgreen have no access to any files or materials relating to the Multi District Litigation involving the Opioid Litigation and the attorneys working on behalf of the County have no access to the personal injury files or materials. A waiver of the conflict will allow von Briesen to continue working on behalf of the County. If the County executes the waiver and consent, it would be allowing von Briesen to represent Walgreen and would be waiving its right to seek to disqualify von Briesen from its representation of Walgreen.

County Counsel has reviewed the consent to representation and waiver of conflict of interest and believes there would be minimal risk of a conflict of interest regarding von Briesen’s representation of Walgreen with respect to the personal injury matters and it would be appropriate for the Board of Supervisors to approve the waiver of the conflict of interest.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Michelle D. Blakemore, County Counsel, 387-5455) on August 30, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on August 30, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on August 30, 2021.

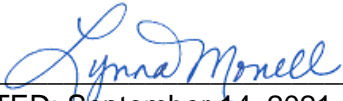
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Dawn Rowe
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 14, 2021



cc: File - County Counsel
CCM 09/17/2021