

# OFFICE OF THE TOWN ADMINISTRATOR

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## MEMORANDUM

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**DATE:** May 4, 2018  
**TO:** Town Council  
**FROM:** Jeffrey D. Nutting, Town Administrator  
**RE:** Background on Opioid Law Suit

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Jamie and I attended a session on the potential lawsuit against large drug distributors. They are attempting to recover cost on a wide range of expenses, including costs to municipalities for responding to the opioid crisis. They are not pursuing anyone affiliated with the Medical profession that prescribed opioids, nor are they pursuing costs of affected individuals or families.

You will note at the bottom of the attached the lawyers are pursuing many avenues to collect money and last on the list are funds for cities and towns. We struggled to determine even a ballpark cost to the town. Anyone transported in an ambulance would be billed for the service and Representative Roy has been successful in obtaining two \$50,000 grants for the SAFE coalition to provide a wide variety of services to help Franklin citizens struggling with addiction.

The lawyers would receive thirty percent of any settlement plus expenses. Given there are six areas where they are trying to collect money and only one really relates to the Town of Franklin. If the law suit was ultimately settled I do not expect we would receive much money.

In listening to many communities some our pursuing the matter to “send a message”, others are not because “we have not brought suit against folks struggling with other health issues” and some have not made any decision.

There is no cost to be part of the suit and currently no time line when it would be filed or information on how we may determine if we had any expenses beyond normal operating costs.

Accordingly it’s up to the council to decide if there is any merit in joining the litigation.

We are happy to answer any questions.



TOWN OF FRANKLIN

RESOLUTION 18-45

PARTICIPATION IN OPIOID LITIGATION AND ENGAGEMENT OF LEGAL COUNSEL FOR THAT PURPOSE

WHEREAS, The Town of Franklin has incurred and will likely continue to incur expense to provide emergency medical services and other public services to the victims of opioid abuse and their families, as a result of the so-called opioid crisis, and

WHEREAS, litigation has been and is being brought on behalf of municipalities against those parties identified as being responsible for creating and/or exacerbating said crisis to recover the municipalities' resulting expenses,

NOW THEREFORE, be it voted by Franklin Town Council that:

- 1. The Town of Franklin participate in litigation against those parties identified as being responsible for creating and/or exacerbating the opioid crisis to recover Town's resulting expenses in providing public services.
- 2. The Town of Franklin retain the law firm Levin, Papantonio, Thomas, Mitchell, Rafferty, & Proctor, PA to provide legal representation to Town in said litigation and authorize the Town Administrator to execute the law firm's engagement agreement, a copy of which is attached hereto as "Exhibit A" and to take any other action he deems necessary or appropriate to protect Town's interests in said litigation.

This Resolution shall become effective according to the Provisions of the Franklin Home Rule Charter.

DATED: \_\_\_\_\_, 2018

VOTED:  
UNANIMOUS \_\_\_\_\_

A True Record Attest:

YES \_\_\_\_\_ NO \_\_\_\_\_

ABSTAIN \_\_\_\_\_

Teresa M. Burr  
Town Clerk

ABSENT \_\_\_\_\_

\_\_\_\_\_  
Glenn Jones, Clerk  
Franklin Town Council

## **ENGAGEMENT TO REPRESENT**

RE: Town of Franklin, Massachusetts civil suit against those legally responsible for the wrongful distribution of prescription opiates and damages caused thereby.

**TOWN of FRANKLIN, Massachusetts** (hereinafter "CLIENT"), by and through its Town Administrator, hereby retains the law firm LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA ("Firm") on a contingent fee basis, to pursue all civil remedies against those in the chain of distribution of prescription opiates responsible for the opioid epidemic which is plaguing the **TOWN** including, but not limited to, filing a claim for public nuisance to abate, enjoin, recover and prevent the damages caused thereby.

**Peter J. Mougey** of the Firm shall serve as LEAD COUNSEL. CLIENT authorizes lead counsel to employ and/or associate additional counsel, with consent of CLIENT, to assist LEAD COUNSEL in the just prosecution of the case. CLIENT consents to the participation of the following firms (collectively referred to, herein, as "Attorneys"), if no conflicts exist, including but not limited to conflicts pursuant to the Massachusetts Ethics laws and the Massachusetts Rules of Professional Conduct:

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA  
316 South Baylen Street  
Pensacola, Florida

SWEENEY MERRIGAN LAW, LLP  
268 Summer Street, LL  
Boston, Massachusetts

RODMAN, RODMAN & SANDMAN, P.C.  
442 Main Street, Suite 300  
Malden, Massachusetts

GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP  
419 11th Street  
Huntington, West Virginia

BARON & BUDD, PC  
3102 Oak Lawn Avenue #1100  
Dallas, Texas

HILL PETERSON CARPER BEE & DEITZLER PLLC  
500 Tracy Way  
Charleston, West Virginia

POWELL & MAJESTRO, PLLC  
405 Capitol Street, P-1200  
Charleston, West Virginia

MCHUGH FULLER LAW GROUP  
97 Elias Whiddon Road  
Hattiesburg, Mississippi

KP LAW, P.C.  
101 Arch Street, 12<sup>th</sup>  
Floor  
Boston, Massachusetts

CLIENT is retaining the Firm and Attorneys collectively and not as individuals, and attorney services to be provided to CLIENT hereunder will not necessarily be performed by any particular attorney.

In consideration, CLIENT agrees to pay twenty-five percent (25%) of the total recovery (gross) in favor of CLIENT as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. CLIENT grants the Firm an interest in a fee based on the gross recovery. If a court awards attorneys' fees, the Firm shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded. **CLIENT shall not pay to the Firm and Attorneys a fee of any kind or nature if there is no recovery.**

The Firm and the Attorneys shall advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated and shall be paid to the Firm and Attorneys. **CLIENT shall not be required to reimburse the Firm and Attorneys for litigation expenses of any kind or nature if there is no recovery. If there is a recovery, the expenses charged shall be capped at 10% of the recovery, such that fees and expenses combined will not exceed 35% of the gross recovery to the Town.**

CLIENT acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this retention will preclude other retention by the Firm, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

Attorneys shall have the right to represent other municipalities, governmental agencies or governmental subdivisions in other opioid related actions or similar litigation, subject to the requirements of the Massachusetts Rules of Professional Conduct relating to conflicts of interest, and CLIENT consents to such multiple representation. CLIENT has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest which may occur as the result of Attorneys' current and continuing representation of other entities in similar litigation.

This litigation is intended to address a significant problem in the TOWN. The litigation focuses on the wholesale distributors and manufacturers of opioids and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in opioid addiction, abuse, morbidity and mortality. There is no easy solution and no precedent for such an action against this sector of the industry. Many of the facts of the case are locked behind closed doors. The billion-dollar industry denies liability. The litigation will be very expensive and the litigation expenses will be advanced by the Firm with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery.

The Firm intends to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages and/or equitable remedies (e.g., an abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the wholesale distributors and manufacturers of opioids. CLIENT agrees to compensate the Firm, wholly contingent upon prevailing, by paying 25% of any settlement/resolution/judgment, in favor of CLIENT, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, CLIENT agrees to pay 25% of the gross amount to Firm as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), CLIENT agrees to pay 25% of the gross value of the equitable relief to the Firm as compensation and then reimburse the reasonable litigation expenses, subject to appropriation of funds therefore and the applicable provisions of Massachusetts law. To the extent that the remedy includes both monetary damages and equitable relief, 25% of the monetary value of the equitable relief together with 25% of the monetary damages will be deducted from the total monetary damages as compensation for the Firm. If such compensation exceeds the total amount of the monetary damages awarded, payment of the additional compensation amount shall be subject to appropriation of funds therefor. To be clear, however, the Firm shall not be paid nor receive reimbursement from public funds unless required by law. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee unless required by law. Under no circumstances shall CLIENT be obligated to pay any attorneys' fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of CLIENT's claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Firm will be paid the designated contingent fee from the resources expended by the defendant(s). CLIENT acknowledges this is a necessary condition required by the Firm to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Firm should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by CLIENT. Any division of fees will be governed by the Massachusetts Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with CLIENT; (2) CLIENT has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; (3)

except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by CLIENT and each lawyer and shall comply with the terms of the Massachusetts Rules of Professional Conduct; and (4) the total fee is not clearly excessive.

The Firm and Attorneys will perform the legal services called for under this Agreement, keep CLIENT informed of progress and developments, and respond promptly to CLIENT's inquiries and communications. CLIENT will be truthful and cooperative with the Firm and Attorneys, disclose to the Firm and Attorneys all facts relevant to the claim, keep the Firm and Attorneys reasonably informed of developments, and be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings, and trial as reasonably necessary.

LEAD COUNSEL shall appoint a contact person to keep CLIENT reasonably informed about the status of the matter in a manner deemed appropriate by CLIENT. CLIENT at all times shall retain the authority to decide the disposition of the case and personally oversee and maintain absolute control of the litigation, including but not limited to whether to settle the litigation and on what terms.

CLIENT may discharge the Firm and Attorneys at any time by written notice effective when received by LEAD COUNSEL. Unless specifically agreed by the Firm and CLIENT, the Firm and Attorneys will provide no further services and advance no further costs on CLIENT's behalf with respect to the litigation after receipt of the notice. If the Firm is CLIENT's attorney of record in any proceeding, CLIENT will execute and return a substitution-of-attorney form immediately on its receipt from the Firm.

Upon conclusion of this matter, LEAD COUNSEL shall provide CLIENT with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyers' fees with a lawyer not in the same firm. The closing statement shall be signed by the CLIENT and each attorney among whom the fee is being divided.

At the conclusion or termination of services under this Agreement, the Firm and Attorneys will release promptly to CLIENT all of CLIENT's papers and property. "CLIENT's paper and property" includes correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to CLIENT's representation, whether CLIENT has paid for them or not.

Nothing in this Agreement and nothing in the Firm and Attorneys' statement to CLIENT may be construed as a promise or guarantee about the outcome of this matter. The Firm and Attorneys make no such promises or guarantees. The Firm and Attorneys' comments about the outcome of this matter are expressions of opinion only and the Firm and Attorneys make no guarantee as to the outcome of any litigation, settlement or trial proceedings.

The relationship to CLIENT of the Firm and Attorneys, and any associate counsel or paralegal provided through them, in the performance of services hereunder is that of independent contractor and not that of employee of CLIENT, and no other wording of this Agreement shall stand in derogation of this paragraph. The fees and costs paid to the Firm and Attorneys hereunder shall be deemed revenues of their law office practice and not as a remuneration for

individual employment apart from the business of that law office.

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement to the extent that the parties carry it out.

If any provision of this Agreement is held in whole or in part to be unenforceable, void, or voidable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the parties hereto submit to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

SIGNED, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**Town of Franklin, Massachusetts**

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Jeffrey D. Nutting  
Town Administrator  
as duly authorized by vote of the Town Council

Accepted:

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA  
316 South Baylen Street  
Pensacola, Florida

By \_\_\_\_\_ Date \_\_\_\_\_  
Peter J. Mougey  
*Lead Counsel*

Accepted:

SWEENEY MERRIGAN LAW, LLP  
268 Summer Street, LL  
Boston, Massachusetts

By \_\_\_\_\_ Date \_\_\_\_\_  
Peter M. Merrigan  
*Massachusetts Counsel*

Accepted:

RODMAN, RODMAN & SANDMAN, P.C.  
442 Main Street, Suite 300  
Malden, Massachusetts

By \_\_\_\_\_  
Richard M. Sandman  
*Massachusetts Counsel*

\_\_\_\_\_  
Date

Accepted:

KP LAW, P.C.  
101 Arch Street  
Boston, Massachusetts

By \_\_\_\_\_  
Mark R. Reich  
*Massachusetts Coordinating Counsel*

\_\_\_\_\_  
Date

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