

**RESUME**

**May 14, 2019**

**AUTHORIZATION TO ENTER INTO A RETAINER AGREEMENT WITH THE LAW FIRM  
KAUFMAN AND CANOLES TO FILE SUIT TO RECOVER COUNTY COSTS OF  
RESPONDING TO OPIOID ADDICTION**

In recent years the country has been experiencing an explosive in opioid related addiction resulting in substantial costs incurred by localities in responding to the medical and public safety expenses resulting from opioid addiction. Class action lawsuits have been filed in federal court against manufactures, distributors, sellers and pharmacists who participated in the sale of opioids but failed to comply with statutory and common law duties to protect consumers. Under the proposed retainer agreement, Kaufman and Canoles will file suit in federal court on the County's behalf seeking to participate in the distribution of damages that would be received as a result of the federal lawsuit. There is no guarantee that the County would prevail in this matter or that we would receive a substantial portion of the costs that the County has incurred. Damages might include: (1) reimbursement of Medicaid and other medical costs for care and treatment of overdose, addiction, and over-prescription; (2) additional costs of law enforcement, first responders, prosecutions, jails, and facilities attributable to the opioid crisis; (3) county-borne medical costs associated with babies born addicted to opioids; and (4) costs of social services and child care and protection services associated with opioid-addicted parents. Legal fees would be paid from any recovery as a result of filing a lawsuit.

Staff recommends that the Board authorize the County Administrator to enter into a Retainer Agreement substantially in the form attached.

Board of Supervisors  
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia this 14<sup>th</sup> day of May, 2019.

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Present:

Donald R. Hunter, Chairman  
Floyd M. Brown, Jr., Vice-Chairman  
Alan R. Carmichael  
Marlene J. Waymack  
T. J. Webb

Vote:

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A-5

On motion of M. \_\_\_\_\_, seconded by M. \_\_\_\_\_, which carried unanimously, the following Resolution was adopted:

RESOLUTION; AUTHORIZATION TO ENTER INTO A RETAINER AGREEMENT WITH THE LAW FIRM KAUFMAN AND CANOLES TO FILE SUIT TO RECOVER COUNTY COSTS OF RESPONDING TO OPIOD ADDICTION

NOW THEREFORE BE IT RESOLVED that the Board of Supervisors of the County of Prince George, this 14<sup>th</sup> day of May, 2019, does hereby authorize the County Administrator to enter into a Retainer Agreement with the law firm Kaufman and Canoles to file suit to recover County costs of responding to opioid addiction.

A Copy Teste:

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Percy C. Ashcraft  
County Administrator

## **RETAINER AGREEMENT**

This Retainer Agreement ("Agreement") represents the understanding between Prince George County ("Client") and Sanford Heisler Sharp, LLP and Kaufman & Canoles, P.C. (collectively, "Attorneys") ("the Parties"). Attorneys' status is that of an independent contractor; Attorneys shall not be considered an employee of Client for any purpose.

### **Retention of Attorneys**

1. Client hereby retains Attorneys as lead counsel to represent Client in the investigation and prosecution of any legal action against Purdue Pharma, L.P.; Purdue Pharma, Inc.; the Purdue Frederick Company, Inc.; Mallinckrodt plc; Endo Health Solutions, Inc.; Endo Pharmaceuticals, Inc.; McKesson Corporation; Cardinal Health, Inc.; AmerisourceBergen Drug Corporation; CVS Health; Walgreens Boots Alliance, Inc.; Pharmacy Benefit Managers; and, any other relevant defendants (collectively, "Defendants"), in connection with Defendants' manufacture, marketing, sale, and distribution of prescription opioid products and the harm created therefrom to Client. Collectively, these matters will be referred to herein as the "Lawsuit."

2. Attorneys intend to enter into a co-counsel agreement with The Cicala Law Firm PLLC in the Lawsuit. Attorneys are further authorized to associate or consult in this representation with other counsel upon consultation with Client and with Client's consent. Notwithstanding any such association of other counsel, and unless such authority is expressly delegated by Attorneys to other counsel with Client's consent, Attorneys shall at all times retain the full authority and responsibility as Client's counsel in the investigation and prosecution of the Lawsuit.

### **Fee Sharing Agreement Between Attorneys**

3. Sanford Heisler Sharp, LLP and Kaufman & Canoles, P.C. have agreed to share fees on a two-thirds/one-third basis generally, with potential adjustments according to their lodestar contribution of hours spent in pursuit of the Lawsuit.

### **Scope of Employment**

4. Client authorizes Attorneys to investigate and, if appropriate after consultation with and authorization by Client, prosecute Client's claims for opioid-related cost recovery involving violations of the Virginia Consumer Protection Act, public nuisance, fraud, unjust enrichment, negligence/gross negligence/negligence per se, among other claims. Attorneys' representation of Client is limited to matters necessary to investigate and litigate the Lawsuit and to bring it to a conclusion. The representation will include a First Step, involving the investigation of Client's claims against Defendants including specifically an analysis of the damages sustained by Client as a result of the opioid epidemic, followed by a Second Step, if appropriate after consultation and authorization by Client, involving prosecution of Client's Lawsuit, if any, and determination of Client's share of any award or settlement in all related proceedings. Client is not hereby obligated to pursue the Lawsuit; however, Client hereby agrees that if it chooses to pursue the Lawsuit, Client will utilize Attorneys to do so pursuant to the terms of this Agreement.

5. Attorneys do not represent Client in connection with the negotiation of the terms of this Agreement. Rather, Attorneys are acting on their own behalf. Client understands that the provisions of this Agreement, including the compensation arrangements set forth below, are not prescribed by law but are determined by negotiation and mutual agreement.

### **The Parties' Obligations**

6. As part of Client's representation, Attorneys shall work closely with Client and its representatives in investigating potential claims and keep Client informed about the status of the Lawsuit, if any, shall provide advice and explanations necessary to permit Client to make informed decisions regarding their representation, and shall comply with Client's reasonable requests for information.

7. Client shall promptly provide any and all information reasonably requested by Attorneys and shall assist fully in the investigation and prosecution of the Lawsuit, including, but not limited to, gathering and sharing facts and evidence in support of the Lawsuit's allegations; attending scheduled hearings and meetings; preserving all documents and tangible things, including electronically stored information, relevant to the Lawsuit; answering truthfully any interrogatories propounded to Client by opposing parties; appearing for and testifying at depositions; and, cooperatively participating in any judicial or other proceeding as may arise during the course of the Lawsuit.

8. In this matter, Client will have certain important document preservation responsibilities. In particular, Client must ensure that any and all information that might potentially relate to the claims asserted in the Lawsuit is properly preserved. Such information might include communications about or with a party, research materials, and product-related materials.

### **Division of the Award**

9. In consideration of the legal services and counsel to be rendered by Attorneys, Client agrees to pay Attorneys a contingent fee representing a percentage of the Lawsuit's settlement or judgment ("Award") which shall be calculated before reimbursement of costs and expenses pursuant to Paragraph 12 of this Agreement. Attorneys' contingent fee percentage shall be twenty-five percent (25%) of Client's recovery.

10. In the event that Defendants pay Client in a structured settlement or under any other arrangement that results in Defendants' payment being made in installments rather than in a single lump sum, the division of the Award according to the provisions of Paragraph 9 shall be applied to each payment received by Client.

### **Award of Costs and Expenses**

11. Sanford Heisler Sharp agrees to advance and, effective February 15, 2019 with the amendment of Rule 1.8, Part Six, Section II of the Rules of Court, in the event of no Award, to be fully responsible for all out-of-pocket costs and expenses associated with this engagement. Reasonable out-of-pocket costs and expenses that are incurred or advanced by Attorneys shall be

reimbursed from the Award after deduction of Attorney's contingent fee and before distribution of the Award.

12. To the extent that any costs and expenses advanced or incurred by Attorneys are later awarded to Client by the Court or recovered by Client through settlement, Client hereby assigns to Attorneys 100% of the proceeds of any such costs and expenses award or settlement.

13. Client authorizes Attorneys to advance costs and expenses while prosecuting the Lawsuit, if any. Attorneys may on Client's behalf advance monies for expenses, costs, charges, and disbursements, including, but not limited to, filing fees; court costs and fees; fees for service of process; copying charges; transcription expenses; printing costs; computerized legal research; investigative, expert and deposition costs; trial costs; exhibit preparation expenses; printing costs; copying charges; witness fees; and, travel costs and expenses which in Attorneys' judgment are necessary to incur in the prosecution and enforcement of the Lawsuit. Attorneys agree to keep detailed records of their costs and expenses paid and/or incurred during the course of their representation. In the likely event that the Lawsuit is pursued as a collective action in which Client is one of multiple similarly situated plaintiffs represented by Attorneys, Client shall be responsible for only a percentage of the total out of pocket disbursements or expenses Attorneys incurred while prosecuting the Lawsuit on behalf of Client and other similarly situated plaintiffs. The specific percentage of the total costs for which Client shall be responsible in the event that Client is one of multiple similarly situated plaintiffs in a collective action shall be that portion of the aggregate damages Client's damage claim represents in relation to the aggregate damage claim of all similarly situated plaintiffs.

#### **Common Representation and Potential Conflicts**

14. Client is aware that Attorneys contemplate entering into the same arrangement as that set forth in this Engagement Letter with other counties and municipalities in Virginia. Attorneys believe that the goals of Client are aligned with those of other counties and municipalities regarding the Lawsuit. Attorneys do not believe that to achieve the goals of the Lawsuit, either Client or another county or municipality must take a position that is adverse to the interests of the other. However, to the extent any issue may arise in this matter about which Client disagrees with another county or municipality and one of you wishes to pursue a course that benefits one but is detrimental to the interest of the other, we cannot advise Client or assist Client or any other county or municipality in pursuing such a course. Because Client's interests and those of other counties and municipalities are aligned, Attorneys are confident that their representation of Client will not be limited in this matter by representation of any other county or municipality, but Client should consider these consequences of joint representation in deciding whether to waive this conflict. By signing this Retainer Agreement, Client acknowledges and agrees to the above-described representation.

15. In addition to the above, one of the consequences of joint representation of multiple clients by a law firm is the sharing of confidential information concerning the subject matter of the joint representation. Client acknowledges and agrees that communications between Attorneys and other counties or municipalities relating to the Lawsuit will be treated as confidential and will not be disclosed outside your group without your Attorneys' informed consent. Client also acknowledges and agrees that any information that we receive concerning this matter, including

communications from Client, may be disclosed to the other jointly represented clients during the course of the joint representation. Client further acknowledges that if a dispute arises between or among one or more of you, and Attorneys no longer represent Client in this matter, as the result of a conflict of interest or otherwise, Attorneys may nevertheless use any confidential information Attorneys have concerning this matter to the advantage of those we continue to represent in any subsequent action relating to this matter.

#### **Termination of Representation**

16. Client may discharge Attorneys at any time by providing Attorneys 30 days' written notice of Client's intent to discharge.

17. In addition, if Attorneys determine at any time that it is no longer feasible or appropriate to pursue the Lawsuit, Attorneys may, by providing 30 days written notice to Client, withdraw from further representation. Under such circumstances, Attorneys will take steps, to the extent it is reasonably practicable, to protect Client's interests in a manner consistent with all rules governing professional conduct.

18. Compensation of Attorneys after discharge or termination of representation discussed in Paragraphs 16-17 will be governed by Paragraph 19 of this Agreement.

19. If Attorneys withdraw or are discharged and Client proceeds with the Lawsuit with or without substitute counsel and Client or Client's substitute counsel receives by settlement or judgement an Award or an award of costs and expenses related to the Lawsuit, Client shall pay separately to Attorneys a portion of the Award and/or award of costs and expenses as follows:

- a. Attorneys' contingent fee percentage of the Award calculated as if Attorneys had not been discharged multiplied by the fraction calculated by dividing the number of hours expended by the discharged Attorneys on the Lawsuit as of the date of discharge by the total number of hours expended by all Attorneys who have worked on the Lawsuit on behalf of Client and, if any, substitute counsel; and
- b. the value of any Award of Costs and Expenses equal to the costs and expenses incurred by Attorneys in connection with the Lawsuit.
- c. Subparagraph b. may be satisfied by providing a good faith opportunity for Attorneys to obtain reasonable costs, expenses, and attorneys' fees from the Court or as part of any settlement agreement.

#### **Alternative Dispute Resolution Including Waiver of Jury Trial Rights**

20. Should any unresolvable dispute arise between the parties regarding fees, costs, or any other matter that relates to this agreement, the Lawsuit or the engagement of the attorneys, including, but not limited to, the quality of the services rendered, the parties agree to submit the dispute to binding arbitration before a mutually agreed-upon arbitrator, or if the parties are unable to agree upon an arbitrator and procedures, then pursuant to the then-applicable rules and

procedures for commercial disputes of the American Arbitration Association (“AAA”) and by arbitrator(s) selected by and through AAA. The parties agree that the arbitrator and the arbitration shall be located in Norfolk, Virginia and that Virginia law will apply. The parties further agree that all reasonable costs of the arbitration, including the prevailing party’s attorneys’ reasonable attorneys’ fees, shall be borne by the unsuccessful party or non-prevailing party. Nothing in this paragraph shall prevent the parties from agreeing to submit any dispute to mediation.

**Miscellaneous**

21. Attorneys hereby agree that they will not negotiate or seek to resolve any claim to attorneys’ fees, costs, or expenses until an agreement in principle has been reached or a judgment has been entered on the Lawsuit’s substantive allegations.

22. Attorneys shall provide upon request a certificate of Attorneys’ professional liability insurance in an aggregate amount of not less than \$10,000,000.

23. The entire Agreement between Client and Attorneys is contained herein. This Agreement supersedes any prior oral or written agreement concerning this representation. No other promises, inducements, or considerations have been offered, accepted, or given either by Client or Attorneys. Client also agrees not to enter into any future agreements concerning the subject matter of this Agreement without prior notice to Attorneys.

24. This Agreement is governed by the laws of the Commonwealth of Virginia and may not be modified, changed, altered, or amended in any way except in a writing signed by all parties. The parties expressly agree that no oral modification of this Agreement shall be effective, notwithstanding any provisions of the governing law that may allow for oral modification.

25. The parties expressly agree that if any term of provision of this Agreement is held invalid or unenforceable, every other term and provision remaining in the Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

26. The parties hereby acknowledge that they have read and understand the foregoing, that they have had the opportunity to consult with independent counsel, and that they agree to the representation on the terms set forth in this Agreement.

27. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

28. Facsimile signatures or electronic copies thereof shall be as effective as original signatures for purposes of this Agreement.

29. This Agreement is effective as of the last date below executed.



**SANFORD HEISLER SHARP, LLP**

\_\_\_\_\_  
Kevin H. Sharp

Date: \_\_\_\_\_

**KAUFMAN & CANOLES, P.C.**

\_\_\_\_\_  
W. Edgar Spivey

Date: \_\_\_\_\_

**PRINCE GEORGE COUNTY**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Its: \_\_\_\_\_