RESOLUTION NO. 17-23

**A RESOLUTION OF THE COUNTY OF MADISON, KENTUCKY ("COUNTY') AUTHORIZING, APPROVING AND DIRECTING THE EMPLOYMENT OF CERTAIN LAW FIRMS TO REPRESENT THE COUNTY IN POTENTIAL LITIGATION AGAINST CONTRIBUTORS OF OPIOID ADDICTION CRISIS.**

WHEREAS, the County is experiencing serious Opioid use as a result of the ready availability of the drug and its abuse; and,

WHEREAS, the County desires to retain the Law Firms identified herein to advise and represent the County regarding litigation and the award of damages from the contributors of opioids within the County.

NOW, THEREFORE, BE IT RESOLVED BY THE FISCAL COURT OF THE COUNTY OF MADISON, KENTUCKY, AS FOLLOWS:

Section 1. The Fiscal Court, as the governing body of the County, herby authorizes and approves the employment of the law firms identified in the Legal Services Agreement, attached hereto and incorporated herein as **Exhibit "A"** (herein referred to as the "Law Firms") to represent the County in potential litigation against contributors of the Opioid addiction crises.

Section 2. The Fiscal Court hereby authorizes and approves, or confirms authorization and approval, of the Legal Services Agreement, substantially in the form attached hereto and incorporated herein by reference thereto as **Exhibit "A"**, and directs the Judge/Executive to execute and enter into the Legal Services Agreement with the Law Firms, setting forth the scope of the work to be performed by the Law Firms, including litigation against contributors to the Opioid addiction crises within the County and the terms and conditions of the employment of the Law Firms, The Legal Services Agreement may be amended, after approval of this Resolution, without further action of the Fiscal Court, with the approval of the Judge/Executive, whose signature on the Legal Services Agreement shall be evidence of such approval.

Section 3. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

Section 4. This Resolution shall be in full force and effect from and after its adoption as provided by law.

*[Signatures for Madison County, Kentucky Resolution appear on the following page S-1]*

# LEGAL SERVICES AGREEMENT

RE: Madison County (Kentucky) civil suit against those parties legally responsible for the wrongful distribution of prescription opiates and the deleterious effects it has had on Madison County (Kentucky), for which such parties have collectively been fined and paid over $200 million in civil penalties.

Madison County (hereinafter "CLIENT") hereby retains outside counsel, pursuant to the Kentucky Rules of Professional Responsibility and KRS § 67.080, § 67.083 and *Lawrence County v. Stewart*, 287 Ky. 827, 155 S.W.2d 446 (1941), 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 Madison County (Kentucky) including, but not limited to, filing a claim for public nuisance to abate the damages caused thereby. **Peter J. Mougey., Esq.** of the law firm LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA 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:

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

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

MCHUGH FULLER LAW GROUP
97 Elias Whiddon Rd
Hattiesburg, Mississippi

Law Office of Lucas Magazine
8606 Government Drive
New Port Richey, Florida

Bowling & Johnson, PLLC
1319 Cumberland Avenue
Middlesboro, Kentucky

Gray & White Law
713 East Market Street
Louisville, Kentucky

In consideration, CLIENT agrees to pay thirty percent (30%) of the total recovery (gross) as an attorney fee whether the claim is resolved by compromise, settlement, or trial and verdict (and appeal). The 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 employment will preclude other employment by the lawyer(s), 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. **There is no fee if there is no recovery.**

This fee applies to any sums, benefit or value obtained on your behalf, whether monetary or non-monetary, including equitable remedies including abatement, and whether recovered by award, judgment, settlement, bankruptcy proceedings, government-imposed reparations proceedings, regulatory relief/settlement, non-monetary remedial benefit provided by defendants or otherwise. Gross recovery is the value, at the time of settlement or collection (whichever confers the greater value), of any sums, benefit or value obtained on your behalf, as set out above. The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. CLIENT grants Attorneys an interest in a fee based on the gross recovery. If a court awards attorneys' fees, Attorneys shall receive the "greater of" the gross recovery-based contingent fee or the attorneys' fees awarded.

The division of fees, expenses and labor between the law firms will be decided by private agreement between the law firms which shall be subject to review by the CLIENT, and any division of fees will be governed by the Kentucky 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 the CLIENT; (2) the CLIENT agrees to the arrangement and the agreement is confirmed in writing; and (3) the total fee is *reasonable*. In the event that the contingent fee portion of this agreement is determined to be unenforceable for any reason or the Attorneys are prevented from representing CLIENT on a contingent fee basis, CLIENT agrees to pay a reasonable fee for the services rendered.

The law firms agree to advance all necessary litigation expenses necessary to prosecute these claims, and the CLIENT shall have no obligation to advance any costs or to make any financial contribution to the lawsuit while the litigation is pending. 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. **There is no reimbursement of litigation expenses if there is no recovery.**

Funds that are recovered on behalf of CLIENT shall flow through the Fiscal Court and may be expended on education, law enforcement and jails, healthcare, or in any other way that the Fiscal Court deems appropriate.

LEAD COUNSEL shall appoint a contact person to keep the CLIENT reasonably informed about the status of the matter in a manner deemed appropriate by the CLIENT and Kentucky Rule of Professional Conduct 1.4. The CLIENT at all times shall retain the authority to decide the disposition of the case and maintain absolute control of the litigation in accordance with Kentucky Rules of Professional Conduct 1.2.

Upon conclusion of this matter, LEAD COUNSEL shall provide the 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 as required by Rule 1.5(c) of the Kentucky Rules of Professional Conduct. 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, as contemplated by Rule 1.5(e)(2) of the Kentucky Rules of Professional Conduct.

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

Further, the execution of this Agreement by the County Judge/Executive is specifically conditioned upon the County Fiscal Court passing a Resolution authorizing this Agreement and the execution by the County Judge/Executive, if such a Resolution has not been adopted by the Fiscal Court at the time the Judge/Executive has executed this Agreement.

SIGNED, this 8th day of August, 2017.

**MADISON COUNTY, KENTUCKY**

By: ______________________
Judge/Executive

Accepted:

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

By ______________________ 8/8/17
Peter J. Mougey., Esq. Date

*Lead Counsel*