

MEMORANDUM

Agenda Item No. 13(A)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 5, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution authorizing the
County Attorney to vote to
approve the Chapter 11
Bankruptcy Plan in *In re*
Mallinckrodt PLC, et al

Resolution No. R-853-21

The accompanying resolution was prepared and placed on the agenda at the request of the County Attorney.



Geri Bonzon-Keenan
County Attorney

GBK/smm

Date: October 5, 2021

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: 
Gen Bonzon-Keenan
County Attorney

Subject: Resolution Authorizing the County Attorney or the County Attorney’s Designee to Vote for Approval of the Mallinckrodt plc, Chapter 11 Bankruptcy Plan in *In re: National Prescription Opiate Litigation*

Recommendation

It is recommended that the Board of County Commissioners (“Board”) approve the attached resolution which authorizes the County Attorney or the County Attorney’s designee to vote in favor of the *Joint Plan of Reorganization of Mallinckrodt plc and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code* (the “Plan”) for Mallinckrodt plc (“Mallinckrodt”). The County is a plaintiff in *In re: National Prescription Opiate Litigation*, MDL¹ No. 2804 (N.D. Ohio) (“Opioid MDL”), and has filed claims against numerous opioid manufacturers, distributors, and retail pharmacy distributors seeking damages associated with opioid use in Miami-Dade County. Mallinckrodt is one of the manufacturer defendants in the Opioid MDL and is the largest generic opioid manufacturer in the United States. The Plan seeks to resolve all litigation that Mallinckrodt is engaged in by settlement, including the Opioid MDL, and reorganize Mallinckrodt’s capital structure. The County Attorney recommends that the County vote in favor of the Plan. A copy of letters in support of the Plan from the County’s local outside counsel,² as well as the Plaintiffs’ Executive Committee (“PEC”)³ are attached hereto and incorporated herein as Attachment A.

The County Attorney and outside counsel believe that the Plan represents an equitable resolution of the County’s opioid claims against Mallinckrodt as proposed by the Plan. The creditor recoveries distributed under the Plan are, with the exception of funding that will support program administrative costs and attorneys’ fees and costs, exclusively dedicated to programs designed to abate the opioid crisis.

Background

The County is a creditor in *In re Mallinckrodt plc, et al.*, Case No. 20-12522 (JTD) (Bankr. D. Del.). On October 12, 2020, Mallinckrodt petitioned for bankruptcy under Chapter 11 of the

¹An MDL or multidistrict litigation is a federal legal procedure designed to consolidate complex cases that involve similar legal issues before one court for all discovery and pretrial proceedings. The goal of an MDL is to expedite proceedings, conserve resources, and foster consistent court rulings across different lawsuits.

² The County’s outside counsel consists of the following law firms: Podhurst Orseck, P.A.; Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA; Baron & Budd, PC; Greene, Ketchum, Farrell, Bailey & Tweet, LLP; McHugh Fuller Law Group, PLLC; Hill, Peterson, Carper, Bee & Dietzler, PLLC; and Powell & Majestro, PLLC.

³ The PEC is the group of lawyers representing different or multiple plaintiffs in the Opioid MDL selected by the judge in the Opioid MDL to represent the common interests of all the plaintiffs effectively and efficiently in the Opioid MDL.

Bankruptcy Code after being named a defendant in the Opioid MDL. The bankruptcy court entered an order which, in part, authorized Mallinckrodt to solicit votes on the Plan. The Plan incorporates settlement of all opioid-related claims. The Plan is now before the bankruptcy court for final confirmation. Because the County filed a proof of claim in the bankruptcy case as a creditor, the County is entitled to vote in favor of or against the Plan. The current deadline to vote on the Plan is October 8, 2021.⁴ If the bankruptcy court approves the Plan, the County's claims against Mallinckrodt will be resolved.

According to the PEC, the proposed Plan has garnered sufficient creditor support, and thus, will likely achieve confirmation. The Plan would provide for a "channeling injunction," which channels liability for all opioid claims to the National Opioid Abatement Trust II ("NOAT II")⁵ in exchange for the release of all opioid claims against Mallinckrodt or its subsidiaries incurred prior to the Plan's effective date.⁶ If the Plan is confirmed, this release will bind all creditors, including the County, regardless of whether any individual holder of an opioid claim votes to reject the Plan or opposes providing the release. After the Plan is confirmed and becomes effective, the County will no longer be able to seek relief against Mallinckrodt in any forum other than that approved by or provided for in the Plan.

The NOAT II established by the Plan will provide funding to states and local governments that have been detrimentally impacted by the opioid epidemic. If the Plan is approved, the NOAT II is guaranteed to be funded with no less than \$1.725 billion: a \$1.6 billion cash payment paid over seven years and an additional \$125 million to be paid on the eighth anniversary of the effective date of the Plan. However, the NOAT II could receive additional funding based on the final value of the bankruptcy estate. Currently, the ultimate value of the bankruptcy estate cannot be ascertained because unknown factors exist that could impact its valuation, including, but not limited to, the profitability of the reorganized Mallinckrodt entity, discounts that could be received due to accelerated payments under the Plan, uncertainty about recovery of pending claims that Mallinckrodt has against third parties for damages, possible additional capital interests in the reorganized entity subject to dilution, and the revenues ultimately realized from the sale of Mallinckrodt's assets. Such factors could increase the value of the bankruptcy estate as well as

⁴ On September 1, 2021, this Board approved Resolution No. R-834-21, which in part, delegated authority to the County Attorney to vote on the Plan after consultation with the County Mayor, the Chief Executive Officer of the Public Health Trust, and outside counsel. As of the September 1st Board meeting, the vote on the Plan was scheduled to occur on September 3rd, and neither outside counsel nor the PEC had made a recommendation on the Plan. Although an extension to vote on the Plan was anticipated, it had not yet occurred. The delegation of authority provided the County Attorney with authority and direction to proceed in the event the deadline was not extended or was extended to a date before this Board's next regularly scheduled meeting. On September 24, 2021, the deadline to vote on the Plan was extended through October 8, 2021.

⁵ The NOAT II is substantially similar to the trust structure proposed in *In re: Purdue Pharma L.P., et. al* ("Purdue Pharma"). On July 8, 2021, this Board approved Resolution No. R-678-21, which authorized the County Attorney or County Attorney's designee to vote to approve the bankruptcy plan in Purdue Pharma.

⁶ Additionally, under the Plan, Mallinckrodt will be enjoined from, among other things: (a) engaging in the promotion of opioids or opioid products; (b) providing financial incentives to its sales and marketing employees or disciplining such employees based on the sale of opioid products; (c) providing financial support or in-kind support, directly or indirectly, to any third party that promotes opioid products; (d) lobbying for any law that encourages or requires health care providers to prescribe opioid products or sanctions health care providers for failing to prescribe opioids; and (e) manufacturing, promoting, or distributing any new opioid products that exceed 30 milligrams of oxycodone per pill.

the funding contributed to the NOAT II. Thus, it is not possible to determine the County's recovery under the Plan at this time.

Pursuant to the Plan, the funds distributed to the NOAT II will be allocated to each state for use within that state and will be exclusively dedicated to programs designed to abate the opioid crisis and for no other purpose other than to fund administration of the programs themselves and to pay attorneys' fees and costs.⁷ The state-by-state distribution methodology is grounded in, among other things, prescription opioid sales, the prevalence of pain reliever use disorder, overdose deaths, population, and other factors. Accordingly, 7.026 percent of the funds will be allocated to the State of Florida for abatement purposes. The State of Florida is being allocated the second highest percentage of any state or territory, with only California receiving a slightly higher allocation of 9.83 percent.

Funds distributed to the states will be further distributed through intra-state allocations to local governments. In Florida, the distribution model required by the Memorandum of Understanding approved in Resolution No. R-834-21 will govern distribution within Florida, including any funds distributed to Miami-Dade County.

⁷ The parties are seeking approval of an attorneys' fees and costs fund similar in structure to those proposed in Purdue Pharma. Currently, there is no consensus between counsel for the parties as to an appropriate cap on such fees or the exact mechanism for the distribution of such a fund.

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September 13, 2021

Geri Bonzon-Keenan
Miami-Dade County Attorney
111 NW 1st Street, Suite 2810
Miami, Florida 33128

Re: Recommendation of Counsel Regarding Approval of the Mallinckrodt Plan

Dear Ms. Bonzon-Keenan:

As you know, our firm Podhurst Orseck, P.A., along with Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A.; Baron & Budd, PC; Greene, Ketchum, Farrell, Bailey & Tweet, LLP; McHugh Fuller Law Group, PLLC; Hill, Peterson, Carper, Bee & Dietzler, PLLC; and Powell & Majestro, PLLC (collectively "Counsel"), represents Miami-Dade County (the "County") in its claims against several opioid manufacturers and distributors to recover damages associated with opioid abuse in the County caused by these manufacturers' and distributors' wrongful conduct. The County filed suit in the Southern District of Florida on April 23, 2018, and the action was transferred to the Opioid multidistrict litigation ("MDL") court in the Northern District of Ohio before Judge Dan Polster on May 8, 2018. The MDL's Plaintiff's Executive Committee ("PEC") represents the interest of all litigating municipalities and cities in the MDL and includes members of Counsel.

Mallinckrodt plc ("Mallinckrodt"), the company which operates a business known as Specialty Generics, filed for bankruptcy in October 2020 after being named as a defendant in thousands of opioid-related lawsuits across the country. After months of negotiations, the Governmental Plaintiff Ad Hoc Committee (of which the PEC is a member) and Mallinckrodt have proposed a plan for the company's restructuring (the "Plan"). The Plan resolves the bankruptcy cases by settlement and establishes an opioid plaintiff recovery trust (the "Opioid Trust") that, among other things, would establish an abatement fund to offset the costs of combating opioid addiction and providing support to communities impacted by opioid abuse.

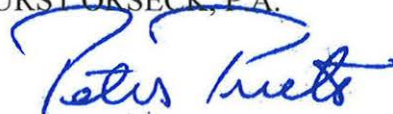
Geri Bonzon-Keenan
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The details of the bankruptcy litigation, the Plan, and the Opioid Trust are set forth in the September 7, 2021 letter from the PEC to counsel for all governmental entities in the MDL, which the County should have received (the "Letter") and is attached to this correspondence as Exhibit A. The Letter also provides an ultimate recommendation from the PEC that governmental entities in the MDL vote in favor of the plan. In the Letter, the PEC opines that the Plan "represents a fair and equitable resolution of opioid-related claims against Mallinckrodt," particularly considering the risks involved with continued expensive and value-draining litigation, which may take years to complete and would likely result in delays and inequitable recoveries among claimants.

We agree with the PEC's recommendation in the Letter and recommend that the County vote in favor of approving the Mallinckrodt Plan. Our firm has remained apprised of the Mallinckrodt bankruptcy proceedings, consulted with the PEC, and reviewed relevant plan documents. We adopt the recommendations of the Letter and advise the County to approve the Plan.

Sincerely,

PODHURST ORSECK, P.A.



Peter Prieto

Co-Lead Counsel and Plaintiff's Executive Committee,
In re: National Prescription Opiate Litigation, MDL 2804
Mallinckrodt@pecmdl2804.com

September 7, 2021

TO ALL COUNSEL FOR ANY
GOVERNMENTAL ENTITY IN THE OPIOID
MDL WHO HOLD A CLAIM IN CONNECTION
WITH *In re Mallinckrodt plc, et al.*, Case No. 20-
12522 (JTD) (Bankr. D. Del.)

RE: Voting to Approve Mallinckrodt Bankruptcy Restructuring Plan

Dear Counsel:

Please review this letter if you or your client have litigation consolidated in MDL 2804 notwithstanding whether you filed a proof of claim in connection with the bankruptcy cases of Mallinckrodt plc and its affiliates (as captioned above) and are eligible to vote on approval of Mallinckrodt's proposed plan of restructuring (the "Plan").¹²

We are co-lead counsel and members of the Plaintiffs' Executive Committee (together, referred to as the "PEC") in *In re National Prescription Opiate Litigation*, Case No. 17-md-02804, MDL No. 2804, multidistrict litigation (the "MDL") against opioid manufacturers, distributors, and retailers before Judge Dan A. Polster in the District Court for the Northern District of Ohio. The PEC is a member of the governmental opioid litigation claimants committee (collectively, the "Governmental Plaintiff Ad Hoc Committee" or "Ad Hoc Committee"),³ which played an instrumental role in Mallinckrodt's bankruptcy cases and negotiation of the Plan. As you may recall, we previously communicated and provided guidance on the master-ballot voting procedures regarding the Plan.

The purpose of this letter is to explain the terms and structure of the Plan and the reasons the PEC supports the Plan ahead of the voting deadline of: **September 14, 2021** (as recently extended, the "Voting Deadline"). **We ask that you and your clients review the Disclosure Statement and Plan closely prior to voting on the Plan.**

¹ The Plan [Docket No. 2916] and Disclosure Statement [Docket No. 2917] and all related filings are accessible on the noticing agent's website: <https://restructuring.primeclerk.com/mallinckrodt/Home-DocketInfo>.

² In our July 1, 2021 letter to counsel, we explained the master ballot and solicitation directive by which law firms with more than four (4) clients could elect to coordinate the solicitation and voting of their clients. The solicitation directive deadline has passed. However, individual governmental entities (and other creditors) holding opioid claims may still vote on the Plan by the September 3, 2021 deadline by navigating to the Debtors' noticing agent's website at: <https://restructuring.primeclerk.com/mallinckrodt/MNKBallot-Home?req=201252201326827>.

³ The Ad Hoc Committee is composed of: (1) State of Kentucky; (2) State of New York; (3) State of North Carolina; (4) State of Pennsylvania; (5) State of Tennessee; (6) State of Texas; (7) State of Wisconsin; and the (8) PEC.

I. Executive Summary.

Mallinckrodt, the company which operates a business known as Specialty Generics, is one of the largest controlled substance pharmaceutical businesses in the U.S. The company offers generic products for pain management, including Hydrocodone, Oxycodone, and other controlled substances, all of which are powerful and addictive opioid painkillers. Mallinckrodt filed for bankruptcy in October 2020 after being named as a defendant in thousands of civil lawsuits seeking damages for asserted opioid-related injuries to governments (state, local, and tribal), hospitals, individuals, insurers, and others. The Plan resolves the bankruptcy cases by settlement and is the culmination of over two years of negotiations and work among the PEC, certain of the States Attorneys' Generals, the United States Government, the Debtors, and various other opioid creditor representatives, including, the Official Committee of Opioid-Related Claimants (the "OCC"). Not to mention the tremendous cost of the bankruptcy which is now over \$59 million through August 13, 2021.

That settlement, as incorporated in the Plan, is now before the bankruptcy court for final confirmation. As part of the process, all creditors holding "opioid"-related claims have the right to vote on the Plan. In broad terms, the Plan proposes to establish the opioid plaintiff recovery trust (the "Opioid Trust") that, among other things, would establish an abatement fund to offset the costs of combatting opioid addiction and providing support to communities impacted by opioid abuse. The structure of the Opioid Trust, which includes sub-trusts for the benefit of: non-federal governments, tribal nations, and various private creditors, is substantially similar to the trust structure proposed in the *Purdue Pharma L.P.* bankruptcy cases. The restructuring plan would also grant Mallinckrodt the benefit of a "channeling injunction" that would provide for the "release" of all opioid-related claims asserted against Mallinckrodt or its subsidiaries and many other Protected Parties (as defined under the Plan) related to Specialty Generics' manufacture and sale of opioids prior to the Plan effective date, regardless of whether the holder of any opioid claim votes to accept the plan, or opposes providing the release. Mallinckrodt will also retain ownership of the Specialty Generics business. At a high-level, the consideration to be provided to the Opioid Trusts, will be: (i) \$1.6 billion in cash paid over seven (7) years (with a right to prepay at a discount); (ii) an additional \$125 million paid on the eighth anniversary of the Effective Date (with a right to prepay at a discount) on account of rights under certain insurance policies; (iii) claims against certain third-parties that are of uncertain valuation; and (iv) warrants to acquire 19.99% of the reorganized equity, subject to dilution from equity reserved under the Management Incentive Plan, at a strike price per share corresponding to a total equity value of \$1.551 billion (the "Opioid Trust Consideration"). The ultimate distributable value to opioid creditors is subject to change based on a number of variables – namely, prepayment of the deferred cash payments, recovery, if any, on claims against third parties), and the value of "New Opioid Warrants" subject to dilution under the anticipated management incentive plan.

The balance of the value of the Debtors' estates, including the ultimate equity interests and cash, will be available for the Debtors' significant non-opioid creditors, including their funded bond-debt, and other unsecured creditors, including creditors asserting anti-trust claims, and various other non-opioid tort and other litigation claims.

Through court-ordered mediation and months of negotiations among the Ad Hoc Committee, representatives of the Multi-State Group of Governmental Entities, and representatives of private entities and individual victims, the opioid creditors reached the resolution, incorporated in the Plan (and described further below) over how to allocate the Opioid Trust Consideration among the

public and private entities. As is the case in *Purdue Pharma*, the position of the Ad Hoc Committee and the PEC is that the funds received by all creditors (other than personal injury victims and children suffering from NAS) **will be restricted for use on the abatement of the opioid problem in their communities**. Additionally, the parties are seeking approval from the Court of an attorneys' fees and costs fund similar in structure to those proposed in *Purdue Pharma*. The proposed amount of such funds allocated to the fees and costs incurred by non-federal governmental entities is 10% of value received by non-federal governmental entities, capped at \$200 million and split 55% to 45% between states and non-federal governments. At this time, there is no global consensus between representatives of the MSGE, the PEC, and the states against the exact mechanism for distribution of this fee fund or its impact on other avenues for reimbursement of private attorneys' fees – it is our understanding that the MSGE Group objects to any attempt to restrict its fees to the \$200mm fund.

II. Background.

Mallinckrodt operates one of the largest controlled substance pharmaceutical business in the U.S., including manufacturing and production of generic opioid products. Public records demonstrate that Mallinckrodt supplied more than 28.9 billion oxycodone pills between 2006 and 2012 and was the subject of investigation by the U.S. Drug Enforcement Agency for excessive opioid shipments and for failure to maintain adequate governance and oversight. The company paid a \$35 million fine to settle the DEA complaints and investigation. As of October 7, 2020, the company was the subject of 3,034 cases (2,785 federal cases; 249 state cases) filed in 50 states and Puerto Rico for its role in fueling the nation's opioid crisis. These lawsuits assert a variety of claims, including, but not limited to, public nuisance, negligence, civil conspiracy, fraud, violations of the Racketeer Influenced and Corrupt Organizations Act or similar state laws, violations of state Controlled Substances Acts or state False Claims Acts, product liability, consumer fraud, unfair or deceptive trade practices, false advertising, insurance fraud, unjust enrichment and other common law and statutory claims arising from the manufacturing, distribution, marketing and promotion of opioids.

The federal cases, while stayed as against the Debtors due to the filing of the bankruptcy, have been, and continue to be, consolidated in the MDL. For more than two years, Mallinckrodt had engaged in settlements discussions with numerous States Attorneys' General and the PEC. In October 2019, on the eve of trial in the "Track One" bellwether cases in the MDL with Ohio-based county plaintiffs, Mallinckrodt agreed to settle the suits for cash payment in the amount of \$24 million and contribution of generic products, including addiction treatment products, worth \$6 million. Shortly thereafter, in February 2020, Mallinckrodt, the PEC, and the States Attorneys' General reached a global agreement on the core economic terms for payment of all outstanding opioid-related liabilities and certain agreed go-forward operational parameters for Mallinckrodt (as was, and may be further modified, the "Opioid Settlement"). The Opioid Settlement forms the basis of the Plan.

As part of this effort and to facilitate the implementation of the Opioid Settlement through a chapter 11 plan structure, the Debtors entered into an engagement letter with Roger Frankel of Frankel Wyron LLP on February 24, 2020 to serve as a proposed future claims representative (the "FCR") to represent the interests of *individuals* who may in the future assert opioid-related claims against the Debtors. The FCR retained multiple advisors, including counsel, an investment banker, a claims estimator, special litigation counsel, and a medical advisor (collectively, the "FCR Advisors") to carry out an extensive due diligence into Mallinckrodt's businesses and pending opioid litigation.

On October 12, 2020, Mallinckrodt and its affiliated subsidiaries filed for chapter 11 relief in the U.S. Bankruptcy Court for the District of Delaware. Contemporaneously with the U.S. chapter 11 filing, Mallinckrodt also commenced proceedings under Part IV of the Canadian Companies Arrangement Act in the Ontario Superior Court of the Justice (the “Canadian Bankruptcy Cases”).

III. The Opioid Settlement Framework (Pre-Bankruptcy).

In preparation for the chapter 11 filing, Mallinckrodt engaged with the PEC, certain of the States Attorneys’ General and the Guaranteed Unsecured Notes Ad Hoc Group (who controls over 84% of the company’s fulcrum funded debt) to craft a Restructuring Support Agreement (the “RSA”) to guide the bankruptcy process. The RSA incorporates the Opioid Settlement and provides the following framework:

- Establishment of a master disbursement trust (the “Opioid MDT II”), to be funded with (i) cash in the amount of \$450 million; (ii) warrants; (iii) deferred cash payments totaling \$1.275 billion over eighth (8) years, subject to prepayment; (iv) assigned third-party claims; and (v) assigned insurance rights;
- All Opioid Claims will be channeled to the Opioid MDT II, the respective Opioid Creditor Trusts and the Ratepayer Account, and will be discharged and released as to Mallinckrodt and other Released Parties;
- As of the Plan Effective Date, Mallinckrodt’s liability for all Opioid Claims shall automatically, and without further act, deed, or court order, be channeled exclusively to and assumed by the Opioid MDT II, the respective Opioid Creditor Trusts, and the Ratepayer Account (as applicable);
- Each Opioid Claim shall be resolved in accordance with the terms, provisions, and procedures of the Opioid MDT II Documents and the Opioid Creditor Trust Documents (as applicable);
- The sole recourse of any Opioid Claimant on account of such Opioid Claim shall be to the Opioid MDT II, the Opioid Creditor Trusts or the Ratepayer Account (as applicable), and solely in accordance with the Opioid MDT II Documents, and the Opioid Creditor Trust Documents (as applicable) and each such Opioid Claimant shall have no right whatsoever at any time to assert its Opioid Claim against any Protected Party;
- The Plan and the Confirmation Order will contain (a) a release by holders of Opioid Claims and (b) an injunction channeling all Opioid Claims against the Protected Parties to the Opioid MDT II, the Opioid Creditor Trusts, and the Ratepayer Account (as applicable); and
- The Debtors shall seek entry of an injunctive order to be effective on the Petition Date, defining the manner in which the Debtors’ opioid business may be lawfully operated by the Debtors or any successors thereto on a going-forward basis during the pendency of the Chapter 11 Cases. The Confirmation Order will extend the Opioid Operating Injunction to govern the Reorganized Debtors’ operations after the Plan Effective Date.

Settlement payments relating to the Opioid Settlement and the Plan’s treatment of Opioid Claims will generally be funded from balance sheet cash and cash from operations.

IV. The Acthar & DOJ Settlements

As of the Petition Date, the Specialty Brands Debtors were named defendants in more than 25 litigation and government investigations, including the Department of Justice (the “DOJ”) in connection with Acthar Gel – the most prominent of which involve (i) disputes over the calculation of rebates that the Debtors pay to the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services and (ii) antitrust and False Claims Act violations. The Debtors faced over \$15 billion in aggregate alleged potential damages.

In September 2020, the Debtors reached an agreement in principle with the DOJ, contingent upon a chapter 11 filing by Mallinckrodt plc, to resolve most Acthar-related claims and investigations of the federal government against the Debtors (the “Acthar Settlement”). The Acthar Settlement requires cash payments in eight installments, beginning on the Plan’s Effective Date and on each of the first seven anniversaries thereof, totaling \$260,000,000, to the DOJ and various states. In return, the Debtors will be released by the relevant governmental agencies for these Acthar-related claims.

V. The Bankruptcy Proceedings.

In preparation of its expected chapter 11 filing, the Company engaged with its prepetition lenders, including the Ad Hoc First Lien Term Lender Group, an ad hoc group of Holders of First Lien Revolving Facility Claims, and an ad hoc group of Holders of Guaranteed Unsecured Notes Claims, in an effort to address near-term maturities and to set an appropriate and sustainable capital structure for the Company, post-emergence. The parties to these negotiations reached an agreement on the terms of a financial restructuring (*i.e.*, the “RSA”), which incorporates the Opioid Settlement and the Acthar Settlement, as reflected in the terms of the Plan.

As of the Petition Date or shortly thereafter, the Restructuring Support Agreement was signed by the Debtors; unsecured noteholders holding more than 84 percent of the Guaranteed Unsecured Notes Claims; 50 Attorneys General of states, Washington, D.C., and U.S. territories with respect to their opioid claims; and the members of the Plaintiffs’ Executive Committee, the MSGE Group, including more than 1,300 governmental opioid claimants, and the Supporting Term Lenders.

A. Private Creditors.

The Opioid Settlement contemplated that the “public creditors”—the states, local governments, and tribes—would: (i) negotiate the allocation of the Opioid Trust Consideration to be made available to “private creditors”; and (ii) allocate the remaining amounts among the various governments to be used to pay for opioid addiction abatement services.

During the bankruptcy proceedings, the Ad Hoc Committee engaged in mediation on the allocation of the Opioid Trust Consideration among the various holders of opioid claims. The Mediation was conducted during the early part of 2021 with Kenneth R. Feinberg serving as mediator with several major groups of private creditors consisting of: (i) personal injury claimants, including guardian claimants asserting claims on behalf of minors with NAS due to exposure to opioids in utero, (ii) claimants comprising a putative class of NAS children seeking medical monitoring funding, (iii) hospitals, (iv) private health insurance carrier plaintiffs and third-party payors, (v) purchasers of private health insurance; and (vi) emergency room physicians. All private creditors (with the

exception of PI claimants) agreed to accept distributions exclusively in the form of funding for programs designed to abate the opioid crisis (the “Private Creditor Trusts”).

The mediation took three months and resulted in the allocations set forth in the Plan among the Private Creditor Trusts, the Public Creditor Trusts (as defined below) and other third party entities. The mediation also resulted in negotiated agreements, which are reflected in the below chart:

Private Creditor Trusts	Distribution Amount ⁴
Third Party Payors Trust:	5.210%
Hospitals Trust:	3.57%
Personal Injury Trust NAS PI Claims	0.625%
Personal Injury Trust Non-NAS PI Claims	9.3%
School Districts	\$5.0 million
NAS Monitoring Trust:	\$1.5 million
IER Physicians Trust	\$4.5 million
Ratepayers	\$3.0 million
Opioid Attorneys’ Fee Fund	10.00% of distributions to Public Opioid Creditor Trusts

Each of the Private Creditors will assume all liability for and administer Claims in the applicable Class and make distributions or award grants for authorized abatement purposes pursuant to an agreed upon “Trust Distribution Procedure” for each creditor group.

B. Public Opioid Creditor Trusts.

As noted above, the “public creditors” are all state, local and tribal governments. After payments are made to the private creditors, the balance of the value of the bankruptcy estate will be allocated among the public creditors. The ultimate value of the bankruptcy estate is unknown because it depends in part on the realization of warrant value and recovery on third party claims transferred to the trust. In general, approximately \$1.725 billion will be provided to public and private creditor trusts with a mission to fund abatement of the opioid crisis.

Pursuant to the terms of the Plan, the public creditors, would assume control over two public creditor trusts, the National Opioid Abatement Trust II (the “NOAT II”), on account of the State Opioid Claims and the Municipal Opioid Claims and the Tribal Opioid Abatement Fund Trust II (the “TAFT II”), on account of the Tribal Opioid Claims. All value distributed to the NOAT II and the TAFT II will be exclusively dedicated to programs designed to abate the opioid crisis and for no other purpose, other than to fund administration of the programs themselves and to pay fees and costs, including the funding of the Opioid Attorneys’ Fee Fund, which will be established for reimbursement of State Opioid Claimant, Municipal Opioid Claimant, and Tribe Opioid Claimant costs and expenses. The exact structure of the Opioid Attorneys’ Fee Fund will be developed and agreed upon by the Governmental Plaintiff Ad Hoc Committee and the MSGE Group from the Public Opioid Creditor Share.

⁴ The percentage deals contemplate a percentage of cash received at the Opioid MDT II TDP, prior to certain administrative expenses and reserves.

A schedule of the distributions to be received by the NOAT II and the TAFT II is set forth below:

AGGREGATE AMOUNT DISTRIBUTABLE	ALLOCATION BETWEEN THE NOAT II AND THE TAFT II*	
	NOAT II	TAFT II
\$0 – \$625 MILLION	97.1%	2.90%
OVER \$625 MILLION – \$1.25 BILLION	97.05%	2.95%
OVER \$1.25 BILLION	97%	3.0%
* The TAFT II is subject to \$145,000 upward adjustment in connection with certain public-school distributions.		

1. National Opioid Abatement Trust II.⁵

Pursuant to the terms of the Plan the funds distributed to the NOAT II will be allocated to each State for use within that State. The distribution methodology is grounded in, among other things, prescription opioid sales, the prevalence of pain reliever use disorder, overdose deaths, population, and other factors. The state-by-state percentage allocations is set forth in the NOAT II Documents. Within-state allocations of those funds to local governments and other Municipal Units within each State will be determined either by a default allocation mechanic or a “Statewide Abatement Agreement” if the required level of support can be reached within the applicable State no later than two weeks following the Effective Date.⁶ Under the default allocation mechanic, the within state allocations of funds for abatement purposes shall be apportioned by region, and the specific abatement uses of the funds shall be determined by the state, with input from a consulting body that includes broad local government representation. Further detail on the inter-state allocation model and intra-state allocation mechanisms is described in the NOAT II Documents. The NOAT II documents also specify the core abatement purposes for which each State may allocate abatement funds, along with distribution procedures, which specify that priority be given to the “core strategies”. The NOAT II documents, which are substantially similar to those proposed in *Purdue Pharma*, were filed on September 4, 2021 [Docket No. 4149-1] and are acceptable in form and substance to the Ad Hoc Committee and PEC.

The net distributable value that will flow through the NOAT II to the local government entities TAFT II depends on whether the Debtors make structured payments over eight (8) years or take advantage of their prepayment option at emergence or within the first eighteen months after the Effective Date of the Plan. If the Debtors make the full structured cash payments, the net distributable value under NOAT II will be approximately \$1.203 billion after payments to the private trusts and net of illustrative assumptions with respect to attorney fees and administrative costs. If the Debtors opt for prepayment at emergence, the net distributable value under NOAT II

At this time, there is no global consensus between the Ad Hoc Committee and PEC on the one hand and the MSGE on the other hand over the exact contours of the NOAT II and NOAT II TDP. The Ad Hoc Committee and PEC maintain that a substantially similar arrangement to that used in *Purdue* should be utilized here. The MSGE has not yet agreed to this arrangement based on, among other things, differences on views on how private counsel reimbursement must be handled.

⁶ The allocation of public funds within a Territory or the District of Columbia will be determined by its local legislative body within the time frame set forth in the procedures of the NOAT II Documents, unless that legislative body is not in session, in which case, the allocation of public funds shall be distributed pursuant to the direction of the Territory’s or District of Columbia’s executive, in consultation – to the extent applicable – with its government participation mechanism, all as set forth in the NOAT II Documents.

will be approximately \$818 million. These estimates may be increased as they do not factor in the monetization of the warrants (or the underlying equity), net insurance proceeds and assigned estate claims.

The NOAT II shall distribute the NOAT II funds consistent with the allocation percentages set forth below and in accordance with the NOAT II Documents:

State	Final Percentage Division of Funds
Alabama	1.5958653635%
Alaska	0.2283101787%
American Samoa*	0.0171221696%
Arizona	2.3755949882%
Arkansas	0.9322152924%
California	9.8347649255%
Colorado	1.6616291219%
Connecticut	1.3010642872%
Delaware	0.4490315873%
District of Columbia	0.1799774824%
Florida	7.0259134409%
Georgia	2.7882080114%
Guam*	0.0480366565%
Hawaii	0.3246488040%
Idaho	0.4919080117%
Illinois	3.3263363702%
Indiana	2.2168933059%
Iowa	0.7419256132%
Kansas	0.7840793410%
Kentucky	2.0059653429%
Louisiana	1.4650905059%
Maine	0.5354480863%
Maryland	2.1106090494%
Massachusetts	2.3035761083%
Michigan	3.4020234989%
Minnesota	1.2972597706%
Mississippi	0.8624327860%
Missouri	2.0056475170%
Montana	0.3125481816%
N. Mariana Islands*	0.0167059202%
Nebraska	0.4171546352%
Nevada	1.2090024165%
New Hampshire	0.5854539780%
New Jersey	2.7551354545%
New Mexico	0.8057440820%
New York	5.3903813405%
North Carolina	3.2502525994%
North Dakota	0.1700251989%

Ohio	4.3567051408%
Oklahoma	1.5400628332%
Oregon	1.3741405009%
Pennsylvania	4.5882419559%
Puerto Rico**	0.7101195950%
Rhode Island	0.4527927277%
South Carolina	1.5393083548%
South Dakota	0.1982071487%
Tennessee	2.6881474977%
Texas	6.2932157196%
Utah	1.1535777967%
Vermont	0.2597674231%
Virgin Islands*	0.0315673573%
Virginia	2.2801150757%
Washington	2.3189040182%
West Virginia	1.0660758910%
Wisconsin	1.7582560561%
Wyoming	0.1668134842%

2. Tribal Opioid Abatement Trust II.

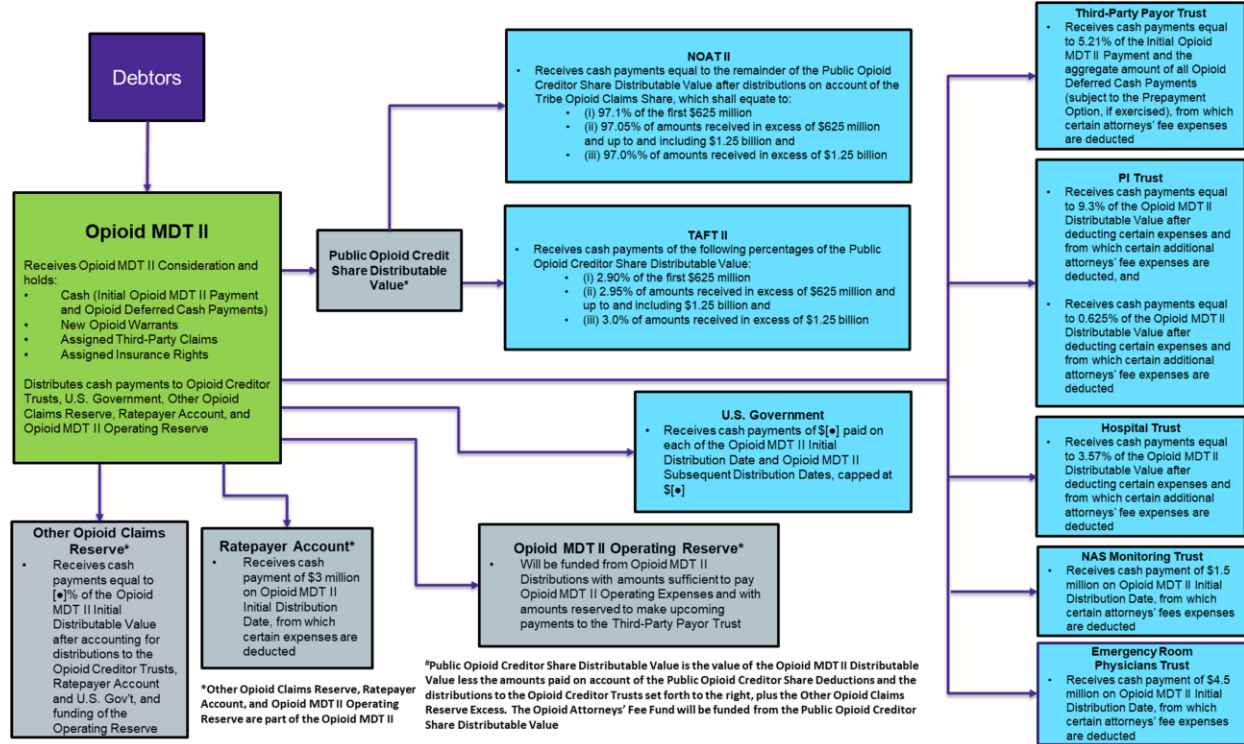
Of the amount available to all public creditors, approximately 3% will be allocated to Tribes (subject to a sliding scale on the Public Opioid Creditor Share Distributable Value). Thus, assuming the total amount for the public creditors will be \$1.239 billion, the Tribes collectively will receive approximately \$36 million. This amount will be disbursed to the Tribes substantially contemporaneously as amounts disbursed to the NOAT II TDP.

The 3% amount allocated to Tribes from the pool of public funds was arrived at through the mediation process conducted by Kenneth Feinberg. The Tribes were represented in the mediation by the Tribal Leadership Committee (TLC), a group appointed by the MDL court to coordinate all Tribal opioid litigation. The state and local governments were counter-parties. The amount paid to the Tribes in aggregate will be allocated among the Tribes pursuant to an allocation matrix developed by the TLC.

VI. The Structure of the Plan.

A. Overall Structure.

The Plan provides that the company's businesses be reorganized and at the direction of the Required Supporting Unsecured Noteholders and with the reasonable consent of the Governmental Plaintiff Ad Hoc Committee and the MSGE Group. At emergence, the Company will be publicly listed on a public exchange (possibly on the NYSE or NASDAQ). Mallinckrodt will continue to manufacture its pre-petition products, but its manufacture and sale of opioid products shall be subject to an injunction that has been agreed by the States Attorneys' General and the AHC. The chart below shows the structure that will be established if the proposed Plan is approved by the Court:



VII. Plan Confirmation.

Voting on the plan by all creditors will be open through September 3, 2021. Claimants are divided into 14 different classes, in order to group similar claims together. Claimants vote by class. In order to accept the plan, a majority in a class by number and two-thirds by dollar amount of claims in a class must vote to approve the Plan. For purposes of this proceeding, all governmental claims are each valued at \$1 for voting purposes, which may effectively establish a requirement that at least two-thirds of the voting members of each class vote to approve the plan in order for such class to be deemed an “accepting” class.

The court is scheduled to hold a hearing on confirmation of the plan beginning September 21, 2021. The number of claimants who will object to the plan, and the grounds for the objections, are not currently known. It is expected that the court will issue a decision on whether to confirm the plan in October. If the plan is confirmed, there will be at least one to two months of work to set up the various trusts and other entities necessary to implement the Plan. Additionally, given that the Debtors’ ultimate parent company is an Irish company, the Debtors are required to obtain approval of the Irish courts of the Plan, under applicable Irish law which may take several months. If that schedule holds, the “effective date” of the Plan could be in early 2022.

VIII. Global Opioid Settlement.

As discussed in Section V above, Mallinckrodt initiated these bankruptcy proceedings with an RSA negotiated with certain stakeholders—which incorporated the pre-bankruptcy Opioid Settlement (as subsequently modified) and laid the framework of the Plan and Disclosure Statement filed with the Court. The Plan and Disclosure Statement, however, left open some material economic and plan implementation terms such as, including without limitation, insurance proceeds, registration rights,

and New Opioid Warrants, which had been the subject of dispute and controversy among the Debtors, Ad Hoc Committee, MSGE Group and the OCC. In late August, these disputing parties reached a consensual settlement of all outstanding issues in connection with the Plan (the “Global Opioid Settlement”), which leaves the terms of the RSA and the Opioid Settlement substantially unchanged, save for the following:

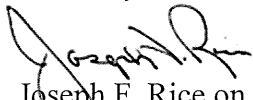
- Additional Consideration: The Opioid MDT II shall receive (i) an additional \$125 million in cash payable on the eighth anniversary of the Effective Date of the Plan and (ii) a 50% interest in estate claims against non-released parties in connection with the Company’s share repurchase program between 2015-2018;
- New Opioid Warrant Terms: exercisable through sixth anniversary of the Effective Date;
- Prepayment Option: Company can now exercise right within 18 months from the Effective Date regardless of whether the prepayment option is exercised;
- Opioid Claimant Releases: the Plan will provide for a release of opioid claimants similar to that included in the Purdue Pharma plan; and
- Opioid MDT II Trustee: the OCC will have the right to consult with the Ad Hoc Committee and the MSGE Group on the appointment of the three Opioid MDT II Trustees, and will have the ability to appoint one of the Opioid MDT II Trustees if no agreement on the identity of the trustees is reached.

IX. PEC Supports the Plan.

The PEC believes that the Plan represents a fair and equitable resolution of opioid-related claims against Mallinckrodt as the vast majority of creditor recoveries distributed under the Plan were negotiated in good faith and are exclusively dedicated to programs designed to abate the opioid crisis (other than to fund administration of the programs themselves and to pay fees and costs). The alternative is to engage in risky, expensive and value-destroying civil litigation that will take years to fully litigate, and which will result in delayed and inequitable recoveries among potential claimants. And perhaps most importantly, even if judgments are obtained, it could take years of additional litigation to collect on those judgments. Meanwhile, local government and other public creditors, including Class 8(a) (State Opioid Claims), Class 8(b) (Municipal Opioid Claims) and Class 8(c) (Tribe Opioid Claims) claimholders, will have received no resources from Mallinckrodt that can be put to immediate use to abate the ongoing problems. **The PEC recommends that all opioid-related claimholders vote to approve the Plan.**

THE FOREGOING IS NOT INTENDED AS A SUBSTITUTE FOR THE DISCLOSURE STATEMENT. THE PEC URGES YOU TO READ THE PLAN AND DISCLOSURE STATEMENT CAREFULLY.

Sincerely,



Joseph F. Rice on behalf of
Co-Leads, MDL 2804

Paul T. Farrell, Jr.

Jayne Conroy

Joseph F. Rice

And MDL 2804 PEC



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 5, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 13(A)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved David L. Levine Mayor
Veto _____
Override _____

Agenda Item No. 13(A)(1)
10-5-21

RESOLUTION NO. R-853-21

RESOLUTION AUTHORIZING THE COUNTY ATTORNEY OR
COUNTY ATTORNEY'S DESIGNEE TO VOTE TO APPROVE
THE CHAPTER 11 BANKRUPTCY PLAN IN *IN RE*
MALLINCKRODT PLC, ET AL

WHEREAS, on November 21, 2017, this Board adopted Resolution No. R-1140-17 directing the County Attorney to: (1) assess whether Miami-Dade County (the "County") should engage in litigation to recover costs and other damages associated with the opioid epidemic; (2) evaluate the viability of legal claims against opioid manufacturers, distributors, or other actors and culpable parties; (3) identify up to three law firms that could serve as outside counsel for possible litigation related to recovering costs and other damages associated with the opioid epidemic under the direction of the County Attorney and on a contingency fee basis with no cost to the County if the County does not prevail in litigation; and (4) report back to the Board within 60 days of the effective date of Resolution No. R-1140-17 with such recommendations; and

WHEREAS, on February 6, 2018, this Board approved Resolution No. R-157-18 and directed the Mayor or the Mayor's designee to execute a retainer agreement with the litigation team consisting of Podhurst Orseck, P.A.; Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA; Baron & Budd, PC; Greene, Ketchum, Farrell, Bailey & Tweet, LLP; McHugh Fuller Law Group, PLLC; Hill, Peterson, Carper, Bee & Dietzler, PLLC; and Powell & Majestro, PLLC ("Podhurst") as outside counsel, and authorized the County Attorney or the County Attorney's designee and outside counsel to pursue litigation to recover costs and other damages associated with opioid use in the County; and

WHEREAS, on April 23, 2018, Podhurst filed the County's lawsuit against several manufacturers and distributors of prescription opiate drugs in federal court in the Southern District of Florida; and

WHEREAS, thereafter, on March 15, 2019, the County's case was amended to add retail pharmacy distributor defendants; and

WHEREAS, the County's case was later transferred to and is currently included in the Opioid Multidistrict Litigation ("Opioid MDL") before Judge Dan Polster in the Northern District of Ohio; and

WHEREAS, an MDL is a federal legal procedure designed to consolidate complex cases that involve similar legal issues before one court for all discovery and pretrial proceedings with the goal of expediting proceedings, conserving resources, and fostering consistent court rulings across different lawsuits; and

WHEREAS, although the County's case is currently before Judge Polster in the Opioid MDL, if it does not settle, it will be tried in the Southern District of Florida; and

WHEREAS, over 2,000 entities are involved in the Opioid MDL, and plaintiffs are categorized as follows: local governments, states, hospitals, third-party payors, and tribal governments; and

WHEREAS, the Opioid MDL is considered the largest MDL in U.S. history and has been described as the most complex civil lawsuit in U.S. history; and

WHEREAS, the Opioid MDL may result in multibillion-dollar settlement agreements or court-ordered judgments; and

WHEREAS, in light of the significant financial exposure, many of the Opioid MDL defendants have filed for bankruptcy or intimated that it was an option they may pursue; and

WHEREAS, for example, Purdue Pharma, L.P. (“Purdue”), one of the Opioid MDL defendants, petitioned for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York on September 15, 2019 (*In re Purdue Pharma LP, et al.*, Case No. 19-23649 (RDD)) (“Purdue Pharma”); and

WHEREAS, on July 8, 2021, this Board approved Resolution No. R-678-21, which authorized the County Attorney or the County Attorney’s designee to vote to approve the Chapter 11 Bankruptcy Plan in Purdue Pharma; and

WHEREAS, like Purdue, Mallinckrodt, plc, (“Mallinckrodt”) a pharmaceutical manufacturer, is a defendant in the Opioid MDL; and

WHEREAS, Mallinckrodt petitioned for bankruptcy under Chapter 11 of the Bankruptcy Code on October 12, 2020; and

WHEREAS, the initial deadline to vote in favor of or against the *Joint Plan of Reorganization of Mallinckrodt plc and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code In re Mallinckrodt PLC, et al.*, Case No. 20-12522 (JTD) (Bankr. D. Del.) (the “Plan”) was September 3, 2021; and

WHEREAS, the bankruptcy court’s voting deadline has been extended several times since its initial date and is currently scheduled to take place on October 8, 2021; and

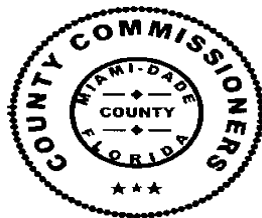
WHEREAS, this Board wishes to authorize the County Attorney to vote in favor of the Plan,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the County Attorney or County Attorney’s designee to vote to approve the *Joint Plan of Reorganization of Mallinckrodt plc and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code In re Mallinckrodt PLC, et al.*, Case No. 20-12522 (JTD) (Bankr. D. Del.).

The Sponsor of the foregoing resolution is County Attorney Geri Bonzon-Keenan. It was offered by Commissioner **Raquel A. Regalado**, who moved its adoption. The motion was seconded by Commissioner **Joe A. Martinez** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 5th day of October, 2021. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Melissa Adames

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "SG" followed by a flourish.

Shanika A. Graves