

OGDENSBURG CITY SCHOOL DISTRICT
OGDENSBURG, NEW YORK

SUBJECT: Resolution Authorizing Commencement of Vaping Litigation

DATE: August 23, 2021

REASON FOR BOARD CONSIDERATION:

The Board of Education must approve all contractual agreements.

FACTS AND ANALYSIS:

WHEREAS, in recent years the use and abuse of e-cigarettes and vaping devices has increased dramatically among high school and middle school students, leading to significant risks of addiction and potentially life-threatening respiratory ailments;

WHEREAS, makers of e-cigarettes, including Juul Labs, Inc. have engaged in marketing practices that have targeted children, thereby endangering the health of millions of children who have become addicted to nicotine and nicotine products;

WHEREAS, the use of e-cigarettes and vaping devices by students has and/or likely will cause the Ogdensburg City School District ("District") to incur costs in the form of staff time, disciplinary proceedings, and other costs, with the expectation that these costs will only increase unless and until student use of these devices decreases and stops;

WHEREAS, the Ogdensburg City School District Board of Education ("BOE") has been invited to join a nation-wide lawsuit by school districts against Juul Labs, Inc. the largest seller of e-cigarettes in the United States and Altria Group, Inc. formerly known as Phillip Morris Companies, Inc.; and

WHEREAS, the BOE wishes to join this lawsuit to discourage the proliferation of e-cigarettes, end the marketing of e-cigarettes to children, and seek compensation for harm caused to the District due to e-cigarette use.

RECOMMENDED ACTION:

NOW, THEREFORE, BE IT RESOLVED, the Ogdensburg City School District Board of Education hereby resolves:

1. To appoint the law firms of Bond Schoeneck & King, PLLC, and the Frantz Law Group, APLC to provide legal services in connection with pursuing claims for damages associated with the Juul Electronic Cigarette litigation against Juul Labs, Inc. and others consistent with the recitals above;
2. To approve the contract for such legal services; and
3. To authorize the Superintendent to take all steps necessary to become an active co-plaintiff to litigation filed on behalf of school districts by Bond Schoeneck & King and the Frantz Law Group.

ADOPTED this 23rd day of August 2021, by a roll call vote as follows:

YES: _____

NO: _____

ABSTAIN: _____

APPROVED FOR PRESENTATION TO THE BOARD:



Superintendent

KK/alf
Attachment

ATTORNEY-CLIENT FEE CONTRACT

The ATTORNEY-CLIENT FEE CONTRACT ("Agreement") is entered into by and between the Ogdensburg City School District ("District") and Frantz Law Group, APLC and Bond Schoeneck & King, PLLC ("Attorneys" or "We") and encompasses the following provisions:

1. **CONDITIONS.** This Agreement will not take effect, and Attorneys will have no obligation to provide legal services, until the District returns a signed copy of this Agreement.
2. **AUTHORIZED REPRESENTATIVES**
 - A. **DISTRICT REPRESENTATIVES.** The District designates Kevin Kendall or his designee, as the authorized representatives to direct Attorneys and to be the primary individuals to communicate with Attorneys regarding the subject matter of Attorneys' representation of the District under this Agreement. The designation is intended to establish a clear line of authority and to minimize potential uncertainty but not to preclude communication between Attorneys and other representatives of the District.
 - B. **ATTORNEY REPRESENTATIVES.** James Frantz, William Shinoff, and Regina Bagdasarian of Frantz Law Group, APLC will be primarily responsible for the work, either performing it himself/herself or delegating it to others as may be appropriate. The District shall have the right to approve or veto the involvement of each of the attorneys on its cases. Attorneys will be added or deleted from the list only upon prior District approval.
3. **SCOPE AND DUTIES.** The District hires Attorneys to provide legal services in connection with pursuing claims for damages associated with JUUL® and Electronic Cigarette (e-cigarette) litigation ("Action"). Attorneys shall provide those legal services reasonably required to represent the District and shall take reasonable steps to keep the District informed of progress and to respond to the District's inquiries. The District shall be truthful with Attorneys, cooperate with Attorneys, and keep Attorneys informed of developments. Attorneys will assist in negotiating liens, but will not litigate them.
4. **LEGAL SERVICES SPECIFICALLY EXCLUDED.** Unless otherwise agreed in writing by the District and Attorneys, Attorneys will not provide legal services with respect to (a) defending any legal proceeding or claim against the District commenced by any person unless such proceeding or claim is filed against the District in the Action or (b) proceedings before any federal or state administrative or governmental agency, department, or board. With the District's permission, however, Attorneys may elect to appear at such administrative proceedings to protect the District's rights. If the District wishes to retain Attorneys to provide any legal services not provided under this Agreement for additional compensation, a separate written agreement between Attorneys and the District will be required.

5. FEES. The District will pay attorneys' fees of:

For any recovery on or before July 20, 2021, twenty percent (20%) of any monetary settlement or recovery that Attorneys obtain for the District and, twenty percent (20%) of the value of any non-monetary settlement or recovery, provided that such fee will be paid only by money recovered from Defendants. However, if money recovered from Defendants is less than twenty percent (20%) of the value of any non-monetary settlement or recovery, the District is not responsible for paying Attorneys any money other than what has been recovered from Defendants;

For any recovery after July 21, 2021, twenty five percent (25%) of any monetary settlement or recovery that Attorneys obtain for the District and, twenty five percent (25%) of the value of any non-monetary settlement or recovery, provided that such fee will be paid only by money recovered from Defendants. However, if money recovered from Defendants is less than twenty five percent (25%) of the value of any non-monetary settlement or recovery, the District is not responsible for paying Attorneys any money other than what has been recovered from Defendants

Fees shall be calculated on the basis of any settlement or recovery prior to the deduction of any expense or cost; the "Gross Recovery." Contingency fee rates are not set by law, but have been negotiated. If no recovery is made, no fees will be charged.

The term "Gross Recovery" shall include, without limitation, the then present value of any monetary payments agreed or ordered to be made by the adverse parties or their insurance carriers as a result of the Services, whether by settlement, arbitration award, court judgment (after all appeals exhausted), or otherwise. Any statutory Attorneys' fee paid by Defendants shall be included in calculating the Gross Recovery.

- (1) "Gross Recovery," if by settlement, also includes (1) the then-present value of any monetary payments to be made to Client; and (2) the fair market value of any non-monetary property and/or services to be transferred and/or rendered for the benefit of the District; and (3) any Attorneys' fees and costs recovered by the District as part of any cause of action that provides a basis for such an award. "Recovery" may come from any source, including, but not limited to, the adverse parties to the District and/or their insurance carriers and/or any third party, whether or not a party to formal litigation. The contingent fee is calculated by multiplying the recovery by the fee percentage. This calculation is performed on the gross recovery amount before the deduction of expenses as discussed above.

Gross Recovery, except in the case of a settlement, does not contemplate nor include any amount or value for injunctive relief or for the value of an abatement remedy which may be obtained in a final arbitration award or court judgment.

- (2) The District shall not be obligated to pay the Attorneys unless Attorneys are successful in collecting a monetary recovery on the District's behalf as a result of the Services.
- (3) If, by judgment, the District is awarded in the form of property or services (In Kind), the value of such property and services shall not be included for purposes of calculating the Gross Recovery.
- (4) If, by judgment, there is *no* money recovery and the District receives In Kind relief, Attorneys acknowledge that the District is not obligated to pay Attorneys' fees from public funds for the value of the In Kind relief. In the event of In Kind relief, by judgment, Attorneys' sole source of recovery of contingent fees will come from a common fund or court ordered Attorney's fees.
- (5) The District understands that Attorneys have and will invest resources into prosecuting this action on behalf of the District and agrees to make a good faith effort to include Attorneys' Fees as part of the terms of any settlement or resolution of the Action.

It is possible that payment to the District by the adverse parties to the Action or their insurance carrier(s) or any third-party may be deferred, as in the case of an annuity, a structured settlement, or periodic payments. In such event, gross recovery will consist of the initial lump sum payment plus the present value (as of the time of the settlement) of the total of all payments to be received thereafter. The contingent fee is calculated, as described above, by multiplying the gross recovery by the fee percentage. The Attorney's fees will be paid out of the initial lump-sum payment if there are sufficient funds to satisfy the Attorney's fee. If there are insufficient funds to pay the Attorney's fees in full from the initial lump sum payment, the balance owed to Attorney will be paid from subsequent payments to the District before there is any distribution to the District.

- A. Reasonable Fee if Contingent Fee is Unenforceable or if Attorney is Discharged Before Any Recovery. 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 the District on a contingent fee basis, the District agrees to pay a reasonable fee for the services rendered. If the parties are unable to agree on a reasonable fee for the services rendered, Attorneys and the District agree that the fee will be determined by arbitration proceedings before a mutually agreed upon neutral affiliated with either the Judicial Arbitration and Mediation Services (JAMS) or Judicate West (JW); in any event, Attorney and the District agree that the fee determined by arbitration shall not exceed twenty five percent (25%) of the gross recovery as defined in paragraph 5.
- B. No General Fund Payments. Notwithstanding any other provision in this agreement, in no event will the District be required to pay legal fees out of any fund other than the monies recovered from Defendants in this litigation. Under

no circumstances shall the District's general funds be obligated to satisfy the contingent Attorneys' fees as a result of this case or this contingency fee contract.

6. **COSTS AND EXPENSES.** In addition to paying legal fees, the District shall reimburse Attorneys for all "costs/expenses", which includes but is not limited to the following: process servers' fees, fees fixed by law or assessed by courts or other agencies, court reporters' fees, long distance telephone calls, messenger and other delivery fees, parking, investigation expenses, consultants' fees, expert witness fees, and other similar items, incurred by Attorneys. The costs/expenses incurred that Attorneys advance will be owed in addition to attorneys' fees and the District will reimburse those costs/expenses after Attorneys' fees have been deducted. Costs will be capped at two percent (2%) of the recovery. If there is no recovery, the District will not be required to reimburse Attorneys for costs and fees. In the event a recovery is less than incurred costs/expenses, the District will not be required to reimburse Attorneys for costs/expenses, above and beyond the recovery, and fees.

SHARED EXPENSES: The District understands that Attorneys may incur certain expenses that jointly benefit multiple clients, including, for example, expenses for travel, experts, and copying. The District agrees that Attorneys shall divide such expenses equally, or pro rata, among such clients, and deduct the District's portion of those expenses from the District's share of any recovery.

FEDERAL MDL AND STATE COORDINATION COMMON BENEFIT FEES: Members of Attorneys frequently serve on plaintiffs' management or executive committees in MDL and/or the California state court coordinated proceedings and perform work which benefits Attorneys' clients as well as clients of other attorneys involved in similar litigation. As a result, the court or courts where the cases are pending may order that Attorneys are to receive additional compensation for Attorneys time and effort which has benefitted all claimants. Compensation for this work and effort, which is known as "common benefit," may be awarded to Attorneys by a court or courts directly from the assessments paid by the District and others who have filed claims in this litigation, and will not in any way reduce the amount of fees owed under this Agreement.

7. **LIEN.** In the event any third party attempts to lien any proceeds recovered from a recovery in this matter, the District hereby grants, and agrees, **TO THE EXTENT PERMITTED BY APPLICABLE LAW**, that Attorneys hold, a first priority and superior lien on any and all proceeds recovered from Defendants in this litigation in the amount of the Attorneys' fees and costs that the Attorneys are entitled to under this Agreement. This lien right is limited to only those monies recovered from Defendants and in no way affects any other rights of the District in any way whatsoever.

8. DISCHARGE AND WITHDRAWAL.

- A. The District may discharge Attorneys at any time. After receiving notice of discharge, Attorneys shall stop services on the date and to the extent specified by the notice of discharge, and deliver to the District all evidence, files and attorney work product for the Action. This includes any computerized indices, programs and document retrieval systems created or used for the Action.
- B. Attorneys may withdraw with the District's consent or for good cause. Good Cause includes the District's breach of this Agreement, the District's refusal to cooperate with Attorneys, or any other fact or circumstance that would render Attorneys continuing representation unlawful or unethical. Attorneys may also discharge the District if the District at any time is dishonest with Attorneys, or fails to provide relevant information to Attorneys.

9. ARBITRATION OF DISPUTES: Attorneys and the District agree that should any dispute arise between them, they must be mediated first, before any claims are filed. Specifically any and all disputes, controversies or claims arising out of, or related to this Agreement and/or Attorneys' representation of the District, including claims of malpractice (collectively referred to herein as "Dispute" or "Disputes"), shall be submitted to mediation at the offices of Judicial Arbitration & Mediation Services, Inc. ("JAMS") in San Diego before a retired judge or other mediator affiliated with JAMS, agreed to between the parties and, if the parties cannot agree, before a retired judge selected by JAMS. No petition for arbitration can be filed until after this agreed-upon mediation has occurred, and any petition for arbitration (or litigation) filed prior to conclusion of this mediation shall be subject to dismissal, pursuant to this Agreement. The District will pay one-half of the actual cost of the mediation, but each party will be responsible for his or her own attorneys' fees and preparation costs. The parties agree that any Dispute, whether submitted to mediation or not, will not be litigated in court. Rather, any Dispute, which is specifically defined above to include claims of malpractice, will be submitted to mandatory binding arbitration before JAMS. By signing this Agreement, Attorneys and the District agree to arbitration and waive the right to a court or jury trial and the right to appeal. Any Disputes shall be decided in San Diego, California, applying California law. The District is not waiving rights to arbitration before the San Diego County Bar Association.

10. AUTHORITY OF ATTORNEY. Attorneys may, with prior District approval, associate co-counsel if the Attorneys believe it advisable or necessary for the proper handling of the District's claim, and expressly authorize the Attorneys to divide any Attorneys' fees that may eventually be earned with co-counsel so associated for the handling of the District's claim. Attorneys understand that the amount of Attorneys' fees which the District pays will not be increased by the work of co-counsel associated to assist with the handling of the District's claim, and that such associated co-counsel will be paid by the Attorneys out of the Attorneys' fees the District pays to the Attorneys.

11. **DISCLAIMER OF GUARANTEE.** Nothing in this Contract and nothing in Attorneys' statements to the District will be construed as a promise or guarantee about the outcome of the District's matter. Attorneys make no such promises or guarantees. Attorneys' comments about the outcome of the District's matter are expressions of opinion only.
12. **MULTIPLE REPRESENTATIONS:** The District understands that Attorneys do or may represent many other individuals/entities with actual or potential litigation claims. Attorneys' representation of multiple claimants at the same time may create certain actual or potential conflicts of interest in that the interests and objectives of each client individually on certain issues are, or may become, inconsistent with the interests and objectives of the other. Attorneys are governed by specific rules and regulations relating to Attorneys professional responsibility in Attorneys representation of clients, and especially where conflicts of interest may arise from Attorneys representation of multiple clients against the same or similar Defendants, Attorneys are required to advise Attorneys' clients of any actual or potential conflicts of interest and obtain their informed written consent to Attorneys representation when actual, present, or potential conflicts of interest exist. By signing this agreement, the District is acknowledging that they have been advised of the potential conflicts of interest which may be or are associated with Attorneys representation of the District and other multiple claimants and that the District nevertheless wants the Attorneys to represent the District, and that the District consents to Attorneys representation of others in connection with the litigation. Attorneys strongly advise the District, however, that the District remains completely free to seek other legal advice at any time even after the District signs this agreement.
13. **AGGREGATE SETTLEMENTS:** Often times in cases where Attorneys represent multiple clients in similar litigation, the opposing parties or Defendants attempt to settle or otherwise resolve Attorneys' cases in a group or groups, by making a single settlement offer to settle a number of cases simultaneously. There exists a potential conflict of interest whenever a lawyer represents multiple clients in a settlement of this type because it necessitates choices concerning the allocation of limited settlement amounts among the multiple clients. However, if all clients consent, a group settlement can be accomplished and a single offer can be fairly distributed among the clients by assigning settlement amounts based upon the strengths and weaknesses of each case, the relative nature, severity and extent of injuries, and individual case evaluations. In the event of a group or aggregate settlement proposal, Attorneys may implement a settlement program, overseen by a referee or special master, who may be appointed by a court, designed to ensure consistency and fairness for all claimants, and which will assign various settlement values and amounts to each client's case depending upon the facts and circumstances of each individual case. The District authorizes Attorneys to enter into and engage in group settlement discussions and agreements which may include the District's individual claims. Although the District authorizes Attorneys to engage in such group settlement discussions and agreements, the District will still retain the right to approve, and Attorneys are required to obtain the District's approval of, any

settlement of the District's case.

14. EFFECTIVE DATE AND TERM. This Agreement will take effect upon execution by the District and Attorneys.
15. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument. Facsimile or pdf versions of this Agreement shall have the same force and effect as signature of the original.

The above is approved and agreed upon by all parties.

[SIGNATURE PAGE FOLLOWS]


Dated: _____

Print Name:
Frantz Law Group, APLC

Dated: _____

Print Name:
Bond Shoeneck & King, PLLC

Dated: 8/23/21



Kevin Kendall
Superintendent of Schools
Ogdensburg City School District