

**MARLINGTON LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION
December 3, 2020 Meeting**

December 3, 2020

Electronic Remote Technology Meeting
Regular Meeting Minutes

7:00 P.M.

I. Call to Order: 7:00**A. Pledge of Allegiance****B. Reading of Mission Statement – Mrs. Carolyn Gabric**

In collaboration with staff, community, parents, and students, the Marlinton Local School District will develop lifelong learners who understand and apply knowledge, and demonstrate excellence in pursuing the highest standards with effective intervention to challenge every student.

II. Roll Call

This meeting is a meeting of the Board of Education in public for the purpose of conducting the school district's business and is not to be considered a public community meeting.

Carolyn Gabric	Present
Josh Hagan	Present
Karen Humphries	Present
Scott Mason	Present
Danielle Stevens	Absent

III. Adoption of Meeting Agenda – Mrs. Carolyn Gabric

A. Recommend that the Marlinton Local Board of Education adopt the following agenda for the December 3, 2020 meeting striking item 6C.

B. Additions or Corrections

BOE Member	1st Motion	2nd Motion	Yea	Nay	Abst.		Approved	Not Approved	Table
Carolyn Gabric			x			Final Resolution:	320-20		
Josh Hagan	x		x			Resolution No.			
Karen Humphries			x						
Scott Mason		x	x						
Danielle Stevens									

IV. Public Participation

Persons wishing to present information or items to the Board shall submit a written statement, along with their names and directory information, in a WORD format to the Treasurer on or before 3:00 p.m. on the Friday prior to the regular meeting of the Board. The Treasurer shall then submit such timely written statements to each board member before the next regular meeting of the Board. At the next regular meeting of the Board, the Treasurer shall identify the name of each person who submitted a written statement and such written statement shall be entered into the minutes but not read aloud at the regular board meeting. There shall be no public participation at special board meetings.

No documents received.

V. Special Presentations

A. Business Advisory Council Update – Mrs. Carolyn Gabric

Mrs. Gabric stated that she attended the Business Advisory Meeting where data for high demand jobs and close alignment for business and schools were presented.

B. Students of the Month

<u>Student Name</u>	<u>Award</u>	<u>Parents Name</u>
Trent Garner	HS Elk Student of the Month	Tim Garner
Kyleigh Muniz	HS Elk Student of the Month	Mike Muniz & Joy Muniz
Mary Hottinger	MMS Student of the Month	Tom & Diana Hottinger
Tatem Hoffman	MMS Student of the Month	Timothy & Tina Hoffman
Adrian Gillman	LEX Kiwanis Student of the Month	Mary LaVoie
Cassandra Tarter	MARL Kiwanis Student of the Month	Dave & Mary Tarter
Brady Tolley	WASH Kiwanis Student of the Month	Trevor Tolley & Brittany Eyrich

VI. Old Business

A. Discussion

1. Public Participation Discussion

2. Lease Purchase Discussion

Dr. Michael R. Shreffler

Ms. Jill Murphy – Huntington Bank

B. Resolution Concerning Anti-Vaping Litigation

Recommend the motion to approve the resolution to approve a contingency fee agreement and authorize litigation as presented and marked “Exhibit CCCC”.

BOE Member	1st Motion	2nd Motion	Yea	Nay	Abst.		Approved	Not Approved	Table
Carolyn Gabric			x			Final Resolution:	x		
Josh Hagan	x		x			Resolution No.	321-20		
Karen Humphries				x					
Scott Mason		x	x						
Danielle Stevens									

VII. New Business

A. Fob System Access

1. Recommend the motion to declare the purchase of a Kantech access control system, a single source expenditure from Securitech and the installation of the system as an urgent necessity given the COVID-19 pandemic.

Dr. Mason asks if the Moulin Center is included. Mr. Davis, Technology Director, states that the Moulin Center is included. Dr. Shreffler and the Board thank the township for partnering on this project.

BOE Member	1st Motion	2nd Motion	Yea	Nay	Abst.		Approved	Not Approved	Table
Carolyn Gabric			x			Final Resolution:	x		
Josh Hagan	x		x			Resolution No.	322-20		
Karen Humphries		x	x						
Scott Mason			x						
Danielle Stevens									

2. Recommend the motion to approve proposal #20334 of a Kantech Access Control System, utilizing funding of \$30,000 from Washington Township Corona Relief Funds and the remaining \$44,944 from Marlinton Corona Relief and Permanent Improvement Funds.

BOE Member	1st Motion	2nd Motion	Yea	Nay	Abst.		Approved	Not Approved	Table
Carolyn Gabric			x			Final Resolution:	x		
Josh Hagan	x		x			Resolution No.	323-20		
Karen Humphries		x	x						
Scott Mason			x						
Danielle Stevens									

VIII. Personnel

A. Supplemental Employment for the 2020-2021 School Year

1. Supplemental Hires

- a) Recommend the motion to hire the following, pending verification of satisfactory credentials, BCI and FBI checks as required and subject to the following: In the event (1) an athletic season is suspended/ cancelled, (2) students do not participate in co-curricular/extra-curricular/pupil activity programs, and/or (3) individuals are not specifically assigned, in writing, by the Superintendent to perform supplemental duties under R.C. 3313.53, R.C. 3319.08(A), and applicable laws during the 2020-2021 school year; the Marlinton Local School District Board of Education (“Board”) hereby suspends any and all such supplemental contracts and directs the Treasurer to not make any payment whatsoever to any individual in connection with such supplemental contracts. Any individual who performs any supplemental duties in violation of this Resolution shall be deemed to have done so as a volunteer only and shall not be paid for any such volunteer services.

Position

Mentors

Name

Abigail Frase
 Jennifer Lauter
 Amy Kohmann (2)
 Cindy Bowser
 Molly Middleton
 Mary Clare Clevenger
 Teresa Phillips

BOE Member	1st Motion	2nd Motion	Yea	Nay	Abst.		Approved	Not Approved	Table
Carolyn Gabric			x			Final Resolution:	324-20		
Josh Hagan		x	x			Resolution No.			
Karen Humphries	x		x						
Scott Mason			x						
Danielle Stevens									

IX. Executive Session

Enter into Executive Session in accordance with ORC 121.22 to discuss the appointment, employment, dismissal and compensation of a public employee and to discuss matters required to be kept confidential by federal law or regulations or state statutes.

In Time: 7:57 Out Time: 8:37

BOE Member	1st Motion	2nd Motion	Yea	Nay	Abst.		Approved	Not Approved	Table
Carolyn Gabric			x			Final Resolution:	325-20		
Josh Hagan		x	x			Resolution No.			
Karen Humphries	x		x						
Scott Mason			x						
Danielle Stevens									

X. Announcements

XI. Next Board of Education Meeting:

Regular Meeting December 17, 2020
7:00 P.M.
Electronic Remote Technology Meeting

XII. Adjournment: 8:39

BOE Member	1st Motion	2nd Motion	Yea	Nay	Abst.		Approved	Not Approved	Table
Carolyn Gabric			x			Final Resolution:	x		
Josh Hagan		x	x			Resolution No.	326-20		
Karen Humphries			x						
Scott Mason	x		x						
Danielle Stevens									

Carolyn Gabric, Board President

Treasurer

**RESOLUTION TO APPROVE CONTINGENCY FEE AGREEMENT AND
AUTHORIZE LITIGATION**

WHEREAS the vaping epidemic among our Nation's students has increased at an alarming rate.

WHEREAS, through their deceptive marketing targeted at students, vaping companies have misled a new generation of students into becoming addicted to nicotine.

WHEREAS the nicotine in vaping products is not only extremely addictive but also negatively affects the development of our students.

WHEREAS a large burden of this student vaping epidemic has been placed upon our Nation's schools including, but not limited to, the Marlinton Local School District.

WHEREAS, in 2019, the law firm of Frantz Law Group, APLC filed a mass-action lawsuit against JUUL Labs, Inc. on behalf of a number of California schools in the case captioned *In re: Juul Labs, Inc. Marketing, Sales Practices & Products Liability Litigation*, United States District Court for the Northern District of California Case No. 3:19-md-2913-WHO ("Action").

WHEREAS, since 2019, schools throughout the Nation have joined in the Action.

WHEREAS the Action seeks to recover damages on behalf of schools to address the health issues caused by the vaping epidemic.

WHEREAS more information about the Action can be found at ohioschoolsagainstjuul.com.

WHEREAS, on October 23, 2020, the Honorable Judge William H. Orrick, III ruled that the Action may move forward with a trial date currently set for January 2022.

WHEREAS the law firms of McGown & Markling Co., L.P.A. and Frantz Law Group, APLC ("Law Firms") have entered into an exclusive non-reciprocal co-counsel agreement to facilitate Ohio schools joining the Action.

WHEREAS the Law Firms have offered to represent the Marlinton Local School District in joining the Action pursuant to a contingency fee agreement, a copy of which is attached hereto and incorporated herein.

WHEREAS the contingency free agreement clearly provides that the Marlinton Local School District **shall not be charged any fees, costs, and/or expenses if there is no recovery** on behalf of the Marlinton Local School District.

WHEREAS a nominal amount of school personnel time is anticipated for the Marlinton Local School District to participate in the Action.

WHEREAS the Law Firms have provided the Marlinton Local School District with a sample complaint to be filed in the appropriate United States District Courts, a copy of which is maintained by the Superintendent and Treasurer.

Resolution to Approve Contingency Fee Agreement and Authorize Litigation



ATTORNEY-CLIENT CONTINGENCY FEE AGREEMENT

This Attorney-Client Contingency Fee Agreement (“Agreement”) is entered into by and between the Marlinton Local School District (“Client”) and the law firms of McGown & Markling Co., L.P.A. and Frantz Law Group, APLC (collectively, “Attorneys”) and encompasses the following provisions:

1. **CONDITIONS.** This Agreement shall not take effect, and Attorneys shall have no obligation to provide legal services, until Client returns a signed copy of this Agreement.
2. **SCOPE AND DUTIES**
 - A. Client hires Attorneys to provide legal services in connection with pursuing claims for damages associated with the JUUL[®] and Electronic Cigarette (e-cigarette) mass action/multidistrict litigation (“Action”).
 - B. Attorneys shall provide those legal services reasonably required to represent Client in the Action.
 - C. Attorneys shall take reasonable steps to keep Client informed of progress in the Action.
 - D. Attorney shall take reasonable steps to respond to Client’s inquiries.
 - E. Client shall be truthful with Attorneys.
 - F. Client shall cooperate with Attorneys. For example, while Attorneys have already provided Client with a sample federal complaint, Client shall cooperate in providing Attorneys with all information needed to tailor the complaint to the unique facts of Client on or before November 30, 2020, in order to meet the bellwether filing deadline of December 15, 2020. While attempts shall be made to include Client in the Action after November 30, 2020, no guarantees are made to Client as to whether any post-December 15, 2020 complaints shall be filed by Attorneys in the Action. And, at this time, no initial complaints shall be made by Attorneys after January 31, 2021, as the trial date in the Action is currently set for January 2022.
 - G. Client shall keep Attorneys informed of developments.
 - H. While Attorneys may assist in negotiating liens, Attorneys shall not litigate liens.

3. **LEGAL SERVICES SPECIFICALLY EXCLUDED**

- A. Unless otherwise agreed in writing by Client and Attorneys, Attorneys **shall not** provide legal services with respect to defending any legal proceeding or claim against the Client commenced by any person before any federal or state administrative or governmental agency, department, and/or board unless such proceeding and/or claim is filed against Client in the Action. However, with Client's permission, Attorneys may elect at their sole discretion to appear at such administrative proceedings to protect Client's rights.
- B. If Client wishes to retain Attorneys to provide any legal services not provided under this Agreement for additional compensation, a separate written agreement between Attorneys and Client shall be required. For example, Client may separately retain McGown & Markling Co., L.P.A. through the School Law HotlineSM Agreement and no work spent on the Action shall be applied to such a separate written agreement.

4. **AUTHORIZED REPRESENTATIVES**

- A. **CLIENT REPRESENTATIVES.** Client designates the Superintendent and/or the Superintendent's Designee as the authorized representative(s) to direct Attorneys and to be the primary individual(s) to communicate with Attorneys regarding the Action. The designation is intended to establish a clear line of authority and to minimize potential uncertainty but **shall not** to preclude communication between Attorneys and other representatives of Client.

- B. **ATTORNEYS REPRESENTATIVES**

- (1) As there is no reciprocal referral agreement between the law firms of McGown & Markling Co., L.P.A. and Frantz Law Group, APLC; Matthew John Markling, Danielle Schantz, and Benjamin J. Miller of McGown & Markling Co., L.P.A. shall be primarily responsible for work on the Action in the State of Ohio, as well as the United States District Courts for the Northern and Southern Districts of Ohio, either performing the work themselves and/or delegating the work to others as may be appropriate and within the limited of the applicable codes of professional responsibility. Matthew John Markling of McGown & Markling Co., L.P.A. shall also submit a *pro hac vice* application for the United States District Court for the Northern District of California upon transfer of the Action from the United States District Courts for the Northern and Southern Districts of Ohio.
- (2) As there is no reciprocal referral agreement between the law firms of McGown & Markling Co., L.P.A. and Frantz Law Group, APLC; James Frantz, William Shinoff, and Regina Bagdasarian of Frantz Law Group,

APLC shall be primarily responsible for work on the Action in the United States District Court for the Northern District of California and any other non-State of Ohio consolidated venue/jurisdiction, either performing the work themselves and/or delegating the work to others as may be appropriate and within the limited of the applicable codes of professional responsibility.

- (3) McGown & Markling Co., L.P.A. and Frantz Law Group, APLC shall actively participate in the Action.
- (4) McGown & Markling Co., L.P.A. and Frantz Law Group, APLC assume joint responsibility for the representation of Client.
- (5) McGown & Markling Co., L.P.A. and Frantz Law Group, APLC shall both be available for consultation with Client.

5. FEES

- A. **Twenty Percent (20%) Contingency Fee.** For any recovery within three hundred sixty four (364) days of filing the initial complaint, Client shall pay fifteen percent (15%) to the Frantz Law Group, APLC and five percent (5%) to McGown & Markling Co., L.P.A. of any monetary and/or non-monetary settlement and/or recovery that Attorneys obtain for Client in the event of settlement, trial, and/or appeal. If money recovered from Defendants is less than twenty percent (20%) of the value of any non-monetary settlement or recovery, Client is not responsible for paying Attorneys any money other than what has been recovered from Defendants. **Client shall not be charged any fees if there is no recovery.** While all litigation and other expenses shall be deducted from the recovery, **Client shall not be liable for any costs and/or expenses if there is no recovery.** All litigation and other expenses shall be deducted from the recovery. As contingency fee rates are not set by law, the instant contingency fees been negotiated by the Attorneys and Client. And Client agrees that the twenty percent (20%) contingency fee is reasonable and understands that the customary constituency fee in similar cases is forty percent (40%) after all litigation and other expenses are deducted. By executing this Agreement, Client gives written consent that the fees shall be divided and that the division of fees shall be in proportion to the services to be performed by Attorneys and that Attorneys shall assume joint responsibility for the representation of Client.
- B. **Twenty-Five Percent (25%) Contingency Fee.** For any recovery after three hundred sixty four (364) days of filing the initial complaint, Client shall pay eighteen and three-fourths percent (18.75%) to the Frantz Law Group, APLC and six and one-fourth percent (6.25%) to McGown & Markling Co., L.P.A. of any monetary and/or non-monetary settlement and/or recovery that Attorneys obtain for Client in the event of settlement, trial, and/or appeal. If money recovered from

Defendants is less than twenty-five percent (25%) of the value of any non-monetary settlement or recovery, Client is not responsible for paying Attorneys any money other than what has been recovered from Defendants. **Client shall not be charged any fees if there is no recovery.** While all litigation and other costs and expenses shall be deducted from the recovery, **Client shall not be liable for any costs and/or expenses if there is no recovery.** As contingency fee rates are not set by law, the instant contingency fees been negotiated by the Attorneys and Client. And Client agrees that the twenty-five percent (25%) contingency fee is reasonable and understands that the customary constituency fee in similar cases is forty percent (40%) after all litigation and other expenses are deducted. By executing this Agreement, Client gives written consent that the fees shall be divided and that the division of fees shall be in proportion to the services to be performed by Attorneys and that Attorneys shall assume joint responsibility for the representation of Client.

- C. **Gross Recovery.** All litigation and other expenses shall be deducted after the contingent fee is calculated – i.e., the “Gross Recovery.”
- (1) 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 Action, 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.
 - (2) “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 Client; and (3) any Attorneys’ fees and costs recovered by Client 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 Client 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.
 - (3) 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.
 - (4) Client **shall not** be obligated to pay Attorneys unless Attorneys are successful in collecting a monetary recovery on Client’s behalf as a result of the Action.

- (a) If, by judgment, Client is awarded in the form of property and/or services (“In Kind”), the value of such property and services **shall not** be included for purposes of calculating the Gross Recovery.
 - (b) If, by judgment, there is **no** money recovery and Client receives In Kind relief, Attorneys acknowledge that Client 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 shall come from a common fund and/or court ordered attorneys’ fees.
 - (c) Client agrees Defendant shall pay all Attorneys’ fees in a settlement that includes nonmonetary value. Client understands that Attorneys have and shall invest resources into prosecuting the Action on behalf of Client and agrees to make a good faith effort to include Attorneys’ fees as part of the terms of any settlement and/or resolution of the Action.
 - (d) If Client and Attorneys disagree as to the fair market value of any non-monetary property and/or services as described above, Attorneys and Client agree that a binding appraisal shall be conducted to determine this value.
- (5) It is possible that payment to Client by the adverse parties to the Action and/or their insurance carrier(s) and/or any third-party may be deferred, as in the case of an annuity, a structured settlement, and/or periodic payments. In such event, Gross Recovery shall 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. Attorneys’ fees shall be paid out of the initial lump-sum payment if there are sufficient funds to satisfy Attorneys’ fee. If there are insufficient funds to pay Attorneys’ fees in full, from the initial lump sum payment, the balance owed to Attorneys shall be paid from subsequent payments to Client before there is any distribution to Client.

D. Reasonable Fee If Contingent Fee Is Unenforceable Or If Attorneys Are Discharged Before Any Recovery. In the event that the contingent fee portion of this Agreement is determined to be unenforceable for any reason or Attorneys are prevented from representing Client on a contingent fee basis, Client 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 Client agree that the fee shall be determined by a mutually agreed upon fee arbitration program. In any event, Attorneys and Client agree that the fee determined by arbitration **shall not** exceed twenty-five percent (25%) of the Gross Recovery.

- E. **No General Fund Payments.** Notwithstanding any other provision in this agreement, in no event shall Client be required to pay legal fees out of any fund other than the monies recovered from Defendants in this litigation. Under no circumstances shall Client's general funds be obligated to satisfy the contingent Attorneys' fees as a result of this case or this Agreement.
- F. **Disbursement and Closing Statement:** If Attorneys become entitled to compensation under this Agreement and Attorneys will be disbursing funds, Attorneys shall prepare a closing statement and shall provide Client with that statement at the time of or prior to the receipt of compensation under this Agreement. This closing statement shall specify the manner in which the compensation was determined under this Agreement, any costs and expenses deducted by Attorneys from the judgment and/or settlement involved, and the actual division of Attorneys' fees.
6. **COSTS AND EXPENSES.** In addition to paying legal fees, Client shall reimburse Attorneys for all costs and 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 shall be owed in addition to Attorneys' fees and Client shall reimburse those costs/expenses after Attorneys' fees have been deducted. **Client shall not be charged any costs and/or expenses if there is no recovery.** While all litigation and other costs and expenses shall be deducted from the recovery, **Client shall not be liable for any costs and/or expenses if there is no recovery.** In the event the recovery is less than incurred costs and expenses, Client **shall not** be required to reimburse Attorneys for costs and expenses above and beyond the recovery, and fees.
- A. **SHARED EXPENSES.** Client understands that Attorneys may incur certain expenses that jointly benefit multiple clients, including, for example, expenses for travel, experts, and copying. Client agrees that Attorneys shall divide such expenses equally, or pro rata, among such clients, and deduct Client's portion of those expenses from Client's share of any recovery.
- B. **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 Client and others who have filed claims in this litigation, and **shall 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 the Action, Client 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 the Action 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 Client in any way whatsoever.

8. **DISCHARGE AND WITHDRAWAL**

- A. Client 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 Client all evidence, files, and 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 Client's consent or for good cause. Good Cause includes Client's breach of this Agreement, Client's refusal to cooperate with Attorneys, and/or any other fact or circumstance that would render Attorneys continuing representation unlawful and/or unethical. Attorneys may also discharge Client if Client at any time is dishonest with Attorneys, and/or fails to provide relevant information to Attorneys.

9. **ARBITRATION OF DISPUTES.** Attorneys and Client 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 Client, including claims of malpractice (collectively referred to herein as "Dispute" or "Disputes"), shall be submitted to a mutually agreed upon fee arbitration program. 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. Client shall pay one-half of the actual cost of the mediation, but each party shall be responsible for their own attorneys' fees and preparation costs. The parties agree that any Dispute, whether submitted to mediation or not, **shall not** be litigated in court. Rather, any Dispute, which is specifically defined above to include claims of malpractice, shall be submitted to by a mutually agreed upon fee arbitration program. By signing this Agreement, Client and Attorneys agree to arbitration and waive the right to a court or jury trial and the right to appeal. Any Disputes shall be decided in Akron, Ohio applying Ohio law. Client is not waiving rights to arbitration before any bar association.

10. **AUTHORITY OF ATTORNEYS.** Attorneys may, with prior Client approval, associate co-counsel if Attorneys believe it advisable and/or necessary for the proper handling of

Client's claim, and expressly authorizes Attorneys to divide any Attorneys' fees that may eventually be earned with co-counsel so associated for the handling of Client's claim. Attorneys understand that the amount of attorneys' fees which Client pays **shall not** be increased by the work of co-counsel associated to assist with the handling of Client's claim, and that such associated co-counsel shall be paid by the Attorneys out of the attorneys' fees Client pays to Attorneys.

11. **DISCLAIMER OF GUARANTEE.** Nothing in this Agreement and nothing in Attorneys' statements to Client shall be construed as a promise or guarantee about the outcome of Client's matter. Attorneys make no such promises and/or guarantees. Attorneys' comments about the outcome of Client's matter are expressions of opinion only.
12. **MULTIPLE REPRESENTATIONS.** Client understands that Attorneys do or may represent many other individuals/entities with actual and/or potential litigation claims. Attorneys' representation of multiple claimants at the same time may create certain actual and/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, and/or potential conflicts of interest exist. By signing this Agreement, Client is acknowledging that they have been advised of the potential conflicts of interest which may be or are associated with Attorneys representation of Client and other multiple claimants and that Client nevertheless wants the Attorneys to represent Client, and that Client consents to Attorneys representation of others in connection with the Action. Attorneys strongly advise Client, however, that Client remains completely free to seek other legal advice at any time even after Client signs this Agreement.
13. **AGGREGATE SETTLEMENTS.** Often times in cases where Attorneys represent multiple clients in similar litigation, the opposing parties and/or Defendants attempt to settle and/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 and/or special master, who may be appointed by a court, designed to ensure consistency and fairness for all claimants, and which shall assign

various settlement values and amounts to each client's case depending upon the facts and circumstances of each individual case. Client authorizes Attorneys to enter into and engage in group settlement discussions and agreements which may include Client's individual claims. Although Client authorizes Attorneys to engage in such group settlement discussions and agreements, Client shall still retain the right to approve, and Attorneys are required to obtain Client's approval of, any settlement of Client's case.

14. **EFFECTIVE DATE AND TERM.** This Agreement shall take effect upon execution by both Client 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]

FOR MCGOWN & MARKLING CO., L.P.A.:

/s/ Matthew John Markling
Matthew John Markling

FOR FRANTZ LAW GROUP, APLC:

/s/ William B. Shinoff
William B. Shinoff

FOR THE MARLINGTON LOCAL SCHOOL DISTRICT:

President*

Treasurer/CFO*

Superintendent/CEO*

Authorized Pursuant to Resolution No. _____

* This Agreement has no legal effect absent Board approval.

**RESOLUTION TO APPROVE CONTINGENCY FEE AGREEMENT AND
AUTHORIZE LITIGATION**

WHEREAS the vaping epidemic among our Nation's students has increased at an alarming rate.

WHEREAS, through their deceptive marketing targeted at students, vaping companies have misled a new generation of students into becoming addicted to nicotine.

WHEREAS the nicotine in vaping products is not only extremely addictive but also negatively affects the development of our students.

WHEREAS a large burden of this student vaping epidemic has been placed upon our Nation's schools including, but not limited to, the Marlinton Local School District.

WHEREAS, in 2019, the law firm of Frantz Law Group, APLC filed a mass-action lawsuit against JUUL Labs, Inc. on behalf of a number of California schools in the case captioned *In re: Juul Labs, Inc. Marketing, Sales Practices & Products Liability Litigation*, United States District Court for the Northern District of California Case No. 3:19-md-2913-WHO ("Action").

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Resolution to Approve Contingency Fee Agreement and Authorize Litigation



ATTORNEY-CLIENT CONTINGENCY FEE AGREEMENT

This Attorney-Client Contingency Fee Agreement (“Agreement”) is entered into by and between the Marlinton Local School District (“Client”) and the law firms of McGown & Markling Co., L.P.A. and Frantz Law Group, APLC (collectively, “Attorneys”) and encompasses the following provisions:

1. **CONDITIONS.** This Agreement shall not take effect, and Attorneys shall have no obligation to provide legal services, until Client returns a signed copy of this Agreement.
2. **SCOPE AND DUTIES**
 - A. Client hires Attorneys to provide legal services in connection with pursuing claims for damages associated with the JUUL[®] and Electronic Cigarette (e-cigarette) mass action/multidistrict litigation (“Action”).
 - B. Attorneys shall provide those legal services reasonably required to represent Client in the Action.
 - C. Attorneys shall take reasonable steps to keep Client informed of progress in the Action.
 - D. Attorney shall take reasonable steps to respond to Client’s inquiries.
 - E. Client shall be truthful with Attorneys.
 - F. Client shall cooperate with Attorneys. For example, while Attorneys have already provided Client with a sample federal complaint, Client shall cooperate in providing Attorneys with all information needed to tailor the complaint to the unique facts of Client on or before November 30, 2020, in order to meet the bellwether filing deadline of December 15, 2020. While attempts shall be made to include Client in the Action after November 30, 2020, no guarantees are made to Client as to whether any post-December 15, 2020 complaints shall be filed by Attorneys in the Action. And, at this time, no initial complaints shall be made by Attorneys after January 31, 2021, as the trial date in the Action is currently set for January 2022.
 - G. Client shall keep Attorneys informed of developments.
 - H. While Attorneys may assist in negotiating liens, Attorneys shall not litigate liens.

3. **LEGAL SERVICES SPECIFICALLY EXCLUDED**

- A. Unless otherwise agreed in writing by Client and Attorneys, Attorneys **shall not** provide legal services with respect to defending any legal proceeding or claim against the Client commenced by any person before any federal or state administrative or governmental agency, department, and/or board unless such proceeding and/or claim is filed against Client in the Action. However, with Client's permission, Attorneys may elect at their sole discretion to appear at such administrative proceedings to protect Client's rights.
- B. If Client wishes to retain Attorneys to provide any legal services not provided under this Agreement for additional compensation, a separate written agreement between Attorneys and Client shall be required. For example, Client may separately retain McGown & Markling Co., L.P.A. through the School Law HotlineSM Agreement and no work spent on the Action shall be applied to such a separate written agreement.

4. **AUTHORIZED REPRESENTATIVES**

- A. **CLIENT REPRESENTATIVES.** Client designates the Superintendent and/or the Superintendent's Designee as the authorized representative(s) to direct Attorneys and to be the primary individual(s) to communicate with Attorneys regarding the Action. The designation is intended to establish a clear line of authority and to minimize potential uncertainty but **shall not** to preclude communication between Attorneys and other representatives of Client.

- B. **ATTORNEYS REPRESENTATIVES**

- (1) As there is no reciprocal referral agreement between the law firms of McGown & Markling Co., L.P.A. and Frantz Law Group, APLC; Matthew John Markling, Danielle Schantz, and Benjamin J. Miller of McGown & Markling Co., L.P.A. shall be primarily responsible for work on the Action in the State of Ohio, as well as the United States District Courts for the Northern and Southern Districts of Ohio, either performing the work themselves and/or delegating the work to others as may be appropriate and within the limited of the applicable codes of professional responsibility. Matthew John Markling of McGown & Markling Co., L.P.A. shall also submit a *pro hac vice* application for the United States District Court for the Northern District of California upon transfer of the Action from the United States District Courts for the Northern and Southern Districts of Ohio.
- (2) As there is no reciprocal referral agreement between the law firms of McGown & Markling Co., L.P.A. and Frantz Law Group, APLC; James Frantz, William Shinoff, and Regina Bagdasarian of Frantz Law Group,

APLC shall be primarily responsible for work on the Action in the United States District Court for the Northern District of California and any other non-State of Ohio consolidated venue/jurisdiction, either performing the work themselves and/or delegating the work to others as may be appropriate and within the limited of the applicable codes of professional responsibility.

- (3) McGown & Markling Co., L.P.A. and Frantz Law Group, APLC shall actively participate in the Action.
- (4) McGown & Markling Co., L.P.A. and Frantz Law Group, APLC assume joint responsibility for the representation of Client.
- (5) McGown & Markling Co., L.P.A. and Frantz Law Group, APLC shall both be available for consultation with Client.

5. FEES

- A. **Twenty Percent (20%) Contingency Fee.** For any recovery within three hundred sixty four (364) days of filing the initial complaint, Client shall pay fifteen percent (15%) to the Frantz Law Group, APLC and five percent (5%) to McGown & Markling Co., L.P.A. of any monetary and/or non-monetary settlement and/or recovery that Attorneys obtain for Client in the event of settlement, trial, and/or appeal. If money recovered from Defendants is less than twenty percent (20%) of the value of any non-monetary settlement or recovery, Client is not responsible for paying Attorneys any money other than what has been recovered from Defendants. **Client shall not be charged any fees if there is no recovery.** While all litigation and other expenses shall be deducted from the recovery, **Client shall not be liable for any costs and/or expenses if there is no recovery.** All litigation and other expenses shall be deducted from the recovery. As contingency fee rates are not set by law, the instant contingency fees been negotiated by the Attorneys and Client. And Client agrees that the twenty percent (20%) contingency fee is reasonable and understands that the customary constituency fee in similar cases is forty percent (40%) after all litigation and other expenses are deducted. By executing this Agreement, Client gives written consent that the fees shall be divided and that the division of fees shall be in proportion to the services to be performed by Attorneys and that Attorneys shall assume joint responsibility for the representation of Client.
- B. **Twenty-Five Percent (25%) Contingency Fee.** For any recovery after three hundred sixty four (364) days of filing the initial complaint, Client shall pay eighteen and three-fourths percent (18.75%) to the Frantz Law Group, APLC and six and one-fourth percent (6.25%) to McGown & Markling Co., L.P.A. of any monetary and/or non-monetary settlement and/or recovery that Attorneys obtain for Client in the event of settlement, trial, and/or appeal. If money recovered from

Defendants is less than twenty-five percent (25%) of the value of any non-monetary settlement or recovery, Client is not responsible for paying Attorneys any money other than what has been recovered from Defendants. **Client shall not be charged any fees if there is no recovery.** While all litigation and other costs and expenses shall be deducted from the recovery, **Client shall not be liable for any costs and/or expenses if there is no recovery.** As contingency fee rates are not set by law, the instant contingency fees been negotiated by the Attorneys and Client. And Client agrees that the twenty-five percent (25%) contingency fee is reasonable and understands that the customary constituency fee in similar cases is forty percent (40%) after all litigation and other expenses are deducted. By executing this Agreement, Client gives written consent that the fees shall be divided and that the division of fees shall be in proportion to the services to be performed by Attorneys and that Attorneys shall assume joint responsibility for the representation of Client.

- C. **Gross Recovery.** All litigation and other expenses shall be deducted after the contingent fee is calculated – i.e., the “Gross Recovery.”
- (1) 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 Action, 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.
 - (2) “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 Client; and (3) any Attorneys’ fees and costs recovered by Client 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 Client 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.
 - (3) 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.
 - (4) Client **shall not** be obligated to pay Attorneys unless Attorneys are successful in collecting a monetary recovery on Client’s behalf as a result of the Action.

- (a) If, by judgment, Client is awarded in the form of property and/or services (“In Kind”), the value of such property and services **shall not** be included for purposes of calculating the Gross Recovery.
 - (b) If, by judgment, there is **no** money recovery and Client receives In Kind relief, Attorneys acknowledge that Client 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 shall come from a common fund and/or court ordered attorneys’ fees.
 - (c) Client agrees Defendant shall pay all Attorneys’ fees in a settlement that includes nonmonetary value. Client understands that Attorneys have and shall invest resources into prosecuting the Action on behalf of Client and agrees to make a good faith effort to include Attorneys’ fees as part of the terms of any settlement and/or resolution of the Action.
 - (d) If Client and Attorneys disagree as to the fair market value of any non-monetary property and/or services as described above, Attorneys and Client agree that a binding appraisal shall be conducted to determine this value.
- (5) It is possible that payment to Client by the adverse parties to the Action and/or their insurance carrier(s) and/or any third-party may be deferred, as in the case of an annuity, a structured settlement, and/or periodic payments. In such event, Gross Recovery shall 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. Attorneys’ fees shall be paid out of the initial lump-sum payment if there are sufficient funds to satisfy Attorneys’ fee. If there are insufficient funds to pay Attorneys’ fees in full, from the initial lump sum payment, the balance owed to Attorneys shall be paid from subsequent payments to Client before there is any distribution to Client.

D. Reasonable Fee If Contingent Fee Is Unenforceable Or If Attorneys Are Discharged Before Any Recovery. In the event that the contingent fee portion of this Agreement is determined to be unenforceable for any reason or Attorneys are prevented from representing Client on a contingent fee basis, Client 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 Client agree that the fee shall be determined by a mutually agreed upon fee arbitration program. In any event, Attorneys and Client agree that the fee determined by arbitration **shall not** exceed twenty-five percent (25%) of the Gross Recovery.

- E. **No General Fund Payments.** Notwithstanding any other provision in this agreement, in no event shall Client be required to pay legal fees out of any fund other than the monies recovered from Defendants in this litigation. Under no circumstances shall Client's general funds be obligated to satisfy the contingent Attorneys' fees as a result of this case or this Agreement.
- F. **Disbursement and Closing Statement:** If Attorneys become entitled to compensation under this Agreement and Attorneys will be disbursing funds, Attorneys shall prepare a closing statement and shall provide Client with that statement at the time of or prior to the receipt of compensation under this Agreement. This closing statement shall specify the manner in which the compensation was determined under this Agreement, any costs and expenses deducted by Attorneys from the judgment and/or settlement involved, and the actual division of Attorneys' fees.
6. **COSTS AND EXPENSES.** In addition to paying legal fees, Client shall reimburse Attorneys for all costs and 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 shall be owed in addition to Attorneys' fees and Client shall reimburse those costs/expenses after Attorneys' fees have been deducted. **Client shall not be charged any costs and/or expenses if there is no recovery.** While all litigation and other costs and expenses shall be deducted from the recovery, **Client shall not be liable for any costs and/or expenses if there is no recovery.** In the event the recovery is less than incurred costs and expenses, Client **shall not** be required to reimburse Attorneys for costs and expenses above and beyond the recovery, and fees.
- A. **SHARED EXPENSES.** Client understands that Attorneys may incur certain expenses that jointly benefit multiple clients, including, for example, expenses for travel, experts, and copying. Client agrees that Attorneys shall divide such expenses equally, or pro rata, among such clients, and deduct Client's portion of those expenses from Client's share of any recovery.
- B. **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 Client and others who have filed claims in this litigation, and **shall 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 the Action, Client 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 the Action 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 Client in any way whatsoever.

8. **DISCHARGE AND WITHDRAWAL**

- A. Client 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 Client all evidence, files, and 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 Client's consent or for good cause. Good Cause includes Client's breach of this Agreement, Client's refusal to cooperate with Attorneys, and/or any other fact or circumstance that would render Attorneys continuing representation unlawful and/or unethical. Attorneys may also discharge Client if Client at any time is dishonest with Attorneys, and/or fails to provide relevant information to Attorneys.

9. **ARBITRATION OF DISPUTES.** Attorneys and Client 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 Client, including claims of malpractice (collectively referred to herein as "Dispute" or "Disputes"), shall be submitted to a mutually agreed upon fee arbitration program. 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. Client shall pay one-half of the actual cost of the mediation, but each party shall be responsible for their own attorneys' fees and preparation costs. The parties agree that any Dispute, whether submitted to mediation or not, **shall not** be litigated in court. Rather, any Dispute, which is specifically defined above to include claims of malpractice, shall be submitted to by a mutually agreed upon fee arbitration program. By signing this Agreement, Client and Attorneys agree to arbitration and waive the right to a court or jury trial and the right to appeal. Any Disputes shall be decided in Akron, Ohio applying Ohio law. Client is not waiving rights to arbitration before any bar association.

10. **AUTHORITY OF ATTORNEYS.** Attorneys may, with prior Client approval, associate co-counsel if Attorneys believe it advisable and/or necessary for the proper handling of

Client's claim, and expressly authorizes Attorneys to divide any Attorneys' fees that may eventually be earned with co-counsel so associated for the handling of Client's claim. Attorneys understand that the amount of attorneys' fees which Client pays **shall not** be increased by the work of co-counsel associated to assist with the handling of Client's claim, and that such associated co-counsel shall be paid by the Attorneys out of the attorneys' fees Client pays to Attorneys.

11. **DISCLAIMER OF GUARANTEE.** Nothing in this Agreement and nothing in Attorneys' statements to Client shall be construed as a promise or guarantee about the outcome of Client's matter. Attorneys make no such promises and/or guarantees. Attorneys' comments about the outcome of Client's matter are expressions of opinion only.
12. **MULTIPLE REPRESENTATIONS.** Client understands that Attorneys do or may represent many other individuals/entities with actual and/or potential litigation claims. Attorneys' representation of multiple claimants at the same time may create certain actual and/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, and/or potential conflicts of interest exist. By signing this Agreement, Client is acknowledging that they have been advised of the potential conflicts of interest which may be or are associated with Attorneys representation of Client and other multiple claimants and that Client nevertheless wants the Attorneys to represent Client, and that Client consents to Attorneys representation of others in connection with the Action. Attorneys strongly advise Client, however, that Client remains completely free to seek other legal advice at any time even after Client signs this Agreement.
13. **AGGREGATE SETTLEMENTS.** Often times in cases where Attorneys represent multiple clients in similar litigation, the opposing parties and/or Defendants attempt to settle and/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 and/or special master, who may be appointed by a court, designed to ensure consistency and fairness for all claimants, and which shall assign

various settlement values and amounts to each client's case depending upon the facts and circumstances of each individual case. Client authorizes Attorneys to enter into and engage in group settlement discussions and agreements which may include Client's individual claims. Although Client authorizes Attorneys to engage in such group settlement discussions and agreements, Client shall still retain the right to approve, and Attorneys are required to obtain Client's approval of, any settlement of Client's case.

14. **EFFECTIVE DATE AND TERM.** This Agreement shall take effect upon execution by both Client 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]

FOR MCGOWN & MARKLING CO., L.P.A.:

/s/ Matthew John Markling
Matthew John Markling

FOR FRANTZ LAW GROUP, APLC:

/s/ William B. Shinoff
William B. Shinoff

FOR THE MARLINGTON LOCAL SCHOOL DISTRICT:

President*

Treasurer/CFO*

Superintendent/CEO*

Authorized Pursuant to Resolution No. _____

* This Agreement has no legal effect absent Board approval.