



## STAFF REPORT

**MEETING DATE:** April 12, 2023

**PRESENTER:** John Jansons, City Manager

**SUBJECT:** New National Opioid Settlements with Teva, Allergan, Walmart, Walgreens, and CVS (JAJ)

**RECOMMENDATION:** Council by motion:

1. Affirm City Manager's Approval of Settlement Agreements and Participation Forms for the City's participation in the National Opioid Settlement Agreements with Teva, Allergan, Walmart, Walgreens, and CVS.
2. Affirm the City Manager's Approval of the California State-Subdivision Agreements Regarding Distribution and Use of Settlement Funds relating to the National Opioid Settlement Agreements with Teva, Allergan, Walmart, Walgreens, and CVS.
3. Adopt a Resolution (i) approving and authorizing the City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements with Teva, Allergan, Walmart, Walgreens, and CVS, including signing necessary documents and transmittal thereof as necessary and (ii) authorizing the City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements, including, but not limited to, the transmittal of the executed documents in Recommendations 1 and 2 and all future settlements (as necessary and applicable) through the National Opioid Settlements process.

**EXECUTIVE SUMMARY:** Because of deadlines for filing, the City Manager processed these actions and by approval of this agenda item, the Council affirms and ratifies his actions and authorizes him to take further action as needed.

In 2021, the City entered into settlement agreements with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc (2021 Settling Defendants). The 2021 settlement agreement related to litigation (the City was not a party to this litigation) by various States, cities, and counties relating to the 2021 Settling Defendants' manufacture and distribution of opioids and, in particular, the impact of such activities upon the national opioid epidemic ("2021 Settlement Agreements"). The 2021 Settlement Agreements required that a "critical mass" of public agencies participate in order for it to become effective, which was achieved in 2022.

At this time, a new settlement is proposed with Teva, Allergan, Walmart, Walgreens, and CVS, who are additional defendants that are retailers and manufacturers of opioids (2023 Settling

Defendants). The terms of the 2023 Settlement Agreements are similar to the 2021 Settlement Agreements, which includes the requirement that a critical mass of participation is required, provides for a broad release of the 2023 Settling Defendants from liability relating to opioids, and, further, direct or indirect payment of settlement funds to the various local agencies agreeing to participate.

Additional information about these settlements can be found at the following website: [www.nationalopioidsettlement.com](http://www.nationalopioidsettlement.com). In regard to the release, as indicated above, it is a very broad release covering any activities by the 2023 Settling Defendants relating to opioids. It arguably also includes a release from liability relating to land use matters for facilities that manufactured, distributed, or sold opioids within the city.

**DISCUSSION:** With respect to the settlement funds, the 2023 Settlement Agreements could provide up to approximately \$1.8 billion to California. This amount assumes maximum participation. Like the 2021 Settlement Agreements, the more local agencies that participate, the more funds will be available to California. Further, the City's share of this amount is anticipated to be near \$100,000, which is distributed over a 5-to-15-year period depending on the settlement agreement. It must be emphasized that this amount is an estimate of what the City may receive and assumes a best-case scenario where all local agencies participate. The actual amount will not be known until the process has been completed. Similarly to the 2021 Settlement Agreements, the use of the funds is restricted to opioid remediation (e.g., addiction treatment programs). By default, these funds are allocated to the County, but the City can elect to receive a direct distribution; and use of the funds requires strict accounting requirements. These requirements only apply to the City if it elects to receive direct distribution and does not apply to the City if the funds go to the County. In terms of enforcement, the State enforces the expenditure requirements.

Approval of Recommendation 1 and 2 would authorize the City to participate in the National Opioid Settlements with the 2023 Settling Defendants on the terms and conditions of those settlement agreements and, further, approve agreements with the State of California on the distribution of settlement funds, consistent with the 2023 Settlement Agreements. (Attachment 'A').

Approval of Recommendation 3 would approve and authorize the City Manager to carry out all necessary acts such that the City can participate in the National Opioid Settlements with Teva, Allergan, Walmart, Walgreens, and CVS, including signing necessary documents and transmittal thereof as necessary. Council approval and authorization to execution, submission, and receipt of all required documents must be completed before April 18, 2023.

**ATTACHMENTS:**

A. Resolution

Attachment 'A'

**RESOLUTION NO. 23- \_\_\_\_**

**APPROVING AND AUTHORIZING THE CITY MANAGER TO CARRY OUT ALL NECESSARY ACTS SUCH THAT THE CITY CAN PARTICIPATE IN THE NATIONAL OPIOID SETTLEMENTS WITH TEVA, ALLERGAN, WALMART, WALGREENS, AND CVS, INCLUDING SIGNING NECESSARY DOCUMENTS AND TRANSMITTAL THEREOF AS NECESSARY AND (II) AUTHORIZING THE CITY MANAGER TO CARRY OUT ALL NECESSARY ACTS SUCH THAT THE CITY CAN PARTICIPATE IN THE NATIONAL OPIOID SETTLEMENTS, INCLUDING, BUT NOT LIMITED TO, THE TRANSMITTAL OF THE EXECUTED DOCUMENTS AND ALL FUTURE SETTLEMENTS (AS NECESSARY AND APPLICABLE) THROUGH THE NATIONAL OPIOID SETTLEMENT PROCESSES**

WHEREAS, the United States is facing an ongoing public health crisis of opioid abuse, addiction, overdose, and death, forcing the State of California and California counties and cities to spend billions of dollars each year to address the direct consequences of this crisis; and,

WHEREAS, pending in the U.S. District Court for the Northern District of Ohio is a multidistrict litigation (“MDL”) being pursued by numerous public entity plaintiffs against the manufacturers and distributors of various opioids based on the allegation that the defendants’ unlawful conduct caused the opioid epidemic; and,

WHEREAS, on or about November 14, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and Walmart Inc. (“Walmart”); and,

WHEREAS, on or about November 22, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and Teva Pharmaceutical Industries Ltd. and all of its respective past and present direct or indirect parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns, including but not limited to Teva Pharmaceuticals USA, Inc., Actavis LLC (f/k/a Actavis Inc.), Actavis Elizabeth LLC, Actavis Kadian LLC, Actavis Pharma, Inc. (f/k/a Watson Pharma, Inc.), Actavis Kadian LLC, Actavis Laboratories UT, Inc. (f/k/a Watson Laboratories, Inc. – Utah), Actavis Mid Atlantic LLC, Actavis Totowa LLC, Actavis Laboratories FL, Inc. (f/k/a Watson Laboratories, Inc. – Florida), Actavis South Atlantic LLC, Warner Chilcott Company LLC, and Watson Laboratories, Inc., and Anda Inc. (collectively, “Teva”); and,

WHEREAS, on or about November 22, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and Allergan Finance, LLC (f/k/a Actavis, Inc., which in turn was f/k/a Watson Pharmaceuticals, Inc.) and Allergan Limited (f/k/a Allergan plc, which, in turn, was f/k/a Actavis plc)(collectively, “Allergan”); and,

WHEREAS, on or about December 9, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and CVS Health Corporation and CVS Pharmacy, Inc. and all of their past and present direct and indirect parent and subsidiaries (collectively, “CVS”); and,

WHEREAS, on or about December 9, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and Walgreen Co. (“Walgreens”); and,

WHEREAS, CVS, Teva, Walgreens, Walmart, and Allergan shall be referred in this Resolution as “Settling Defendants”; and

WHEREAS, as part of the settlements with the Settling Defendants, local subdivisions, including certain cities, that are not plaintiffs in the MDL may participate in the settlements in exchange for a release of the Settling Defendants (“Participating Subdivision”); and,

WHEREAS, copies of the proposed terms of those proposed nationwide settlements have been set forth in the Master Settlement Agreements with the Settling Defendants; and,

WHEREAS, copies of the Master Settlement Agreements have been made available to the City Council with this Resolution (“Master Settlement Agreements”); and,

WHEREAS, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in California including to the State of California and Participating Subdivisions upon occurrence of certain events as defined in the Settlement Agreements (“California Opioid Funds”); and,

WHEREAS, in order to become a Participating Subdivision, the City must enter into “Participation Agreements” which allow participation in the Master Settlement Agreements; and,

WHEREAS, California local governments in the MDL have engaged in extensive discussions with the State Attorney General’s Office (“AGO”) as to how the California Opioid Funds will be allocated, which has resulted in the Proposed California State-Subdivision Agreements Regarding Distribution and Use of Settlement Funds (“Allocation Agreements”) from the settlements with the Settling Defendants; and,

WHEREAS, copies of the Allocation Agreements for all of the settlements with the Settling Defendants have been made available to the City Council with this Resolution; and,

WHEREAS, the Allocation Agreements allocate the California Opioid Funds as follows: 15% to the State Fund; 70% to the Abatement Accounts Fund; and 15% to the Subdivision Fund. For the avoidance of doubt, all funds allocated to California from the Settlements shall be combined pursuant to the Allocation Agreements, and 15% of total from each settlement shall be allocated to the State of California (the “State of California Allocation”), 70% to the California Abatement Accounts Fund (“CA Abatement Accounts Fund”), and 15% to the California Subdivision Fund (“CA Subdivision Fund”); and,

WHEREAS, under the Master Settlement Agreements, certain local subdivisions that did not file a lawsuit against the Settlement Defendants may qualify to participate in the settlements and obtain funds from the Abatement Account Fund; and,

WHEREAS, the City is eligible to participate in the Settlement and become a CA Participating Subdivision; and,

WHEREAS, the funds in the CA Abatement Accounts Fund (the 70% allocation) will be allocated based on the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804), as adjusted to reflect only those cities and counties that are eligible, based on population or litigation status, to become a CA Participating Subdivision (those above 10,000 in population). The percentage from the CA Abatement Accounts Fund allocated to each CA Participating Subdivision is set forth in Appendix 1 to the Allocation Agreements and provided to the City Council with this Resolution. The City's share of the CA Abatement Accounts Fund will be a product of the total in the CA Abatement Accounts Fund multiplied by the City's percentage set forth in Appendix 1 of the Allocation Agreements (the "Local Allocation"); and,

WHEREAS, a CA Participating Subdivision that is a city will be allocated its Local Allocation share as of the date on which it becomes a Participating Subdivision. The Local Allocation share for a city that is a CA Participating Subdivision will be paid to the county in which the city is located, unless the city elects to take a direct election of the settlement funds, so long as: (a) the county is a CA Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date; and,

WHEREAS, it the intent of this Resolution is to authorize the City to enter into the Master Settlement Agreements with the Settling Defendants by executing the Participation Agreements and to enter into the Allocation Agreements by executing the signature pages to those agreements.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Kerman hereby approves and authorizes the City Manager to settle and release the City's claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements, Allocation Agreements and all exhibits thereto, including, without limitation, taking the following measures:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Approval and Authorization. The City Manager is hereby approved and authorized to settle and release the City's claims against the Settling Defendants in exchange for the consideration set forth in the Master Settlement Agreements, Participation Agreements, Allocation Agreements, and all exhibits thereto.

Section 3. Further Acts. The City Manager is hereby authorized to carry out all necessary acts such that the City can participate in the Master Settlement Agreements, including, without limitation, execution (as necessary) of the Participation Agreements, Master Settlement Agreements, Allocation Agreements; and all related documents and the transmittal of thereof as necessary and appropriate.

Section 4. Ratification. All actions heretofore taken by the City Manager with respect to the matters contemplated under this Resolution are hereby ratified, confirmed and approved.

Section 5. Future Settlements. It is anticipated that there will be further National Opioid settlements in the future. The City Council further authorizes, and delegates authority to, the City Manager to carry out all necessary acts to participate in, and effectuate, the National Opioid Settlements, including, but not limited to, execution of all future settlements and related documents subject to approval as to legal form from the City Attorney.

Section 6. Effective Date. This Resolution shall immediately take effect upon passage. The foregoing resolution was introduced at a regular meeting of the City Council of the City of Kerman held on the 12<sup>th</sup> day of April 2023, and passed at said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

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Maria Pacheco  
Mayor

ATTEST:

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Marci Reyes  
City Clerk