



## Council Staff Report

From: Elizabeth Hull, City Attorney

Subject: Consideration of Opting into Settlement Agreements with Distributors of Opioids, Walgreens Co., Walmart, Inc., and CVS Health Corporation/CVS Pharmacy, Inc., and Opioid Manufacturers Teva Pharmaceutical Industries LTD and Allergan Finance, LLC/Allergan Limited

CEQA Determination: The City find that this action is not a project under the California Environmental Quality Act pursuant to State Guidelines Section State CEQA Guidelines, §§ 15060, subd. (b)(2)-(3), 15378.

Date: April 4, 2023

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### Facts

1. Last year, litigation brought by states and cities across the United States against the three largest pharmaceutical distributors of opioid painkillers, Amerisource Bergen, Cardinal Health, and McKesson (the “Distributors”), and the opioid painkiller manufacturer, Janssen (owned by Johnson & Johnson) (“J&J”), resulted in two proposed settlements totaling approximately \$26 billion dollars. The City has previously opted into the Distributors and the J&J Settlements.
2. Between November and December 2022, five additional parties (the “New Parties”) have entered into National Opioid Settlements with terms identical to the Distributors/J&J Settlements.
3. The City can opt into these new settlements, thereby releasing its claims against the new, in order to receive at most \$500,000 paid out over a period of 15 years. The funds are restricted to certain opioid abatement/remediation uses.

### Options

1. Take no action;
2. Opt into settlement agreements with Distributors of Opioids, Walgreens Co., Walmart, Inc., and CVS Health Corporation/CVS Pharmacy, Inc., and Opioid Manufacturers Teva Pharmaceutical Industries LTD and Allergan Finance, LLC/Allergan Limited, whereby the County of San Luis Obispo will receive the City’s designated share of settlement funds and direct the City Manager to execute any documents necessary to implement the action;
3. Provide alternative direction to staff.

### Analysis and Conclusions

#### Allocation of Funds

Additional litigation brought by states and cities across the United States against the New Parties has resulted in a proposed settlement totaling approximately \$20.2 billion dollars. The proposed settlement is broken into five separate deals: (1) the Walgreens Settlement (Exhibit A); (2) the Walmart Settlement (Exhibit B); (3) the CVS Settlement (Exhibit C); (4) the Teva Settlement (Exhibit D); and the Allergan Settlement (Exhibit E). The estimated total nationwide payout and payment schedule are outlined below:

Defendant	Estimated Max Payout	Years
Walgreens	\$5,522,528,766	15 years
Walmart	\$3,011,242,061	Primarily paid within 3 years, but if participation levels are not met until later, payment can extend over 6 years
CVS	\$5,002,083,578	10 years
Teva	\$4,246,567,371.76	6 years
Allergan	\$2,372,972,184.12	7 years

Of the amounts above, California is to receive approximately \$1.8 billion and is to distribute these funds pursuant to intrastate allocation agreements for the new settlements.

As outlined in the Intrastate Allocation Agreements, Settlement Fund payments due to the State of California are allocated as follows: 15% to the State Fund; 70% to the California Abatement Accounts Fund; and 15% to the California Subdivision Fund. This results in the State receiving 15% of the payments allocated to California and local subdivisions receiving the remaining 85%. The percentages paid out to the California Subdivision Fund is reserved for entities that participated in the litigation of the claims giving rise to the settlement agreements. The percentages paid out to local subdivisions that did not litigate but choose to opt into the settlements comes from the share of the settlement proceeds that are placed in the California Abatement Accounts Fund. Essentially, this means that the City of Paso Robles, if it chooses to opt into the settlement, is entitled to receive a percentage share from the California Abatement Accounts Fund.

The default distribution of funds in the settlement agreements provides that the funds will go directly to the county in which a city is located. A city can elect to have its funds delivered directly to the city by providing notice in the settlement agreements. Additionally, a city within a county may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the settlement fund administrators at least sixty days prior to a payment date.

In deciding whether to allow a city's funds to go directly to the county in which a city is located, a city should consider the following: (1) whether the amount of money is substantial enough for the city to handle it on its own; (2) whether the city offers the services and has the employees to spend the money in accordance with its prescribed uses; and (3) whether the city wants to engage in the reporting requirements over the course of the next nineteen years (eighteen years of distribution and an additional year following final distribution).

### Use of Received Funds

Similar to the Distributor and J&J Settlements, funds received from these additional settlements must be used for future opioid remediation or abatement. For instance, participating subdivisions may use funds for areas such as services to treat opioid use disorder; support people in treatment and recovery; connect people to care; address needs of criminal justice-involved persons; address the needs of pregnant or parenting women and their families, including babies with neonatal abstinence syndrome; prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids; prevent misuse of opioids; prevent overdose deaths and other harms; provide leadership, planning, and coordination of programs; provide training; and conduct research.

The Intrastate Allocation Agreements (Exhibit F) also provide spending limitations in addition to those provided in the settlement agreements. Under the Intrastate Allocation Agreements, no less than 50% of the funds received in each calendar year will be used for one or more of the following High Impact Abatement Activities:

1. The provision of matching funds or operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program;
2. Creating new or expanded Substance Use Disorder (“SUD”) treatment infrastructure;
3. Addressing the needs of communities of color and vulnerable populations (including sheltered and unsheltered homeless populations) that are disproportionately impacted by SUD;
4. Diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders (sworn and non-sworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction; and/or
5. Interventions to prevent drug addiction in vulnerable youth.

In addition to these requirements, there is also a time limit on the spending of received funds. If funds are not expended or encumbered within five years of receipt and in accordance with the settlement agreements and the Intrastate Allocation Agreements, the funds are required to be transferred back to the State.

### Opting In

The City must opt into the settlements by April 18, 2023, which requires the City to release its claims against the New Parties. If the City takes no action, it will have opted out of the settlements and its designated funds will flow to the State. The City would still have the opportunity to bring its own action against the New Parties.

The City can either allow the funds to be used by the County of San Luis Obispo or elect to use the funds itself subject to reporting requirements to the state. Alternatively, the City can take no action, thereby opting out of the settlements, while maintaining its right to pursue litigation against the New Parties. Unless the City intends to pursue its own litigation against the New Parties, it is recommended that the City opt into the settlements. Given the relatively small amount of funds and the onerous reporting requirements, it is also recommended that the City accept the default distribution and allow its funds to deposit with the county.

### **Fiscal Impact**

The City of Paso Robles has been allocated 0.043% of the 70% of the approximate \$1,800,000,000 (i.e., best case scenario), which is equal to approximately \$500,000. This total amount will be disbursed over a period of 15 years, with payments decreasing as each settlement finishes paying out. The first payments are scheduled to occur in the latter half of 2023. After the receipt of these initial payments, further payments will be received annually thereafter. As stated above, the definite amount is not yet known because of the bonus structure built into the agreements.

Each county and city that receives payment of funds from the settlements must prepare written reports at least annually regarding the use of those funds until the funds are fully expended and for one year thereafter. Each county and city will need to track all deposits and expenditures. These reports will also include a certification that all funds received have been used in compliance with the allocation agreements. The California Department of Healthcare and Services (“DHCS”) may review these reports in order to determine compliance with the settlement agreements and the Intrastate Allocation Agreement.

If the DHCS determines that a participating subdivision’s use of abatement funds is inconsistent with the settlement agreements or Intrastate Allocation Agreements, the parties are required to meet and confer. If the meet and confer process does not provide a resolution, the DHCS may conduct an audit, which can lead to a court action if the matter is still not resolved after an audit.

### **CEQA**

The City find that this action is not a project under the California Environmental Quality Act pursuant to State Guidelines Section State CEQA Guidelines, §§ 15060, subd. (b)(2)-(3), 15378.

### **Recommendation**

1. Opt into settlement agreement with opioid distributor, Walgreens Co., and direct the City Manager to execute any documents necessary to implement the action.
2. Opt into settlement agreement with opioid distributor, Walmart, Inc. and direct the City Manager to execute any documents necessary to implement the action.
3. Opt into settlement agreement with opioid distributor, CVS Health Corporation/CVS Pharmacy, Inc. and direct the City Manager to execute any documents necessary to implement the action.
4. Opt into settlement agreement with opioid manufacturer, Teva Pharmaceutical Industries Ltd., and direct the City Manager to execute any documents necessary to implement the action.
5. Opt into settlement agreement with opioid manufacturer, Allergan Finance, LLC/Allergan Limited and direct the City Manager to execute any documents necessary to implement the action.

### **Attachments**

1. Walgreens Settlement Agreement
2. Walmart Settlement Agreement
3. CVS Settlement Agreement
4. Teva Settlement Agreement
5. Allergan Settlement Agreement
6. Sample CA Allocation Agreement
7. Sample Participation Agreement