



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: SETTLEMENT OF NATIONAL
OPIOID LITIGATION

DATE: December 2, 2021

RECOMMENDATION:

Approve and join a settlement in the national opioid litigation involving distributors to which the City's lawsuit, *City of San Jose v. Amerisourcebergen Drug Corporation, et al.*, was consolidated and the intrastate allocation agreement with the State of California, and direct the City Attorney to execute all necessary documents and agreements on behalf of the City of San Jose.

BACKGROUND:

The City of San Jose, represented by the law firm Baron and Budd, filed a lawsuit on August 2, 2019, in connection with the national opioid litigation seeking damages from certain distributors named as defendants. The City's lawsuit was consolidated into the multi-district litigation (MDL No. 2804 National Prescription Opiate Litigation). On July 21, 2021, a proposed settlement was announced to resolve lawsuits against the three large pharmaceutical distributor defendants (McKesson, AmerisourceBergen, and Cardinal Health) and Janssen (including Johnson & Johnson). The three large distributors could pay up to \$21 billion and Janssen could pay up to \$5 billion to resolve lawsuits nationwide. The amount to be paid by the settling defendants depends on the participation in the settlement by eligible local entities, including counties and cities. The full amount of the settlement is to be paid if there is close to 100% participation. The distributor payments are spread over 18 years and the Janssen payments are spread over no more than nine years.

California's share of the \$26 billion settlement is approximately up to \$2.263 billion. Nearly 100% of the 431 eligible counties and cities in California must participate to reach the maximum settlement amount. As participation decreases, so does the total amount. This sliding scale of participation and payment, along with other information, can be found at www.nationalopioidsettlement.com. The minimum amount a participating county or city may receive is roughly 53% of the potential maximum. In California, eligible entities include counties and cities with a population of at least 10,000 at the

time of the 2019 U.S. Census count, and counties and cities that filed a lawsuit regardless of population.

Pursuant to an intrastate allocation agreement negotiated between the California Attorney General's Office and local entities in the state, California's share of the national settlement will be distributed within the state as follows: 15% will go directly to the State of California, 70% is reserved as future abatement funds allocated among all 431 eligible counties and cities that participate, and 15% is further allocated to only the eligible counties and cities that filed a lawsuit. The 15% fund allocated among eligible entities that filed a lawsuit will be used to reimburse in-house attorney time and costs, outside counsel attorney time and costs (to the extent those fees and costs are not covered by the contingency fee received from the national fee fund and in no event to exceed a total of a 15% contingency fee), and past and future opioid related expenses.

Under the settlement agreement formulas, funds are allocated among and between the counties using three nationally accepted opioid metrics: opioid use disorder, opioid overdose deaths, and morphine milligram equivalents within each county. Funds are allocated within counties, among and between the counties and their cities, using 10 nationally accepted categories of spending such as police, fire, health care, and other factors. These allocation methods are normalized and apply across all 431 eligible entities. The City of San Jose is eligible to receive up to an estimated \$5.878 million over the term of the settlement payments.

Counties and cities that receive money from the 70% abatement fund must spend the funds only on eligible abatement activities and expenditures. Counties and cities receiving funds must meet reporting requirements under the settlement agreements and the state-subdivision agreements, including annual reports to the California Department of Health Care Services, describing the expenditures. Cities can elect to receive funds directly or have their share of funds be directed to their corresponding county. This payment election may be made at any time more than 60 days prior to a payment date. If no election is made the money will be delivered to the county.

CEQA

Not Applicable. Not a Project; File No. PP10-066(h), Settlement Agreements.

By: /s/ Nora Frimann
NORA FRIMANN
City Attorney

cc: Jennifer Maguire, City Manager

For questions, please contact NORA FRIMANN, City Attorney, at (408) 535-1900