



## City Council Staff Report

From: City Attorney  
Report Type: **CONSENT CALENDAR**  
Lead Department: City Attorney

Meeting Date: **April 17, 2023**

Report #:2304-1253

### TITLE

Adoption of a Resolution Authorizing the City Manager to Execute Participation Agreements on Behalf of the City of Palo Alto to Enter Into Settlement Agreements Regarding Manufacture and Distribution of Opioid Products with Allergan Finance, LLC and related entities (Allergan), Teva Pharmaceutical Industries Ltd. and related entities (Teva); Walgreens Co.; CVS Health Corporation and CVS Pharmacy, Inc. (CVS), and Walmart, Inc.; Agree to the Terms of the Memorandum of Understanding (MOU) Allocating Settlement Proceeds; and Authorize Entry Into the MOU with the California Attorney General.

### RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the City to participate in settlements that have been negotiated by certain litigating public entities to resolve lawsuits that seek to hold certain opioid pharmaceutical supply chain participants accountable for the damage caused by their misfeasance, nonfeasance, and malfeasance. Staff recommends that the City Council adopt Resolution No. \_\_\_\_\_, authorizing the City Manager to complete and execute the Settlement Participation Forms to authorize the City of Palo Alto's participation in the settlements, and to take such further actions as necessary to ensure that the City receives settlement proceeds allocated to it under the allocation agreements with the Attorney General.

Furthermore, in the event settlement agreements are entered into with additional manufacturers and distributors in the opioid pharmaceutical supply chain, Staff recommends that the City Council authorize the City Manager to complete and execute any future Settlement Participation Forms and to take all necessary action to ensure the City receives proceeds from future settlements in the national opioid litigation.

### BACKGROUND

#### ***2021 National Settlements***

More than 400 state and local government entities have filed lawsuits against opioids distributors and manufacturers seeking to recover costs incurred due to opioids-related

substance abuse disorder. A coalition of state attorneys general entered into negotiations in an attempt to reach a global resolution with defendants in the litigation.

On July 21, 2021, the attorneys general announced final agreements with Janssen/Johnson & Johnson, a manufacturer of prescription opioids, and the three major pharmaceutical distributors, Amerisource Bergen, Cardinal Health, and McKesson (“2021 National Settlements”). Among other things, the 2021 National Settlements included releases to resolve legal claims against these companies stemming from their involvement in the opioid addiction epidemic in return for their payment of up to \$26 billion that would be allocated to participating entities across the country to use to address the epidemic.

Agencies that wished to participate in the 2021 National Settlements had to opt in to receive settlement proceeds. On December 13, 2021, the City Council authorized the City Manager to complete and submit the necessary forms for participation in the 2021 National Settlements. For further details on the 2021 National Settlements and the City’s allocation from these earlier settlements, refer to the Staff Report from December 13, 2021, included as Attachment B.

### ***2022 National Settlements***

In late 2022, the attorneys general reached additional settlement agreements with three pharmacy chains—CVS, Walgreens, and Walmart—and two manufacturers—Allergan and Teva. As with the 2021 National Settlements, states and local governments that want to participate in the 2022 National Settlements must opt in, and with the greater the level of participation the more funds will ultimately be paid out for abatement. Assuming maximum participation, the 2022 National Settlements require:

- Teva to pay up to \$3.34 billion over 13 years and to provide either \$1.2 billion of its generic version of the drug Narcan over 10 years or \$240 million of cash in lieu of product, as each state may elect;
- Allergan to pay up to \$2.02 billion over 7 years;
- CVS to pay up to \$4.90 billion over 10 years;
- Walgreens to pay up to \$5.52 billion over 15 years; and
- Walmart to pay up to \$2.74 billion in 2023, and all payments to be made within 6 years.

As with the 2021 National Settlements, at least 85% of the funds going directly to participating states and subdivisions from the 2022 National Settlements must be used for abatement of the opioid epidemic, with the overwhelming bulk of the proceeds restricted to funding future abatement efforts by state and local governments. California will receive up to approximately \$1.8 billion in combined settlement payments from the 2022 National Settlements. The total payment will depend on the extent of participation by cities and counties in the State. 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](http://www.nationalopioidsettlement.com).

The national settlement agreements also provide that each state must negotiate intrastate allocation agreements that allocate funds among the state government and litigating and non-litigating local entities, or otherwise be subject to a default allocation formula specified in the national agreements. On October 27, 2021 the California Attorney General and local government representatives reached an agreement regarding intrastate allocation agreements for California. These allocation agreements were used for the 2021 National Settlements, which the City previously signed, and identical allocation agreements are used for the 2022 National Settlement Agreements.

### ***The Intrastate Allocation Agreements***

Under the intrastate agreements (CA Allocation Agreement for Allergan Settlement (Attachment C); CA Allocation Agreement for Teva Settlement (Attachment D); CA Allocation Agreement for Walgreens Settlement (Attachment E); CA Allocation Agreement for CVS Settlement (Attachment F); CA Allocation Agreement for Walmart Settlement (Attachment G)), 70% of the settlement proceeds are allocated to local government entities, including non-litigating entities like the City of Palo Alto. The remaining 30% of the funds are split equally between the State and litigating entities, including 51 of California's 58 counties.

Each county's share of the settlement proceeds is based on measures of the severity of the opioid epidemic: (1) prevalence of opioids abuse disorder; (2) opioids deaths; and (3) estimate opioids dosage. Within each county, the share allocated to each jurisdiction is based on ten factors that reflect spending on opioids treatment and prevention.

The national settlements allow state and local governments to spend the settlement proceeds on a wide range of opioids remediation uses. (See Attachment H for allowed uses under the 2022 National Settlements. All agreements provide for the same allowed uses.) Under the intrastate agreement, 50% of funds allocated to local governments must be spent on five State priorities:

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 treatment infrastructure;
3. addressing the needs of communities of color and vulnerable populations that are disproportionately impacted substance use disorder;
4. diversion of people with substance use disorder from the justice system into treatment; and
5. interventions to prevent drug addiction in vulnerable youth.

### ***Palo Alto's Allocation***

Under the intrastate allocation agreements, Palo Alto could receive up to approximately \$437,000 distributed over a period of 14 years. The actual payment will depend on the degree of participation by litigating and non-litigating entities and the terms of each settlement

agreement. The deadline for the City to elect to participate in the 2022 National Settlements is April 18, 2023. If the City declines to participate, the City's allocated settlement funds will default to the State and the City will maintain its right to pursue litigation against Allergan, Teva, Walgreens, CVS, and Walmart.

If the City elects to participate, the City has the option of accepting the payments and must spend the funds on qualified programs within five years of receipt or the funds are returned to the State. Alternatively, the City may allocate its payment to the County to fund County opioids remediation programs.

If the City elects to receive funds directly, it will be required to report annually to the State Department of Health and Community Services regarding the use of the funds. The City may opt in or out of a direct payment at any time, and 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.

#### **ANALYSIS**

Staff recommends that the City Council adopt Resolution No. \_\_\_\_\_, authorizing the City Manager to complete and execute the Settlement Participation Forms to authorize the City of Palo Alto's participation in the 2022 National Settlements, and to take such further actions as necessary to ensure that the City receives settlement proceeds allocated to it under the Allocation Agreements.

Furthermore, in event settlement agreements are entered into with additional manufacturers and distributors, Staff recommends that the City Council authorize the City Manager to complete and execute any future Settlement Participation Forms and to take all necessary action to ensure the City receives proceeds from future settlements in the national opioid litigation.

#### **ENVIRONMENTAL REVIEW**

The proposed Council action is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA").

#### **ATTACHMENTS**

Attachment A: Resolution Authorizing City Manager to Execute Participation Agreements obo CPA to Enter into Settlement Agreements re Manufacture and Distribution of Opioid Products

Attachment B: Staff Report from December 13, 2021

<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-b-12-13-2021-staff-report.pdf>

Attachment C: CA Allocation Agreement for Allergan Settlement

[https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-c\\_allergan-participation-form.pdf](https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-c_allergan-participation-form.pdf)

Attachment D: CA Allocation Agreement for Teva Settlement

[https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-d\\_teva-participation-form.pdf](https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-d_teva-participation-form.pdf)

Attachment E: CA Allocation Agreement for Walgreens Settlement

[https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-e\\_walgreens-participation-form.pdf](https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-e_walgreens-participation-form.pdf)

Attachment F: CA Allocation Agreement for CVS Settlement

[https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-f\\_cvs-participation-form.pdf](https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-f_cvs-participation-form.pdf)

Attachment G: CA Allocation Agreement for Walmart Settlement

[https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-g\\_walmart-participation-form.pdf](https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-g_walmart-participation-form.pdf)

Attachment H: Allowed uses under the 2022 National Settlements

[https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-h\\_final-allergan-exhibit-epdf.pdf](https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/agendas-minutes/city-council-agendas-minutes/2023/new-folder/attachment-h_final-allergan-exhibit-epdf.pdf)

**\*Attachments were linked due to the length, totaling more than 400 pages.**

**APPROVED BY:**

Molly Stump, City Attorney