



## AGENDA SUMMARY EUREKA CITY COUNCIL

**TITLE:** Nationwide Opioid Settlements and Appointing the City Attorney or City Attorney's designee as the City's Authorized Representative

**DEPARTMENT:** City Attorney, City Prosecutor

**PREPARED BY:** Autumn E. Luna, City Attorney  
Robert N. Black, Assistant City Attorney

**PRESENTED FOR:** Action  Information only  Discussion

### **RECOMMENDATION**

Adopt a Resolution of the City Council of the City of Eureka Approving Participation in Nationwide Opioid Settlement Litigation and Appointing the City Attorney or City Attorney designee as the City's Authorized Representative and Authorizing the City Attorney or City Attorney's designee to Execute Necessary Documents and Take All Reasonable and Necessary Actions to Implement the Settlements, Secure the Funds, and Fulfill City's Prior Agreement to Compensate Outside Counsel.

### **FISCAL IMPACT**

Positive Fiscal Impact  Included in Budget  Additional Appropriation

### **SUMMARY**

On November 16, 2021, Council granted the City Attorney's request to authorize settlements with McKesson, Cardinal Health, and Amerisource Bergen (Distributor Settlements) and Janssen Pharmaceuticals (Janssen Settlement.)

On March 7, 2023, the City Council granted further authorization for settlements with Teva, Allergan, CVS, Walgreens, and Walmart.

The City recently received notice of a proposed nationwide settlement agreement with Kroger Co., and expects that additional national settlement agreements will be forthcoming. The City Attorney's office, principally through Assistant City Attorney Robert N. Black, has been handling all aspects of the national opioid settlement cases on behalf of the City of Eureka. The City Attorney's office requests additional authority to enter into new settlements and execute associated documents as appropriate and necessary to effectuate the City Council's objections and direction.

## **BACKGROUND AND DISCUSSION**

### **Initiation of the Litigation**

On August 30, 2018 the City of Eureka and the City Attorney, acting as the City Prosecutor, with the assistance of outside counsel, filed suit against Purdue Pharma, Inc. and numerous other defendants, each of which was involved in one capacity or another in creating, fueling, and profiting from the opioid crisis plaguing the U.S. and – close to home – the City of Eureka and Humboldt County. In filing suit, Eureka joined other local and state jurisdictions nationally that had brought and were bringing legal actions. Eventually, around 3000 lawsuits, including Eureka's, were consolidated into a Multi-District Litigation (MDL) under the supervision of District Judge Dan Aaron Polster in Northern Ohio. As the MDL has been ongoing, certain cases have been brought to trial for the purpose of establish liability and damage baselines.

### **Our Retention and Compensation of Outside Litigation Counsel**

In preparing and pursuing the litigation, Eureka retained the services of Keller Rohrbach, a national law firm with deep experience in “mass tort” litigation, such as the opioid litigation we are discussing. In California, Keller Rohrbach is also representing Humboldt County and Santa Barbara County. Nationwide, they have a substantial array of clients in this particular fight. In order to fund the services of the firm, Eureka entered into a contingency-fee agreement, whereby we paid nothing up front or by “pay-as-you-go” but will owe Keller Rohrbach a percentage of the City's recovery from the litigation and related bankruptcies. In our retainer agreement the relevant percentage, based on the total recovery the City is likely to obtain, is 20%. Two factors are operating to reduce that percentage. First, as the settlements have been developed, a national fund was created to help compensate outside counsel. Some portion – at this point an unknown portion – of the fee will be paid by the national fee fund. Second, Keller Rohrbach has agreed that their total fee recovery will not exceed 15%. Exactly how much the City's obligation will be is now dependent on two unknowns: (1) how much will be our gross total recovery and (2) how much will be awarded by the national fee fund.

### **Progress of the Litigation toward Settlements**

Judge Polster has been an active proponent of settlement between the governmental plaintiffs and the industry defendants. The first real breakthroughs were achieved with the Distributor and Janssen Settlements. The combined proceeds from the four settling Distributor and Janssen defendants total about \$24 Billion nationwide, with about 10% of that flowing into California over the course of 18 years. The first two years of settlement proceeds have been received from the Distributor and Janssen Settlements.

In addition to the Distributor and Janssen Settlements, a settlement was reached with Purdue Pharma, a leading manufacturer and promoter of opioid drugs. Purdue, which was in bankruptcy, also sought to protect its owners, the Sackler family, through that bankruptcy. This move was resisted by certain parties because the Sacklers were not in bankruptcy themselves. In other words, the Sacklers would have had access to

bankruptcy protection but without having to yield up their assets. They would personally have been allowed to stay rich despite giving up their company, which had made them rich on opioids. The Purdue bankruptcy is now in the Federal second Circuit Court of Appeal over this issue. While we don't know the outcome, it seems relatively certain that there will be a further settlement of significance from Purdue.

The Mallinkrodt pharmaceutical manufacturer has also entered bankruptcy and has reached a small settlement. Eureka has already received a small sum as the first year's payment from the Mallinkrodt bankruptcy administrator. These payouts will continue for multiple years.

*Will there be Additional Settlements?*

There is some uncertainty in any future settlement payouts to the City of Eureka because further negotiations may be needed between local governments and the State of California. However, based on the outcome of past negotiations, it is believed that the proceeds of future settlements will be distributed on the lines of the existing formulas.

On the upside, there are multiple additional defendants in the ongoing litigation. If, as hoped, further settlements are negotiated, bringing more money into the State, there is the potential that even greater resources will become available to Eureka.

Further information, including Copies of the agreements, as well as helpful flowcharts and FAQs, can be accessed at the following website:

<http://www.nationalopioidsettlement.com>

I will be available to answer any questions your Council may have.

**REVIEWED AND APPROVED BY:**

- City Attorney
- City Clerk/Information Technology
- Community Services
- Development Services
- Finance
- Fire
- Human Resources
- Police
- Public Works