



AGENDA SUMMARY EUREKA CITY COUNCIL

TITLE:

Nationwide Opioid Settlements with Teva, Allergan, CVS, Walgreens, and Walmart

DEPARTMENT: City Attorney, City Prosecutor

PREPARED BY: Robert N. Black, Deputy 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 with Teva, Allergan, CVS, Walgreens, and Walmart and Appointing the Deputy City Attorney as the City's Authorized Representative and Authorizing the Deputy City Attorney 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

COUNCIL GOALS/STRATEGIC VISION

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.) This item requests Council's authority to the new settlements with new Settling Defendants (Teva, Allergan, CVS, Walgreens, and Walmart) and release any potential claims the City has against these defendants in exchange for the payment of opioid abatements funds and injunctive relief guarding against future unlawful business practices.

HISTORY 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.

The New Settlements

Subject to your approval on tonight's agenda are five new proposed settlements with Teva, Allergan, CVS, Walgreens, and Walmart. With the embedded assumption that 100% of the eligible plaintiffs are participating, the following are the settlement amounts and the lengths of the payouts:

Teva

Maximum national payment (assuming 100% participation): \$4,246,567,371.76

Timing: Paid over 6 years.

Allergan

Maximum national payment (assuming 100% participation): \$2,372,972,184.12

Timing: Paid over 7 years.

CVS

Maximum national payment (assuming 100% participation): \$5,022,083,578

Timing: Paid over 10 years.

Walgreens

Maximum national payment (assuming 100% participation): \$5,522,528,766

Timing: Paid over 15 years.

Walmart

Maximum national payment (assuming 100% participation): \$3,011,242,061

Timing: Primarily paid within 3 years, but if participation levels are not met until later, payment can extend over 6 years.

In total, these new settlements are over \$20 billion nationally. California's share is approximately 10% or \$2 billion. This would roughly double the amounts that will be received and distributed in the State from the existing settlements.

How much has Eureka Received under the Existing Settlements with the Distributors and Janssen?

As can be seen from the settlement terms listed about, it is difficult to say with precision **how much Eureka will receive when each settlement not only varies by amount**

but also by term and level by year. What can be said is that the settlements are approximately twice the Distributor and Janssen settlements. Because we have received the first and second-year's payouts under these settlements, it is possible to a reasonably accurate estimate.

Distributors Settlement,	Year One:	\$81,299
	Year Two	\$85,441
Janssen Settlement,	Year One	\$28,942
	Year Two	<u>\$67,524</u>

To determine a reasonable estimate of how much the five new settlements will add to these annual payouts, it is most reasonable to look at the Year Two totals of the Distributor's and Janssen payouts: \$152,965. It is likely that the five new settlements will bring in a roughly equal amount for a total of old and new settlements in excess of \$300,000 annually.

Will there be Additional Settlements?

I have already pointed to the Purdue bankruptcy to partially answer this question. 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.