

RESOLUTION NO. 22-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA AUTHORIZING THE CITY MANAGER TO ENTER INTO THE SETTLEMENT AGREEMENTS WITH WALGREENS CO., WALMART, INC., CVS HEALTH CORPORATION/CVS PHARMACY INC., TEVA PHARMACEUTICAL INDUSTRIALS LTD., AND ALLERGAN FINANCE LLC/ALLERGAN LIMITED, AGREE TO THE TERMS OF THE STATE-SUBDIVISION AGREEMENTS, AND AUTHORIZE ENTRY INTO THE STATE-SUBDIVISION AGREEMENTS WITH THE ATTORNEY GENERAL

WHEREAS, the United States is facing an ongoing public health crisis of opioid abuse, addiction, overdose, and death, forcing the State of California and California counties and cities to spend billions of dollars each year to address the direct consequences of this crisis; and,

WHEREAS, pending in the U.S. District Court for the Northern District of Ohio is a multidistrict litigation (“MDL”) being pursued by numerous public entity plaintiffs against the manufacturers and distributors of various opioids based on the allegation that the defendants’ unlawful conduct caused the opioid epidemic; and,

WHEREAS on or about November 14, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and Walmart Inc. (“Walmart”); and,

WHEREAS on or about November 22, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and Teva Pharmaceutical Industries Ltd. and all of its respective past and present direct or indirect parents, subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns, including but not limited to Teva Pharmaceuticals USA, Inc., Actavis LLC (f/k/a Actavis Inc.), Actavis Elizabeth LLC, Actavis Kadian LLC, Actavis Pharma, Inc. (f/k/a Watson Pharma, Inc.), Actavis Kadian LLC, Actavis Laboratories UT, Inc. (f/k/a Watson Laboratories, Inc. – Utah), Actavis Mid Atlantic LLC, Actavis Totowa LLC, Actavis Laboratories FL, Inc. (f/k/a Watson Laboratories, Inc. – Florida), Actavis South Atlantic LLC, Warner Chilcott Company LLC, and Watson Laboratories, Inc., and Anda Inc. (collectively, “Teva”); and,

WHEREAS on or about November 22, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and Allergan Finance, LLC (f/k/a Actavis, Inc., which in turn was f/k/a Watson Pharmaceuticals, Inc.) and Allergan Limited (f/k/a Allergan plc, which, in turn, was f/k/a Actavis plc)(collectively, “Allergan”); and,

WHEREAS, on or about December 9, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and CVS Health Corporation and CVS Pharmacy, Inc. and all of their past and present direct and indirect parent and subsidiaries (collectively, “CVS”); and,

WHEREAS, on or about December 9, 2022, a proposed nationwide tentative settlement was reached between the plaintiffs in the MDL and Walgreen Co. (“Walgreens”); and,

WHEREAS, CVS, Teva, Walgreens, Walmart, and Allergan shall be referred in this Resolution as “Settling Defendants”; and

WHEREAS, as part of the settlements with the Settling Defendants, local subdivisions, including certain cities, that are not plaintiffs in the MDL may participate in the settlements in exchange for a release of the Settling Defendants; and,

WHEREAS, copies of the proposed terms of those proposed nationwide settlements have been set forth in the Master Settlement Agreements with the Settling Defendants; and,

WHEREAS, copies of the Master Settlement Agreements have been provided to the City Council with this Resolution; and,

WHEREAS, the Settlement Agreements provide, among other things, for the payment of a certain sum to settling government entities in California including to the State of California and Participating Subdivisions upon occurrence of certain events as defined in the Settlement Agreements (“California Opioid Funds”); and,

WHEREAS, California local governments in the MDL have engaged in extensive discussions with the State Attorney General’s Office (“AGO”) as to how the California Opioid Funds will be allocated, which has resulted in the Proposed California State-Subdivision Agreements Regarding Distribution and Use of Settlement Funds (“Allocation Agreements”) from the settlements with the Settling Defendants; and,

WHEREAS, copies of the Allocation Agreements for all of the settlements with the Settling Defendants have been provided with this Resolution; and,

WHEREAS, the Allocation Agreements allocate the California Opioid Funds as follows: 15% to the State Fund; 70% to the Abatement Accounts Fund; and 15% to the Subdivision Fund. For the avoidance of doubt, all funds allocated to California from the Settlements shall be combined pursuant to the Allocation Agreements, and 15% of total from each settlement shall be allocated to the

State of California (the "State of California Allocation"), 70% to the California Abatement Accounts Fund ("CA Abatement Accounts Fund"), and 15% to the California Subdivision Fund ("CA Subdivision Fund"); and,

WHEREAS, under the Master Settlement Agreements, certain local subdivisions that did not file a lawsuit against the Settlement Defendants may qualify to participate in the settlements and obtain funds from the Abatement Account Fund; and,

WHEREAS, the City is eligible to participate in the Settlement and become a CA Participating Subdivision; and,

WHEREAS, the funds in the CA Abatement Accounts Fund (the 70% allocation) will be allocated based on the allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804), as adjusted to reflect only those cities and counties that are eligible, based on population or litigation status, to become a CA Participating Subdivision (those above 10,000 in population). The percentage from the CA Abatement Accounts Fund allocated to each CA Participating Subdivision is set forth in Appendix 1 to the Allocation Agreements and provided to the City Council with this Resolution. The City's share of the CA Abatement Accounts Fund will be a product of the total in the CA Abatement Accounts Fund multiplied by the City's percentage set forth in Appendix 1 of the Allocation Agreements (the "Local Allocation"); and,

WHEREAS, a CA Participating Subdivision that is a city will be allocated its Local Allocation share as of the date on which it becomes a Participating Subdivision. The Local Allocation share for a city that is a CA Participating Subdivision will be paid to the county in which the city is located, unless the city elects to take a direct election of the settlement funds, so long as: (a) the county is a CA Participating Subdivision, and (b) the city has not advised the Settlement Fund Administrator that it requests direct payment at least 60 days prior to a Payment Date; and,

WHEREAS, it the intent of this Resolution is to authorize the City to enter into the Master Settlement Agreements with the Settling Defendants by executing the Participation Agreements and to enter into the Allocation Agreements by executing the signature pages to those agreements.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fontana resolves as follows:

Section 1. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. The City Manager is authorized to settle and release the City's claims against the Settling Defendants in exchange for the consideration set forth in the Settlement Agreements and Allocation Agreements, including taking the following measures:

1. The execution of the Participation Agreements with the Settling Defendants and any and all documents ancillary thereto.
2. The execution of the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds with the Settling Defendants by executing the signature pages to those Allocation Agreements.
3. Notify the Settlement Fund Administrator that the City requests a direct payment under the Allocation Agreements at least 60 days prior to the Payment Date in the Settlement Agreements.

Section 3. CEQA. That the City Council finds this Resolution is not subject to the California Environmental Quality Act (CEQA) in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty, as in this case, that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 4. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Resolution are declared to be severable.

Section 5. Effective Date. The City Clerk shall certify to the adoption of this Resolution. This Resolution shall become effective upon the passage by the City Council.

APPROVED AND ADOPTED this ____ day of ____ 2023.

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

I, Germaine McClellan Key, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council of the City of Fontana, hereby certify that the foregoing Resolution is the actual resolution that was duly and regularly adopted by the City Council of the City of Fontana at a regular meeting on the ___ day of _____, 2023, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Germaine McClellan Key, City Clerk

Acquanetta Warren, Mayor

ATTEST:

Germaine McClellan Key, City Clerk