

RESOLUTION NO. RES-2021-223

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA AUTHORIZING THE CITY OF SANTA ROSA TO ENTER INTO SETTLEMENT AGREEMENTS AS PART OF THE NATIONAL PRESCRIPTION OPIATE LITIGATION, AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY AND DIRECTING USE OF SETTLEMENT PROCEEDS

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

WHEREAS, since 2017, state and local governments in California and around the United States have been pursuing litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (the “Opioid Defendants”) in an effort to hold the Opioid Defendants financially responsible for the impact on of the Opioid Epidemic on the City of Santa Rosa (“the City”) and resources necessary to combat the opioid epidemic; and

WHEREAS, negotiations to settle claims against several of the Opioid Defendants, specifically McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (the “Settling Defendants”) have been ongoing for several years; and

WHEREAS, negotiations with the Settling Defendants have resulted in proposed nationwide settlements of state and local government claims to settle the Litigation; and

WHEREAS, the proposed terms of those proposed nationwide settlements have been set forth in the Distributors Master Settlement Agreement and the J&J Master Settlement Agreement (collectively “Settlement Agreements”); and

WHEREAS, copies of the Settlement Agreements as well as summary of the main terms of the Settlement Agreements, the deadlines for submitting the Participation Agreements to the Settlement Agreements and the MDL Court’s Order setting deadlines for any Plaintiff who declines to enter into the Settlement Agreements, have been provided to the 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 as well as the attorneys representing those local governments 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 Agreement Regarding Distribution and Use of

Settlement Funds- Distributor Settlement and the Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Janssen Settlement (collectively the “Allocation Agreements,”) which are agreements between all of the entities identified in the Allocation Agreements; and

WHEREAS, copies of the Allocation Agreements have been provided with this resolution; and

WHEREAS, the Allocation Agreements propose to allocate the California Opioid Funds 15% to a State Fund; 70% to local governments in an Abatement Accounts Fund; and 15% to litigating local governments in a Subdivision Fund. For the avoidance of doubt, all funds allocated to California from the Settlements will be combined pursuant to Allocation Agreements, and 15% of that total shall be allocated to the State of California (the “State of California Allocation”), 70% to the California Abatement Accounts Fund (“CA Abatement Accounts Fund Allocation”), and 15% to the California Subdivision Fund (“CA Subdivision Fund Allocation”); and

WHEREAS, the funds in the CA Abatement Accounts Fund (the California Abatement Accounts Fund Allocation) will be allocated based on an allocation model developed in connection with the proposed negotiating class in the National Prescription Opiate Litigation (MDL No. 2804). The percentage from the CA Abatement Accounts Fund allocated to each eligible local government (any county or city above 10,000 in population) “Eligible Local Government”) is set forth in Appendix 1 to each Allocation Agreement and provided to the Council with this Resolution. The City’s share of the CA Abatement Accounts Fund is a product of the total in the CA Abatement Accounts Fund multiplied by the City’s percentage set forth in Appendix 1 (the “Local Allocation”), which is part of Exhibits C and D to this resolution; and

WHEREAS, any city that is an Eligible Local Government will be allocated its Local Allocation share only when it becomes a Participating Subdivision by signing the Participation Agreements to the Settlements. The Local Allocation share for a city that is a Participating Subdivision will be paid to the county in which the city is located, rather than to the city, so long as: (a) the county is a 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 as defined in the Settlement Agreements.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa authorize the City Manager to execute the following settlement agreements, subject to approval as to form by the City Attorney:

(1) Participation Agreement to the Distributors Settlement Agreement, attached to this resolution as Exhibit A and made a part of herein, and any and all documents ancillary thereto;

(2) Participation Agreement to the Janssen Settlement Agreement, attached to this resolution as Exhibit B and made a part of herein, and any and all documents ancillary thereto;

(3) Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Distributor Settlement, attached to this resolution as Exhibit C and made a

part of herein; and

(4) Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Janssen Settlement, attached to this resolution as Exhibit D and made a part of herein.

BE IT FURTHER RESOLVED that all proceeds received from the settlements shall be used for City programs, as permitted under the agreements, unless and to the extent that Council directs that the proceeds shall be paid to the County.

IN COUNCIL DULY PASSED this 14th day of December, 2021.

AYES: (7) Mayor C. Rogers, Vice Mayor Alvarez, Council Members Fleming, N. Rogers, Sawyer, Schwedhelm, Tibbetts

NOES: (0)

ABSENT: (0)

ABSTAIN: (0)

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM: _____
City Attorney

Exhibit A – Settlement Participation Form pursuant to the Distributor Settlement Agreement dated July 21, 2021

Exhibit B – Settlement Participation Form pursuant to the Janssen Settlement Agreement dated July 21, 2021

Exhibit C – Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Distributor Settlement,

Exhibit D – Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds- Janssen Settlement Allocation Agreements