



WASHOE COUNTY

Integrity Communication Service

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STAFF REPORT

BOARD MEETING DATE: July 16, 2024

DATE: Thursday, July 11, 2024

TO: Board of County Commissioners

FROM: Michael Large, Deputy District Attorney
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THROUGH: Nathan Edwards, Assistant District Attorney
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SUBJECT: Recommendation and possible action to approve the settlement between Kroger Company and the State of Nevada in the opioid litigation (*State of Nevada v. McKesson Corp. et al.*, Case No. A-19-796755-B (Nev. Dist. Ct., Clark County) and execution by Washoe County of the "Kroger Subdivision Participation and Release Form" pursuant to the One Nevada Agreement on Allocation of Opioid Recoveries ("One Nevada Agreement") previously agreed upon for participation in settlements (entered into on July 27, 2021).

The proposed settlement between Kroger and the State of Nevada is in an amount of \$26,718,162 before attorney's fees are deducted and paid over a 10-year period. Pursuant to the One Nevada Agreement, Washoe County will receive an estimated annual allocation of \$100,043.47 for 10 years.

District Attorney. (All Commission Districts.) FOR POSSIBLE ACTION

SUMMARY

Staff recommends approval of the proposed settlement agreements between the State of Nevada and Kroger Company and execution of the Kroger Subdivision Participation and Release Form attached hereto as Exhibits 1. Additionally, included as Exhibit 2 is the term sheet for the Masters Pharmaceuticals, LLC settlement agreement.

This Board has previously authorized the initiation of litigation against various defendants related to damages incurred due to the opioid crisis. On July 27, 2021, this Board entered into the One Nevada Agreement which provides the allocation model for distribution of any monetary recovery from the defendants between all governmental entities within the State of Nevada.

Pursuant to WCC 65.240(5), the Board has sole authority to settle any claim or suit for damages in excess of \$24,999. Pursuant to litigation authority delegated to the County

AGENDA ITEM # _____

Manager or Board Chair pursuant to NRS 241.0357, authority is limited to \$150,000. It is expected this settlement will result in substantially more than these cutoffs. Accordingly, Board approval has been sought.

Washoe County Strategic Objective supported by this item: Stewardship of Our Community.

PREVIOUS ACTION

March 26, 2019 - the Board approved an agreement for legal services of Eglet Prince, LLP and Bradley, Drendel & Jeanney as for outside counsel to represent Washoe County against manufacturers, distributors and dispensers of opioid-based drugs, and to authorize the filing of actions against such entities. The agreement provided that outside counsel would receive Twenty-Five percent (25%) of the recovery.

July 24, 2020 - a Complaint was filed against numerous corporate defendants.

June 8, 2021 - the Board received an update on the litigation and bankruptcy cases involving the various opioid defendants and took action to direct counsel for Washoe County to cast its vote to approve a bankruptcy plan consistent with other members of the Multi-State Government Entities ("MSGE") in the Purdue Pharma Bankruptcy Case No. 19-23649 filed in the United States Bankruptcy Court Southern District of New York.

July 27, 2021 – the Board approved the One Nevada Agreement which provides the allocation model for distribution of any monetary recovery from the defendants between all governmental entities within the State of Nevada.

June 21, 2022 – the Board approved "Amendment No. 2 to One Nevada Agreement on Allocation of Opioid Recoveries" which allows the Nevada Attorney General's Office to divide the Recoveries in accordance with the percentages and terms of the One Nevada Agreement and remit payments to Local Governments and attorneys' fees to the appropriate Counsel on behalf of the Local Governments. Recoveries means settlement payments totaling \$285,679,409.03 from opioids distributor defendants AmerisourceBergen Drug Corporation, Cardinal Health, and McKesson, and opioid manufacturer defendant Janssen/Johnson & Johnson to compensate for the effects of the nationwide opioid crisis.

February 21, 2023 – the Board approved the Settlement between the State of Nevada and Walmart in the amount of \$32,231,037.14 pursuant to the One Nevada Agreement.

April 25, 2023 – the Board approved the Settlement between the State of Nevada and Allergan in the amount of \$26,508,913.00 and between the State of Nevada and CVS in the amount of \$151,858,772.26 pursuant to the One Nevada Agreement.

September 12, 2023 – the Board approved the Settlement between Teva and Walgreens and the State of Nevada in the amounts of \$193,985,662.29 and \$285,000.00 respectively pursuant to the One Nevada Agreement.

BACKGROUND

After the Board hired outside counsel to represent Washoe County in opioid-related litigation matters, a Complaint was filed in the Second Judicial District Court. Counsel has filed actions in state district court and claims in bankruptcy actions across the country. The agreement provided that outside counsel would receive Twenty-Five

percent (25%) of the recovery and a reimbursement of actual costs expended. Outside counsel has filed suit on behalf of Washoe County, the State of Nevada, and other political subdivision within the State. Those cases are proceeding, and several are being resolved in the bankruptcy courts.

In July 2021, Washoe County entered into the One Nevada Agreement Allocation of Opioid Recoveries approved by the Board in July 2021 with the State of Nevada and other participating political subdivisions. Under the One Nevada Agreement, Washoe County will receive (before deductions required but yet to be calculated): 6.841995% of the Local Government Allocation (making up 38.77% of the total allocation) 14% of the Medicaid Match Allocation (17.37% of the total allocation). The consolidated bargaining power of the One Nevada Agreement allows outside counsel to engage in settlement discussions on behalf of the entire State of Nevada and the participating political subdivisions.

The parties by and through outside counsel have engaged in settlement discussions with certain opioid defendants. Tentative settlement agreements have been reached between the State of Nevada and Teva, and the State of Nevada and Walgreens. The proposed Subdivision Participation Forms allows Washoe County to be a party to these settlement agreements and resolve the claims against Teva and Walgreens.

The proposed settlement between Kroger Company and the State of Nevada is in an amount of \$26,718,162.19. The proposed settlement between Kroger and the State of Nevada is in an amount of \$26,718,162 before attorney's fees are deducted and paid over a 10-year period. Pursuant to the One Nevada Agreement, Washoe County will receive an estimated annual allocation of \$100,043.47 for 10 years.

This settlement does not affect the ongoing litigation by Washoe County against the other defendants in the previously filed actions.

FISCAL IMPACT

Pursuant to the Kroger settlement agreement, Washoe County will receive \$100,043.47 per year for 10-years to be used for opioid abatement in our community.

Any funds received from this settlement will be deposited into IN20517 – 485300. Use of the funds will adhere to the guidelines established by the State.

RECOMMENDATION

It is recommended that the Board approve the agreement between the State of Nevada and Kroger Company, and approve execution of both the Masters Subdivisions Participation Forms.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

“Move to approve the settlements between the State of Nevada and Kroger Company, and approve execution of the Kroger Subdivision Participation Forms for distribution of monies to Washoe County pursuant to the One Nevada Agreement.”