WASHOE COUNTY

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STAFF REPORT
BOARD MEETING DATE: April 25, 2023

DATE: Saturday, April 22, 2023

TO: Board of County Commissioners

FROM: Michael Large, Deputy District Attorney
(775) 337-5712, mlarge@da.washoecounty.gov

THROUGH: Nathan Edwards, Assistant District Attorney
(775) 337-5700, nedwards@da.washoecounty.gov

SUBJECT: Recommendation and possible action to approve the settlement between Allergan, CVS 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 "Allergan Settlement Participation Agreement" and the "CVS Settlement Participation Agreement" and releases 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 Allergan and the State of Nevada is in the amount of $26,508,913.00 and will be paid in equal installments over seven years beginning in 2023. Pursuant to the One Nevada Agreement, Washoe County will receive an estimated total net allocation of $1,187,393.62 ($193,763.90 per year minus $24,136.24 in attorneys' fees for seven years).

The proposed settlement with CVS and the State of Nevada is in the amount of $151,858,722.26 and will be paid in equal installments over 10 years beginning in 2023. Attorneys' fees and costs were resolved directly with outside counsel and will not be deducted from this settlement. Pursuant to the One Nevada Agreement, Washoe County will receive an estimated net allocation of $7,380,909.94 ($738,090.99 per year for 10 years)

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

AGENDA ITEM # _____

SUMMARY

Staff recommends approval of the proposed settlement agreements between the State of Nevada and CVS, and the State of Nevada and Allergan pursuant to the One Nevada Agreement and execution of the CVS Settlement Participation Form and Allergan Settlement Participation Form attached hereto as Exhibits 1 & 2.

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 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 outside counsel to represent the County against manufacturers, distributers 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.

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 subdivisions 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) and 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 CVS, and the State of Nevada and Allergan. The proposed Settlement Participation Forms allow Washoe County to be a party to these settlement agreements and resolve the claims against CVS and Allergan.

The settlement between Allergan and the State of Nevada is in amount of $26,508,913.00 and will be paid in equal installments over seven years beginning in 2023. Pursuant to the One Nevada Agreement, Washoe County will receive an estimated total net allocation of $1,187,393.62 from this settlement ($193,763.90 per year minus $24,136.24 in attorney's fees for 7 years). The Allergan settlement documents are attached hereto as Exhibit 3 along with the Settlement Participation Form (Exhibit 2).

The settlement between CVS and the State of Nevada is in the amount of $151,858,722.26 and will be paid in equal installments over 10 years beginning in 2023. Attorneys' fees and costs were resolved directly with outside counsel and will not be deducted from this settlement. Pursuant to the One Nevada Agreement, Washoe County will receive an estimated net allocation of $7,380,909.94 ($738,090.99 per year for 10 years). The CVS settlement documents are attached hereto as Exhibit 4 along with the Settlement Participation Form (Exhibit 1).

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 Allergan settlement agreement, Washoe County will receive $1,187,393.62 from this settlement ($193,763.90 per year minus $24,136.24 in attorney's fees for 7 years) to be used for opioid abatement in our community.

Pursuant the CVS settlement agreement, Washoe County will receive $7,380,909.94 ($738,090.99 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 Allergan and the agreement between State of Nevada and CVS, and approve execution of both the Allergan and CVS Settlement 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 CVS and Allergan, and approve execution of the CVS and Allergan Settlement Participation Forms for distribution of monies to Washoe County pursuant to the One Nevada Agreement.