

**Attachment C- Proposed California State-Subdivision  
Agreement Regarding Distribution and Use of Settlement Funds**

**Proposed California State-Subdivision Agreement  
Regarding Distribution and Use of Settlement Funds  
Purdue/Sackler Settlement**

**1. Introduction**

The State of California<sup>1</sup> and certain of its cities and counties have reached this proposed agreement (the “California Purdue/Sackler State-Subdivision Agreement” or the “Agreement”) to govern the payments made to California in *In re: Purdue Pharma L.P., et al*, Case No. 19-23649, pending in the United States Bankruptcy Court, Southern District of New York (the “Purdue Bankruptcy Matter”) and pursuant to the related settlement with the Sacklers.

This Agreement is proposed to govern the allocation, distribution, and use of payments, including the Statewide Payment Amounts, consisting of Base Payments and Incentive Payments, and Estate Distributions, paid to California pursuant to the Governmental Entity & Shareholder Direct Settlement Agreement (“GESA”), the Master Settlement Agreement (“MSA”), the Thirteenth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors (the “Plan”), and the Governmental Remediation Trust Agreement (“GRTA”), and any revisions thereto (collectively, the “Governing Documents”), filed in the Purdue Bankruptcy Matter.

For the avoidance of doubt, this Agreement does not apply to payments of attorneys’ fees and costs made to California, including any payments to California from the Local Government Costs and Expenses Fund and the State Expenses Fund and payments pursuant to Sections 9.01, 9.02, and 9.03 and Exhibit R of the GESA and Sections 5.9(a) and 5.9(b) of the Plan, unless otherwise noted.

Pursuant to Exhibit O, paragraph 4, of the GESA, acceptance of this California State-Subdivision Agreement is a requirement to be an Initial Participating Subdivision.

**2. Definitions**

- a) *CA Participating Subdivision* means a General Purpose Government that is a Participating Subdivision and also (a) a Plaintiff Subdivision; (b) a Primary Subdivision; and/or (c) a Non-Litigating Threshold Subdivision. For the avoidance of doubt, eligible CA Participating Subdivisions are those California Subdivisions listed in Exhibits C (excluding Litigating Special Districts), I, and/or W to the GESA.
- b) *CA Litigating Special District* means a Litigating Special District located in California. For the avoidance of doubt, CA Litigating Special District does not include School Districts and certain Health and Hospital Special Districts that fall under a separate creditor group in the Purdue Bankruptcy Plan.

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<sup>1</sup> For purposes of clarity, use of the term “California” refers to the geographic territory of California and the state and its local governments therein. The term “State” or “State of California” refers to the State of California as a governmental unit.



- c) *Plaintiff Subdivision* means a Subdivision located in California, other than a CA Litigating Special District, that filed a lawsuit, on behalf of the Subdivision and/or through an official of the Subdivision on behalf of the People of the State of California, against one or more Opioid Defendants prior to October 1, 2020.
- d) *Opioid Defendant* means any defendant (including but not limited to Alvogen, Inc. Amneal Pharmaceuticals LLC; Apotex Corp., Hikma Pharmaceuticals USA Inc. f/k/a West-Ward Pharmaceuticals Corp.; Indivior Inc.; Viatris Inc. a/k/a Mylan N.V.; Sun Pharmaceutical Industries, Inc.; Zydus Pharmaceuticals (USA) Inc.; Kroger Co., Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Allergan Limited, CVS Health Corporation, CVS Pharmacy, Inc., Walgreen Co., Walmart Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Purdue Pharma L.P., Cardinal Health, Inc., Cencora, Inc. f/k/a AmerisourceBergen Corporation, McKesson Corporation, Dr. Richard S. Sackler, Beverly Sackler, Jonathan Sackler, David Sackler, Marianna Sackler, Theresa Sackler, Ilene Sackler Lefcourt, Dr. Kathe Sackler, and Mortimer D.A. Sackler) named in a lawsuit seeking damages, abatement, or other remedies related to or caused by the opioid public health crisis in any lawsuit brought by any state or local government on or before October 1, 2020.

### **3. General Terms**

This Agreement is subject to the requirements of the Governing Documents, as well as applicable law, and the Governing Documents govern over any inconsistent provision of this California Purdue/Sackler State-Subdivision Agreement. Terms not otherwise defined herein shall have the same meaning as in the Governing Documents.

All payments made to the State of California and CA Participating Subdivisions subject to this Agreement will be used for Opioid Remediation, except as allowed by Section 5.02(b) of the GESA and Section 4.01(f)(ii) of the MSA.

This Agreement does not apply to funds received by California for attorneys' fees and cost, including payments from the Local Government Costs and Expenses Fund or the State Expenses Fund, unless otherwise noted.

### **4. State Allocation**

Funds allocated to California shall be combined pursuant to this Agreement, 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"), and 15% to the California Subdivision Fund ("CA Subdivision Fund").

#### **A. State of California Allocation**

Fifteen percent of the payments to California subject to this Agreement will be allocated to the State and used by the State for future Opioid Remediation.



## **B. CA Abatement Accounts Fund**

### **i. Allocation of CA Abatement Accounts Funds**

- a) Seventy percent of the payments to California subject to this Agreement will be allocated to the CA Abatement Accounts Fund. The funds in the CA Abatement Accounts Fund 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. The percentage from the CA Abatement Accounts Fund allocated to each CA Participating Subdivision is set forth in Appendix 1 in the column entitled abatement percentage (the “Local Allocation”). For the avoidance of doubt, CA Litigating Special Districts and California towns, cities, and counties with a population less than 10,000 (except those that are Plaintiff Subdivisions) are not eligible to receive an allocation of CA Abatement Accounts Funds.
- b) A CA Participating Subdivision that is a county, or a city and county, will be allocated its Local Allocation share as of the date on which it becomes a Participating Subdivision, and will receive payments as provided in the Governing Documents and this Agreement.
- c) 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, rather than to the city, so long as the county is a CA Participating Subdivision; *provided, however*, that if a city currently receives direct payment of its share of funds in the National Opioids Settlement with Distributors Cencora, Inc. (f/k/a AmerisourceBergen Corporation), Cardinal Health, Inc., and McKesson Corporation (the “Distributors Settlement”), that city’s Local Allocation amount will be paid directly to the city. A Local Allocation share allocated to a city but paid to a county is not required to be spent exclusively for abatement activities in that city, but will become part of the county’s share of the CA Abatement Accounts Funds, which will be used in accordance with Section 4.B.ii (Use of CA Abatement Accounts Funds).
- d) A city within a county that is a CA Participating Subdivision may opt in or out of direct payment at any time, and it may also elect direct payment of only a portion of its share, with the remainder going to the county, by providing notice to the Settlement Administrator at least 60 days prior to a Payment Date.
- e) The State will receive the Local Allocation share of any payment that is attributable to a county or city that is eligible to become a CA Participating Subdivision, but has not, for a particular payment, become a Participating Subdivision.
- f) Funds received by a CA Participating Subdivision, and not expended or encumbered within five years of receipt and in accordance with the Governing Documents and this



Agreement shall be transferred to the State; provided however, that CA Participating Subdivisions have seven years to expend or encumber CA Abatement Accounts Funds designated to support capital outlay projects before they must be transferred to the State.

**ii. Use of CA Abatement Accounts Funds**

- a) The CA Abatement Accounts Funds will be used for future Opioid Remediation in one or more of the areas described in the List of Opioid Remediation Uses, which is Exhibit E to the GESA.
- b) In addition to this requirement, no less than 50% of the funds received by a CA Participating Subdivision from the CA Abatement Accounts Fund in each calendar year will be used for one or more of the following High Impact Abatement Activities:
  - (1) the provision of matching funds or operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program;
  - (2) creating new or expanded Substance Use Disorder (“SUD”) treatment infrastructure;
  - (3) addressing the needs of communities of color and vulnerable populations (including sheltered and unsheltered homeless populations) that are disproportionately impacted by SUD;
  - (4) diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders (sworn and non-sworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction;
  - (5) interventions to prevent drug addiction in vulnerable youth, including but not limited to, youth in foster care, juvenile justice-impacted youth, youth experiencing adversities related to socioeconomic status, and unhoused youth; and/or
  - (6) the purchase of naloxone for distribution and efforts to expand access to naloxone for opioid overdose reversals.
- c) The California Department of Health Care Services (“DHCS”) may add to this list (but not delete from it) by designating additional High Impact Abatement Activities. DHCS will make reasonable efforts to consult with stakeholders, including the CA Participating Subdivisions, before adding additional High Impact Abatement Activities to this list.
- d) For the avoidance of doubt, and subject to the requirements of the Governing Documents and applicable law, CA Participating Subdivisions may form agreements or ventures, or otherwise work in collaboration with, federal, state, local, tribal or private sector entities in pursuing Opioid Remediation activities funded from the CA Abatement Accounts Fund. Further, provided that all CA Abatement Accounts Funds are used for Opioid Remediation consistent with the Governing Documents and this Agreement, a county and



any cities or towns within the county may agree to reallocate their respective shares of the CA Abatement Accounts Funds among themselves, provided that any direct distribution may only be to a CA Participating Subdivision and any CA Participating Subdivision must agree to their share being reallocated.

### **iii. CA Abatement Accounts Fund Oversight**

- a) Pursuant to Section 5 below, CA Participating Subdivisions receiving funds pursuant to the Purdue Bankruptcy Plan and related Sackler settlement must prepare and file reports annually regarding the use of those funds. DHCS may regularly review the reports prepared by CA Participating Subdivisions about the use of CA Abatement Accounts Funds for compliance with the Governing Documents and this Agreement.
- b) If DHCS determines that a CA Participating Subdivision's use of CA Abatement Accounts Funds is inconsistent with the Governing Documents or this Agreement, whether through review of reports or information from any other sources, DHCS shall send a request to meet and confer with the CA Participating Subdivision. The parties shall meet and confer in an effort to resolve the concern.
- c) If the parties are unable to reach a resolution, DHCS may conduct an audit of the Subdivision's use of the CA Abatement Accounts Funds within one year of the request to meet and confer, unless the parties mutually agree in writing to extend the meet and confer time frame.
- d) If the concern still cannot be resolved, the State may bring a motion or action against the Subdivision in the court where the State has filed its Consent Judgment to resolve the concern or otherwise enforce the requirements of the Governing Documents or this Agreement. However, in no case shall any audit be conducted, or motion be brought, as to a specific expenditure of funds, more than five years after the date on which the expenditure of the funds was reported to DHCS, in accordance with this Agreement.
- e) Notwithstanding the foregoing, this Agreement does not limit the statutory or constitutional authority of any state or local agency or official to conduct audits, investigations, or other oversight activities, or to pursue administrative, civil, or criminal enforcement actions.

### **C. CA Subdivision Fund**

- i. Fifteen percent of the payments to California subject to this Agreement will be allocated to the CA Subdivision Fund. All funds in the CA Subdivision Fund will be allocated among the Plaintiff Subdivisions that are Initial Participating Subdivisions. The funds will be used, subject to any limits imposed by the Governing Documents and this Agreement, to fund future Opioid Remediation and reimburse past opioid-related expenses, which may include fees and expenses related to litigation.



However, in no event shall more than one-third (5% out of the 15%) be used for litigation-related fees and expenses.

#### **D. Provision for State Back-Stop Agreement**

On August 6, 2021, Judge Dan Polster of the U.S. District Court, Northern District of Ohio, Eastern Division, issued an order (ECF Docket Number 3814) (“MDL Fees Order”) in the National Prescription Opiate Litigation (MDL No. 2804) “cap[ping] all applicable contingent fee agreements at 15%.” Private counsel representing Plaintiff Subdivisions should seek its contingency fees and costs from the Local Government Costs and Expenses Fund pursuant to the Governing Documents, and if applicable, the Attorney Fee Fund or Cost Funds under the settlement agreements with other Opioid Defendants.

A Plaintiff Subdivision may separately agree to use up to one-third (5% out of the 15%) of its share of the CA Subdivision Fund to pay for fees or costs incurred by its contingency-fee counsel (“State Back-Stop Agreement”), pursuant to Exhibit R of the GESA and the MDL Fees Order, so long as: (1) such payments, together with any payments to contingency-fee counsel from the Local Government Costs and Expenses Fund related to such Plaintiff Subdivision, do not exceed 15% of a Plaintiff Subdivision’s total gross recovery under this Agreement; and (2) Plaintiff Subdivision certifies that any payments made under a State Back-Stop Agreement will be made in accordance with the 95% Opioid Abatement use requirements under Section 5.02(a) of the GESA and Section 4.01(f)(i) of the MSA. Before seeking fees or litigation costs and expenses from a State Back-Stop Agreement, private counsel representing Plaintiff Subdivisions must first seek contingency fees and costs from the Local Government Costs and Expenses Fund funded pursuant to the Governing Documents. Further, private counsel may only seek reimbursement for litigation fees and costs that have not previously been reimbursed through prior settlements or judgments.

To effectuate a State Back-Stop Agreement pursuant to this section, an agreement in the form of Appendix 2 may be entered into by a Plaintiff Subdivision, private counsel, and the California Office of the Attorney General. The California Office of the Attorney General shall, upon the request of a Plaintiff Subdivision, execute any agreement executed by a Plaintiff Subdivision and its private counsel if it is in the form of Appendix 2. The California Office of the Attorney General will also consider requests from Plaintiff Subdivisions to execute and enter into agreements presented in other forms.

For the avoidance of doubt, this Agreement does not require a Plaintiff Subdivision to request or enter into a State Back-Stop Agreement, and no State Back-Stop Agreement shall impose any duty or obligation on the State of California or any of its agencies or officers, including without limitation the Attorney General.





## **5. State and Subdivision Reporting**

- a) DHCS will prepare an annual written report regarding the State's use of funds from the settlement until those funds are fully expended and for one year thereafter. These reports will be made publicly available on the DHCS web site.
- b) Each CA Participating Subdivision that receives payments of funds from the Purdue Bankruptcy Plan and related Sackler settlement will prepare written reports at least annually regarding the use of those funds, until those funds are fully expended and for one year thereafter. These reports will also include a certification that all funds that the CA Participating Subdivision has received through the Purdue Bankruptcy Plan and related Sackler settlement have been used in compliance with the Governing Documents and this Agreement. The report will be in a form reasonably determined by DHCS. Prior to specifying the form of the report DHCS will confer with representatives of the Plaintiff Subdivisions.
- c) The State and all CA Participating Subdivisions receiving CA Abatement Accounts Funds will track all deposits and expenditures. Each such subdivision is responsible solely for the CA Abatement Accounts Funds it receives. A county is not responsible for oversight, reporting, or monitoring of CA Abatement Accounts Funds received by a city within that county that receives direct payment. Unless otherwise exempt, Subdivisions' expenditures and uses of CA Abatement Accounts Funds and other payments will be subject to the normal budgetary and expenditure process of the Subdivision.
- d) Each Plaintiff Subdivision receiving CA Subdivision Funds will track all deposits and expenditures, as required by the Governing Documents and this Agreement. Among other things, Plaintiff Subdivisions using monies from the CA Subdivision Fund for purposes that do not qualify as Opioid Remediation must identify and include in their annual report, the amount and how such funds were used, including if used to pay attorneys' fees, investigation costs, or litigation costs. Pursuant to Section 5.02(b) of the GESA and Section 4.01(f)(ii) of the MSA, such information must also be reported to the Settlement Administrator and Sackler Parties' Representative.
- e) In each year in which DHCS prepares an annual report DHCS will also host a meeting to discuss the annual report and the Opioid Remediation activities being carried out by the State and Participating Subdivisions.

## **6. Miscellaneous**

- a) The State or any CA Participating Subdivision may bring a motion or action in the court where the State has filed its Consent Judgment to enforce the requirements of this California Purdue/Sackler State-Subdivision Agreement. Before filing such a motion or action the State will meet and confer with any CA Participating Subdivision that is the subject of the anticipated motion or action, and vice versa.





- b) Except as provided in the Governing Documents, this California Purdue/Sackler State-Subdivision Agreement is not enforceable by any party other than the State and the CA Participating Subdivisions. It does not confer any rights or remedies upon, and shall not be enforceable by, any third party.
- c) Except as provided in this Agreement, if any provision of this Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby, and each other provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.
- d) Except as provided in the Governing Documents, this Agreement shall be governed by and interpreted in accordance with the laws of California.



The undersigned, Santa Barbara County, CA, ACKNOWLEDGES acceptance of this Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Purdue/Sackler Settlement is a requirement to be an Initial Participating Subdivision and ACCEPTS this Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds - Purdue/Sackler Settlement.

I swear under penalty of perjury that I have all necessary power and authorization to execute this agreement on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

