

BARRON COUNTY RESOLUTION NO. 2023 - 11

Authorizing Barron County to Enter Into the Settlement Agreements with Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Walgreen Co., Walmart, Inc., CVS Health Corporation and CVS Pharmacy, Inc., Agree to the Terms of the Addendum to the MOU Allocating Settlement Proceeds, and Authorize Entry Into the MOU with the Attorney General

TO THE BARRON COUNTY BOARD OF SUPERVISORS:

1 **WHEREAS**, the County Board of Supervisors previously authorized the County to enter
2 into an engagement agreement with von Briesen & Roper, s.c., Crueger Dickinson LLC and
3 Simmons Hanly Conroy LLC (the “Law Firms”) to pursue litigation against certain manufacturers,
4 distributors, and retailers of opioid pharmaceuticals (the “Opioid Defendants”) in an effort to hold
5 the Opioid Defendants financially responsible for the County’s expenditure of vast money and
6 resources to combat the opioid epidemic;

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8 **WHEREAS**, on behalf of the County, the Law Firms filed a lawsuit against the Opioid
9 Defendants;

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11 **WHEREAS**, the Law Firms filed similar lawsuits on behalf of 66 other Wisconsin counties
12 and all Wisconsin cases were coordinated with thousands of other lawsuits filed against the same
13 or substantially similar parties as the Opioid Defendants in the Northern District of Ohio, captioned
14 *In re: Opioid Litigation*, MDL 2804 (the “Litigation”);

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16 **WHEREAS**, four (4) additional Wisconsin counties (Milwaukee, Dane, Waukesha, and
17 Walworth) hired separate counsel and joined the Litigation;

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19 **WHEREAS**, since the inception of the Litigation, the Law Firms have coordinated with
20 counsel from around the country (including counsel for Milwaukee, Dane, Waukesha, and
21 Walworth Counties) to prepare the County’s case for trial and engage in extensive settlement
22 discussions with the Opioid Defendants;

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24 **WHEREAS**, the settlement discussions with Teva Pharmaceutical Industries Ltd.,
25 Allergan Finance, LLC, Walgreen Co., Walmart, Inc., CVS Health Corporation and CVS
26 Pharmacy, Inc.. (the “Settling Defendants”) resulted in a tentative agreement as to settlement terms
27 pending agreement from the County and other plaintiffs involved in the Litigation;

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29 **WHEREAS**, copies of the various settlement agreements relating to the Settling
30 Defendants (collectively “Settlement Agreements”) representing the terms of the tentative
31 settlement agreements with the Settling Defendants have been provided with this Resolution;

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33 **WHEREAS**, the Settlement Agreements provide, among other things, for the payment of
34 certain sums to Participating Subdivisions (as defined in the Settlement Agreements) upon the
35 occurrence of certain events detailed in the Settlement Agreements;

36
37 **WHEREAS**, the County is a Participating Subdivision in the Settlement Agreements and
38 has the opportunity to participate in the benefits associated with the Settlement Agreement

provided the County (a) approves the Settlement Agreements; (b) approves the Memorandum of Understanding allocating proceeds from the Settlement Agreements among the various Wisconsin Participating Subdivisions, a copy of which is attached to this Resolution (the "Allocation MOU"); (c) approves the Memorandum of Understanding with the Wisconsin Attorney General regarding allocation of settlement proceeds, a copy of which is attached to this Resolution (the "AG MOU"); and (d) the Legislature's Joint Committee on Finance approves the terms of the Settlement Agreements and the AG MOU;

WHEREAS, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin Statutes relating to the settlement of all or part of the Litigation;

WHEREAS, pursuant to Wis. Stat. § 165.12(2), the Legislature's Joint Committee on Finance is required to approve the Settlement Agreements and the AG MOU;

WHEREAS, pursuant to Wis. Stat. § 165.12(2), the proceeds from any settlement of all or part of the Litigation are distributed 70% to local governments in Wisconsin that are parties to the Litigation and 30% to the State;

WHEREAS, Wis. Stat. § 165.12(4)(b)2. provides the proceeds from the Settlement Agreement must be deposited in a segregated account (the "Opioid Abatement Account") and may be expended only for approved uses for opioid abatement as provided in the Settlement Agreements;

WHEREAS, Wis. Stat. § 165.12(7) bars claims from any Wisconsin local government against the Opioid Defendants filed after June 1, 2021;

WHEREAS, the definition of Participating Subdivisions in the Settlement Agreements recognizes a statutory bar on claims such as that set forth in Wis. Stat. § 165.12(7) and, as a result, the only Participating Subdivisions in Wisconsin are those counties and municipalities that were parties to the Litigation (or otherwise actively litigating a claim against one, some, or all of the Opioid Defendants) as of June 1, 2021;

WHEREAS, the Legislature's Joint Committee on Finance is not statutorily authorized or required to approve the allocation of proceeds of the Settlement Agreements among Wisconsin Participating Subdivisions;

WHEREAS, the Law Firms have engaged in extensive discussions with counsel for all other Wisconsin Participating Subdivisions resulting in the proposed Allocation MOU, which is an agreement between all of the entities identified in the Allocation MOU as to how the proceeds payable to those entities under the Settlement Agreements will be allocated;

WHEREAS, the proposed Addendum to the MOU ("Addendum") provided with this Resolution provides for allocation of settlement proceeds among the Wisconsin Participating Subdivisions according to the same percentages as that provided in the previously-approved MOU allocating the settlement proceeds of the settlements involving McKesson Corporation, Cardinal

84 Health, Inc., AmerisourceBergen Corporation, Johnson & Johnson, Janssen Pharmaceuticals, Inc.,
85 Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.;

86
87 **WHEREAS**, there is provided with this Resolution a summary of the essential terms of
88 the Settlement Agreements, the deadlines related to the effective dates of the Settlement
89 Agreements, the ramifications associated with the County's refusal to enter into the Settlement
90 Agreements, the form of the Addendum, the form of the AG MOU, and an overview of the process
91 for finalizing the Settlement Agreements;

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93 **WHEREAS**, the County, by this Resolution, shall deposit the proceeds of the Settlement
94 Agreements consistent with the terms of this Resolution and Wis. Stat. § 165.12(4)(b);

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96 **WHEREAS**, pursuant to the County's engagement agreement with the Law Firms, the
97 County shall pay up to an amount equal to 25% of the proceeds from successful resolution of all
98 or part of the Litigation, whether through settlement or otherwise, plus the Law Firms' costs and
99 disbursements, to the Law Firms as compensation for the Law Firms' efforts in the Litigation and
100 any settlement;

101
102 **WHEREAS**, the Law Firms anticipate making application to the national fee fund
103 established in the Settlement Agreements seeking payment, in whole or part, of the fees, costs, and
104 disbursements owed the Law Firms pursuant to the engagement agreement with the County;

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106 **WHEREAS**, it is anticipated the amount of any award from the fee fund established in the
107 Settlement Agreements will be insufficient to satisfy the County's obligations under the
108 engagement agreement with the Law Firms;

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110 **WHEREAS**, the County, by this Resolution, and pursuant to the authority granted the
111 County in the applicable Order emanating from the Litigation in relation to the Settlement
112 Agreements and payment of attorney fees, shall authorize and direct the escrow agent responsible
113 for the receipt and distribution of the proceeds from the Settlement Agreements to establish an
114 account for the purpose of segregating funds to pay the fees, costs, and disbursements of the Law
115 Firms owed by the County (the "Attorney Fees Account") in order to fund a local "backstop" for
116 payment of the fees, costs, and disbursements of the Law Firms;

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118 **WHEREAS**, in no event shall payments to the Law Firms out of the Attorney Fees
119 Account and the fee fund established in the Settlement Agreements exceed an amount equal to
120 25% of the amounts allocated to the County in the Addendum;

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122 **WHEREAS**, the intent of this Resolution is to authorize the County to enter into the
123 Settlement Agreements, the Addendum, and the AG MOU, establish the County's Opioid
124 Abatement Account, and establish the Attorney Fees Account; and

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126 **WHEREAS**, the County, by this Resolution, shall authorize the County's corporation
127 counsel to finalize and execute any escrow agreement and other document or agreement necessary
128 to effectuate the Settlement Agreements and the other agreements referenced herein;

130 **NOW, THEREFORE, BE IT RESOLVED:** the County Board of Supervisors hereby
131 approves:

- 132
- 133 1. The execution of the Settlement Agreements and any and all documents ancillary
134 thereto and authorizes County Administrator Jeffrey S. French Sr. or designee to
135 execute same.
- 136 2. The final negotiation and execution of the Addendum in form substantially similar
137 to that presented with this Resolution and any and all documents ancillary thereto
138 and authorizes County Administrator Jeffrey S. French Sr., or designee to execute
139 same upon finalization provided the percentage share identified as allocated to the
140 County is substantially similar to that identified in the Addendum provided to the
141 Board with this Resolution.
- 142
- 143 3. The final negotiation and execution of the AG MOU in form substantially similar
144 to that presented with this Resolution and any and all documents ancillary thereto
145 and authorizes County Administrator Jeffrey S. French Sr. or designee to execute
146 same.
- 147
- 148 4. The execution by County Administrator Jeffrey S. French Sr. or designee of any
149 additional documents or agreements for the receipt and disbursement of the
150 proceeds of the Settlement Agreements as referenced in the Addendum.
- 151

152 **BE IT FURTHER RESOLVED:** all proceeds from the Settlement Agreements not
153 otherwise directed to the Attorney Fees Account shall be deposited in the County's Opioid
154 Abatement Account. The Opioid Abatement Account shall be administered consistent with the
155 terms of this Resolution, Wis. Stat. § 165.12(4), and the Settlement Agreements.

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157 **BE IT FURTHER RESOLVED:** the County hereby authorizes the establishment of an
158 account separate and distinct from any account containing funds allocated or allocable to the
159 County which shall be referred to by the County as the "Attorney Fees Account." An escrow agent
160 shall deposit a sum equal to up to, but in no event exceeding, an amount equal to 20% of the
161 County's proceeds from the Settlement Agreements into the Attorney Fees Account. If the
162 payments to the County are not enough to fully fund the Attorney Fees Account as provided herein
163 because such payments are made over time, the Attorney Fees Account shall be funded by placing
164 up to, but in no event exceeding, an amount equal to 20% of the proceeds from the Settlement
165 Agreements attributable to Local Governments (as that term is defined in the Allocation MOU)
166 into the Attorney Fees Account for each payment. Funds in the Attorney Fees Account shall be
167 utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to the
168 engagement agreement between the County and the Law Firms provided, however, the Law Firms
169 shall receive no more than that to which they are entitled under their fee contract when considering
170 the amounts paid the Law Firms from the fee fund established in the Settlement Agreements and
171 allocable to the County. The Law Firms may make application for payment from the Attorney
172 Fees Account at any time and the County shall cooperate with the Law Firms in executing any
173 documents necessary for the escrow agent to make payments out of the Attorney Fees Account.

175 **BE IT FURTHER RESOLVED** that all actions heretofore taken by the Board of
176 Supervisors and other appropriate public officers and agents of the County with respect to the
177 matters contemplated under this Resolution are hereby ratified, confirmed and approved.

Adopted by the Barron County Board of Supervisors this 20th day of March, 2023.

<p>Number of readings required: One (<input checked="" type="checkbox"/>) Two (<input type="checkbox"/>)</p> <p>Vote required for passage: Majority (<input checked="" type="checkbox"/>) 2/3 Entire Board (20) (<input type="checkbox"/>)</p> <p>Source of funding: Budgeted (<input type="checkbox"/>) General Fund (<input type="checkbox"/>) Grant (<input type="checkbox"/>) Contingency (<input type="checkbox"/>) Other (<input checked="" type="checkbox"/>) Details: Not Applicable</p> <p>Fiscal impact: - Current year total amount: \$ Unknown - Future years total amount: \$ Unknown - Effect on tax levy – current year - \$ Unknown - Effect on tax levy – future years - \$ Unknown</p> <p>Fiscal impact reviewed by County Finance Department</p> <p>_____ Jodi Busch, Finance Director</p> <p>Approved as to form by:</p> <p>_____ Jeffrey French, Administrator</p> <p>_____ John Muench, Corporation Counsel</p>	<p>_____ Louie Okey, Executive Committee Chair</p> <p>(The Committee Chair signature verifies the action taken by the Committee.)</p> <p>Board Action: Adopted (<input checked="" type="checkbox"/>) Failed (<input type="checkbox"/>) Tabled (<input type="checkbox"/>)</p> <p>Motion: (Buchanan/Heller) to approve. Administrator French and Chair Okey answered questions from the Board. Carried with 29 voting Yes.</p>
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