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From the Milwaukee County Office of Corporation Counsel, requesting approval of a resolution authorizing Milwaukee County to enter into certain Settlement Agreements with Teva Pharmaceutical Industries Ltd., Allergan Finance, LLC, Walgreen Co., Walmart, Inc., CVS Health Corporation and CVS Pharmacy, Inc.; to agree to the terms of the Addendum to the Memorandum of Understanding Allocating Settlement Proceeds; to establish an attorney fee account; and to authorize entry into a Memorandum of Understanding with the Attorney General of the State of Wisconsin, by recommending adoption of the following:

A RESOLUTION

WHEREAS, the Milwaukee County Board of Supervisors (County Board) authorized Milwaukee County (the County) to enter into an Engagement Agreement with Attolles Law, S.C.; Aiken & Scoptur, S.C.; Levin, Papantonio, Rafferty & Proctor; Buchanan, O'Brien, Barr, Mougey, PA; Green, Ketchum, Bailey & Twell, LLP; Baron & Budd, PC; Hill, Peterson, Carper, Bee & Deitzler, PLLC (collectively, the Law Firms), to pursue litigation against certain manufacturers, distributors, and retailers of opioid pharmaceuticals (collectively, the Opioid Defendants), in an effort to hold the Opioid Defendants financially responsible for the County's expenditure of vast money and resources to combat the opioid epidemic; and

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

WHEREAS, the Law Firms filed similar lawsuits on behalf of three other State of Wisconsin (the State) counties, and all State cases were coordinated with thousands of other lawsuits filed against the same, or substantially similar, parties as the Opioid Defendants in a case captioned *In re: Opioid Litigation*, Case No. MDL 2804, in the United States District Court for the Northern District of Ohio (the Litigation); and

WHEREAS, 66 additional State counties hired separate counsel and joined the Litigation; and

WHEREAS, since the commencement of the Litigation, the Law Firms have coordinated with counsel from around the country (including counsel for other State counties), to prepare the County's case for trial and engage in extensive settlement discussions with the Opioid Defendants; and

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

47 WHEREAS, copies of the Settlement Agreements with the Settling Defendants
48 (collectively, Settlement Agreements), containing the terms of the tentative Settlement
49 Agreements with the Settling Defendants, are available at nationalopioidsettlement.com;
50 and

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52 WHEREAS, the Settlement Agreements provide, among other things, for the
53 payment of certain sums to Participating Subdivisions (as defined in the Settlement
54 Agreements) upon the occurrence of certain events detailed in the Settlement
55 Agreements; and

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57 WHEREAS, the County is a Participating Subdivision in the Settlement
58 Agreements, and will participate in the benefits pursuant to the Settlement Agreements,
59 provided the following occurs: (a) the County Board approves (i) the terms of the
60 Settlement Agreements; (ii) the Addendum to the Memorandum of Understanding
61 (MOU) Allocating Settlement Proceeds, a copy of which is attached hereto as Exhibit A,
62 allocating proceeds from the settlement with the Settling Defendants among the State
63 Participating Subdivisions (the Allocation MOU Addendum); (iii) the MOU with the State
64 Attorney General regarding allocation of the settlement proceeds as between the State,
65 and the Participating Subdivisions in the State, a copy of which is attached hereto as
66 Exhibit B (the AG MOU); and (b) the State Legislature’s Joint Committee on Finance
67 approves the terms of the Settlement Agreements and the AG MOU; and

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69 WHEREAS, 2021 Wisconsin Act 57 created Section 165.12 of the Wisconsin
70 State Statutes (State Statutes) relating to the settlement of all or part of the Litigation;
71 and

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73 WHEREAS, pursuant to Section 165.12(2), State Statutes, the State
74 Legislature’s Joint Committee on Finance is required to approve the Settlement
75 Agreements and the AG MOU; and

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77 WHEREAS, pursuant to Section 165.12(2), State Statutes, the proceeds from
78 any settlement of all or part of the Litigation are distributed as 70 percent to local
79 governments in the State that are parties to the Litigation, and 30 percent to the State of
80 Wisconsin; and

81

82 WHEREAS, Section 165.12(4)(b)2, State Statutes, provides that the proceeds
83 from the Settlement Agreements must be deposited into a segregated account (the
84 Opioid Abatement Account), and may be expended only for approved uses for opioid
85 abatement as provided in the Settlement Agreements; and

86

87 WHEREAS, Section 165.12(7), State Statutes, bars claims by any State local
88 government against the Opioid Defendants filed after June 1, 2021; and

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90 WHEREAS, the definition of State Participating Subdivisions in the Settlement
91 Agreements recognizes a statutory bar on claims such as that set forth in Section
92 165.12(7), State Statutes, and, as a result, the only Participating Subdivisions in the
93 State are those counties and municipalities that were parties to the Litigation (or
94 otherwise actively litigating a claim against one, some, or all of the Opioid Defendants)
95 as of June 1, 2021; and
96

97 WHEREAS, the State Legislature’s Joint Committee on Finance is not statutorily
98 authorized or required to approve the allocation of proceeds of the Settlement
99 Agreements among State Participating Subdivisions; and
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101 WHEREAS, the Law Firms have engaged in extensive discussions with counsel
102 for all other State Participating Subdivisions resulting in the previously-approved
103 Allocation MOU (Allocation MOU), which is an agreement among those entities
104 identified therein allocating the settlement proceeds of the settlements involving
105 McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation,
106 Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen
107 Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.; and
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109 WHEREAS, the Allocation MOU Addendum provides for allocation of the
110 settlement proceeds from the Settling Defendants among the State Participating
111 Subdivisions, according to the same percentages as that provided in the Allocation
112 MOU; and
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114 WHEREAS, a summary of the essential terms of the Settlement Agreements, the
115 deadlines related to the effective dates of the Settlement Agreements, the ramifications
116 should the County fail to enter into the Settlement Agreements, the form of the
117 Allocation MOU Addendum, the form of the AG MOU, and an overview of the process
118 for finalizing the Settlement Agreements are included with the Resolution; and
119

120 WHEREAS, the County, by this Resolution, shall deposit the proceeds of the
121 settlement with the Settling Defendants, as set forth in the Settlement Agreements,
122 consistent with the terms of this Resolution and Section 165.12(4)(b), State Statutes;
123 and
124

125 WHEREAS, pursuant to the County’s engagement agreement with the Law
126 Firms, the County shall pay to the Law Firms an amount not-to-exceed 25 percent of the
127 proceeds from the successful resolution of all or part of the Litigation, whether through
128 settlement or otherwise, plus the Law Firms’ costs and disbursements, as compensation
129 for the Law Firms’ efforts in the Litigation and any settlement; and
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131 WHEREAS, the Law Firms anticipate making application to the national attorney
132 fee fund (National Attorney Fee Fund) established in the Settlement Agreements,
133 seeking payment, in whole or part, for the fees, costs, and disbursements owed the Law
134 Firms, pursuant to the engagement agreement with the County; and
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WHEREAS, it is anticipated that the amount of any award from the National Attorney Fee Fund established in the Settlement Agreements will be insufficient to satisfy the County's obligations under the engagement agreement with the Law Firms; and

WHEREAS, the County Board, by this Resolution, shall authorize and direct the escrow agent responsible for the receipt and distribution of the proceeds from the Settlement Agreements to establish an account, for the purpose of segregating funds to pay the fees, costs, and disbursements of the Law Firms owed by the County (the Attorney Fees Account) in order to fund a local backstop for payment of the fees, costs, and disbursements of the Law Firms; and

WHEREAS, in no event shall payments to the Law Firms out of the Attorney Fees Account, and the National Attorney Fee Fund exceed an amount equal to 25 percent of the amounts allocated to the County in the Allocation MOU Addendum, consistent with the engagement agreement between the County and the Law Firms; and

WHEREAS, the intent of this Resolution is to authorize the County to enter into the Settlement Agreements, the Allocation MOU Addendum, and the AG MOU, and establish the Attorney Fees Account; and

WHEREAS, the County Board, by this Resolution, shall authorize the Office of Corporation Counsel to finalize and execute any escrow agreement and other documents necessary to effectuate the Settlement Agreements and the other agreements referenced herein; and

WHEREAS, the Committee on Finance, at its meeting of April 13, 2023, recommended adoption of File No. 23-490 (vote 7-0); and

WHEREAS, the Committee on Judiciary, Law Enforcement, and General Services, at its special meeting of April 17, 2023, recommended adoption of File No. 23-490 (vote 4-0); now, therefore,

BE IT RESOLVED, the Milwaukee County Board of Supervisors (County Board) hereby approves the following:

1. The execution of the Settlement Agreements and any and all documents ancillary thereto, and the authorization for Corporation Counsel, or her designee, to execute the same.

2. The execution of the Allocation Memorandum of Understanding (MOU) Addendum in a form substantially similar to Exhibit A attached hereto, and the authorization for Corporation Counsel, the Office of Corporation Counsel (Corporation Counsel), or her designee, to execute the same.

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3. The final negotiation and execution of the AG MOU in a form substantially similar to Exhibit B attached hereto, and any and all documents ancillary thereto, and authorizes Corporation Counsel, or her designee, to execute same.

4. The execution by Corporation Counsel, or her designee, of any additional documents or agreements for the receipt and disbursement of the proceeds of the Settlement Agreements as referenced in the Allocation MOU Addendum. ; and

BE IT FURTHER RESOLVED, the County Board hereby authorizes the establishment of the Attorney Fees Account. An escrow agent shall deposit a sum not-to-exceed an amount equal to 20 percent of Milwaukee County's (the County) proceeds from the Settlement Agreements into the Attorney Fees Account. If the payments to the County are not enough to fully fund the Attorney Fees Account as provided herein because such payments are made over time, the Attorney Fees Account shall be funded by placing up to, but in no event exceeding, an amount equal to 20 percent of the proceeds from the Settlement Agreements attributable to the County into the Attorney Fees Account for each payment. Funds in the Attorney Fees Account shall be utilized to pay the fees, costs, and disbursements owed to the Law Firms pursuant to the engagement agreement with the Law Firms provided, however, the Law Firms shall receive no more than that to which they are entitled under the engagement agreement with the County, when considering the amounts paid the Law Firms from the fee fund established in the Settlement Agreements, and allocable to the County. The Law Firms may submit an application for payment from the Attorney Fees Account at any time, and the County shall cooperate with the Law Firms in executing any documents necessary for the escrow agent to make payments out of the Attorney Fees Account. ; and

BE IT FURTHER RESOLVED, all proceeds from the Settlement Agreements not otherwise directed to the Attorney Fees Account shall be deposited in the previously-established Opioid Abatement Account, consistent with Section 165.12(4), Wisconsin State Statutes, and the Settlement Agreements. ; and

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

Adopted by the Milwaukee County Board of Supervisors this ____ day of _____, 2023.

County Clerk

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04/17/2023
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