

STATE OF TEXAS, § IN THE DISTRICT COURT OF  
§  
Plaintiff, §  
§  
v. §  
§  
AMERISOURCEBERGEN § TRAVIS COUNTY, TEXAS  
CORPORATION; §  
MCKESSON CORPORATION; and §  
CARDINAL HEALTH, INC., §  
§  
Defendants. § 459th JUDICIAL DISTRICT

The Parties intend the terms of the Texas Agreement to parallel the terms of the Global Agreement. As set forth in the Texas Agreement, if the Global Agreement becomes effective by

July 1, 2022, its terms will supersede the terms of the Texas Agreement except for Section III.B (Dismissal of Claims), Section VIII (Plaintiffs’ Attorneys’ Fees and Costs), Section X (Release), and Section XIV.D (No Admission). Because the Global Agreement became effective as of April 2, 2022, its terms supersede the Texas Agreement except for Section III.B, Section VIII, Section X, and Section XIV.D.

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

**I. RECITALS**

A. Plaintiff State of Texas filed an Original Petition (the “Petition”) complaining of Defendants’ alleged violations of the Texas Deceptive Trade Practices—Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 (“DTPA”) and for negligently and/or intentionally creating a public nuisance.

B. Subdivisions and Special Districts in Texas also filed complaints for damages and other relief.

C. This Court has jurisdiction over the subject matter of the Action and over the Parties.

D. The terms of this Judgment shall be governed by the laws of the State of Texas.

E. The Settling Distributors deny the allegations against them and that they have any liability whatsoever to the State, its Subdivisions, and/or (a) any of the State’s or Subdivisions’ departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other

Special Districts, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public.

F. Plaintiff State of Texas has determined that the Agreements are in the public interest.

G. Each Party warrants and represents that it engaged in arm's-length negotiations in good faith. In hereby executing the Agreements, the Parties intend to effect a good-faith settlement.

H. The Parties recognize that the outcome of the Action is uncertain and a final resolution through the adversarial process likely will require protracted litigation.

I. Therefore, without any admission of liability or wrongdoing by Settling Distributors or any other Released Entities, the Parties now mutually desire to consent to the entry of this Judgment and agree to dismissal of the claims with prejudice pursuant to the terms of the Agreements to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation. Attached as Exhibits E, F, and G are signed certifications by the Settling Distributors of their intent to proceed with the Global Agreement.

## **II. AGREEMENT**

In consideration of the mutual promises, terms, and conditions set forth in the Agreements, the adequacy of which is hereby acknowledged by all Parties, it is agreed by and between Settling Distributors and the State, and adjudicated by the Court, as follows:

1. The foregoing Recitals are incorporated herein and constitute express terms of this Judgment.

2. The Parties have entered into a full and final settlement of all Released Claims of Releasors against the Settling Distributors (including but not limited to the State) and the Released

Entities pursuant to the terms and conditions set forth in the Agreements. Attached as Exhibits E, F, and G are signed certifications by the Settling Distributors of their intent to proceed with the Global Agreement.

3. The “Definitions” set forth in Section I of the Global Agreement are incorporated by reference into this Judgment. The State is a “Settling State” within the meaning of the Global Agreement. Unless otherwise defined herein, capitalized terms in this Judgment shall have the same meaning given to them in the Global Agreement, or, if not defined in the Global Agreement, the same meanings they have in the Texas Agreement.

4. The Parties agree that the Court has jurisdiction over the subject matter of the Action and over the Parties with respect to the Action and this Judgment. This Judgment shall not be construed or used as a waiver of any jurisdictional defense the Settling Distributors or any other Released Entity may raise in any other proceeding.

5. The Court finds that the Agreements were entered into in good faith.

6. The Court finds that entry of this Judgment is in the public interest and reflects a negotiated settlement agreed to by the Parties. The Action is dismissed with prejudice, subject to a retention of jurisdiction by the Court as provided herein and in the Agreements.

7. By this Judgment, the Agreements are hereby approved by the Court, and the Court hereby adopts their terms as its own determination of this matter and the Parties’ respective rights and obligations. The Court recognizes that, as set forth in the Texas Agreement, because the Global Agreement became effective before July 1, 2022, its terms supersede the terms of the Texas Agreement except for Section III.B (Dismissal of Claims), Section VIII (Plaintiffs’ Attorneys’ Fees and Costs), Section X (Release), and Section XIV.D (No Admission).



8. The Court shall have authority to resolve disputes identified in Section VI.F.1 of the Global Agreement, governed by the rules and procedures of the Court.

9. By this Judgment, the Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet, a copy of which is attached hereto as Exhibit C and as incorporated into the Global Agreement pursuant to Exhibit O, is hereby approved by the Court as the means by which relevant funds paid pursuant to the Global Agreement will be divided within the State, subject to the full acceptance by any Subdivision receiving such funds of the terms of the Global Agreement, including the releases provided therein.

10. The Parties have satisfied the Condition to Effectiveness of Agreement set forth in Section III of the Texas Agreement and the Release set forth in Sections X.A, E, and F of the Texas Agreement, as follows:

- a. The Attorney General of the State of Texas has exercised the fullest extent of his powers to release the Settling Distributors and all other Released Entities from all Released Claims pursuant to the release attached hereto as Exhibit D (the “*AG Release*”).
- b. The Attorney General of the State of Texas has secured the releases specified in Section X.F. of the Texas Agreement.
- c. No later than February 18, 2022, all Texas Litigating Subdivisions with a population of at least 500,000 (as set forth in Exhibit T) submitted the Participation Forms necessary to become a Participating Subdivision as detailed in Section IV of the Texas Agreement and will become Participating Subdivisions upon dismissal of their claims. Copies of the Texas Participation Forms for such Subdivisions were

delivered to the Settling Distributors by that date and held in escrow until the Effective Date of the Texas Agreement.

- d. No later than March 10, 2022, at least 96% of the Texas Litigating Subdivisions, as measured by population, submitted the Participation Forms necessary to become a Participating Subdivision as detailed in Section IV of the Texas Agreement and will become Participating Subdivisions upon dismissal of their claims. Copies of the Texas Participation Forms for such Subdivisions were delivered to the Settling Distributors by that date and held in escrow until the Effective Date of the Texas Agreement.

11. The Parties have satisfied the Condition to Effectiveness of Agreement set forth in Section VIII of the Global Agreement and the Release set forth in Sections XI.A, F, and G of the Agreement, as follows:

- a. The Attorney General of the State exercised the fullest extent of his or her powers to release the Settling Distributors and all other Released Entities from all Released Claims pursuant to the AG Release attached hereto as Exhibit D.
- b. The Settling Distributors have determined that there is sufficient State participation and sufficient resolution of the Claims of the Litigating Subdivisions in the Settling States to proceed with the Agreements.
- c. The Participation Form for each Initial Participating Subdivision in the State has been delivered to the Settling Distributors. As stated in the Participation Form, and for the avoidance of doubt, nothing in the Participation Form executed by the Participating Subdivisions is intended to modify in any way the terms of the Global Agreement and/or a non-superseded term of the Texas Agreement to which the

Participating Subdivisions agree. As stated in the Participation Form, to the extent the executed version of the Participation Form differs from the Global Agreement and/or from a non-superseded term of the Texas Agreement in any respect, the Global Agreement and/or non-superseded term of the Texas Agreement controls.

- d. Pursuant to Section VII.C of the Global Agreement, each Participating Subdivision in the State is dismissing with prejudice any Released Claims that it has filed against the Settling Distributors and the Released Entities.

12. Release. The Parties acknowledge that the AG Release, which is incorporated by reference herein, is an integral part of this Judgment. Pursuant to the Agreements and the AG Release, and without limitation and to the maximum extent of the power of the State's Attorney General, the Settling Distributors and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (a) the State and its Participating Subdivisions and any of their departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind, and attorneys, including the State's Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing, and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Special Districts in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or any Subdivision in the State, whether or not any of them participate in the Agreements. Pursuant to the Agreements and the AG Release and to the maximum extent of the State's power, the Settling Distributors and the other Released Entities are, as of the Effective

Date, hereby released from any and all Released Claims of (1) the State, (2) all past and present executive departments, state agencies, divisions, boards, commissions, and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions, and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Further, the provisions set forth in Section X of the Texas Agreement are incorporated by reference into this Judgment as if fully set forth herein. The Parties acknowledge, and the Court finds, that those provisions are an integral part of the Agreements and this Judgment and shall govern the rights and obligations of all participants in the settlement. Any modification of those rights and obligations may be made based only on a writing signed by all affected parties and approved by the Court.

13. Release of Unknown Claims. The State expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

14. The State may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State expressly waived and fully, finally, and forever settled, released, and discharged, through the Agreements

and AG Release, any and all Released Claims that may exist as of the Effective Date but which the State does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or through no fault whatsoever, and which, if known, would have materially affected the State's decision to enter into the Agreements.

15. Costs and Fees. The Parties will bear their own costs and attorneys' fees except as otherwise provided in the Agreements.

16. No Admission of Liability. The Settling Distributors are consenting to this Judgment solely for the purpose of effectuating the Agreements, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which the Settling Distributors expressly deny. None of the Settling Distributors or any other Released Entity admits that it caused or contributed to any public nuisance, and none of the Settling Distributors or any other Released Entity admits any wrongdoing that was or could have been alleged by the State, its Participating Subdivisions, or any other person or entity. No part of this Judgment shall constitute evidence of any liability, fault, or wrongdoing by the Settling Distributors or any other Released Entity. The Parties acknowledge that payments made under the Agreements are not a fine, penalty, or payment in lieu thereof, and are properly characterized as described in Section V.F of the Global Agreement.

17. No Waiver. This Judgment is entered based on the Agreements without trial or adjudication of any contested issue of fact or law or finding of liability of any kind. This Judgment shall not be construed or used as a waiver of any Settling Distributor's right, or any other Released Entity's right, to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, or class claims or suits relating to the subject matter or terms of this Judgment.

Notwithstanding the foregoing, the State may enforce the terms of this Judgment as expressly provided in the Agreements.

18. No Private Right of Action. This Judgment is not intended for use by any third party for any purpose, including submission to any court for any purpose, except pursuant to Section VI.A of the Global Agreement. Except as expressly provided in the Agreements, no portion of the Agreements or this Judgment shall provide any rights to, or be enforceable by, any person or entity that is not a Settling State or Released Entity. The State shall allow Participating Subdivisions in the State to notify it of any perceived violations of the Agreements or this Judgment. No Settling State, including the State of Texas, may assign or otherwise convey any right to enforce any provision of the Agreements.

19. Admissibility. It is the intent of the Parties that this Judgment not be admissible in other cases against the Settling Distributors or binding on the Settling Distributors in any respect other than in connection with the enforcement of this Judgment or the Agreements. For the avoidance of doubt, nothing herein shall prohibit a Settling Distributor from entering this Judgment or the Agreements into evidence in any litigation or arbitration concerning (1) a Settling Distributor's right to coverage under an insurance contract or (2) the enforcement of the releases provided for by the Agreements and this Judgment.

20. Preservation of Privilege. Nothing contained in the Agreements or this Judgment, and no act required to be performed pursuant to the Agreements or this Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, or common interest/joint defense privilege, and each Party agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

21. Mutual Interpretation. The Parties agree and stipulate that the Agreements were negotiated on an arm's-length basis between parties of equal bargaining power and was drafted jointly by counsel for each Party. Accordingly, the Agreements are incorporated herein by reference and shall be mutually interpreted and not construed in favor of or against any Party, except as expressly provided for in the Agreements.

22. Injunctive Relief. The Parties have agreed to the injunctive relief set forth in Exhibit P to the Global Agreement.

23. Retention of Jurisdiction. The Court shall retain jurisdiction of the Parties for the limited purpose of the resolution of disputes identified in Section VI.F.1 of the Global Agreement. The Court shall have jurisdiction over Participating Subdivisions in the State for the limited purposes as identified in the Agreements.

24. Successors and Assigns. This Judgment is binding on each of the Settling Distributor's successors and assigns.

25. Modification. This Judgment shall not be modified (by the Court, by any other court, or by any other means) without the consent of the State and the Settling Distributors, or as provided for in Section XIV.U of the Global Agreement.

SIGNED this 29<sup>th</sup> day of April, 2022.

  
JUDGE PRESIDING

MAYA GUERRA GAMBLE  
459<sup>th</sup> DISTRICT COURT

**AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:**

KEN PAXTON  
Attorney General of Texas

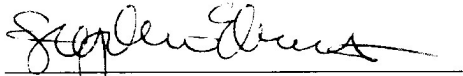
BRENT WEBSTER  
First Assistant Attorney General

GRANT DORFMAN  
Deputy First Assistant Attorney General

LESLEY FRENCH  
Chief of Staff

SHAWN E. COWLES  
Deputy Attorney General for Civil Litigation

STEVEN ROBINSON  
Chief, Consumer Protection Division



STEPHANIE EBERHARDT  
Assistant Attorney General  
State Bar No. 24084728  
Office of the Attorney General  
Consumer Protection Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
Phone: (512) 463-1308  
Facsimile: (512) 463-8301  
Email: Stephanie.Eberhardt@oag.texas.gov

**ATTORNEYS FOR PLAINTIFF  
STATE OF TEXAS**

**AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:**

By: /s/ Stan Perry  
Stan Perry  
State Bar No. 15799920  
sperry@reedsmith.com  
Nicole S. Soussan  
State Bar No. 24079371



nsoussan@reedsmith.com  
Emma L. Short  
State Bar No. 24101001  
eshort@reedsmith.com  
Reed Smith LLP  
811 Main Street, Suite 1700  
Houston, Texas 77002  
Telephone: 713.469.3800  
Facsimile: 713.469.3899

**Attorneys for Defendant AmerisourceBergen Corporation**

By: /s/ Michael W. Mengis  
Michael W. Mengis, attorney-in-charge  
State Bar No. 13941040  
mmengis@bakerlaw.com  
Matt R. Raley  
State Bar No. 24051224  
mraley@bakerlaw.com  
BAKER & HOSTETLER LLP  
811 Main Street, Suite 1100  
Houston, Texas 77002  
Phone: 713-751-1600  
Fax: 713-751-1717

**Attorneys for Defendant Cardinal Health Inc.**

/s/ Craig Smyser  
Craig Smyser  
Texas Bar No. 18777575  
csmyser@skv.com  
David Isaak  
Texas Bar No. 24012887  
disaak@skv.com  
Crystal Robles  
Texas Bar No. 24083754  
crobles@skv.com  
Smyser Kaplan & Veselka, L.L.P.  
717 Texas Avenue, Suite 2800  
Houston, Texas 77002  
Phone: 713-221-2300  
Fax: 713-221-2320

**Attorney for Defendant McKesson Corporation**