



ORIGINAL

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FILED
Clerk of District Court
AUG 16 2022

By ANGIE SPARKS, Clerk

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

STATE OF MONTANA,

Plaintiff,

v.

JOHNSON & JOHNSON;
JANSSEN PHARMACEUTICALS,
INC.; ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC.; and
JANSSEN PHARMACEUTICA,
INC.,

Defendants.

)
) Case No. ADV 2022-637

)
) **CONSENT JUDGMENT**

)
) **MIKE MENAHAN**
) **PRESIDING JUDGE**

FINAL CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE

The State of Montana ("*State*") and Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, "*Janssen*" or "*Defendants*") (together with the State, the "*Parties*," and each a "*Party*") have entered into a consensual resolution of the above-captioned litigation (the "*Action*") pursuant to a settlement agreement entitled Janssen Settlement Agreement, dated as of July 21, 2021 (as subsequently

updated) (the “*Agreement*”), a copy of which is attached hereto as Exhibit A. The Agreement shall become effective by its terms upon the entry of this Final Consent Judgment (the “*Judgment*”) by the Court without trial or adjudication of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

RECITALS:

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

2. The State has determined that the Agreement is in the public interest.

3. Janssen denies the allegations against it and that it has 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.

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

5. The Parties agree to the entry of the injunctive relief terms pursuant to Exhibit P of the Agreement.

6. Therefore, without any admission of liability or wrongdoing by Janssen or any other Released Entities (as defined in the Agreement), the Parties now mutually consent to the entry of this Judgment and agree to dismissal of the claims with prejudice pursuant to the terms of the Agreement to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

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

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

2. The Parties have entered into a full and final settlement of all Released Claims of Releasers against Janssen (including but not limited to the State) and the Released Entities pursuant to the terms and conditions set forth in the Agreement.

3. The "Definitions" set forth in Section I of the Agreement are incorporated by reference into this Judgment. The State is a "Settling State" within

the meaning of the Agreement. Unless otherwise defined herein, capitalized terms in this Judgment shall have the same meaning given to them in the 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 Janssen or any other Released Entity may raise in any other proceeding.

5. The Court finds that the Agreement was 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 Agreement.

7. By this Judgment, the Agreement is hereby approved by the Court, and the Court hereby adopts the Agreement's terms as its own determination of this matter and the Parties' respective rights and obligations.

8. The Court shall have authority to resolve disputes identified in Section XII.F.2 of the Agreement, governed by the rules and procedures of the Court.

9. By this Judgment, the Montana Distributor's and Janssen Opioids Settlement Memorandum of Understanding, a copy of which is attached hereto as Exhibit A and as incorporated into the Agreement pursuant to Exhibit O of the Agreement, is hereby approved by the Court as the means by which relevant funds paid pursuant to the Agreement will be divided within the State, subject to the full

acceptance by any Subdivision receiving such funds of the terms of the Agreement, including the releases provided therein.

10. The Parties have satisfied the Condition to Effectiveness of Agreement set forth in Section VIII of the Agreement and the Release set forth in Sections IV.A, D, and E of the Agreement, as follows:

- a. The Attorney General of the State exercised the fullest extent of his or her powers to release Janssen and all other Released Entities from all Released Claims pursuant to the release attached hereto as Exhibit B (the "*Release*").
- b. Janssen has 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 Agreement.
- c. The Settlement Participation Form for each Initial Participating Subdivision in the State has been delivered to Janssen. As stated in the Settlement Participation Form, and for the avoidance of doubt, nothing in the Settlement Participation Form executed by the Participating Subdivisions is intended to modify in any way the terms of the Agreement to which the Participating Subdivisions agree. As stated in the Settlement Participation Form, to the extent the executed version of the Settlement Participation Form differs from the Agreement in any respect, the Agreement controls.
- d. Pursuant to the Settlement Participation Form, each Participating Subdivision in the State is dismissing with prejudice any Released Claims that it has filed against Janssen and the Released Entities.

11. Release. The Parties acknowledge that the Release, which is incorporated by reference herein, is an integral part of this Judgment. Pursuant to the Agreement and the Release and without limitation and to the maximum extent of the power of the State's Attorney General, Janssen 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, water districts, law enforcement districts, emergency services districts, school districts, hospital 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 Agreement. Pursuant to the Agreement and the Release and to the maximum extent of the State's power, Janssen 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, (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, and (4) any Participating Subdivision. 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 IV of the 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 Agreement 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.

12. 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.

13. 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 Agreement and 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 Agreement.

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

15. No Admission of Liability. Defendants are consenting to this Judgment solely for the purpose of effectuating the Agreement, 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 Defendants expressly deny. No Defendant or Released Entity admits that it caused or contributed to any public nuisance, and no Defendant or Released Entity admits any wrongdoing that was or could have been alleged by the State, its Participating Subdivisions and/or Participating Special Districts, or any other person or entity. No part of this Judgment shall constitute evidence of any liability, fault, or wrongdoing by Defendants or any other Released Entity. The Parties acknowledge that payments made under the Agreement are not a fine, penalty, or payment in lieu thereof and are properly characterized as described in Section VI.F of the Agreement.

16. No Waiver. This Judgment is entered based on the Agreement 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 Janssen'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 Agreement.

17. 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 XII.A of the Agreement. Except as expressly provided in the Agreement, no portion of the Agreement 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 Agreement or this Judgment. No Settling State, including the State, may assign or otherwise convey any right to enforce any provision of the Agreement.

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

19. Preservation of Privilege. Nothing contained in the Agreement or this Judgment, and no act required to be performed pursuant to the Agreement 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.

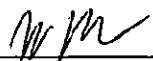
20. Mutual Interpretation. The Parties agree and stipulate that the Agreement was negotiated on an arm's-length basis between parties of equal bargaining power and was drafted jointly by counsel for each Party. Accordingly, the Agreement is incorporated herein by reference and shall be mutually interpreted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

21. Retention of Jurisdiction. The Court shall retain jurisdiction of the Parties for the limited purpose of the resolution of disputes identified in Section XII.F.2 of the Agreement. The Court shall have jurisdiction over Participating Subdivisions in the State for the limited purposes identified in the Agreement.

22. Successors and Assigns. This Judgment is binding on Defendants' successors and assigns.

23. 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 Defendants, or as provided for in Section XIII.S of the Agreement.

Austin Knudsen
Montana Attorney General

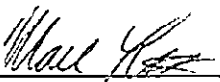
By: 

Joshua Pierson
Assistant Attorney General
Attorney for the State of Montana

Dated this 25th day of April, 2022.

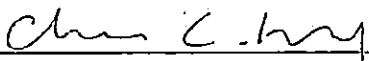
For the Janssen Defendants:

Date:

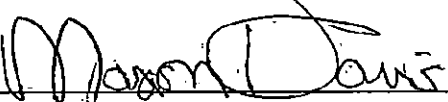
By: 
Marc Larkins
Assistant Corporate Secretary, Johnson & Johnson

Approved as to form:

Date:

By: 
Charles C. Lifland
O'Melveny & Myers
Counsel for Defendants

Date:

By: 
Maxon Davis
Davis, Hatley, Haffeman & Tighe, P.C.
Local Counsel for Defendants

APPROVAL BY COURT

APPROVED FOR FILING and SO ORDERED this 16th day of August, 2022.

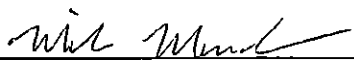

DISTRICT COURT JUDGE
Montana First Judicial District

Exhibit A

**MONTANA DISTRIBUTORS' AND JANSSEN OPIOIDS
SETTLEMENT MEMORANDUM OF UNDERSTANDING**

("MOU")

WHEREAS the people of the State of Montana and its communities have been harmed by serious and substantial wrongdoing committed by certain entities within the Pharmaceutical Supply Chain; and,

WHEREAS the State of Montana, through the State's Attorney's Office of the Montana Attorney General, and certain litigating cities and counties, through their elected representatives and counsel, are separately engaged in litigation seeking to hold manufacturers, distributors, and others in the Pharmaceutical Supply Chain accountable for the harms caused by their wrongdoing; and,

WHEREAS the State of Montana and Montana's cities and counties (hereafter Local Governments) share a common desire to abate and remediate the impacts of that wrongdoing throughout the State of Montana and to maximize the resources devoted to combatting the opioid crisis; and,

WHEREAS researchers and clinicians in Montana and elsewhere have now built a substantial body of evidence demonstrating which opioid abatement strategies work and which do not and there are public health leaders in the State and at the local level with expertise in addiction and substance use available to guide determinations for the use of any settlement funds; and,

WHEREAS recently the State of Montana agreed to join a settlement agreement process (hereafter Settlement Agreements) which, if finalized, will resolve litigation against certain specific defendants in the Pharmaceutical Supply Chain, namely the opioid distributors McKesson Corporation, Cardinal Health,

Inc., and Amerisource Bergen Corporation and also Janssen and the related entities listed in the Section I. 32 of the Janssen Settlement Agreement¹ (hereafter the Opioid Settlement Defendants) for harms caused by their wrongdoing that require -- with limited exception-- that all settlement funds be used for forward-looking remediation and abatement of opioid associated harms; and

WHEREAS maximum monetary payments available to the State of Montana and its Local Governments depend upon maximum Local Government participation in the Settlement Agreements and in this Memorandum of Understanding (MOU);

NOW THEREFORE the State of Montana and its Local Governments, subject to completing any additional documents needed to effectuate their agreement, enter into this MOU for the allocation, management, and use of the proceeds of the Settlement Agreements: (a) to develop a fair and transparent process for making decisions based on medical and scientific evidence concerning where and how to spend the funds from the Settlement Agreements to effectuate forward-looking abatement strategies and to supplement rather than replace existing spending; (b) to establish a dedicated Montana Abatement Trust with representation that reflects the public health expertise and diversity of affected communities when allocating settlement funds that meets the requirements of Section V.E.2d. of the Settlement Agreements; and (c) to provide a framework for equitable distribution of funds from the Settlement Agreements among all participating Local Governments within the

¹ "Janssen" means Johnson & Johnson, Janssen Pharmaceuticals, Inc., OrthoMcNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.

State of Montana that agree to be bound by this MOU and forego pursuing separate litigation against any of the settling defendants named above.

A. DEFINITIONS AND DESCRIPTIONS

1. “The State” shall mean the State of Montana acting through the Attorney General.
2. “Participating Local Governments” shall mean any Montana county or city that has chosen to participate in this MOU and the Settlement Agreements, including execution of all documents required to effectuate the Settlement Agreements and this MOU.
3. “The Parties” shall mean the State of Montana and the Participating Local Governments.
4. “Settlement Agreements” shall mean the Distributor Settlement Agreement dated as of July 21, 2021, and the Janssen Settlement Agreement dated as of July 21, 2021.
5. “Settlement Funds” shall mean all monetary amounts obtained through the Settlement Agreements as defined herein, according to the allocation percentage to the State provided for in Section F of the Settlement Agreements, and as determined by the Settlement Fund Administrator.
6. The “Settlement Funds Administrator” shall mean the person or entity in I. MMM of the Definitions section of the Settlement Agreements chosen by the settling defendants and the national plaintiffs’ enforcement committee to determine the proper allocation of funds from the Settlement Agreements to each

participating state and to manage the distribution of the Settlement Funds to all participating states.

7. “Opioid Remediation” as defined or referenced in the Settlement Agreements shall include care, treatment, and other forward-looking programs and expenditures for Approved Purposes, including: to (1) address the misuse and abuse of prescription opioid products, (2) treat or mitigate opioid misuse or related disorders, or (3) mitigate other injuries or harms resulting from the overprescribing of opioids, including diversion and the misuse or abuse of Fentanyl or Fentanyl-containing products or substances. Opioid Remediation efforts shall involve evidence-based strategies, programming, and services used to: expand the availability of treatment for individuals affected by opioid use or polysubstance use disorders; develop, promote, and provide opioid-related or polysubstance use prevention strategies; provide opioid-related or polysubstance use avoidance and awareness education; decrease the oversupply of licit and illicit opioids, including Fentanyl or products or substances containing Fentanyl; support recovery through addiction services performed by qualified and appropriately licensed providers of persons suffering from opioid-related use disorder, polysubstance abuse, or chronic-pain patients and others who suffer from or are at substantial risk of opioid abuse or dependency; and support for law enforcements addressing the impact of opioid-related substance abuse in the communities they serve, including misuse or illicit use of heroin and/or Fentanyl. Exhibit E in the Settlements Agreements provides a non-exhaustive list of expenditures that qualify as Opioid Remediation. Qualifying expenditures may include reasonably related administrative expenses.

8. “Approved Purposes” shall mean forward-looking strategies, programming, and services to abate the opioid epidemic as identified by the terms of the Settlement Agreements.

9. “Opioid Settlement Defendants” shall mean McKesson Corporation, Cardinal Health Inc., Amerisource Bergen Corporation, and Janssen and their related entities and affiliates as delineated in the Settlement Agreements.

B. MONTANA ABATEMENT REGIONS

1. Local and regional use of Opioid Settlement Funds shall be implemented through Abatement Regions and the Local Governments within those regions. The Abatement Regions shall comprise nine Metropolitan Abatement Regions—consisting of the nine Montana counties with populations exceeding 30,000—and five Multi-County Abatement Regions—utilizing the five existing Health Planning Regions established by the Montana Department of Public Health and Human Services. *See Montana Abatement Regions Map, attached as Exhibit A.*

2. The Nine Metropolitan Regions having populations of 30,000 or more are Yellowstone, Missoula, Gallatin, Flathead, Cascade, Lewis & Clark, Silver Bow, Ravalli, and Lake Counties, provided they participate in this Agreement. Each of the nine Metropolitan Regions have consolidated city-county health departments with substantial public health expertise that can serve as the lead or co-lead agencies within their respective regions for administration and use of settlement funds.

3. The Multi-County Abatement Regions derived from the five existing Montana Department of Health and Human Services Health Planning Regions exclude any local governments not participating in this MOU and the Settlement Agreements. The five Multi-County Abatement Regions also exclude the nine Metropolitan Regions and all Local Governments within the nine Metropolitan Regions. *See Exhibit A.*

4. All the Metropolitan Regions that agree to the Settlement Agreements and this MOU as well as all the constituent Participating Local Governments comprising a Multi-County Abatement Region that have chosen to enter into this MOU and the Settlement Agreements shall be treated as Participating Abatement Regions. For the sake of clarification, any county or city listed in the MOU Abatement Region Allocation, attached as Exhibit B², within a Multi-County Region that does not enter into this MOU and the Settlement Agreements shall not be included in the Abatement Region where it is geographically located and shall not be entitled to receive any funds from the Settlement. Rather, the share(s) of the funds that a nonparticipating city or county would be allocated according to Exhibit B shall instead be allocated to the Abatement Trust.

C. THE MONTANA ABATEMENT TRUST

1. The Attorney General shall create a private, non-profit Abatement Trust ("Trust") with an Advisory Committee ("Committee"), as required by the Settlement Agreements for the purpose of receiving and disbursing Settlement Funds allocated to the Abatement Trust and to Participating Abatement Regions,

² Exhibit B of this MOU is comprised of the Montana Local Governments listed in Exhibit G of the Settlement Agreements.

Participating Local Governments and to the State of Montana for Opioid Remediation and Approved Purposes, which are to be distributed as set forth in this MOU, in the Settlement Agreements, and in the documents establishing the Trust.

2. The Trust shall be governed by the Advisory Committee consisting of ten voting members and an Executive Director appointed by the Attorney General who will only vote in the event of a tie.

3. The ten voting members of the Advisory Committee shall provide equal representation between the State and local governments as follows: three members chosen by the Metropolitan Regions, two members chosen by the Multi-County Regions, two members chosen by the Director of the Department of Health and Human Services (DPHHS), and three members chosen by the Attorney General.

4. At least one of the ten members of the Committee shall be a law-enforcement representative from the Montana Department of Justice's Division of Criminal Investigation (DCI) and/or Montana Highway Patrol (MHP). One of the ten members of the Advisory Committee may be, but is not required to be, a family member of a person who had or has suffered from opioid use disorder. All other Committee members must come from the fields of medicine, public health, mental health, or addiction.

5. Committee terms will be three years and initially staggered. Committee members may serve more than one term. In the first year, two members from the Metropolitan Regions and one member from the Multi-County Regions will have a one-year term, one member representing the Department of

Health and Human Services and one member representing the Attorney General will have two-year terms, and the remaining members will have three-year terms. Six members of the Committee shall constitute a quorum. Unless the Committee determines otherwise, the Metropolitan and Multi-County Abatement Regions shall determine for themselves how to choose their member representatives. No Committee member shall receive compensation but may be reimbursed for reasonable costs expended for work on the Committee.

6. To provide for health security and reduce expense, members of the Committee shall participate in meetings by telephone or video conference at least every three months, except, if feasible, one annual in-person meeting per year shall be set by consensus of the Committee. If a member of the Committee is unable to attend in-person or remotely, s/he may designate a proxy. A quorum exists if six members are voting in-person, remotely, or by proxy.

7. In all votes of the Committee, a measure shall pass if a quorum is present and the measure receives the affirmative votes from a majority of those Committee members voting. The Executive Director may vote to break a tie.

8. The Attorney General shall appoint the Executive Director at his/her discretion from a list of three candidates provided to the Attorney General by the Committee. If the Attorney General finds all three candidates to be unsatisfactory, the Attorney General may reject all three candidates and request that the Committee provide three new persons to select from.

9. In choosing candidates to be submitted to the Attorney General, with the exception of the one member who is a family member of a victim of the opioid

crisis, if applicable, and representative(s) from DCI and/or MHP, the Committee shall seek candidates with at least six years of experience in issues related to addiction, mental health, and/or public health and who have management experience in those fields.

10. The Executive Director shall serve as an *ex officio*, non-voting member of the Committee unless there is a tie vote, in which case the Executive Director may cast the tie breaking vote.

11. The Attorney General shall set a date for a first in-person meeting of the Committee. Once the Abatement Regions, the Attorney General, and the Director of the Department of Health and Human Services have designated their respective members of the Committee, the Attorney General shall designate an Interim Executive Director to conduct the meeting and other scheduled meetings until a permanent Executive Director can be named.

12. At the first meeting the Committee shall develop written guidelines for receiving input from the State of Montana, Abatement Regions, Local Governments, and others regarding how the opioid crisis is affecting their jurisdictions or communities and their respective abatement needs. These written guidelines shall provide procedures for Regions and Local Governments or communities to develop and submit proposals for distribution of funds from the Abatement Trust for Opioid Remediation programs for the Regions and/or throughout Montana.

13. The Committee shall draft its own bylaws or other governing documents, which must include appropriate conflict of interest and dispute

resolution provisions, in accordance with the terms of this MOU and Montana law. It shall not have rulemaking authority under Montana law. The Committee shall utilize the legal advice and assistance of the State's Attorney's Office and legal counsel for the Local Governments and Regions, who will work collaboratively to draft and finalize necessary bylaws, procedures and other governing documents with the goal of minimizing red tape and maximizing the efficient flow of funds to abate the opioid problem.

14. The Committee shall be responsible for accounting of all Opioid Funds it distributes. The Committee shall be responsible for releasing Opioid Funds in accordance with Approved Purposes, the Settlement Agreements, and this MOU and, with the help of the State's Attorney's Office and Local Government counsel, shall develop policies and procedures for the release and oversight of such funds.

15. The Committee may also require outcome related data from any Party or Local Government that receives Opioid Funds and may publish such outcome related data. In determining which outcome related data may be required, the Committee shall work with all Parties, Regions, and Local Governments to identify appropriate data sets and develop reasonable procedures for collecting such data sets so that the administrative burden does not outweigh the benefit of producing such outcome related data.

16. The Committee shall facilitate collaboration between the State, Regions, and Participating Local Governments regarding sharing information related to abating the opioid crisis in Montana.

D. ALLOCATION OF AND USE OF SETTLEMENT PAYMENTS TO THE STATE

1. According to the terms of the Settlement Agreements, when all requirements of the Settlement Agreements have been met to allow direct payments of Settlement Funds to the State of Montana, Local Governments, and Abatement Regions the Settlement Fund Administrator will determine the total amount of Settlement Funds to allocate and pay to the State of Montana, including base payments and incentive payments.

2. The funds from the Settlement Agreements for the State of Montana shall be direct-deposited into three separate funds: the State of Montana Fund, the Abatement Trust, and the Local Government Fund.

3. Of the total paid to the State of Montana, including incentive payments:

- a. Fifteen percent (15%) shall be allocated to directly to the State of Montana Fund;
- b. Seventy percent (70%) shall be allocated directly to the Abatement Trust, from which funds may be disbursed from the Trust, with approval of the Advisory Committee, for Opioid Remediation at the State, Regional, or Local Government levels; and,
- c. Fifteen percent (15%) shall be allocated directly to the Local Government Fund.

4. The Settlement Funds allocated to the State of Montana Fund shall be used by the State for Approved Purposes as determined by a separate committee

made up of representatives from the Attorney General and the Montana Department of Health and Human Services.

5. The Settlement Funds allocated to the Abatement Trust shall be paid into the Abatement Trust for Approved Purposes administered by the Advisory Committee and Executive Director as described herein.

6. The Abatement Trust, administered by the Advisory Committee, shall be designated the lead single point of contact for Montana's communications with the Settlement Fund Administrator. As lead agency it shall have primary responsibility for evaluating and distributing funds for evidence based Opioid Remediation proposals and programs for opioid-related substance abuse disorder services.

7. Of the amount apportioned to the Abatement Trust for Opioid Remediation as outlined in 3(b) above, eighty percent (80%) shall be allocated to the Participating Abatement Regions according to the Subdivision Allocation Percentages in Exhibit B, on the assumption that all Subdivisions within each region become Participating Subdivisions. The allocation of 80% of the Abatement Trust to the Participating Abatement Regions, however, does not change the calculation of attorneys' fees for Outside Counsel for Local Governments described in Section E below. That calculation, which is set forth in the Settlement Agreements Exhibit R, is based on dividing and allocating the total settlement funds received by the State, half to the State and half to Local Governments. Attorneys' fees are then calculated by multiplying the Local Government half

times the allocation percentage in Exhibit B to determine amount allocated to their respective Local Governments upon which the attorneys' fees is based.

8. Amounts apportioned to the Local Government Fund shall be distributed to Participating Local Governments included on Exhibit B per the Subdivision or Local Government Allocation Percentage listed in Exhibit B. No Non-Participating Local Government will receive any amount from the Settlement Funds allocated to the State of Montana, regardless of whether such Local Government is included on Exhibit B. Rather, any funds allocated to the Local Government Fund for Non-Participating Local Governments shall be transferred to the Abatement Trust for Approved Purposes by the Region in which that Non-Participating Local Government is geographically located.

9. Each Abatement Region shall create its own governance structure for the administration, management, and use of Opioid Remediation funds to ensure all Participating Local Governments within that Region have input and equitable representation regarding regional Opioid Remediation administration and decisions, including representation on the Montana Opioid Abatement Trust Committee, and selection of projects to be funded from the Region's share. That governance structure shall include designation of a fiscal agent within the Region to receive and distribute Settlement Funds allocated to it.

10. All Participating Abatement Regions shall have the responsibility to make decisions about planning, budgeting, and disbursement of funds for projects that will equitably and appropriately serve the needs of the entire Region and be

consistent with this MOU and the Settlement Agreements' definition and description of appropriate Opioid Remediation and Approved Purposes.

11. The Trust Committee and all the Regions shall be guided by the recognition that budgeting for operating expenditures should be conservative and carefully limited to ensure that the maximum funds are preserved for forward-looking abatement of the opioid epidemic and the prevention of future opioid-related addiction and substance misuse. In recognition of these core principles, the Committee and the Regions shall endeavor to assure the funds are disbursed only to support evidence-based Opioid Remediation for opioid-related substance abuse/misuse abatement, education, and prevention efforts as described in detail in this MOU and the Settlement Agreements.

12. Funds from the Abatement Trust may also be expended by the Trust for statewide programs, innovation, research, and education. Any statewide programs funded from the Trust would be only as directed by an affirmative majority vote of the Committee. Expenditures for these purposes may also be funded by the Trust with funds received from either the State of Montana's share (as directed by the Attorney General in consultation with DPHHS) or from sources other than Opioid Settlement Funds as provided for below.

13. Participating Abatement Regions may collaborate with other Participating Abatement Regions to submit joint proposals to be paid for from the Regional Shares of two or more Participating Abatement Regions for the use of those Regions.

14. Disbursements for proposed Opioid Remediation programs and services to Participating Abatement Regions shall be reviewed by the Committee to determine whether the proposed disbursements meet the criteria for Opioid Remediation and Approved Purposes.

15. The Trust and any entities receiving Opioid Remediation funds shall operate in a transparent manner. Meetings shall follow Montana constitutional and statutory law and be open and all documents shall be public to the same extent they would be if the Trust were a public, governmental entity. All operations of the Trust and all entities receiving Trust Funds shall, with respect to the receipt and use of such funds, be subject to audit. The bylaws of the Trust regarding governance of the Committee, as adopted by the Committee, may clarify any other provisions in this MOU, except this subsection. Rather, the substantive portion of this subsection shall be restated in the bylaws.

16. The Trust's financial resources shall be invested through the Montana Board of Investments to assure the Trust's investments are appropriate, prudent, and consistent with best practices for investments of public funds. The investment policy shall be designed to meet the Trust's long-term and short-term goals.

17. Any other matter concerning the allocation, management, and use of Settlement Funds from the Settlement Agreements not covered by this MOU, shall be controlled by the terms of the Settlement Agreements.

E. ATTORNEYS' FEES AND COSTS

1. The Settlement Agreements each provide very substantial separate funds for payment of fees for both outside counsel for litigating local

governments and outside counsel for litigating states such as Montana. If any Settlement is insufficient to cover the fee obligations owed to outside counsel representing the State of Montana and to outside counsel representing Local Governments (collectively, "Outside Counsel"), the deficiencies may be covered as set forth in further detail below.

2. Regarding attorneys' fees for local governments that filed suit, United States District Judge Dan Polster who is responsible for the MultiDistrict Litigation (MDL 2804) *IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION*, on August 6, 2021 (Docket No. 3804) notified:

... all eligible participants to the July 21, 2021 Settlement Agreements, and ... their private counsel, that a contingent fee in excess of 15% of the participant's award under the Settlement Agreements is presumptively unreasonable. Accordingly, the Court caps all applicable contingent fee agreements at 15%.

3. As such, total attorney fees to outside counsel collected from the Settlement Agreement attorney fee funds and the Montana Back Stop shall be capped at a 15% contingency fee of the amount allocated to their respective governmental entities.

4. Fees claimed and collected for common benefit work under the Settlement Agreements shall be calculated pursuant to the specific requirements of Exhibit R to the Settlement Agreements and shall not be utilized to reduce fees otherwise recoverable from the Montana Attorney Fee Back Stop Fund.

5. The State of Montana and Litigating Local Governments shall first seek to have their attorneys' fees and expenses paid through the attorneys' fee funds created by the Settlement Agreements. The Local Governments litigating in

the MDL proceeding in the Northern District of Ohio, the Honorable Judge Dan Polster presiding, shall endeavor to obtain the maximum recovery from the Settlement Agreements attorney fee fund. In addition, as a means of covering any deficiencies in paying Outside Counsel, a supplemental Montana Attorney Fee Back-Stop Fund shall be established.

6. The Montana Attorney Fee Back-Stop Fund shall be funded by 5.5% of the total settlement funds paid to the State of Montana. The Mathematical Model described in Exhibit R of the Settlement Agreements for calculation of attorneys' fees provides that each Settling State shall attribute 50% of the settlement funds it receives to its Local Governments. Therefore, Fifty percent (50%) of the Montana Attorney Fee Back-Stop Fund shall be allocated to the Montana Attorney General's Back-Stop Sub-fund and fifty percent (50%) to the Litigating Local Government Attorney Fee Back Stop Sub-fund. The Attorney General's Fund shall be used in the Attorney General's sole discretion to (a) reimburse the State of Montana for opioid-related investigation and litigation costs; (b) offset the costs of the legal and administrative burdens imposed upon the Attorney General's Office by the Settlement Agreements as well as future settlements or disbursements by bankruptcy courts; and (3) for approved remediation or abatement purposes including, without limitation, the development of plans or projects whereby the State of Montana and the Local Governments may pool their respective recoveries and resources to fund efficient and effective statewide or regional abatement programs or strategies.

The remaining Fifty percent (50%) of the Montana Attorney Fee Back-Stop Fund shall be allocated to the Montana Litigating Local Governments' Attorney Fee Back-Stop Sub-fund for payment of Outside Counsel attorneys' fees incurred by Participating Local Governments. As provided above, fifty percent (50%) of the total settlements funds the State receives from these settlements shall be attributed to Local Governments. The amount upon which the fees for Litigating Local Government Attorneys shall be based is calculated by multiplying the fifty percent Local Government share of all settlement funds by the allocation percentage for each respective Litigating Local Government as listed in Exhibit B to this MOU.

7. Outside Counsel for Litigating Local Governments may apply to the Montana Attorney Fee Back-Stop Fund only after applying to any contingency fee fund created pursuant to the Settlement Agreements.

8. Subject to the 15% cap, above, Outside Counsel for Litigating Local Governments may apply to the Montana Attorney Fee Back-Stop Fund for only a shortfall, that is, the difference between what their fee agreements would entitle them to minus what they have already collected from any contingency fee fund created pursuant to the Settlement Agreements. Payments out of the Montana Litigating Local Governments' Attorney Fee Back-Stop Sub-fund shall be fairly allocated by a neutral committee consisting of one representative from each Litigating Local Government.

9. Any funds remaining in the Montana Litigating Local Governments' Attorney Fee Back-Stop Sub-fund in excess of the amounts needed to cover the

fees and litigation expenses to Outside Counsel for Litigating Local Governments shall revert to the allocations described in Section (D).

10. Payments to Outside Counsel shall be made from the Montana Attorney Fee Back-Stop Fund in the same percentages and over the same period of time as the national Contingency Fee Fund for each settlement. The Attorneys' Fees and Costs schedule for the Settling Distributors is listed in the Exhibit R §(II)(A)(1) of the Distributor Settlement Agreement. The Attorneys' Fees and Costs schedule for Janssen is listed in Exhibit R §(II)(A)(1) of the Janssen Settlement Agreement.

F. INSTRUCTIONS FOR SIGNING THIS MOU AND THE SIGN-ON FORMS.

You have already received a NOTICE relating to the Settlement Agreements. To join this MOU and to execute sign-on forms for the Settlement Agreement you must FIRST go to the national settlement website at <https://nationalopioidsettlement.com/> in order to register.

SECOND, once you are at the website please register your Local Government, county or city. Registration will only take a minute. This requires knowing who is authorized to sign-on the Settlements for your Local Government and an email address to which the sign-on form will be sent. With that information you can register your Local Government using the registration code

in the NOTICE you have received. If you do not register, your Local Government will not receive the sign-on form for the Settlements electronically.

DATED this 26th day of November, 2021.

MONTANA ATTORNEY GENERAL



Austin Knudsen
Montana Attorney General

Exhibit A
Montana Abatement Regions

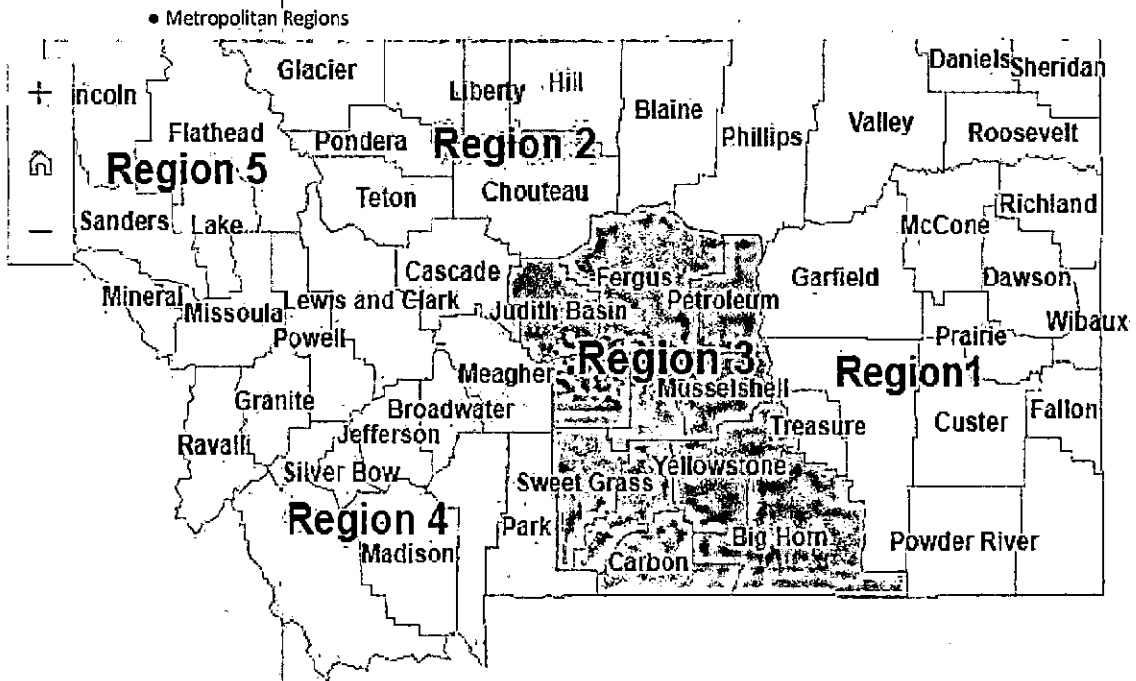


Exhibit B

DRAFT - 8/13/2021
Subject to Revision

MT1	Anaconda-Deer Lodge County, Montana	1.4480190514%
MT2	Beaverhead County, Montana	0.6841480225%
MT3	Big Horn County, Montana	0.8504903609%
MT4	Billings City, Montana	9.1331142413%
MT5	Blaine County, Montana	0.3691094337%
MT6	Bozeman City, Montana	2.0161886507%
MT7	Broadwater County, Montana	0.4143251264%
MT8	Butte-Silver Bow, Montana	5.6101260434%
MT9	Carbon County, Montana	0.7105360522%
MT10	Carter County, Montana	0.0374679104%
MT11	Cascade County, Montana	3.8993050480%
MT12	Chouteau County, Montana	0.4053063424%
MT13	Custer County, Montana	1.5139056450%
MT14	Daniels County, Montana	0.1787602908%
MT15	Dawson County, Montana	0.7800682133%
MT16	Fallon County, Montana	0.1543582011%
MT17	Fergus County, Montana	0.8667027669%
MT18	Flathead County, Montana	8.0141785369%
MT19	Gallatin County, Montana	4.0205572717%
MT20	Garfield County, Montana	0.0398838599%
MT21	Glacier County, Montana	1.5230709367%
MT22	Golden Valley County, Montana	0.0264303648%
MT23	Granite County, Montana	0.1831398237%
MT24	Great Falls City, Montana	4.3577779784%
MT25	Helena City, Montana	1.7360655042%
MT26	Hill County, Montana	1.8438532922%
MT27	Jefferson County, Montana	0.7770843087%
MT28	Judith Basin County, Montana	0.0614804228%
MT29	Kalispell City, Montana	2.4735432710%
MT30	Lake County, Montana	3.6175099064%
MT31	Lewis and Clark County, Montana	4.9326712334%
MT32	Liberty County, Montana	0.1210395973%
MT33	Lincoln County, Montana	2.1915597624%
MT34	Madison County, Montana	0.5498047673%
MT35	McCone County, Montana	0.0823035394%
MT36	Meagher County, Montana	0.0912086373%
MT37	Mineral County, Montana	0.7546909914%
MT38	Missoula City, Montana	4.4312558575%
MT39	Missoula County, Montana	8.0272833629%
MT40	Musselshell County, Montana	0.3895510594%
MT41	Park County, Montana	2.0831835653%
MT42	Petroleum County, Montana	0.0144742922%
MT43	Phillips County, Montana	0.2085622347%
MT44	Pondera County, Montana	0.4003873948%
MT45	Powder River County, Montana	0.1504386452%
MT46	Powell County, Montana	0.8872723490%
MT47	Prairie County, Montana	0.0572069653%
MT48	Ravalli County, Montana	3.6906819270%

MT49	Richland County, Montana	0.7541525281%
MT50	Roosevelt County, Montana	0.8182976782%
MT51	Rosebud County, Montana	0.5641981949%
MT52	Sanders County, Montana	1.0679134558%
MT53	Sheridan County, Montana	0.2700355225%
MT54	Stillwater County, Montana	0.5055604014%
MT55	Sweet Grass County, Montana	0.2836540766%
MT56	Teton County, Montana	0.5735903832%
MT57	Toole County, Montana	0.3258040487%
MT58	Treasure County, Montana	0.0226554138%
MT59	Valley County, Montana	0.5598291268%
MT60	Wheatland County, Montana	0.0720998508%
MT61	Wibaux County, Montana	0.0630373047%
MT62	Yellowstone County, Montana	7.3090889550%

Exhibit B

**ATTORNEY GENERAL'S RELEASE OF OPIOID-RELATED CLAIMS PURSUANT TO THE
JANSSEN SETTLEMENT AGREEMENT**

WHEREAS the Janssen Settlement Agreement dated July 21, 2021 (the "Agreement") provides in Section IV.A that, as of the Effective Date of the Agreement, Janssen and the related Released Entities will be released and forever discharged from all of the Releasers' Released Claims;¹ and

WHEREAS the Agreement provides in Section I.62 that Releasers who are releasing claims under Section IV.A include without limitation and to the maximum extent of the power of each Settling State's Attorney General to release Claims (a) the Settling State's and Participating Subdivision's departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their 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, water districts, law enforcement districts, emergency services districts, school districts, hospital districts and other Special Districts in a Settling 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 a Settling State or Subdivision in a Settling State, whether or not any of them participate in this Agreement; and

WHEREAS the Agreement provides in Section IV.E that each Settling State's Attorney General expressly represents and warrants that he or she has, has obtained, or will obtain on or before the Effective Date, the authority to settle and release, to the maximum extent of the State's power, all Released Claims of (1) his or her respective Settling 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 his or her respective Settling 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, and (4) any Participating Subdivisions. 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;

¹ Capitalized terms used herein and defined in the Agreement have the meanings given to them in the Agreement.

WHEREAS the Agreement provides in Section IV.E that a release from a Settling State's Governor is sufficient to demonstrate that the appropriate releases have been obtained for the purposes of clause (3) of Section IV.E, and the Governor of the State of Montana has provided a release;]

THEREFORE, pursuant to the foregoing provisions of the Agreement and without limitation and to the maximum extent of the power of the Attorney General, Janssen and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (a) the State of Montana and its Participating Subdivision's departments, agencies, divisions, boards, commissions, Subdivisions, 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, water districts, law enforcement districts, emergency services districts, school districts, hospital districts and other Special Districts in the State of Montana, 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 of Montana or Subdivision in the State of Montana, whether or not any of them participate in the Agreement; and

THEREFORE, pursuant to the foregoing provisions of the Agreement and to the maximum extent of the State of Montana's power, Janssen and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (1) the State of Montana, (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 of Montana'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, and (4) any Participating Subdivisions. 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 of Montana's Governor.



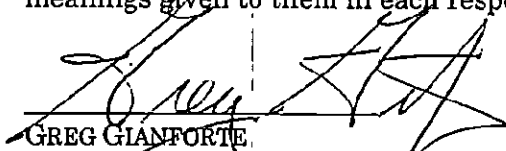
AUSTIN KNUDSEN

Attorney General of the State of Montana

Date: February 10, 2022

**GOVERNOR'S RELEASE OF OPIOID-RELATED CLAIMS PURSUANT TO THE
DISTRIBUTORS AND JANSSEN SETTLEMENT AGREEMENTS**

I, Greg Gianforte, Governor of the State of Montana, hereby authorize Attorney General Austin Knudsen to settle and release, to the maximum extent of my power as Governor, all Released Claims of (1) all of Montana's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities with regulatory authority to enforce state and federal controlled substances acts and (2) all of Montana'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. The foregoing authorization is given in connection with each of (a) Section XI.G of that certain settlement agreement dated as of July 21, 2021 setting forth the terms of settlement between and among McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation, on the one hand, and certain Settling States and certain Participating Subdivisions on the other hand and (b) Section IV.E of that certain settlement agreement dated as of July 21, 2021 setting forth the terms of settlement between and among Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., on the one hand, and certain Settling States and certain Participating Subdivisions on the other hand. This release is intended to be a "release from a State's Governor" as contemplated in each such section. Capitalized terms used herein and defined in either of such settlement agreements have the meanings given to them in each respective settlement agreement.



GREG GIANFORTE
Governor of the State of Montana

Date: Feb. 11 / 2022