

**WALMART SETTLEMENT AGREEMENT**

**TECHNICAL CORRECTIONS MEMORANDUM**

Walmart, the Settling States, and the Participating Subdivisions entered into a Settlement Agreement on November 14, 2022. Section XII.W of that Agreement enabled the Plaintiffs’ Executive Committee, the Executive Committee of the State Attorneys General, and Walmart to meet and confer and make technical corrections as they agree are appropriate. The Parties issued an initial round of technical corrections to the Settlement Agreement on December 2, 2022. The Parties issued a second round of technical correction to the Settlement Agreement on February 7, 2023. This memorandum summarizes all technical corrections made to the Settlement Agreement pursuant to that process.

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**February 7, 2023 Technical Corrections**

**The Settlement Agreement**

In Section II.B.1, references to the Threshold Subdivision Participation Date were changed from March 31, 2023 to April 18, 2023. In Section V.D.1, the deadline for notice to be provided to Walmart and the Settlement Fund Administrator in order for a State-Subdivision to be applied to the relevant portion of the Payment Amount was changed from 60 calendar days prior to the First, Second, or Third Participation Date to “ten (10) business days prior to the Settlement Fund Administrator issuing payment to Settling States pursuant to the Payout Procedure.”

**Exhibit B: Enforcement Committee Organization Bylaws**

In Article III, the number of Enforcement Committee members was expanded to sixteen, of which ten are Settling State Members and six are Participating Subdivision Members (three counties and three municipalities). The initial Settling State Members were identified as Connecticut, Delaware, Illinois, Indiana, Louisiana, New York, North Carolina, Ohio, Tennessee, and Texas.

**Exhibit C: Litigating Subdivisions List**

Multiple changes were made to the list of litigating subdivisions to remove subdivisions that are not, in fact, litigating, and add those that are litigating.

**Exhibit G: Subdivisions Eligible to Receive Direct Allocations from the Subdivision Fund and Default Subdivision Fund Allocation Percentages**

The list of subdivisions was added.

**Exhibit K: Subdivision Participation Form**

The following sentence was added to Paragraph 2: “With respect to any Released Claims pending in In re National Prescription Opiate Litigation, MDL No. 2804, the Governmental Entity authorizes the Plaintiffs’ Executive Committee to execute and file on behalf of the Governmental

Entity a Stipulation of Dismissal With Prejudice substantially in the form found at <https://nationalopioidsettlement.com>.”

### **Exhibit M: Maximum Payment Amounts**

The following sentence was added: “Walmart shall deposit the amounts payable to the State Outside Counsel Fee Fund and the State Cost Fund into the Settlement Fund on the Deposit Date and those amounts shall be disbursed by the Settlement Fund Administrator consistent with Exhibits S and T.”

### **Exhibit R: Agreement on Attorneys’ Fees, Costs, and Expenses**

Several changes were made to the Description of Mathematical Model for the Allocation of the Contingency Fee Funds.

- The parenthetical “(or any Released Entity)” was added to the third paragraph of the introduction.
- The illustrative example in Paragraph 1 was changed from “\$11,968,970.60” to “\$11,968,970.59.”
- The illustrative example in Paragraph 3.a was changed from “\$1,800,000,000” to “\$120,000,000” and the subsequent calculations were adjusted accordingly.
- The following parenthetical was deleted from Paragraph 3.b: “(but only if the Subdivision timely named Walmart in a lawsuit).”
- The illustrative example in Paragraph 3.b was changed for an assumption of “\$17,600,000” to “\$1,600,000” and the subsequent calculations were adjusted accordingly.
- The phrase “less any amounts the Fee Panel is authorized to, and does, withhold” was added to the penultimate paragraph.
- In Footnote 4, “Participating Litigating Subdivisions” was changed to “litigating subdivisions.”
- In Footnote 5, the following sentences were deleted: “This rule is designed to prevent windfalls by addressing over-allocation in a small number of states with relatively few Participating Litigating Subdivisions. An estimated 97% of Qualifying Representations are not impacted this rule.”

### **Exhibit S: Agreement on the State Outside Counsel Fee Fund for Chain Pharmacy Settlements**

The following parenthetical was added to Paragraph 6(c): “(or, if lower, the applicable contingency fee percentage in the Settling State’s outside counsel contract).” The dollar figures in Schedule I to Exhibit S were also updated.

### **Exhibit W: Non-Litigating Subdivisions List**

Multiple changes were made to the list of non-litigating subdivisions to remove subdivisions that are, in fact, litigating, and add those that are not litigating.

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## December 2, 2022 Technical Corrections

### **The Settlement Agreement**

There are two broad categories of corrections to the Settlement Agreement itself: (1) changes to clarify the intent of the agreement, and (2) minor changes to address typographical errors, including appropriate references to defined terms and sections.

#### *Summary of Clarifying Changes:*

- Sections IV.D and IV.E: References to “Remediation Payment” have been replaced with “Global Settlement Remediation Amount.” As defined, the term “Remediation Payment” is based on the number of Settling States. The proper multiplier for determining the Base Payment and incentive payments is the Global Settlement Remediation Amount, e.g., the remediation and abatement payment of \$2,393,794,118.64. The tables in Section IV.E.2.a and IV.E.3.b were similarly adjusted.
- Section IV.E.1.b: The language in the provision regarding a state that qualifies for Incentive A in Years 2 and 3 was revised to clarify the portion of the payment that would be accounted for based on payments in the earlier years is the prior Incentive Payment BC that was already paid.
- Footnote 7: The sentence regarding the calculation of the Percentage of Incentive BC Subdivision Population was revised to clarify that an individual Subdivision should not be included more than once in either the numerator or the denominator if it is named more than once in the same lawsuit.
- Section IV.E.3.c: The language “after that date” was removed because the sentence refers to multiple look-back dates and is clearer without this additional language.
- Section V (and corresponding definition in Section I.TTT): The defined term “Sub-Fund” was added to be used in connection with the Remediation Accounts Fund, State Fund, and/or Subdivision Fund. This defined term is incorporated throughout Section V for ease of reference and readability.
- Footnote 11 (new): The same explanatory footnote which is used elsewhere in the agreement was added for consistency. The footnote is used in connection with references to future Opioid Remediation.
- Section VIII.D (agreed upon non-technical correction): Language was added concerning the use of the Additional Remediation Amount to pay investigating outside counsel.
- Section IX: Footnote 12 was removed in light of the now operative Contingency Fee Fund and Common Benefit Fund split.
- Section X: Although duplicative of Section X.B.2, this Section has been retained but language was added to make both provisions consistent.
- Section XII.B: References were added to Section IV.E.1.a and Section IV.E.3.a, in order to speak to language applicable to both Incentive Payment BC and Incentive Payment D.

#### *Summary of Typographical Changes:*

- Section I.P (“Covered Conduct”): Made changes to address parallelism and punctuation.

- Sections I.GG (“*Litigating Subdivisions*”), I.KK (“*Non-Litigating Threshold Subdivision*”): incorporated the appropriate defined term, e.g. Released Entity.
- Sections I.CCC (“*Released Claims*”), I.EEE (“*Releasors*”), I.KKK (“*Settlement Fund*”), I.LLL (“*Settlement Fund Administrator*”), I.PPP (“*State Participation Date*”), I.VVV (“*Subdivision Allocation Percentage*”), VII.C, VII.D: Addressed typographical errors, including punctuation and/or cross references.
- Sections II.B.1, IV.B.1, IV.C.3.e, IV.E.1.a, IV.E.3.d, V.E.2.a, VI.D, IX, X.J, XII.B, XII.E, XII.F.4, XII.N, XII.P, XII.U, XII.W: Implemented minor clarifying changes/missing words, defined terms.

### **Exhibit B: Enforcement Committee Organization Bylaws**

In Article III, references to the size of the Enforcement Committee were reduced to thirteen members, of which eight are Settling State Members and five are Participating Subdivision Members. The deadlines for designating representatives were changed to fifteen months from the Effective Date.

### **Exhibit C: Litigating Subdivisions List**

Multiple changes were made to the list of litigating subdivisions to remove subdivisions that are not, in fact, litigating, and add those that are litigating.

### **Exhibit E: List of Opioid Remediation Uses**

The phrase “Participant Subdivisions” in the first sentence was changed to “Participating Subdivisions” to reflect the terminology used in the Settlement Agreement. Reference to “the 2016 CDC guidelines” in Section G.3 was changed to “CDC guidelines” given that a newer set of CDC Guidelines have been made official. Pagination errors were corrected.

### **Exhibit I: Primary Subdivisions**

There had previously been a placeholder to add the updated version of the Distributor/Janssen Agreement Exhibit I. The exhibit now includes subdivisions listed on either Exhibit I from Janssen’s March 30, 2022 agreement or Exhibit I from Distributor’s March 25, 2022 agreement, except for subdivisions in New Mexico and West Virginia.

### **Exhibit P: Injunctive Relief**

Paragraph numbering in Section I.4 was fixed. References to corresponding sections of the Settlement Agreement were added to the definitions of “Effective Date,” “National Arbitration Panel,” and “Settling State(s)” in Section I.

### **Exhibit R: Agreement on Attorneys’ Fees, Costs, and Expenses**

- Section I.F: Replaced “III.C” with “II.C.”
- Section I.G: Changed “III.D” with “II.D.”
- Section I.H: Added docket number and date for relevant MDL Order and added phrase “and its subfunds” after “Cost Fund.”

- Section I.I: Added definition of “Court Common Benefit Fund.”
- Section K: Added docket number and date for relevant MDL Order and added phrase “and make recommendations for the allocation and distribution of” after “to administer.”
- Section I.X: Included new definition of “Subdivision Cost and Expense Fund” and deleted definition of “Litigating Subdivision Cost Fund.” Conforming changes implemented throughout Exhibit R.
- Section II.A.1: Phrase “up to” deleted.
- Section II.A.1: The total attorneys’ fees and costs and Attorney Fee Fund numbers were revised to state the correct figures consistent with the parties’ agreement and Footnote 2 of the Settlement Agreement, which reflects the removal of Florida and Alabama. The total attorneys’ fees and costs number was changed to up to but in no event more than \$297,720,376.93, and the Attorney Fee Fund number was changed to up to \$267,720,376.93.
- Section II.A.4: “[TK] %” replaced with “7.5%” in two instances.
- Section II.B.2: Split between Contingency Fee Fund and Common Benefit Fund specified at 40% and 60%, respectively.
- Section II.C: Common Benefit Fund percentage designated as 60%.
- Section II.C.2: Replaced phrase “II.A.4” with “II.A.5” and insert “Section” before “II.G.”
- Section II.D: Contingency Fee Fund percentage designated as 40%.
- Section II.D.3: Replaced “III.H.7” with “II.H.7.”
- Section II.E.5: New paragraph reads: “The Cost Fund shall be administered by the Cost Fund and Expense Fund Administrator (MDL Docket No. 3828), who will be governed by the provisions of this Agreement and shall design the process and procedures for the allocation of costs pursuant to this Agreement and the MDL Court’s Order.”
- Section II.E.6: Deleted and replaced with new paragraph: “The costs of the Cost and Expense Fund Administrator shall be paid from the Cost Fund and allocated by the Cost and Expense Fund Administrator between the MDL Direct Cost Fund and the Subdivision Cost and Expense Fund to fairly charge each fund the cost incurred in implementing and supervising the specific fund.”
- Section II.E.7: Former Section II.E.5 substantially edited to read: “The Cost and Expense Fund Administrator shall set the process and procedures for submission of and criteria for applications for payment of Subdivisions’ and Tribal Nations’ costs and expenses. The Cost and Expense Fund Administrator shall receive and evaluate applications from Participating Litigating Subdivisions and litigating Tribal Nations, whether filed in Federal Court or State Court, to seek reimbursement for eligible costs under Section II.E.2 in pursuit of claims against Walmart. The process shall require a showing that the costs or expenses sought were reasonably incurred in furtherance of active litigation of a designated state or federal bellwether trial-set case, or Common Benefit. The Cost and Expense Fund Administrator shall require transparency from all applicants as to any other sources for compensating Attorneys for Subdivisions and Tribal Nations for costs incurred. If funds remain after the reimbursement of approved out-of-pocket costs, the Cost and Expense Fund Administrator may consider reasonable and appropriate payment for client time, costs, or expenses incurred by recognized trial bellwether plaintiffs. At the conclusion of the process, any funds not allocated by the Cost and Expense Fund Administrator shall be transferred to the Common Benefit Fund established in this Exhibit R.”

- Section II.E.8: New paragraph reads: “In the event that States and Subdivisions enter into an additional global settlement with a party or parties other than Walmart that is (a) under the jurisdiction of the MDL Court in MDL No. 2804, (b) creates a separate cost fund, and (c) unless the parties agree to another date, such agreement has an effective date prior to June 30, 2023, the Cost and Expense Fund Administrator shall have the authority to aggregate the Cost Fund with the cost fund created under that global settlement agreement. The Cost and Expense Fund Administrator shall have the authority to address the appropriate procedures and required information to allow the costs to be funded from the appropriate cost fund or shared by two or more cost funds; provided, however, that the Subdivision Cost and Expense Fund shall remain subject to the requirements set forth in Section II.E.2. For the avoidance of doubt, the Subdivision Cost and Expense Fund is available only to compensate Attorneys for costs and expenses arising out of representation of Participating Litigating Subdivisions and no funds in the Subdivision Cost and Expense Fund may be used to compensate the costs incurred by Non-Participating Subdivisions or Non-Litigating Subdivisions or costs and expenses arising out of representation of any such Subdivision.”
- Section II.H.3.f: Replaced period with semicolon at end of phrase.
- Description of Mathematical Model for the Allocation of the Contingency Fee Funds: Added the Description of Mathematical Model for the Allocation of the Contingency Fee Funds document referenced in Exhibit R.

#### **Exhibit S: Agreement on the State Outside Counsel Fee Fund for Chain Pharmacy Settlements**

- Overall: References were changed from “the Settlement” or “a Chain Pharmacy Settlement” to “This Settlement” throughout the exhibit.
- Section 4.a: The reference to “Additional Restitution Amount” was changed to “Additional Remediation Amount” for consistency with the defined terms in the Settlement Agreement.
- Section 8.b: Language was added to clarify that a Settling State must be “eligible to be a ‘Settling State’ under either of the two other Multistate Chain Pharmacy Settlement Agreements but does not become such a ‘Settling State’” in order for the payment from the State Outside Counsel Chain Pharmacies Fee Fund to be reduced. The reference to “Exhibit [Denver Allocation]” was changed to “Exhibit F.”
- Section 8.c: The reference to the “State Outside Counsel Chain Pharmacy Fee Fund” was changed to the “State Outside Counsel Chain Pharmacies Fee Fund.”
- Schedule I: The Fee Schedule chart was adjusted to include New Mexico and West Virginia as it pertains to Walgreens, and calculations throughout the chart and the list of Excluded States with respect to specific pharmacies were adjusted accordingly.

#### **Exhibit V: Walmart Settlement Agreement Sign-on Form**

Contact information for where to submit the completed sign-on form was added.

#### **Exhibit W: Non-Litigating Subdivisions List**

Multiple changes were made to the list of non-litigating subdivisions to remove subdivisions that are, in fact, litigating, and add those that are not litigating.