

FILED
10-24-2023
CIRCUIT COURT
DANE COUNTY, WI
2023CX000018

BY THE COURT:

DATE SIGNED: October 24, 2023

Electronically signed by Ryan D. Nilsestuen
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2023-CX-_____
Complex Forfeiture: 30109

ALLERGAN FINANCE, LLC and
ALLERGAN LIMITED,

Defendants.

CONSENT JUDGMENT

The State of Wisconsin (“*State*”) and Allergan Finance, LLC (f/k/a Actavis, Inc., which, in turn was f/k/a Watson Pharmaceuticals, Inc.) and Allergan Limited (f/k/a Allergan plc, which, in turn, was f/k/a Actavis plc) (collectively, “*Allergan*” 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 Allergan Public Global Opioid Settlement Agreement, dated as of November 22, 2022 (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. This Consent Judgment resolves litigation as to “Allergan” and the “Released Entities” as those terms are defined in the Allergan Public Global Opioid Settlement Agreement.

RECITALS:

1. Each Party warrants and represents that it engaged in arm’s-length negotiations in good faith. By entering into the Agreement, the Parties intended to effect a good-faith settlement.

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

3. Pursuant to Wis. Stat. § 165.12(2)(a), on May 2, 2023, the State of Wisconsin’s Legislative Joint Committee on Finance approved the Agreement.

4. Allergan denies the allegations in the Action and maintains that it has no liability whatsoever to the State, its Subdivisions, its Special Districts and/or any other governmental entity (whether or not such governmental entity has brought or is a party to an Action or not).

5. The Parties have agreed to the resolution of the Action and the entry of this Judgment (including the injunctive terms incorporated herein) by the Court without trial or finding of admission or wrongdoing or liability of any kind.

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

7. Allergan is entering into this Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, regulation, or ordinance, or of any other matter of fact or law, or of any fault, liability, or wrongdoing, all of which Allergan denies.

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

9. Therefore, without any admission of liability or wrongdoing by Allergan 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 (including but not limited to the State) against Allergan 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. In the event of a conflict between the terms of the Agreement and this summary document, the terms of the Agreement shall govern.

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 Allergan 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 XIV.G.2 of the Agreement, governed by the rules and procedures of the Court.

9. By this Judgment, the *Wisconsin State-Local Government Memorandum of Understanding for the Allocation of Opioid Settlement Proceeds*, a copy of which is

attached hereto as Exhibit B 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 or Special District 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 X of the Agreement and the Release set forth in Sections V.A, E and F of the Agreement, as follows:

- a. The Attorney General of the State exercised the fullest extent of his or her powers to release Allergan and all other Released Entities from all Released Claims pursuant to the release attached hereto as Exhibit C (the "*Release*").
- b. Allergan has determined that there is sufficient State participation and sufficient resolution of the actual and potential Claims of the Subdivisions and Special Districts in the Settling States to proceed with the Agreement.
- c. The Settlement Participation Form for each Initial Participating Subdivision and Initial Participating Special District in the State has been delivered to Allergan. As stated in the Settlement Participation Form, and for the avoidance of doubt, nothing in the Settlement Participation Form executed by the Participating Subdivisions or Participating Special Districts is intended to modify in any way the terms of the Agreement to which the Participating Subdivisions and Participating Special Districts 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 and Participating Special District in the State is dismissing with prejudice any Released Claims that it has filed against Allergan 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, Allergan 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 Participating Special Districts 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 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, emergency services districts, school districts, healthcare districts, hospital districts, Sheriffs and law enforcement districts, library districts, coroner's offices, and public transportation authorities and other Special Districts in the State, including those with the regulatory authority to enforce state and federal controlled substances acts or the authority to bring Claims related to Covered Conduct seeking money (including abatement (or remediation and/or restitution)) or revoke a pharmaceutical distribution license, 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, including but not limited to, fines, penalties, or punitive damages, on behalf of or generally applicable to the general public with respect to the

State or any Subdivision or Special District 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, Allergan 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 or Participating Special District. 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 V 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. Pursuant to Wis. Stat. § 165.12(7)(b), a political subdivision, or an officer or agent of any political subdivision of the state, that was not a party as of June 1, 2021 to the opiate litigation, as defined in Wis. Stat. § 165.12(1), may not maintain any claim or commence any action related to opioids against a person that is identified as a party defendant in the opiate litigation that would be released in a similar agreement if the political subdivision, officer, or agent was a party to a settlement agreement that is described under Wis. Stat. § 165.12(2). Accordingly, any political subdivisions in Wisconsin that were not a party as of June 1, 2021 to opiate

litigation may not maintain any claim or commence any action related to opioids against Allergan and any other Released Entities.

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

16. 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 VIII.G of the Agreement.

17. 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 Allergan'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.

18. No Private Right of Action. No part of this Order or of the Agreement shall create a private cause of action or confer any right to any third party for violation of any federal or state statute. 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 XIV.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 and Participating Special Districts 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.

19. Admissibility. It is the intent of the Parties that this Judgment not be admissible in other cases against Defendants or Released Entities or binding on Defendants or Released Entities 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 or Released Entities from entering this Judgment or the Agreement into evidence in any litigation or arbitration concerning (1) Defendants' or Released Entities' right to coverage under an insurance contract or (2) the enforcement of the releases provided for by the Agreement and this Judgment.

20. 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.

21. 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.

22. Retention of Jurisdiction. The Court shall retain jurisdiction of the Parties for the limited purpose of the resolution of disputes identified in Section XIV.G.2 of the Agreement. The Court shall have jurisdiction over Participating Subdivisions and Participating Special Districts in the State for the limited purposes identified in the Agreement.

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

24. 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 XVI.T of the Agreement.

APPROVED, AGREED TO AND PRESENTED BY:

Date: October 18, 2023

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

s/ Laura E. McFarlane
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