

**ONE UTAH
UNIVERSAL OPIOID SETTLEMENT MEMORANDUM OF
UNDERSTANDING**

1. Recitals and General Principles.

1.1. The people of the State of Utah, its counties, and its communities have been harmed by the opioid epidemic, which was caused by Pharmaceutical Supply Chain Participants.¹

1.2. The State of Utah, *ex rel.* Sean Reyes, Attorney General (the "State"), and most of the counties in Utah are separately engaged in litigation and other actions seeking to hold the Pharmaceutical Supply Chain Participants accountable for the opioid epidemic.

1.3. The Parties desire to abate and alleviate the impacts of the Pharmaceutical Supply Chain Participants' misfeasance, malfeasance, and nonfeasance throughout their respective geographic areas.

1.4. The Parties enter into this One Utah Universal Opioid Settlement Memorandum of Understanding ("MOU") to determine the allocation of Recovered Funds and set forth certain other terms under which the Parties may jointly agree to an allocation of Recovered Funds.

1.5. The parties recognize that, for some Pharmaceutical Supply Chain Participants, the anticipated amount of Settlement Funds is likely to increase as more counties, cities, and towns participate in any Settlements, and that the maximum amount of Settlement Funds may be achieved only if the State and all counties, cities, and towns agree to a Settlement. Without such global agreement within Utah, the amount of Settlement Funds, in some cases, is likely to be reduced.

1.6. Any Settlement will require subsequent acceptance and approval by any settling Parties of a formal written Settlement agreement, including the execution of required releases of claims.

- 1.7. By entering into this MOU, each Party reserves, in its sole discretion, its rights to:
- 1.7.1 Participate or not participate in any Settlement;
 - 1.7.2 Maintain, pursue, and prosecute its existing and potential legal claims;
 - 1.7.3 Resolve its claims as it sees fit; and
 - 1.7.4 Resolve its claims independent of the other Parties.

Provided, however, if a County elects not to enter into a settlement of the Litigation, the County shall not participate or be entitled to, Settlement Funds.

1.8. By entering this MOU, no Party is acquiescing to or giving jurisdiction over any element of its actions, including control over payment of attorney fees, to any federal court, including MDL 2804 - National Prescription Opiate Litigation.

¹ Capitalized terms not defined contemporaneously are defined in Section 2.

1.9 This MOU has been drafted collaboratively by the Parties to maintain the Parties' existing or potential legal claims (to the extent legally cognizable) while allowing the Parties to cooperate in exploring all possible means of resolution.

2. Definitions.

As used in this MOU:

2.1. "Administrator" shall mean the person or entity responsible for compiling data and information from the Settling Parties.

2.2. "Approved Uses" shall mean those uses directed to abating the opioid epidemic and its impacts. The Parties anticipate Approved Uses will be more specifically defined in the terms of any Settlement.

2.3. "County(ies)" shall mean each county that has signed this MOU on its own behalf as a political subdivision of the state pursuant to Utah Code Ann. § 17-50-101(1).

2.4. "Litigation" means existing or potential legal claims against Pharmaceutical Supply Chain Participants seeking to hold them accountable for the opioid epidemic, including any kind of injury caused by their misfeasance, nonfeasance, and malfeasance relating to the unlawful manufacture, marketing, promotion, distribution, or dispensing of prescription opioids. It is the intent of this MOU that that the term litigation shall apply to all claims, whether or not asserted by a Party. This MOU does not apply to AmerisourceBergen, Cardinal, McKesson, or Janssen, which are the subject of a prior MOU.

2.5. "Local Governments" shall mean all counties and municipalities located within the geographic boundaries of the State.

2.6. "Municipalities" shall mean those entities defined in Utah Code Ann. § 10-1-104.

2.7. "Settlement Fund Administrator" shall mean the person or entity responsible for enforcing the provisions of any national Settlement or bankruptcy plan, whether called an "administrator," "trustee," "board," or the functional equivalent of those terms.

2.8. "Opioid Litigation Settlement Restricted Account" shall mean the restricted account established within the General Fund pursuant to Utah Code Ann. § 51-9-801.

2.9. "Party(ies)" shall mean the State and all Local Governments, whether represented by outside counsel or not, whether involved in Litigation or not, which have signed this MOU.

2.10. "Participating Subdivision" shall mean, for matters resolved in bankruptcy courts, all subdivisions whose claims are subject to the jurisdiction of the bankruptcy court, and for any matter resolved by Settlement, all subdivisions participating in the Settlement.

2.11. "Pharmaceutical Supply Chain Participant" shall mean any entity or individual that engages in or has engaged in the manufacture, marketing, promotion, distribution, or dispensing of prescription opioids, including any agent, affiliate, contractor, or other individual or entity

whose efforts relate to the manufacture, marketing, promotion, distribution, or dispensing of prescription opioids.

2.12. "Recovered Funds" shall mean any funds recovered in a bankruptcy proceeding, other action, or settlement on or after the date of this MOU, provided that such funds are subject to this MOU as provided in Section 5.2.

2.13. "Settlement" shall mean the negotiated resolution of Litigation when that resolution has been jointly entered into by all the Parties, or if jointly entered into by fewer than all the Parties, this MOU is incorporated by the Settling Parties.

2.14. "Settlement Funds" shall mean any funds obtained through a Settlement on or after the date of this MOU, provided that the Settlement is subject to this MOU as provided in Section 5.2.

2.15. "Settling Parties" shall mean the State and any Local Governments which accept a Settlement and sign the corresponding Settlement agreement.

3. Allocation of Recovered Funds.

3.1. All Recovered Funds, other than those directed to attorney fees and costs, regardless of allocation, shall be utilized consistent with the Approved Uses, as ultimately memorialized in a written Settlement agreement or bankruptcy plan, which shall become an order of the Litigation courts or other tribunals, including bankruptcy courts. Compliance with the Approved Uses shall be verified as set forth in Section 7.

3.2. 50% of the Recovered Funds shall be allocated to the State ("State Share").

3.3. 50% of the Recovered Funds shall be allocated to the Participating Party Counties ("Local Government Share") depending on participation, in the percentages in Exhibit A. If fewer than all subdivisions participate in a matter subject to this MOU pursuant to Section 5.2, the Participating Party Counties' share shall remain 50% in total, and will be reallocated proportionately based on the allocation in Exhibit A.

4. Mechanism for Directing Recovered Funds to Approved Uses.

4.1. The State Share shall be deposited by the National Settlement Fund Administrator into the Opioid Litigation Settlement Restricted Account and disbursed pursuant to the terms of that statute.

4.2. The Participating Subdivision share shall be distributed directly to each settling County pursuant to the percentages set forth in Exhibit A (adopted from <https://allocationmap.iclaimsonline.com/>), less funds distributed to the Utah attorney fee and expense fund pursuant to Section 6.

5. Local Government Allocation.

5.1. As provided for in this Agreement the funds allocated to each settling County shall be paid to the County directly when possible and the County and its constituent municipalities may distribute the settling County's share of the Recovered Funds among all of the jurisdictions in that county in any manner they choose, consistent with the requirements set forth in the Settlements.

5.2. This Memorandum of Understanding shall apply to (1) the bankruptcies of Mallinckrodt PLC, Purdue Pharma L.P., Endo International PLC, and any other Pharmaceutical Supply Chain Participant against whom both the State and one or more Local Governments has claims; (2) any settlement for which the State and its subdivisions meet the participation threshold requirements specified in the applicable national settlement agreement for the relevant Pharmaceutical Supply Chain Participant; and (3) any other matter the State and Counties agree in writing to incorporate into this MOU.

6. Payment of Counsel and Litigation Expenses.

6.1. The parties anticipate that Settlements may provide for the payment of all or a portion of the fees and litigation expenses of the State and local governments.

6.2. In the event that there is a national fund established to pay attorney fees related to a Settlement ("National Fund"), the Counties direct the administrator of settlement funds to allocate twenty (20) percent of the Local Government Share payments to a Utah attorney fee and expense fund ("Utah Fund"), from which counsel for the Settling Parties may seek payment of their attorney fees and costs not paid from a National Fund. Prior to applying to a Utah Fund, counsel for the Settling Parties must first apply for payment of attorney fees from a National Fund, after which it may seek its fees from the Utah Fund for any deficiency.

6.3. No portion of the State Share shall be used for the payment of Settling Party Local Government attorney fees and no portion of the State Share shall be used to establish the Utah Fund; no Settling Party Local Government Settlement Funds and no part of the Utah Fund shall be used for the payment of State attorney fees.

6.4. In addition to payment of attorney fees, in no event shall counsel for any Settling Party receive reimbursement for costs and expenses in excess of its actual costs and expenses or in excess of its reimbursement rights under its representation agreement.

6.5. Counties which did not retain outside counsel may not apply to any Utah Fund for payment of any attorney fees or costs.

6.6. The Counties participating in any matter subject to this MOU shall oversee any Utah Fund. The State shall bear no responsibility and waives any right it may have to oversee any Utah Fund. All expenses in administering the Utah Fund are the responsibility of the participating Counties.

6.7. If any Party is represented by more than one law firm, the Party shall be responsible for distribution of attorney fees and costs to its counsel. Each such Party shall designate the

attorney or law firm to which the settlement payment administrator will make each payment, and that attorney or law firm will be responsible for distributing those funds among the outside counsel for that party.

6.8. Payments to subdivision outside counsel from the Utah Fund shall be disbursed in the same proportion as the allocation percentages defined in Exhibit A. Portions of the Utah Fund that would otherwise be due to outside counsel for participating but non-litigating subdivisions shall be reapportioned to the outside counsel for litigating subdivisions on a pro rata basis based on the percentages in Exhibit A. The subdivisions represented by outside counsel shall inform the settlement fund administrator the amount of attorney fees owed to counsel and when those fees have been paid in full from the National Fund and, as necessary, the Utah Fund. Upon the administrator being informed that a settling County's attorney fees have been paid in full, it will release any remaining funds in the Utah Fund held for that settling County to that settling County.

7. Compliance Reporting and Accountability.

7.1. At least annually, the Administrator shall provide an up-to-date accounting of payments and uses of Recovered Funds. The Administrator shall also provide an up-to-date accounting of payments and uses of Settlement Funds upon written request of a Participating Party.

7.2. Settling Party Local Governments shall file with the Administrator on or before May 30 of each year a proposed plan detailing the anticipated use of the Settlement Funds including (1) the amount of funds it anticipates disbursing; and (2) the proposed uses of those funds. For the State, on or before May 30 of each year, the Administrator shall make available to the other Settling Parties a plan detailing the same categories of information.

7.3. Settling Party Local Governments shall file with the Administrator, and the Administrator shall make available for the State to the Settling Parties, on June 30 of each year in which Settlement Funds are received, an annual report detailing the use of the Settlement Funds received including (1) the amount of funds received by that Settling Party; (2) the allocation of the funds received (listing the recipient of a third party, the program funded, and disbursement terms), and (3) the amounts disbursed on approved allocations. The State shall provide this information separately to the appropriate authority designated in a Settlement document.

7.4. Out of any Settlement Funds, administrative expenses shall not exceed 1% of the Settlement Funds recovered by the State or any Settling Party.

7.5. Each Settling Party shall maintain, for at least the prior five (5) years, records of expenditures of Settlement Funds and documents underlying those expenditures, so the Settling Party can verify that all Settlement Funds are utilized consistent with this MOU, including the Approved Uses.

7.6. At least annually, each Settling Party shall publish on its website a report detailing for the preceding year (1) the amount of Settlement Funds received, and (2) the allocation of any

distributions from the Settling Party's Settlement allocation (listing the recipient, the amount distributed, the program funded, and disbursement terms).

7.7. If it appears to any Settling Party that another Settling Party is using or has used Settlement Funds for non-Approved Uses, the objecting Settling Party may on written request seek the documentation underlying the report(s) described in this MOU. The Settling Party receiving such request shall have fourteen (14) days to provide the requested information. The objecting Settling Party and the Settling Party receiving such request may extend the time for compliance with the request only upon mutual written agreement.


7.8. Each Settling Party may object to an allocation or expenditure of Settlement Funds by any other Settling Party solely on the basis that the allocation or expenditure at issue (1) is inconsistent with provisions of this MOU, including the Approved Uses; or (2) violates the limitations set forth in Section 7.4. with respect to administrative expenses.

7.9. Following a request and production of information pursuant to Section 7.7. and when it appears that Settlement Funds are being or have been spent on non-Approved Uses, the objecting Settling Party may seek and obtain in an action in the Third District Court of Utah in Salt Lake County an injunction prohibiting the misusing Party from spending any Opioid Funds on non-Approved Uses and requiring the misusing Party to return the monies that were spent on non-Approved Uses after notice as is required by the rules of civil procedure. So long as an action is pending, distribution to the misusing Party of Opioid Funds temporarily will be suspended. Once the action is resolved, the suspended payments will resume, less any amounts that were ordered returned but which have not been returned by the time the action is resolved.

7.10. In an action brought pursuant to Section 7.9., attorney fees and costs shall not be recoverable.

7.11. Nothing in this agreement shall limit the ability of subdivisions to pool or assign Recovered Funds to which they are entitled. If a subdivision assigns its Recovered Funds, the subdivision shall report the assignment to the State and publish the assignment on its website. The assignee of Recovered Funds shall assume the reporting requirements set forth above.

ACCEPTED by the undersigned and executed this 29th day of NOVEMBER, 2022.

Signature: 
Name: JAMES A. WELCH
Title: COUNTY MANAGER
Subdivision: TOOELE COUNTY

APPROVED AS TO FORM:

 11/29/2022
Colin R. Winchester
Deputy Tooele County Attorney

Exhibit: A

**Exhibit A to One Utah Opioid Settlement MOU
County Allocations**

<u>County</u>	<u>Allocation Percentage</u>
Beaver	0.228%
Box Elder	1.464%
Cache	2.649%
Carbon	2.718%
Daggett	0.028%
Davis	8.695%
Duchesne	0.641%
Emery	0.938%
Garfield	0.147%
Grand	0.304%
Iron	1.622%
Juab	0.352%
Kane	0.439%
Millard	0.355%
Morgan	0.216%
Piute	0.022%
Rich	0.061%
Salt Lake	42.271%
San Juan	0.249%
Sanpete	1.013%
Sevier	0.661%
Summit	0.944%
Tooele	2.233%
Uintah	0.866%
Utah	15.426%
Wasatch	0.601%
Washington	4.865%
Wayne	0.109%
Weber	9.883%