

SETTLEMENT SUBDIVISION PARTICIPATION FORM

Local Government: City of Santa Fe	State: New Mexico
Authorized Official: Alan M. Webber, Mayor	
Address 1: 200 Lincoln Avenue	
Address 2:	
City, State, Zip: Santa Fe, NM 87501	
Phone: 505-955-6590	
Email: mayor@santafenm.gov	

The governmental entity identified above (“Local Government”), in order to obtain and in consideration for the benefits provided to the Local Government pursuant to the Settlement Agreement and Full Release of All Claims (“Albertson’s Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Albertson’s Settlement, release all Released Claims against all Releasees, and agrees as follows.

1. The Local Government is aware of and has reviewed the Albertson’s Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Local Government elects to participate in the Albertson’s Settlement and become a Participating Local Government as provided therein.
2. The Local Government shall immediately cease any and all litigation activities as to the Releasees and Released Claims and, in any event within 14 days of executing this Participation Form, dismiss with prejudice any Released Claims that it has filed.
3. The Local Government agrees to the terms of the Albertson’s Settlement pertaining to Local Governments as defined therein.
4. By agreeing to the terms of the Albertson’s Settlement and becoming a Releasor, the Local Government is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date of the Release.
5. The Local Government agrees to (i) treat all funds received pursuant to the Albertson’s Settlement as “Opioid Funds” as that term is defined in Section A.2 the New Mexico Opioid Allocation Agreement attached to the Albertson’s Settlement (“the NMOAA” or “the MOU”); (ii) modify the term “Settlement” as that term is defined in Section A.7 of the MOU to include the Albertson’s Settlement; (iii) forego the use of a settlement administrator for the Albertson’s Settlement as contemplated by Section B.1 of the MOU, instead utilizing the payment process described in Section III.A of the Albertson’s Settlement; and (iv) allow the State to hold back and oversee the distribution of any funds needed for any attorney fee backstop fund that may be required (but in no event will that holdback be more than 15% of the Local Government’s share, and all outside counsel will be required to exhaust all other sources of fees in accordance with the MOU).

6. The Local Government submits to the jurisdiction of the court in which the State of New Mexico's Consent Judgment is filed for purposes limited to that court's role as provided in, and for resolving disputes to the extent provided in, the Albertson's Settlement.
7. The Local Government, as a Participating Local Government, hereby becomes a Releasor for all purposes in the Albertson's Settlement, including but not limited to all provisions of Section IV, and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Local Government hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Releasee in any forum whatsoever. The releases provided for in the Albertson's Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Releasee the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Local Government to release claims. The Albertson's Settlement shall be a complete bar to any Released Claim.
8. In connection with the releases provided for in the Albertson's Settlement, each Local Government 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.


A Releasor 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 each Local Government hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Albertson's Settlement.

9. The Local Government acknowledges, agrees, and understands that the Participating Local Governments Remediation by Albertson's is less than or equal to the amount, in the aggregate, of the Alleged Harms allegedly suffered by the Local Government; constitutes restitution and remediation for damage or harm allegedly caused by Albertson's in order to restore, in whole or part, the Local Government to the same position or condition that it would be in had it not suffered the Alleged Harms; and constitutes restitution and remediation for damage or harm allegedly caused by the

potential violation of a law and/or is an amount paid to come into compliance with the law.

10. Nothing herein is intended to modify in any way the terms of the Albertson's Settlement, to which Local Government hereby agrees. To the extent this Election and Release is interpreted differently from the Albertson's Settlement in any respect, the Albertson's Settlement controls.

I have all necessary power and authorization to execute this Election and Release on behalf of the Local Government.

Signature: 

Name: Alan M. Webber

Title: Mayor

Date: Feb 28, 2023

CITY OF SANTA FE:



ALAN M. WEBBER, MAYOR

Feb 28, 2023

DATE

ATTEST:



KRISTINE BUSTOS MIHELICIC, CITY CLERK XIV
GB MTG 2/22/2023

CITY ATTORNEY'S OFFICE:



ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED FOR FINANCES:



[Emily K. Oster \(Feb 28, 2023 14:56 MST\)](#)

EMILY OSTER, FINANCE DIRECTOR

**SETTLEMENT AGREEMENT AND
FULL RELEASE OF ALL CLAIMS**

I. Overview

This Settlement Agreement is made and entered into this 7 th day of December, 2022 between Albertson's LLC ("Albertsons"), on the one hand, and the State of New Mexico ("New Mexico" or the "State"), acting through its Attorney General (the "Attorney General"), on the other hand (together, the "Parties"). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, the State filed its second amended complaint in this Action on March 6, 2019, which was served upon Albertsons on April 9, 2019,¹ (i) alleging, among other things, that Albertsons, among others, violated the law by failing to monitor, report, and abstain from shipping allegedly suspicious orders of opioid pain medications; (ii) alleging, among other things, that Albertsons, among others, violated the law by dispensing opioid pain medications without confirming those prescriptions were issued for a legitimate medical purpose; and (iii) asserting Claims for damages, equitable abatement, civil penalties, attorneys' fees, litigation costs, and other relief.

WHEREAS, the State brought this Action in its sovereign capacity as the people's attorney in order to protect the public interest, including the interests of the State of New Mexico and its citizens;

WHEREAS, numerous New Mexico Local Governments have filed actions in various forms against Albertsons, among others, raising claims or allegations concerning, related to, based upon, or in connection with the Covered Conduct;

WHEREAS, there are numerous New Mexico Local Governments that have not filed actions against Albertsons, but may in the future raise claims or allegations concerning, related to, based upon, or in connection with the Covered Conduct;

WHEREAS, Albertsons (i) denies each and all of the Claims and allegations of wrongdoing made by the State in this Action and maintains that it has meritorious defenses; (ii) denies all assertions of wrongdoing or liability against Albertsons arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in this Action, and contends that the factual allegations made in this Action relating to Albertsons are false and materially inaccurate; (iii) denies that the State, any New Mexico Local Government, or any New Mexico resident was harmed by any conduct of Albertsons alleged in this Action; (iv) denies liability, expressly denies any wrongdoing, and denies it violated any federal or state common law; and (v)

¹ The State filed its initial complaint in this Action on September 7, 2017, and filed its first amended complaint in this Action on December 21, 2017, neither of which named Albertsons as a party.

maintains that Albertsons would be able to successfully defend against the State's claims and allegations at trial;

WHEREAS, the Parties have each investigated the facts and analyzed the relevant legal issues;

WHEREAS, the Parties have now reached this Settlement, which they believe avoids the expense, delay, and uncertainty of litigation;

WHEREAS, the State has concluded that the terms of the Settlement are fair, reasonable, adequate, and in the best interest of the State of New Mexico and its citizens;

WHEREAS, the Parties agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be a concession as to any claim, an admission, evidence of any violation of any statute or law, evidence of any liability or wrongdoing by Albertsons, or evidence of the truth, falsity, merit, or lack of merit of any of the allegations in this Action or any defense thereto;

WHEREAS, this Settlement Agreement is a product of arm's length settlement negotiations between the duly-authorized representatives of the Parties;

NOW, THEREFORE, IT IS HEREBY AGREED by and among the Parties, by and through their respective counsel, that all Released Claims shall be finally and fully settled and released as to the Releasee, as set forth below.

II. Definitions

A. "Action" means the lawsuit filed by the State in the First Judicial District Court, County of Santa Fe, State of New Mexico, captioned *State of New Mexico ex rel. Hector Balderas, Attorney General v. Purdue Pharma L.P. et al.* (No. D-101-CV-2017-02541).

B. "Agreement," "Settlement," or "Release" refers to this Settlement Agreement and Release.

C. "Albertsons" means Albertson's LLC, and each of its current and former corporate parents, direct and indirect subsidiaries, affiliates, agents, predecessors, successors, insurers, and attorneys; and the current and former directors, officers, and employees of any of the foregoing. As used in this paragraph, "affiliates" means entities directly or indirectly controlling, controlled by, or under common control or ownership. "Albertsons" also includes but is not limited to all other entities that have been acquired by Albertsons or Albertsons-affiliated entities.

D. "Claim" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, parens patriae claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state, or local common law, statute, regulation, guidance, ordinance, or principles of equity, whether filed or unfiled, whether asserted or

unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen, or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including, but not limited to, any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs, or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

E. “Claim-Over” means a Claim asserted by any entity that is not a Releasor against a Releasee on the basis of contribution, indemnity, or other claim-over on any theory relating to Claims arising out of or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by the Releasee) asserted by the Releasor.

F. “Covered Conduct” means any and all acts, failures to act, conduct, statements, omissions, events, transactions, or other activity of any kind whatsoever, whether known or unknown and whether discovered or undiscovered, occurring up to and including the Execution Date arising from or related in any way to (i) the discovery, development, manufacture, marketing, promotion, advertising, recall, withdrawal, distribution, dispensing, monitoring, supply, sale, prescribing, use, or abuse of any Opioid; (ii) the characteristics, properties, risks, or benefits of any Opioid; (iii) the reporting, disclosure, non-reporting, or non-disclosure to federal, state, or other regulators of orders placed with the Releasee; (iv) the purchasing, selling, acquiring, disposing of, importing, exporting, applying for quota for, procuring quota for, handling, processing, packaging, supplying, distributing, converting, precursor or component Opioid products, including, but not limited to, natural, synthetic, semi-synthetic, or chemical raw materials, starting materials, active pharmaceutical ingredients, drug substances, or any related intermediate Opioid products; or (v) diversion control programs or suspicious order monitoring.

G. “Cure Period” has the meaning specified in Section VI.C of this Agreement.

H. “Execution Date” means the date on which this Agreement is executed by the last Party to do so.

I. “Effective Date of the Release” means the date on which the Releasee pays the Settlement Amount to the Releasor as specified in Section III.A of this Agreement.

J. “Global Settlement” means any agreement resolving substantially all litigation and claims brought or threatened to be brought against Albertsons by other states and political subdivisions in the United States or any Federally recognized tribes, including without limitation claims against Albertsons in the multidistrict litigation pending in In re: Nationwide Prescription Opiate Litigation, MDL No. 2804 (N.D. Ohio) and related state court prescription opiate litigation against Albertsons as defined in this agreement.

K. “Injunctive Relief” means the terms set forth in Exhibit A of this Agreement.

L. “Local Governments” shall have the same meaning as in the New Mexico MOU.

M. “New Mexico MOU” means the New Mexico Opioid Allocation Agreement set forth in Exhibit B of this Agreement.

N. “Notice Designees” has the meaning specified in Section VI.E of this Agreement.

O. “Opioid” means any chemical substance, whether licit or illicit, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance that is an opioid or opiate, as well as any product containing any such substance.

P. “Parties” means the Releasee together with the Releasor.

Q. “Promotion” means the publication or dissemination to a Third Party of information that is intended to directly or indirectly increase the use or sale of Opioids.

R. “Releasee” means Albertsons as defined herein.

S. “Released Claims” means any and all Claims brought by the State that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct occurring prior to the Execution Date of the Release. Without limiting the foregoing, Released Claims include any Claims arising out of, or relating to, in whole or in part, the Covered Conduct, and any such Claims that could be or could have been asserted now or in the future in this Action or in any comparable action or proceeding brought by the State (whether judicial, arbitral, or administrative). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to this Agreement, whether or not such Claims relate to Covered Conduct. The Parties intend that “Released Claims” be interpreted broadly. This Agreement does not release Claims by private individuals for damages for any alleged personal injuries arising out of their own use of any Opioid or criminal liability on the part of the Releasee.

T. “Releasor” means the State of New Mexico, including all of its executive departments, agencies, divisions, boards, commissions, instrumentalities, and officers, including the Attorney General, both as a person and on behalf of all New Mexico citizens.

U. “Settlement Amount” has the meaning set forth in Section III.A of this Agreement.

V. “Settlement Payment” means Albertsons’ payment of the Settlement Amount as provided in this Agreement.

W. “Third Party” means any person or entity other than Albertsons.

III. Settlement Consideration

A. **Payment of Settlement Amount.** The Releasee shall pay the Releasor the sum of twenty million dollars (\$20,000,000) (the “Settlement Amount”) via wire transfer pursuant to wiring instructions previously provided to the Releasee by the Releasor’s outside counsel on the Releasor’s behalf. Such Settlement Payment shall be made no later than December 30, 2022. The Settlement Amount will be allocated as follows:

1. \$8,250,000 to the State's Restitution account for payment to participating Local Governments, which shall be distributed in accordance with the allocation percentages outlined in the New Mexico MOU and expended solely on abatement efforts as permitted in the New Mexico MOU;
2. \$6,750,000 to the State's Consumer Settlement Fund for costs associated with abatement of the public nuisance alleged in the State's complaint, which shall be expended solely on abatement efforts as permitted in the New Mexico MOU;
3. \$4,500,000 in fees to outside counsel for the State; and
4. \$500,000 in costs to cover litigation costs incurred by the State.

B. Implementation of Terms for Injunctive Relief. The Releasee shall implement the terms set forth in Exhibit A to this Agreement.

C. No Other Payments. Other than the Settlement Amount and Implementation of Terms for Injunctive Relief referenced in Sections III.A and III.B, the Releasee shall have no obligation to make any further or additional payments in connection with Claims for Covered Conduct or this Settlement Agreement.

D. Taxes. Each of the Parties acknowledges, agrees, and understands that it is its intention that, for purposes of Section 162(f) of the Internal Revenue Code, the Payment of the Settlement Amount by the Releasee constitutes restitution for damage or harm allegedly caused by the potential violation of a law and/or is an amount paid to come into compliance with the law. The Parties acknowledge, agree, and understand that only payment for the State's litigation costs represents reimbursement to the State or other person or entity for the costs of any investigation or litigation, and no portion of the Settlement Amount represents or should properly be characterized as the payment of fines, penalties, or other punitive assessments. The Releasor acknowledges, agrees, and understands that the Releasee may allocate the cost of the Settlement Amount using a reasonable basis. Pursuant to 26 CFR section 1.6050X-1(a) and (b), Releasor understands that it is to complete and file Form 1098-F with the Internal Revenue Service, and Releasor agrees to report the Settlement Amount as remediation/restitution amounts on that form. Further, pursuant to 26 CFR 1.6050X-1(c), Releasor shall furnish Releasee a draft copy of the Form 1098-F at least one week before Releasee files such form with the IRS in order to confirm that such form has been prepared according to this agreement, and Releasee will provide the copy of such Form 1098-F, as filed with the IRS, no later than February 28, 2023. Neither Party makes any warranty or representation to the other Party as to the tax consequences of the Settlement Amount or any portion thereof.

E. Solvency. The Releasee warrants that, as of the date of this Agreement, it is not insolvent nor will its Settlement Payment or Implementation of Terms for Injunctive Relief render it insolvent within the meaning of and/or for the purposes of the United States Bankruptcy Code. If (i) a case is commenced with respect to the Releasee under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, or conservator is appointed under any similar law, and (ii) a court of competent jurisdiction enters a final order determining the Settlement Payment to be a

preference, voidable transfer, fraudulent transfer, or similar transaction, and (iii) pursuant to an order of a court of competent jurisdiction monies paid by the Releasee pursuant to this Settlement are either not delivered or are returned to the Releasee or the trustee, receiver, or conservator appointed by a court in any bankruptcy proceeding with respect to the Releasee, then the releases given pursuant to this Settlement shall be null and void.

IV. Settlement of Claims, General Release, and Covenant Not to Sue

A. Scope. The Releasor agrees that it brought this Action in its sovereign capacity as the people's attorney in order to protect the public interest, including the interests of the State of New Mexico and its citizens. The Releasor acknowledges that numerous New Mexico Local Governments have filed actions in various forms against Releasee, among others, raising claims or allegations concerning, related to, based upon, or in connection with the Covered Conduct; and that there are numerous New Mexico Local Governments that have not filed actions in various forms against Releasee, among others, but may in the future raise claims or allegations concerning, related to, based upon, or in connection with the Covered Conduct. The Releasor hereby agrees to settle the Released Claims. The Releasor agrees that settlement of the Released Claims on the terms set forth in this Agreement is in the public interest. Upon the Effective Date of the Release, the Releasor hereby releases the Releasee, and shall be deemed to have fully, finally, forever, and permanently released, remised, acquitted, held harmless, relinquished, and discharged with prejudice all Released Claims brought by Releasor, and shall have covenanted not to sue the Releasee with respect to any Released Claim, and shall be permanently barred and enjoined from instituting, reinstituting, maintaining, commencing, or prosecuting any Released Claim against the Releasee, and the Release as set forth herein shall be given full res judicata effect. The Releasor shall be deemed to have released all Released Claims against the Releasee. It is the intention of the Parties to fully and completely resolve all Released Claims that have been, could have been, or could be asserted by the Releasor against the Releasee with respect to Opioids in the State of New Mexico.

B. In connection with the releases provided for in the Agreement, the Releasor will expressly waive, release, and forever discharge 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.

The Releasor 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 Releasor will expressly waive and fully, finally, and forever settle, release, and discharge, upon the Execution Date, any and all Released Claims that may exist as of such date but which the Releasor does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or through no fault whatsoever, and which, if known, would materially affect the Releasor's decision to enter into the

Agreement. This provision does not extend to Released Claims which the Releasor does not know or suspect to exist because of fraud committed by, or willful misrepresentations made by, the Releasee in the course of litigating the Action.

C. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Releasee the broadest possible bar against any liability arising from or relating in any way to the Released Claims and extend to the full extent of the power of the Releasor to release its Released Claims. This Settlement Agreement is, will constitute, and may be pleaded as a complete bar to any Released Claim asserted by the Releasor against the Releasee, whether currently pending or in the future.

D. Dismissal. As soon as practicable following execution of this Agreement, the Parties will execute and file a consent judgment including a dismissal of the Action with prejudice and with each side bearing their own attorneys' fees and costs. Notwithstanding the foregoing, the consent judgment shall provide that the Court shall retain jurisdiction for purposes of enforcing compliance with the Settlement Agreement. The Parties shall confer and agree as to the final form and time of filing prior to filing the consent judgment.

E. Statement of Intent. It is the intent of the Parties that:

1. The payments made under this Agreement shall be the sole payments made by the Releasee involving, arising out of, or related to the Released Claims;
2. Claims by the Releasor against non-Parties should not result in additional payments by the Releasee for the Released Claims, whether through contribution, indemnification, or any other means; and
3. To the extent permitted under New Mexico law, the Settlement meets the requirements of the Uniform Contribution Among Joint Tortfeasors Act and any similar state law or doctrine that reduces or discharges a released party's liability to any other parties.

F. Non-Party Settlement. To the extent that, on or after the Execution Date of the Agreement, the Releasor settles any Claims arising out of or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by the Releasee) ("Non-Party Covered Conduct Claims") it may have against any entity that is not a Releasee (a "Non-Released Entity") that is, as of the Execution Date of the Agreement, a defendant in the Action or any other action and provides a release to such Non-Released Entity (a "Non-Party Settlement"), including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will seek to include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include), unless prohibited from doing so under applicable law, in the Non-Party Settlement a prohibition on seeking contribution or indemnity of any kind from the Releasee or a release from such Non-Released Entity in favor of the Releasee (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to seek to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

G. Claim-Over. In the event that the Releasor obtains a judgment with respect to a Non-Party Covered Conduct Claim against a Non-Released Entity that does not contain a prohibition on seeking contribution or indemnity of any kind for the Releasee, or the Releasor files a Non-Party Covered Conduct Claim against a Non-Released Entity in bankruptcy or the Releasor is prevented for any reason from obtaining a prohibition on seeking contribution or indemnity of any kind for the Releasee in a Non-Party Settlement, and such Non-Released Entity asserts a Claim-Over against the Releasee, the Parties shall meet and confer concerning any additional appropriate means by which to ensure that the Releasee is not required to make any payment with respect to Covered Conduct beyond the amounts that will already have been paid by the Releasee under this Agreement.

H. Cooperation. The Releasor agrees that it will cooperate in good faith with the Releasee to secure the prompt dismissal of any and all Released Claims. The Releasor further agrees to make reasonable efforts to obtain consensual releases from Releasor's Local Governments in exchange for their participation in this Agreement and their execution of the New Mexico Local Government Albertsons Settlement Participation Form ("Participation Form"). The Releasor further agrees that it will not oppose any effort by the Releasee to secure the prompt dismissal of any and all Released Claims, including but not limited to any Released Claims asserted against the Releasee by New Mexico Local Governments, whether currently pending or in the future. Provided, however, that Releasor will oppose any effort by Releasee to secure dismissal if such effort is premised upon or involves (i) any material misstatement of Releasor's legal obligations under this Agreement or (ii) any material misstatement regarding the practical or legal effect or impact of this Agreement on Released Claims asserted against Releasee by New Mexico Local Governments.

1. 100% of the abatement amount identified in Section III.A.2 and 100% of the fees and costs identified in Sections III.A.3 and III.A.4 shall be consideration in exchange for a release of any and all claims brought against Albertsons and all related entities and affiliates by the State of New Mexico, and shall be non-refundable.
2. For the avoidance of doubt, \$6,750,000 (the amount identified in Section III.A.2), plus the \$5,000,000 referenced in Sections III.A.3 and III.A.4, for a total of \$11,750,000, is payable to the State of New Mexico and is non-refundable.
3. \$8,250,000 (the amount identified in Section III.A.1) shall be reserved for the Local Governments, and shall be distributed in accordance with the allocation percentages outlined in the New Mexico MOU .
4. To the extent any New Mexico Local Government does not execute a release within ninety (90) days of the Execution Date, Albertsons shall be entitled to a credit for each subdivision's allocation amount of the remaining 55% of the abatement amount, as outlined in the New Mexico MOU, and the State shall return such funds to Albertsons within thirty-days of the Local Government sign-on deadline.

a) The Parties may extend these deadlines by a writing executed by all the Parties hereto.

5. In any action brought by a New Mexico political subdivision that fails to release Albertsons, if Albertsons successfully asserts that the political subdivision's claims are extinguished by virtue of the State's settlement with Albertsons, Albertsons shall return to the State the Local Government's allocation of the abatement amount as outlined in the New Mexico MOU.

I. Most Favored Nations. To the extent Albertsons enters into a Global Settlement, the State's allocable share shall be identified. If the State would have received under the Global Settlement an abatement amount that is greater than the sum of the State Abatement Amount and Subdivision Abatement Amount, then Albertsons shall pay the difference to the State (the "MFN Payment"). Any MFN Payment shall be made in accordance with the terms of the Global Settlement, including without limitation terms related to incentives, allocation, and payment schedule.

1. In determining whether the Global Settlement would have resulted in the State receiving an abatement amount that is greater than the sum of the State Abatement Amount and the Subdivision Abatement Amount, the net present value of the abatement amount that the State would have received under the Global Settlement shall be used. The net present value shall be calculated with a discount rate to be agreed to by the Parties. The State and Local Governments shall not receive a greater total sum on a net present value basis than they would have received had they joined the Global Settlement. Any dispute over the calculation of what the State and Local Governments would have received under the Global Settlement, including without limitation any dispute over the discount rate to be used for the net present value analysis, shall be submitted to Mediator Robert Meyer.

J. Res Judicata. Nothing in this Agreement shall be deemed to enlarge or reduce the scope of the res judicata or claim preclusive effect that the settlement memorialized in the Agreement, and/or any consent judgment or other judgment entered on the Agreement, gives rise to under applicable law, including but not limited to as to any Released Claims asserted against the Releasee by New Mexico Local Governments, whether currently pending or in the future.

V. No Admission

A. The Releasor acknowledges and agrees that this Settlement is a compromise of matters involving disputed issues of law and fact. The Releasee is entering into this Settlement solely for the purposes of settlement, to resolve the Released Claims, and thereby avoid significant expense, inconvenience, and uncertainty. Nothing contained herein may be taken as or deemed to be an admission or concession by the Releasee of (i) any violation of law, regulation, or ordinance; (ii) any fault, liability, or wrongdoing; (iii) the strength or weakness of any claim or defense or

allegation made in any other past, present, or future proceeding relating to any Covered Conduct or any Opioid; or (iv) any other matter of fact or law.

VI. Miscellaneous Provisions

A. Use of Agreement as Evidence. Neither this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement (i) is or may be deemed to be or may be used as an admission of, or evidence of, any Covered Conduct, or of any wrongdoing or liability of the Releasee; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault, or omission of the Releasee in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible as evidence or otherwise used in any way in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasee may use this Agreement in any action for any purpose, including, but not limited to, in order to support a claim for contribution and/or indemnification or to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or similar defense or counterclaim, including but not limited to against Released Claims asserted against the Releasee by New Mexico governmental subdivisions, whether currently pending or in the future.

B. Voluntary Settlement. This Settlement Agreement is a product of arm's length settlement negotiations between the duly-authorized representatives of the Parties. The Parties represent and warrant that they have been advised by their respective counsel of their rights and obligations under this Settlement Agreement and the accompanying Releases, and enter into this Settlement Agreement and the accompanying Releases freely, voluntarily, and without duress.

C. Dispute Resolution. In the event that either Party believes that the other Party is not in compliance with any term of this Settlement, then the complaining Party shall (i) provide written notice specifying the reason(s) why the complaining Party believes that the other Party is not in compliance with the Settlement Agreement; and (ii) allow the other Party at least thirty (30) days to attempt to cure such alleged non-compliance (the "Cure Period"). In the event the alleged non-compliance is cured to the complaining Party's satisfaction within the Cure Period, the complaining Party shall not have any liability for such alleged non-compliance. The complaining Party may not commence a proceeding to enforce compliance with this Settlement Agreement before expiration of the Cure Period.

D. Authority to Enter Settlement Agreement. Each signatory to this Agreement on behalf of a Party specifically represents and warrants that he or she is fully authorized to enter into and to execute this Agreement on behalf of such Party. The Releasee represents that it has the power and authority to enter into and perform this Agreement, and that the execution and performance of this Agreement has been duly authorized by all requisite corporate or other legal action. The Releasor represents that it is expressly authorized to take all action required or permitted to be taken pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement. Each Party specifically represents and warrants that this Settlement Agreement constitutes a legal, valid, and binding obligation of such Party. The Releasor agrees that it brought this Action in its sovereign capacity as the people's attorney in order to protect the

public interest, including the interests of the State of New Mexico and its citizens. The Releasor specifically represents and warrants that it has concluded that the terms of this Settlement are fair, reasonable, adequate, and in the best interest of the State of New Mexico and its citizens, and that it has satisfied all conditions and taken all actions required by law in order to validly enter into this Settlement. In addition, the Releasor specifically represents and warrants that it has not sold, assigned, or otherwise transferred any Released Claims, or any portion thereof or rights related thereto, to any Third Party.

E. Notices. To be effective, all notices under this Agreement shall be in writing and delivered to the persons specified below ("Notice Designees") (i) by e-mail and (ii) by either hand delivery or registered or certified mail, return receipt required, postage pre-paid. Any Party may change its Notice Designee(s) by giving written notice to all other Parties as provided in this paragraph.

1. Notices to the State shall be delivered to:

Brian E. McMath, CIPP/US
Assistant Attorney General
NEW MEXICO OFFICE OF THE ATTORNEY GENERAL
Consumer & Environmental Protection Division
408 Galisteo St.
Santa Fe, NM 87501
Direct: (505) 717-3531
Fax: (505) 318-1050
Email: bmcmath@nmag.gov

AND

Daniel Alberstone
BARON & BUDD, P.C.
15910 Ventura Blvd.
Suite 1600
Encino, CA 91436
Direct: (818) 839-2322
Fax: (818) 986-9698
Email: dalberstone@baronbudd.com

2. Notices to Albertsons shall be delivered to:

Albertsons Corporate Office Headquarters
250 Parkcenter Boulevard
Boise, Idaho 83706
Attn: Jon-Peter Kelly, Senior Vice President - Head of Litigation

AND

Francis A. Citera
GREENBERG TRAURIG, LLP
77 West Wacker Drive
Suite 3100
Chicago, IL 60601
Direct: (312) 456-8413
Fax: (312) 899-0320
Email: citera@gtlaw.com

F. Severability; Reinstatement. In the event any one or more provisions of this Settlement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Settlement; provided, however, that if the Releasor is required by final order of a court of competent jurisdiction to return the Settlement Payment or Settlement Product for any reason, this Agreement, including the releases set forth herein, shall be void ab initio and all rights and remedies of the Parties as they existed immediately prior to the Execution Date shall be reinstated in full.

G. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

H. Choice of Law. Any dispute arising from or in connection with the completion and execution of the Settlement Agreement shall be governed by New Mexico law without regard to its choice of law provisions and the Parties agree to venue in the First Judicial District Court, County of Santa Fe, State of New Mexico.

I. Headings; No Conflict Intended. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

J. No Party Deemed to Be the Drafter. None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

K. Amendment; Waiver. This Agreement shall not be modified in any respect except by a writing executed by all the Parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

L. Execution in Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. An executed signature page of this Settlement delivered in PDF format via email shall be as effective as an original executed signature page.

M. Integrated Agreement. This Agreement constitutes the entire agreement between the Parties and no representations, warranties, or inducements have been made to any Party

concerning this Agreement other than the representations, warranties, and covenants contained and memorialized herein. As such, the Parties represent and warrant that they are not relying on any promises, inducements, or representations other than those provided herein.

N. Public Statements. No press releases or other public statements concerning the Settlement shall be made unless and until the execution of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have executed this Agreement as of the dates set forth below.

ALBERTSON'S LLC


By: _____

Francis A. Citera
GREENBERG TRAURIG, LLP
77 West Wacker Drive
Suite 3100
Chicago, IL 60601
Direct: (312) 456-8413
Fax: (312) 899-0320
Attorneys for Albertson's LLC

HECTOR H. BALDERAS
NEW MEXICO ATTORNEY GENERAL

By: Brian E. McMath 12/7/22
Brian E. McMath, CIPP/US

Assistant Attorney General
NEW MEXICO OFFICE OF THE
ATTORNEY GENERAL
408 Galisteo St.
Santa Fe, NM 87501
Direct: (505) 717-3531
Fax: (505) 318-1050

**State of New Mexico – Albertsons Opioid Settlement
Local Government Allocation**

New Mexico - Alberstons Opioid Settlement Local Government Allocation	
State Abatement Amount	\$6,750,000.00
Gross Local Government Abatement Amount - Before MDL Assessment	\$8,250,000.00
Gross 7.5% National MDL Assessment¹	\$562,500.00
<i>State Outside Counsel Local Government Fees Applied to MDL Assessment²</i>	<i>\$547,942.33</i>
<i>Final Net MDL Assessment</i>	<i>\$14,557.67</i>
Local Government Abatement Amount - After MDL Assessment	\$7,687,500.00
15% Local Government Attorneys Fees - Before State Counsel Fee Waiver	\$1,153,125.00
<i>State Outside Counsel Local Government Fees Applied to MDL Assessment</i>	<i>\$547,942.33</i>
<i>Local Government Attorneys Fees After State Outside Counsel Fee Waiver</i>	<i>\$605,182.67</i>
Local Government Abatement Amount Net of MDL Assessment & Fees	\$6,534,375.00

	100.00%	\$ 6,534,375.00
Local Government	Allocation	Final Net Payment
Bernalillo County	18.6169292699%	\$1,216,499.97
Albuquerque City	22.7540246633%	\$1,486,833.30
Catron County	0.1129940051%	\$7,383.45
Chaves County	2.5358877708%	\$165,704.42
Roswell city		
Cibola County	0.7723148257%	\$50,465.95
Colfax County	0.7448541610%	\$48,671.56
Curry County	1.4056466248%	\$91,850.22
Clovis city		
De Baca County	0.0650725663%	\$4,252.09
Dona Ana County	4.1009817203%	\$267,973.52
Las Cruces city	2.7789710876%	\$181,588.39
Sunland Park city	0.2012417097%	\$13,149.89
Eddy County	2.5979985848%	\$169,762.97
Artesia city		
Carlsbad city		
Grant County	1.8057321396%	\$117,993.31
Guadalupe County	0.1869187026%	\$12,213.97

¹ [State Abatement Amount] + [Gross Local Government Abatement Before MDL Assessment] divided by 2; then multiplied by 7.5%.

² The State's outside counsel, who also represents certain New Mexico Local Governments in the opioid litigation, agreed to waive their fee for representing New Mexico Local Governments for the Albertsons, CVS, Kroger, and Walmart settlements and to direct these funds to offset ~97.4% of the National MDL Assessment.

**State of New Mexico – Albertsons Opioid Settlement
Local Government Allocation**

Harding County	0.0102668257%	\$670.87
Hidalgo County	0.1965507765%	\$12,843.36
Lea County	1.3193643533%	\$86,212.21
Hobbs city	0.5477699843%	\$35,793.34
Lovington city	0.1729179347%	\$11,299.11
Lincoln County	1.2208675842%	\$79,776.07
Los Alamos County	0.5915454490%	\$38,653.80
Luna County	0.5889582326%	\$38,484.74
Deming city	0.2484870948%	\$16,237.08
McKinley County	1.0214669791%	\$66,746.48
Gallup city	0.7722895935%	\$50,464.30
Mora County	0.1903934157%	\$12,441.02
Otero County	1.6062640137%	\$104,959.31
Alamogordo city	0.9683526415%	\$63,275.79
Quay County	0.4733520608%	\$30,930.60
Rio Arriba County	3.5113726662%	\$229,446.26
Española city	1.0869232439%	\$71,023.64
Roosevelt County	0.3148139409%	\$20,571.12
Portales city	0.2248670805%	\$14,693.66
San Juan County	2.4064498445%	\$157,246.46
Farmington city	1.4120396740%	\$92,267.97
San Miguel County	0.7151901194%	\$46,733.20
Las Vegas city	0.9509305850%	\$62,137.37
Sandoval County	1.9253935060%	\$125,812.43
Bernalillo town	0.2863480762%	\$18,711.06
Rio Rancho city	2.3456255907%	\$153,271.97
Santa Fe County	3.5143193357%	\$229,638.80
Santa Fe City	4.5408953413%	\$296,719.13
Sierra County	1.0308488455%	\$67,359.53
Socorro County	0.7363065077%	\$48,113.03
Taos County	1.7429125688%	\$113,888.44
Torrance County	0.7071523256%	\$46,207.98
Union County	0.1108929666%	\$7,246.16
Valencia County	2.7716079380%	\$181,107.26
Los Lunas village	1.0566950725%	\$69,048.42












23-0063 Albertson's LLC CAO GB

Final Audit Report

2023-02-28

Created:	2023-02-28
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAVZdLV8iNyIX5R6_inpJgPKIAAsGGVvS5

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Agreement completed.

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