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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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11 SANTA CRUZ COUNTY,
12 CALIFORNIA; POPE COUNTY,
13 ILLINOIS; and THE VILLAGE OF
14 EDDYVILLE, ILLINOIS, Individually and
on Behalf of a Class of Persons Similarly
Situated

Case No. 21-md-02996-CRB (SK)

**AMENDED MASTER CLASS ACTION
COMPLAINT (SUBDIVISION)**

15

IN RE: MCKINSEY & CO., INC.
NATIONAL PRESCRIPTION OPIATE
CONSULTANT LITIGATION

REDACTED

16

This Document Relates to:

JURY TRIAL DEMANDED

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ALL SUBDIVISION ACTIONS

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1 **I. PREAMBLE**

2 This complaint is an administrative device as described in *In re Propulsid Prods. Liab.*
3 *Litig.*, 208 F.R.D.133, 142 (E.D. La. 2002), for the specific purpose of enabling the Court to
4 address the threshold issues it articulated in its statements and Orders to date, as well as
5 settlement, and does not supersede the complaints filed in the individual actions consolidated in
6 this multi-district litigation for pretrial proceedings only. *See Gelboim v. Bank of Am.*, 574 U.S.
7 405, 413 n.3 (2015). This Complaint is not intended to consolidate the Plaintiffs' claims for trial.
8 This Complaint does not include every Plaintiff-specific fact alleged in the underlying
9 complaints, including facts related to individual damages. This complaint incorporates by
10 reference the complaints filed by individual subdivision Plaintiffs pending in this MDL as of
11 November 22, 2021.

12 This Complaint does not concede that a federal court has subject matter jurisdiction over
13 any Plaintiff's case or claim where that Plaintiff filed a timely motion to remand. Any properly-
14 made objections to removal are preserved. Some Plaintiffs have filed motions to remand based on
15 the absence of federal subject matter jurisdiction. By joining in the filing of this complaint, these
16 Plaintiffs do not waive their right to seek remand of their cases to the state courts in which they
17 were originally filed.

18 **II. INTRODUCTION**

19 1. For more than two decades, the opioid crisis has raged across this country. An
20 opioid-related public health emergency was declared by the President in 2017. Last year was the
21 worst on record, with drug overdoses soaring nearly 30%.¹ Today, there are increasingly few
22 Americans whose lives have not been affected by the consequences of opioid dependency,
23 addiction, and overdoses.

24 2. McKinsey is a management consulting firm with operations across the globe. It
25 played a central role in the unfolding, propagation, and exploitation of the opioid crisis by
26 advising multiple opioid manufacturers and other industry participants how to sell as many

27 ¹ Betsy McKay, "U.S. Drug-Overdose Deaths Soared Nearly 30% in 2020, Driven by Synthetic Opioids," *Wall Street*
28 *Journal*, July 14, 2021, *available at*: <https://www.wsj.com/articles/u-s-drug-overdose-deaths-soared-nearly-30-in-2020-11626271200>.

1 opioids as conceivably possible. Knowing that its clients' products were highly addictive,
2 ineffective, and unsafe for the treatment of long-term chronic pain, non-acute pain, and non-
3 cancer pain, McKinsey developed a singular focus on increasing opioid sales, no matter the
4 resultant cost to society. McKinsey did this for well over a decade, despite knowing full well the
5 risk to public health and safety and the widespread economic harm from developing and
6 implementing the transformation of strictly-controlled substances into top-selling blockbuster
7 drugs.

8 3. The purpose of McKinsey's work with its opioids clients was at all times to
9 maximize return on investment. The whole point for those clients (and hence McKinsey) was to
10 make as much money as possible. They all did. This relentless drive to increase sales and create
11 greater availability of opioids was made with no concern about the parallel, known, and inevitable
12 increase in opioid-related deaths, addiction, abuse, diversion, and misuse.

13 4. In the world of management consulting, McKinsey is preeminent. It is one of the
14 world's oldest, largest, and most lucrative consulting firms and is generally seen as the most
15 prestigious firm in the industry. More consigliere than one-off advisor, McKinsey touts its model
16 of engaging in "transformational partnerships" with its clients. McKinsey learns each client's
17 business intimately, embeds itself into all levels of the corporate hierarchy, and provides granular
18 strategies to achieve transformative goals for its clients.

19 5. Marvin Bower, the managing director of McKinsey from 1950 to 1967, was "the
20 father of the consulting profession."² He "turned the business of selling management advice into a
21 keystone of American corporate culture," and is "credited with taking a fledgling industry and
22 setting its course not only as to the kinds of services it could sell but also the standards it must
23 uphold for its work to be respected."³ A lawyer by trade, Bower stressed that management
24 consulting should be seen as an emergent profession, akin to the law or accounting, with
25 obligations to clients and to the broader society that extend beyond the mere commercial.

27 ² Douglas Martin, *Marvin Bower, 99; Built McKinsey & Co.*, N.Y. Times, Jan. 24, 2003, available at:
28 <https://www.nytimes.com/2003/01/24/business/marvin-bower-99-built-mckinsey-co.html>

³ *Id.*

1 6. Bower instilled an ethos at McKinsey that has been reinforced throughout the
2 decades as a core value of the firm: “Deliver the bad news if you must, but deliver it properly.”⁴
3 Bower’s principles, and the values he imparted within McKinsey, are said to guide the firm to the
4 present day. “In many ways, certainly in spirit and soul, Marvin continued to lead it after he
5 retired, and he leads it still,” eulogized Rajat Gupta, McKinsey’s then-global managing partner, at
6 Bower’s funeral in 2003.⁵

7 7. This case is, in large part, about the firm’s failure to adhere to Bower’s simple,
8 foundational tenet. It arises instead from the firm’s steadfast and continual work to maximize
9 opioid sales in partnership with numerous clients during the pendency of the worst man-made
10 epidemic in modern medical history. It is about McKinsey never delivering the “bad news” of
11 opioids’ devastating impact on Plaintiffs and the public, properly or otherwise, and instead
12 looking the other way for money.

13 8. When it came to opioids, McKinsey did far more than just give advice. Not only
14 did it suggest courses of action that its clients should adopt, the firm remained in place and
15 worked collaboratively alongside its clients to actually implement McKinsey’s recommendations
16 to achieve objectives jointly identified by the clients and McKinsey. McKinsey stood alongside
17 its clients in the arena doing the deeds.

18
19 ⁴ Duff McDonald, *The Firm* 35 (2014).

20 ⁵ *Id.* at 270. In many ways, Gupta was an interesting figure to opine on Bower’s legacy. Indeed, Gupta’s leadership of
21 McKinsey is in many respects to be *contrasted* with Bower’s legacy. Many of the values Bower emphasized—an
22 emphasis on professionalism over commercial exploitation, for example—were jettisoned under Gupta’s tenure as
23 managing partner of the firm, which ended in 2003. “Under his watch, McKinsey began to chase top billings in a way
24 it never had before.” *Id.* at 234. For instance, McKinsey first began accepting equity stakes in clients as a form of
25 incentive compensation during Gupta’s tenure. Previously, McKinsey only charged standard fees for its consulting
26 services as Bower disdained the notion of taking equity stakes in clients. *Id.* at 234. Under Gupta, McKinsey also began
27 to allow consultants’ compensation to be tied to client performance. *Id.*

28 Consistent with Gupta’s efforts to monetize McKinsey’s consulting business in ways previous firm leadership
had not, McKinsey also began to expand its client base. “While the firm would never admit as much, under Gupta,
McKinsey began working for just about anyone with a fat bank account and a checkbook.” *Id.* at 266.

Institutions age, and by the time Gupta came to lead the firm in 1994, McKinsey was a mature institution. It
had built up significant value in its *reputation* by historically advising *only* “blue chip” companies “at the top of the
corporate pyramid.” *Id.* Under Gupta, McKinsey began the process of realizing that value. For McKinsey, the way to
monetize an elite reputation was to start advising those it historically may have shunned as clients—to start offering its
imprimatur, in addition to its services, for money. McKinsey’s work with opioid manufacturers began under Gupta’s
leadership.

1 9. The deceptive marketing strategies that McKinsey and its clients invented,
2 developed, deployed, and continually refined for years to expand the market for opioids are
3 foundational to the epidemic.

4 10. McKinsey worked hand-in-hand with major opioid manufacturers, including
5 Purdue Pharma L.P., Endo Pharmaceuticals,⁶ Johnson & Johnson,⁷ and Mallinckrodt⁸ for years.
6 At the same time, McKinsey advised other participants in the opioid supply chain, including
7 distributors, pharmacies, and even regulators.

8 11. In particular, McKinsey advised the Sackler family and their company, Purdue, for
9 years while Purdue aggressively marketed OxyContin, widely viewed as the taproot of the opioid
10 crisis. The relationship began no later than 2004. In the years following Purdue’s 2007 guilty plea
11 for misleadingly marketing OxyContin, McKinsey continued to work closely with Purdue to
12 dramatically increase OxyContin sales, notwithstanding the existence of a five-year Corporate
13 Integrity Agreement that Purdue entered as part of its guilty plea.

14 12. McKinsey knew of the dangers of opioids and in particular the prior misconduct of
15 Purdue but nonetheless advised Purdue and other opioid manufacturers to improperly market and
16 sell OxyContin and other prescription opioids, supplying granular sales and marketing strategies
17 and remaining intimately involved throughout implementation of those strategies. McKinsey’s
18 actions resulted in a surge in sales of OxyContin and other opioids that fueled and prolonged the
19 opioid crisis.

20 13. For years, McKinsey advised Purdue on, designed, and helped to implement
21 various strategies to raise sales of OxyContin by focusing on high dose sales and deceptively
22 messaging to physicians that OxyContin would improve function and quality of life. For example,
23 McKinsey urged Purdue to maximize sales by dictating, to a greater degree, which prescribers its
24 sales representatives would target, exploring ways to increase the amount of time those sales
25

26 ⁶ “Endo Pharmaceuticals” or “Endo” refers to Endo Health Solutions Inc., Endo International plc, and Endo
Pharmaceuticals Inc., collectively.

27 ⁷ “Johnson & Johnson” refers to Johnson & Johnson Services, Inc. and its wholly-owned subsidiary Janssen
Pharmaceuticals, Inc. (“Janssen”).

28 ⁸ “Mallinckrodt” refers to Mallinckrodt LLC and Mallinckrodt plc, together.

1 representatives spent in the field increasing opioid sales and prioritizing OxyContin in incentive
2 compensation targets.⁹

3 14. McKinsey's partnership with Purdue reached its fever pitch in the summer of
4 2013. In January of that year, Purdue's Corporate Integrity Agreement expired, and Purdue was
5 no longer bound by its constraints. Within months, the Sacklers tasked McKinsey with
6 transforming Purdue's approach to OxyContin sales in order to extract as much money as
7 possible from the remaining patent life of the drug.¹⁰

8 15. In response, McKinsey developed and proposed Project Turbocharge, a series of
9 transformational changes that McKinsey proposed to implement at Purdue to dramatically
10 increase OxyContin sales by re-tooling Purdue's sales force and investing large amounts of
11 capital to "turbocharge" it. "[O]ur recommendation is that Purdue makes a clear go-no-go
12 decision to 'Turbocharge the Sales Engine'," McKinsey told Purdue on August 8, 2013.

13 16. The Sacklers chose "go," and McKinsey subsequently implemented and
14 continually refined Project Turbocharge at Purdue over the course of years, to devastating, but
15 profitable, effect.

16 17. McKinsey has recently been the subject of scrutiny for its various business
17 practices, including its work facilitating the opioid crisis with Purdue.¹¹ On March 7, 2019, Kevin
18 Sneader, McKinsey's then-global managing partner, addressed all McKinsey employees
19 regarding this scrutiny. Drawing inspiration from Theodore Roosevelt, Sneader stated,

20 [W]e cannot return to a time when we were in the background and unobserved.
21 Those days have gone. Indeed, I have little doubt that scrutiny—fair and unfair—
22 will continue. It is the price we pay for being "in the arena" and working on what
23 matters.¹²

24 ⁹ PPLPC012000437346

¹⁰ OxyContin, like any branded pharmaceutical, is subject to eventual patent expiration and competition from generic
25 opioid manufacturers.

¹¹ See Michael Forsythe and Walt Bogdanich, *McKinsey Advised Purdue Pharma How to 'Turbocharge' Opioid Sales,*
26 *Lawsuit Says*, N.Y. Times, Feb. 1, 2019, available at: <https://www.nytimes.com/2019/02/01/business/purdue-pharma-mckinsey-oxycontin-opioids.html>.

¹² See *"The Price We Pay for Being 'In the Arena'": McKinsey's Chief Writes to Staff About Media Scrutiny and*
27 *Scandal*, Fortune Magazine, March 8, 2019, available at <https://fortune.com/2019/03/08/mckinsey-staff-letter-kevin-sneader/>. The "arena" reference is to *Citizenship in a Republic*, a speech delivered by Theodore Roosevelt at the
28 *Sorbonne* on April 23, 1910:

1 18. Weeks later, McKinsey announced that it would no longer work for any opioid
2 manufacturer. “Opioid abuse and addiction are having a tragic and devastating impact on our
3 communities. We are no longer advising clients on any opioid-specific business and are
4 continuing to support key stakeholders working to combat the crisis.”¹³

5 19. The price for being in the arena is more than mere scrutiny. McKinsey is liable for
6 its misconduct and the harms it caused or exacerbated. McKinsey is liable for its successful
7 efforts to increase opioid sales for years. It continued this work unabated and with alacrity despite
8 events as stunning as Purdue’s 2007 guilty plea for misbranding OxyContin, Purdue’s 2015
9 settlement with the State of Kentucky, and numerous other enforcement actions related to opioid
10 sales and marketing by McKinsey clients. Through it all, McKinsey remained steadfast in its
11 efforts to promote opioid sales for all of its clients for the purpose of maximizing return on
12 investment without regard to the obvious implications of what they were doing. Indeed, the firm
13 endeavored alongside its clients to increase the size of the *overall* opioid market for *nearly two*
14 *decades*, until as late as March 22, 2019, despite increasingly blood-red flags along the way.¹⁴

18 It is not the critic who counts; not the man who points out how the strong man stumbles, or where
19 the doers of deeds could have done them better. The credit belongs to the man who is actually in the
20 arena [here, McKinsey; and the arena, opioid sales], whose face is marred by dust and sweat and
21 blood; who strives valiantly; who errs, who comes short again and again, because there is no effort
22 without error and shortcoming; but who does actually strive to do the deeds; who knows great
enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in
the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring
greatly, so that his place shall never be with those cold and timid souls who neither know victory
nor defeat.

23 As it happens, Mr. Sneader is not the only McKinsey person to draw inspiration from Roosevelt. *Citizenship*
24 *in a Republic* similarly inspired Dominic Barton, the man Mr. Sneader succeeded as McKinsey’s global managing
25 partner. It served as the basis for his 2017 address to the Ivey Business School in Canada. *See* Dominic Barton *In the*
26 *Arena: Leadership in an Age of Disruption*, October 17, 2017, *available at*: https://www.ivey.uwo.ca/media/3780710/daquino_lecture2017.pdf. While McKinsey continues to preach the values of corporate integrity from the Bower area,
its actions show that it has moved far afield from its professed moral compass.

27 ¹³ *See* Paul La Monica, *Consulting firm McKinsey no longer working with opioid maker Purdue Pharma*, CNN, May
28 24, 2019, *available at*: <https://www.cnn.com/2019/05/24/business/mckinsey-purdue-pharma-oxycontin/index.html>.
The statement was attributed to McKinsey as an entity. No individual’s name was attributed.

29 ¹⁴ *See* “About McKinsey’s past work for opioid manufacturers,” *last updated March 22, 2021, available at*:
<https://www.mckinseyopioidfacts.com> (“We decided nearly two years ago to end all work on opioid-specific
business”)

1 **III. JURISDICTION AND VENUE**

2 20. This Court has subject matter jurisdiction over this action for the reasons stated in
3 each underlying complaint.

4 21. This Court has personal jurisdiction over McKinsey for the reasons stated in each
5 underlying complaint.

6 22. Venue is appropriate for pretrial proceedings under *In re McKinsey & Co., Inc.*,
7 *Nat'l Prescription Opiate Consultant Litig.*, MDL No. 2996, 2021 WL 2351628 (J.P.M.L. June 7,
8 2021).

9 **IV. PARTIES**

10 **A. Named Plaintiffs**

11 23. Plaintiff County of Santa Cruz is a political subdivision of the State of California.

12 24. Plaintiff Pope County is a political subdivision of the State of Illinois.

13 25. Plaintiff The Village of Eddyville is a political subdivision of the State of Illinois.

14 26. Plaintiffs County of Santa Cruz, Pope County, and The Village of Eddyville are
15 willing to serve as Named Plaintiffs over the national class of plaintiffs and as Settlement
16 Representatives for any settlement class.

17 **B. Subdivision Plaintiffs**

18 27. This Complaint is an administrative summary of claims by the following:

19 a. Alabama Plaintiffs: Walker County; City of Jasper

20 b. California Plaintiffs: County of San Mateo; County of Santa Cruz

21 c. Florida Plaintiffs: City of Pembroke Pines

22 d. Georgia Plaintiffs: Peach County; City of Woodbury

23 e. Illinois Plaintiffs: St. Clair County; Pope County; Madison County; Village
24 of Eddyville

25 f. Indiana Plaintiffs: Orange County; Scott County; City of Madison; City of
26 Austin

27 g. Kentucky Plaintiffs: Green County Fiscal Court; Breckinridge County
28 Fiscal Court; Hardin County Fiscal Court; Meade County Fiscal Court; Menifee County Fiscal

1 Court; Nelson County Fiscal Court; Ohio County Fiscal Court; Washington County Fiscal Court;
2 Green County Fiscal Court; City of Henderson; The City of Columbia; The City of Jamestown;
3 Russell County Fiscal Court; The City of Russell Springs; Breathitt County Fiscal Court;
4 Caldwell County Fiscal Court; Clinton County Fiscal Court; Harrison County Fiscal Court; Hart
5 County Fiscal Court; Larue County Fiscal Court; Logan County Fiscal Court; Mason County
6 Fiscal Court; Mercer County Fiscal Court; Todd County Fiscal Court; Calloway County Fiscal
7 Court; The City of Campbellsville; Daviess County Fiscal Court; Fulton County Fiscal Court;
8 Hancock County Fiscal Court; Hickman County Fiscal Court; McLean County Fiscal Court;
9 Muhlenberg County Fiscal Court; The City of Murray; The City of Owensboro; Spencer County
10 Fiscal Court; Taylor County Fiscal Court; Webster County Fiscal Court

11 h. Louisiana Plaintiff: Parish of Livingston

12 i. Michigan Plaintiff: Cannon Township

13 j. New York Plaintiffs: County of Albany; County of Westchester; County of
14 Genesee; Town of Auburn; City of Buffalo; County of Chautauqua; County of Chemung; County
15 of Chenango; County of Clinton; County of Cortland; County of Hamilton; City of Ithaca; City of
16 Kingston; County of Livingston; County of Madison; City of Mount Vernon; County of Niagara;
17 County of Orleans; City of Poughkeepsie; Town of Poughkeepsie; County of Rensselaer; City of
18 Saratoga Springs; County of Steuben; City of New York; County of Suffolk; County of Broome;
19 County of Columbia; County of Dutchess; County of Erie; County of Fulton; County of Greene;
20 County of Herkimer; County of Lewis; County of Monroe; County of Montgomery; County of
21 Ontario; County of Orange; County of Oswego; County of Schenectady; County of Seneca;
22 County of St. Lawrence; County of Sullivan; County of Ulster; County of Washington; County of
23 Wyoming

24 k. Ohio Plaintiffs: County of Montgomery; City of Dayton; County of
25 Portage; City of Ravenna; City of Kent; City of Aurora; County of Stark; City of Canton; City of
26 Alliance; County of Summit; City of Akron; City of Fairlawn; City of Barberton; Village of
27 Boston Heights; Boston Township; Village of Clinton; Copley Township; Coventry Township;
28 City of Cuyahoga Falls; City of Green; Village of Lakemore; Village of Mogadore; City of

1 Munroe Falls; City of New Franklin; City of Norton; Village of Peninsula; Village of Richfield;
2 Village of Silver Lake; Springfield Township; City of Stow; City of Tallmadge; Cuyahoga
3 County; City of Broadview Heights; City of Euclid; City of Garfield Heights; City of North
4 Olmsted; City of Olmsted Falls; City of Parma Heights; City of Parma; City of Strongsville; City
5 of Warrensville Heights; County of Medina; County of Ashtabula; City of Findlay; County of
6 Harrison; County of Jefferson; County of Lorain; City of Lorain; City of North Ridgeville;
7 County of Trumbull; City of Warren; County of Lake; Township of Painesville; Seven Hills; City
8 of Toledo

- 9 l. Oklahoma Plaintiffs: City of Shawnee; Kay County
- 10 m. Pennsylvania Plaintiffs: Bedford County
- 11 n. Tennessee Plaintiffs: Blount County; City of Maryville
- 12 o. Virginia Plaintiffs: The City of Chesapeake; The County Board of
13 Arlington County; Fairfax County Board of Supervisors; Chesterfield County; Prince William
14 County Board of Supervisors; Loudoun County; Henrico County; City of Roanoke; Roanoke
15 County; Fauquier County; City of Bristol; City of Salem; Alleghany County; Accomack County;
16 Northumberland County; City of Lexington; Franklin County; Frederick County; Halifax County;
17 Rockbridge County; Dickenson County; Louisa County; Madison County; Floyd County; City of
18 Covington; City of Fredericksburg; Charlotte County; Greensville County; Culpeper County;
19 Prince George County; City of Emporia; Amherst County; Botetourt County; Isle of Wight
20 County; City of Buena Vista; King and Queen County; Northampton County; Goochland County;
21 Dinwiddie County; Mecklenburg County; City of Fairfax; Stafford County; City of Winchester;
22 City of Alexandria; Washington County; Lee County; City of Norton; Pittsylvania County; Henry
23 County; City of Martinsville; Page County; City of Galax; Giles County; Montgomery County;
24 Cumberland County; Patrick County; City of Radford; Shenandoah County; City of Waynesboro;
25 The County Board of Arlington County; Fairfax County Board of Supervisors; Chesterfield
26 County; Prince William County Board of Supervisors; Loudoun County; Henrico County; City of
27 Roanoke; Roanoke County; Fauquier County; City of Bristol; City of Salem; Alleghany County;
28 Accomack County; Northumberland County; City of Lexington; Franklin County; Frederick

1 County; Halifax County; Rockbridge County; Dickenson County; Louisa County; Madison
2 County; Floyd County; City of Covington; City of Fredericksburg; Charlotte County; Greenville
3 County; Culpeper County; Prince George County; City of Emporia; Amherst County; Botetourt
4 County; Isle of Wight County; City of Buena Vista; King and Queen County; Northampton
5 County; Goochland County; Dinwiddie County; Mecklenburg County; City of Fairfax; Stafford
6 County; City of Winchester; City of Alexandria; Washington County; Lee County; City of
7 Norton; Pittsylvania County; Henry County; City of Martinsville; Page County; City of Galax;
8 Giles County; Montgomery County; Cumberland County; Patrick County; City of Radford;
9 Shenandoah County; City of Waynesboro

10 p. Washington Plaintiffs: King County; Skagit County; Lewis County; City of
11 Kent; Island County; Kitsap County

12 q. West Virginia Plaintiffs: County Commission of Mingo County; The Town
13 of Kermit

14 C. **Defendants**

15 28. Defendant McKinsey & Company, Inc. is a corporation organized under the laws
16 of the state of New York. McKinsey's principal place of business is located at 711 Third Avenue,
17 New York, NY 10017. It may be served with process via its registered agent, Corporation Service
18 Company, at 80 State Street, Albany, NY 12207.

19 29. Defendant McKinsey Holdings, Inc. is a Delaware corporation with its principal
20 place of business is located at 711 Third Avenue, New York, NY 10017. It may be served with
21 process via its registered agent, Corporation Service Company, 251 Little Falls Drive,
22 Wilmington, DE 19808

23 30. Defendant McKinsey & Company, Inc. United States is a Delaware corporation
24 with its principal place of business is located at 711 Third Avenue, New York, NY 10017. It may
25 be served with process via its registered agent, Corporation Service Company, 251 Little Falls
26 Drive, Wilmington, DE 19808

27 31. Defendant McKinsey & Company, Inc. Washington D.C. is a Delaware
28 corporation with its principal place of business is located at 711 Third Avenue, New York, NY

1 10017. It may be served with process via its registered agent, Corporation Service Company, 251
2 Little Falls Drive, Wilmington, DE 19808.

3 32. Upon information and belief, McKinsey & Company, Inc. is the parent company
4 of McKinsey & Company Holdings, Inc., which is itself the parent company of both McKinsey &
5 Company, Inc. United States and McKinsey & Company, Inc. Washington D.C. Upon
6 information and belief, each subsidiary corporation is wholly-owned by its parent. Despite the
7 corporate form, McKinsey began as a partnership and still refers to its senior employees as
8 “partners.” Those partners are the firm’s shareholders. Collectively, these four Defendants are
9 referenced throughout as “McKinsey.”

10 33. McKinsey a is global management consultancy with offices in over 130 cities in
11 65 countries, including the following United States cities: Atlanta, GA; Austin, TX; Houston, TX;
12 Dallas, TX; San Francisco, CA; Los Angeles, CA; Redwood City, CA; Boston, MA; Charlotte,
13 NC; Chicago, IL; Cleveland, OH; Denver, CO; Detroit, MI; Miami, FL; Miramar, FL; Tampa,
14 FL; Minneapolis, MN; Summit, NJ; New York, NY; Philadelphia, PA; Pittsburgh, PA; Seattle,
15 WA; St. Louis, MO; Stamford, CT; Waltham, MA; and Washington, D.C.

16 34. McKinsey is registered to do business in all fifty states.

17 **V. FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

18 **A. The Opioid Crisis**

19 35. The term “opioid” refers to a class of drugs that bind with opioid receptors in the
20 brain and includes natural, synthetic, and semi-synthetic opioids. Natural opioids are derived from
21 the opium poppy. Generally used to treat pain, opioids produce multiple effects on the human
22 body, the most significant of which are analgesia, euphoria, and respiratory depression.

23 36. The opium poppy contains various opium alkaloids, three of which are used in the
24 pharmaceutical industry today: morphine, codeine, and thebaine. Early use of opium in Western
25 medicine was a tincture of opium and alcohol called laudanum, which contains all of the opium
26 alkaloids and is still available by prescription today. Chemists first isolated the morphine and
27 codeine alkaloids in the early 1800s.

1 37. In 1827, the pharmaceutical company Merck began large-scale production and
2 commercial marketing of morphine. During the American Civil War, field medics commonly
3 used morphine, laudanum, and opium pills to treat the wounded, and many veterans were left
4 with morphine addictions. By 1900, an estimated 300,000 people were addicted to opioids in the
5 United States, and many doctors prescribed opioids solely to prevent their patients from suffering
6 withdrawal symptoms. The nation’s first Opium Commissioner, Hamilton Wright, remarked in
7 1911: “The habit has this nation in its grip to an astonishing extent Our prisons and our
8 hospitals are full of victims of it, it has robbed ten thousand businessmen of moral sense and
9 made them beasts who prey upon their fellows . . . it has become one of the most fertile causes of
10 unhappiness and sin in the United States.”

11 38. Pharmaceutical companies have long tried to develop substitutes for opium and
12 morphine that would provide the same analgesic effects without the addictive properties. In 1898,
13 Bayer Pharmaceutical Company began marketing diacetylmorphine (obtained from acetylation of
14 morphine) under the trade name “Heroin.” Bayer advertised heroin as a non-addictive cough and
15 cold remedy suitable for children, but as its addictive nature became clear, heroin distribution in
16 the United States was limited to prescription only in 1914 and then banned altogether a decade
17 later.

18 39. Although heroin and opium became classified as illicit drugs, there is little
19 difference between them and prescription opioids. Prescription opioids are synthesized from the
20 same plant as heroin, have similar molecular structures, and bind to the same receptors in the
21 human brain.

22 40. Due to concerns about their addictive properties, prescription opioids have usually
23 been regulated at the federal level as Schedule II controlled substances by the Drug Enforcement
24 Administration since 1970.

25 41. Throughout the twentieth century, pharmaceutical companies continued to develop
26 prescription opioids like Percodan, Percocet, and Vicodin, but these opioids were generally
27 produced in combination with other drugs, with relatively low opioid content.
28

1 42. In contrast, OxyContin, the product whose launch in 1996 ushered in the modern
2 opioid epidemic, is pure oxycodone. Purdue initially made it available in the following strengths:
3 10 mg, 15 mg, 20 mg, 30 mg, 40 mg, 60 mg, 80 mg, and 160 mg. The weakest OxyContin
4 delivers as much narcotic as the strongest Percocet, and some OxyContin tablets delivered sixteen
5 times that.

6 43. The effects of opioids vary by duration. Long-acting opioids, such as Purdue's
7 OxyContin and MS Contin, Janssen's Nucynta ER and Duragesic, Endo's Opana ER, and
8 Actavis's Kadian, are designed to be taken once or twice daily and are purported to provide
9 continuous opioid therapy for, in general, twelve hours. Short-acting opioids, such as Cephalon's
10 Actiq and Fentora, are designed to be taken in addition to long-acting opioids to address "episodic
11 pain" (also referred to as "breakthrough pain") and provide fast-acting, supplemental opioid
12 therapy lasting approximately four to six hours. Still other short-term opioids, such as Insys's
13 Subsys, are designed to be taken in addition to long-acting opioids to specifically address
14 breakthrough cancer pain, excruciating pain suffered by some patients with end-stage cancer. The
15 opioid manufacturers promoted the idea that pain should be treated by taking long-acting opioids
16 continuously and supplementing them by also taking short-acting, rapid-onset opioids for
17 episodic or "breakthrough" pain.

18 44. Patients develop tolerance to the analgesic effect of opioids relatively quickly. As
19 tolerance increases, a patient typically requires progressively higher doses in order to obtain the
20 same perceived level of pain reduction. The same is true of the euphoric effects of opioids—the
21 "high." However, opioids depress respiration and, at very high doses, can, and often do, arrest
22 respiration altogether. At higher doses, the effects of withdrawal are more severe. Long-term
23 opioid use can also cause hyperalgesia, a heightened sensitivity to pain.

24 45. Discontinuing opioids after more than just a few weeks of therapy will cause most
25 patients to experience withdrawal symptoms. These withdrawal symptoms include severe anxiety,
26 nausea, vomiting, headaches, agitation, insomnia, tremors, hallucinations, delirium, pain, and
27 other serious symptoms, which may persist for months after a complete withdrawal from opioids,
28 depending on how long the opioids were used.

1 46. As one doctor put it, the widespread long-term use of opioids “was an experiment
2 on the population of the United States. It wasn’t randomized, it wasn’t controlled, and no data
3 was collected until they started gathering death statistics.”

4 47. The results were devastating, and the nation continues to reach ever grimmer
5 milestones. In 2020, drug-overdose deaths in the United States soared nearly 30%, reaching all-
6 time highs.¹⁵

7 **B. Marketing and the Origins of the Opioid Crisis**

8 48. OxyContin, manufactured by Purdue Pharma L.P., was introduced to the market in
9 1996. Within six years of its introduction, the increasingly widespread misuse and abuse of
10 OxyContin and similar opioids had drawn the attention of the United States Senate.

11 49. Two decades ago, Dr. Art Van Zee traveled from the rural coal town of St.
12 Charles, in the southwestern corner of Virginia, to Washington D.C. to provide testimony to the
13 United States Senate Committee on Health, Education, Labor and Pensions. On February 12,
14 2002, that Committee held a hearing entitled “Examining the Effects of the Painkiller OxyContin,
15 Focusing on Federal, State, and Local Efforts to Decrease Abuse and Misuse of this Product
16 While Assuring Availability for Patients Who Suffer Daily from Chronic Moderate to Severe
17 Pain.”¹⁶

18 50. Today, OxyContin—and the methods used to sell it—is widely seen as a principal
19 taproot of the opioid crisis. In those early days of the unfolding opioid epidemic, Dr. Van Zee’s
20 medical practice in St. Charles put him in a position to offer informed, first-hand observations of
21 the toll that the pharmaceutical industry’s efforts to market opioids was exacting from his
22 community. He testified:

23 In the 25 years I have practiced as a general internist in St. Charles, which is a small
24 Appalachian coal mining town, there has never been anything to compare to the
25 epidemic of drug abuse and addiction that we have seen the last 3 years with
OxyContin. Contrary to what is sometimes portrayed in the media as long-term

26 ¹⁵ Betsy McKay, “U.S. Drug-Overdose Deaths Soared Nearly 30% in 2020, Driven by Synthetic Opioids,” *Wall Street*
27 *Journal*, July 14, 2020, available at: <https://www.wsj.com/articles/u-s-drug-overdose-deaths-soared-nearly-30-in-2020-11626271200>.

28 ¹⁶ A transcript of the hearing is available at: <https://www.govinfo.gov/content/pkg/CHRG-107shrg77770/html/CHRG-107shrg77770.htm>

1 addicts switching to the drug *du jour*, what we have seen for the most part is
2 numerous young people recreationally using OxyContin and then becoming very
3 rapidly addicted. Many of these kids are good kids, good families with bright,
4 promising futures that are being destroyed in every way by their opioid addiction.¹⁷

5 51. Further, Dr. Van Zee identified the sales and marketing practices of the
6 pharmaceutical industry when selling controlled substances as a primary cause of the problem:

7 My own personal view of the complicated OxyContin abuse problem is that there
8 are at least three major elements involved. First, there has been an obvious problem
9 with physician misprescribing and overprescribing of this drug. Second, this
10 epidemic has been a vicious indicator of the alarming degree of prescription drug
11 abuse in our society. *Third and perhaps the one closest to this committee and the*
12 *FDA is that the promotion and marketing of OxyContin by Purdue Pharma has*
13 *played a major role in this problem.*¹⁸

14 52. Five years after Dr. Van Zee's testimony and eighty miles from his hometown of
15 St. Charles, United States Attorney John Brownlee announced in Abingdon, Virginia, the guilty
16 plea of the Purdue Frederick Company, the parent of Purdue Pharma, L.P., relating to the
17 misbranding of OxyContin. Brownlee stated, "Even in the face of warnings from health care
18 professionals, the media, and members of its own sales force that OxyContin was being widely
19 abused and causing harm to our citizens, Purdue, under the leadership of its top executives,
20 continued to push a fraudulent marketing campaign that promoted OxyContin as less addictive,
21 less subject to abuse, and less likely to cause withdrawal. In the process, scores died as a result of
22 OxyContin abuse and an even greater number of people became addicted to OxyContin; a drug
23 that Purdue led many to believe was safer, less subject to abuse, and less addictive than other pain
24 medications on the market."

25 53. Two years later, in 2009, Dr. Van Zee published *The Promotion and Marketing of*
26 *OxyContin: Commercial Triumph, Public Health Tragedy* in the American Journal of Public
27 Health.

28 54. In his paper, Dr. Van Zee stated the matter plainly: "Compared with noncontrolled
drugs, controlled drugs, with their potential for abuse and diversion, pose different public health

¹⁷ See <https://www.govinfo.gov/content/pkg/CHRG-107shrg77770/html/CHRG-107shrg77770.htm>

¹⁸ *Id.* (emphasis added).

1 risks when they are overpromoted and highly prescribed.”¹⁹ In one sense, Dr. Van Zee’s
2 observation is not particularly novel. Indeed, it approaches tautology: controlled substances are
3 *controlled* precisely because they should not be sold to maximize volume and profits. This did not
4 prevent McKinsey and Purdue from marketing Purdue’s opioids full hilt, however. By 2004,
5 “OxyContin had become the most prevalent prescription opioid in the United States.”²⁰

6 55. Dr. Van Zee identified the three principal marketing tactics Purdue employed as a
7 source of OxyContin misuse and abuse—the exact tactics McKinsey identified and promoted—
8 and suggested that regulation may be appropriate to curtail its use. The first was the use of
9 granular sales and marketing data to profile individual prescribers and identify those that already
10 prescribe large amounts of opioids. “Through these profiles, a drug company can identify the
11 highest and lowest prescribers of particular drugs on a single zip code, county, state, or the entire
12 country. One of the critical foundations of Purdue’s marketing plan for OxyContin was to target
13 the physicians who were the highest prescribers for opioids across the country.”²¹

14 56. The second tactic was the use of incentive compensation structures to encourage
15 the salesforce to sell ever more prescriptions of OxyContin. Bonuses at Purdue were “uncapped,”
16 meaning there was no upper limit to what an OxyContin salesperson could earn. Rather,
17 salesforce remuneration was a direct function of overall OxyContin sales—the more you sell, the
18 more you make. “A lucrative bonus system encouraged sales representatives to increase sales of
19 OxyContin in their territories, resulting in large numbers of visits to physicians with high rates of
20 opioid prescriptions, as well as a multifaceted information campaign aimed at them.”²²

21 57. The third tactic was to increase the overall number of individual calls that the
22 salesforce placed to prescribers. “From 1996 to 2000, Purdue increased its internal sales force
23 from 318 sales representatives to 671, and its total physician call list from approximately 33,400
24 to 44,500 to approximately 70,500 to 94,000 physicians.”²³

25 ¹⁹ Art Van Zee, *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*, American
26 Journal of Public Health, February 2009, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2622774/pdf/221.pdf>

27 ²⁰ *Id.*

28 ²¹ *Id.*

²² *Id.*

²³ *Id.*

1 58. When combined, these tactics produced the intended result. “The use of prescriber
2 profiling data to target high-opioid prescribers—coupled with very lucrative incentives for sales
3 representatives—would seem to fuel increased prescribing by some physicians—perhaps the most
4 liberal prescribers of opioids and, in some cases, the least discriminate.”²⁴

5 59. Dr. Van Zee’s observations regarding the direct link between OxyContin
6 marketing and overall opioid overdose mortality would, in time, be confirmed by further
7 academic work, including empirical research published by the National Bureau of Economic
8 Research in 2019.

9 60. McKinsey played a central role in the sales and marketing of these Schedule II
10 controlled substances in the United States for many years. Throughout that time, the purpose of
11 McKinsey’s actions was singular: making the most money possible no matter the resultant cost to
12 society. Indeed, no significant concern was given to the fact that greater availability of drugs
13 correlates to opioid-related deaths, addiction, abuse, and misuse. Return on investment was
14 McKinsey’s guiding light. McKinsey partnered with numerous opioid manufacturers and other
15 opioid industry participants to maximize the return on investment in sales and marketing efforts
16 for numerous opioid products, and did so contemporaneously. Despite the fact that the Schedule
17 II controlled substances were designed for a small, narrowly defined group—patients with acute,
18 terminal, or cancer-related pain—McKinsey’s goal, in all instances, was to sell as many pills as
19 conceivably possible.

20 **C. What McKinsey Does: “Consulting is more than giving advice.”**

21 61. McKinsey is a global consulting firm with many areas of expertise, including the
22 pharmaceutical industry. As a management consulting firm, McKinsey provides plans to
23 managers, directors, and owners on how to run their companies or other enterprises, and helps
24 implement those plans.

25 62. Management consulting is the business of providing solutions to clients. Solutions
26 take many forms, depending on the client’s needs. “Management consulting includes a broad
27

28 ²⁴ *Id.*

1 range of activities, and the many firms and their members often define these practices quite
2 differently.”²⁵

3 63. Broadly speaking, there are two schools of management consulting. “Strategy”
4 consulting provides big-picture advice to clients about how they approach their business: how the
5 business is structured, which markets to compete in, potential new business lines, and mergers
6 and acquisitions. The strategy consultant provides a plan to the client that the client may choose
7 to adopt or not.

8 64. “Implementation” consulting is what comes next. If strategy consulting is
9 providing advice to a client, “implementation” work is what happens once the client has adopted
10 the consultant’s plan. After a client has adopted the strategy consultant’s recommendations, the
11 implementation consultant remains in place with the client to actually do the necessary work and
12 execute on the plan.

13 65. In his 1982 *Harvard Business Review* article entitled “Consulting is More Than
14 Giving Advice,” Professor Arthur Turner of the Harvard Business School described the then-
15 current state of the consulting industry’s attitude toward implementation work:

16 The consultant’s proper role in implementation is a matter of considerable debate in
17 the profession. Some argue that one who helps put recommendations into effect
18 takes on the role of manager and thus exceeds consulting’s legitimate bounds.
19 Others believe that those who regard implementation solely as the client’s
20 responsibility lack a professional attitude, since recommendations that are not
21 implemented (or implemented badly) are a waste of money and time. And just as
the client may participate in diagnosis without diminishing the value of the
consultant’s role, so there are many ways in which the consultant may assist in
implementation without usurping the manager’s job.²⁶

22 66. Although McKinsey has historically been regarded as a “strategy” consulting firm,
23 by the time it was working with Purdue, implementation services were a core component of the
24 suite of services that McKinsey provided within the “transformational relationship” it developed
25 with its clients.²⁷ Indeed, writing in 2013, Harvard Business School Professor Clayton

26 ²⁵ Arthur Turner, *Consulting is More Than Giving Advice*, *Harvard Business Review*, September 1982, available at:
27 <https://hbr.org/1982/09/consulting-is-more-than-giving-advice>

28 ²⁶ *Id.*

²⁷ For McKinsey’s own description of its implementation services, See <https://www.mckinsey.com/business-functions/mckinsey-accelerate/how-we-help-clients/implementation> (last accessed October 19, 2020).

1 Christensen observed the decline in “pure” strategy work performed by consultants, as the
2 industry sought to diversify its income streams by offering implementation and other services to
3 clients. “For example, at traditional strategy-consulting firms, the share of work that is classic
4 strategy has been steadily decreasing and is now about 20%, down from 60% of 70% some 30
5 years ago.”²⁸

6 67. When partnering with clients, a core component of the McKinsey relationship is
7 discretion. “The basis of any client relationship with the firm is trust. Companies share their most
8 competitive secrets with McKinsey with the understanding that confidentiality is paramount.
9 McKinsey consultants aren’t even supposed to tell their own spouses about their client work.”²⁹
10 McKinsey recognizes it must have its clients’ trust and make confidentiality “paramount,” as
11 “[c]ompanies share their most competitive secrets with McKinsey” for McKinsey to do its
12 work.³⁰

13 68. During the implementation phase, McKinsey essentially bonds with the client.
14 Describing McKinsey’s approach to implementation, one McKinsey consultant stated, “In some
15 of the most successful engagements I’ve seen, you can’t even tell the difference between a
16 McKinsey team member and one of our clients because we working that cohesively together.”³¹

17 69. Another McKinsey Senior Implementation Coach described McKinsey’s
18 approach: “We’re in there interacting with every element of that organization, from the welders or
19 mechanics on the front line, all the way up to the board of directors.”³²

20
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26 ²⁸ Clayton Christensen, Dina Wang, and Derek van Bever, “Consulting on the Cusp of Disruption,” *Harvard Business Review*, October 2013, available at <https://hbr.org/2013/10/consulting-on-the-cusp-of-disruption>

27 ²⁹ McDonald, *The Firm*, Pg. 308.

28 ³⁰ *Id.* at 308.

³¹ McKinsey on Implementation, April 30, 2017, available at <https://www.youtube.com/watch?v=rEQOGVpI9CY>

³² *Id.*

1 70. McKinsey's implementation team even has a symbol: a rowing team.



71. Jenny, a Practice Manager at McKinsey, explained its significance: “The rowers symbolized to us being in the boat with the clients, doing real work and being jointly responsible for the success.”³³

72. Eugene, a partner, further offered:

The reason McKinsey implementation works is because clients love it. The fact that we are staying longer with them, the fact that we're getting in to the trenches, the fact that we are there to walk the emotional journey with them when they're going through the tough times and really changing their companies, is what makes McKinsey implementation truly distinctive.³⁴

73. In the broadest of generalities, then, McKinsey's business model, as a provider of strategy and implementation consulting services, is to partner with clients to pursue business objectives identified by McKinsey. Once an objective is identified, the client and McKinsey then

27 ³³ See “McKinsey Careers: what's behind McKinsey Implementation's logo and success?”, October 22, 2018, available
28 at <https://web.archive.org/web/20200419140214/https://www.youtube.com/watch?v=3-Zx859VJtw>

³⁴ *Id.*

1 engage in concerted action as a seamless and cohesive unit in order to implement the necessary
2 means to achieve it.

3 **1. McKinsey's Long-Term Partnership with the Pharmaceuticals**
4 **Industry**

5 74. Today, McKinsey's website explains "How We Help Clients" in the
6 pharmaceuticals industry: "Helping clients maximize commercial value by assisting with product
7 launch, marketing, sales, and market access."³⁵ McKinsey helps numerous clients throughout the
8 pharmaceutical industry, from manufacturers to distributors and pharmacies. It often does so
9 contemporaneously. For instance, McKinsey might advise multiple opioid manufacturers on the
10 sales and marketing of competing branded opioid products.

11 75. McKinsey's dominance of the consulting space in the pharmaceutical industry
12 presents its own opportunity for further client service. Specifically, McKinsey also helps its
13 clients by telling them what their competitors—who are also McKinsey clients—are doing.

14 76. For example, McKinsey pitched its services to Purdue on the basis that it was able
15 to "*bring examples from other successful companies*" and perform "detailed analytics."³⁶

16 **2. The McKinsey Pharmaceuticals and Medical Products Practice Group**

17 77. Like most management consulting companies, McKinsey organizes itself into
18 practice groups that specialize in a given industry.

19 78. McKinsey has long maintained a Pharmaceuticals and Medical Products ("PMP")
20 industry practice group dedicated to working with pharmaceutical companies. In 2004, when
21 McKinsey's relationship with Purdue began, the PMP group was led by Michael Pearson. Pearson
22 worked for McKinsey for twenty-three years and was a member of the firm's shareholder council
23 (McKinsey's equivalent of a board of directors) in addition to leading PMP before departing
24 McKinsey in 2008 to helm Valeant Pharmaceuticals.³⁷

25 ³⁵ <https://www.mckinsey.com/industries/life-sciences/how-we-help-clients/commercial>

26 ³⁶ PPLPC021000601208 (emphasis added).

27 ³⁷ John Gapper, *McKinsey's fingerprints are all over Valeant*, Financial Times, March 23, 2016, available at:
28 <https://www.ft.com/content/0bb37fd2-ef63-11e5-aff5-19b4e253664a>

Notably, Rob Rosiello, a McKinsey partner who was a Director of Client Services (or "DCS") of the Purdue account alongside co-DCS'es Maria Gordian and Martin Elling, went on to join Pearson at Valeant in 2015 as Chief Financial Officer. The DCS is the partner in charge of the client account.

1 79. Pearson stated: “At McKinsey pharmaceuticals was one of our biggest industry
2 groups.”³⁸ Pearson was “not the quintessential suave and intellectual McKinsey partner. He was
3 loud and profane and was seen, in the words of one former colleague, as ‘sharp-edged and sharp
4 elbowed.’”³⁹

5 80. Under his leadership, McKinsey’s knowledge and expertise in the pharmaceutical
6 industry was significant. By 2009, McKinsey described its capabilities: “We have an unparalleled
7 depth of both functional and industry expertise as well as breadth of geographical reach. Our
8 scale, scope, and knowledge allow us to address problems that no one else can. At heart, we are a
9 network of people who are passionate about taking on immense challenges that matter to leading
10 organizations, and often, to the world.”

11 81. In 2012, while advising Purdue, McKinsey described PMP and its health care
12 capabilities thusly: “Indeed, there is a doctor in the house. We have more than 1,700 consultants
13 with significant healthcare experience, including more than 150 physicians and 250 consultants
14 with advanced degrees in genetics, immunology, biochemical engineering, neurobiology, and
15 other life sciences. We also have 75 consultants with advanced degrees in public health,
16 healthcare management, and related fields.”

17 82. That same year, the PMP group published a report entitled “Death of a Sales
18 Model, or Not: Perspectives on the Evolution of Pharmaceutical Field Based Selling.”⁴⁰ In it,
19 McKinsey partner Laura Moran co-authored a segment called “The Few, The Proud, The Super-
20 Productive: How a ‘smart field force’ can better drive sales.” In the segment, Moran and her co-
21 authors described various ways a pharmaceutical company could optimize its sales force. Moran
22 worked on the Purdue account, where the strategies outlined in her article were incorporated into
23 Project Turbocharge two years later.

24 _____
25 ³⁸ Michael Peltz, *Mike Pearson’s New Prescription for the Pharmaceuticals Industry*, Institutional Investor, September
26 3, 2014, available at: [https://www.institutionalinvestor.com/article/b14zbfm8nflc4/mike-pearsons-new-prescription-](https://www.institutionalinvestor.com/article/b14zbfm8nflc4/mike-pearsons-new-prescription-for-the-pharmaceuticals-industry)
27 [for-the-pharmaceuticals-industry](https://www.institutionalinvestor.com/article/b14zbfm8nflc4/mike-pearsons-new-prescription-for-the-pharmaceuticals-industry)

28 ³⁹ John Gapper, *McKinsey’s fingerprints are all over Valeant*, Financial Times, March 23, 2016, available at:
<https://www.ft.com/content/0bb37fd2-ef63-11e5-aff5-19b4e253664a>

⁴⁰ “Death of a Sales Model, or Not,” Pharmaceutical and Medical Product Practice, McKinsey, available at
[https://www.mckinsey.com/~media/mckinsey/dotcom/client_service/pharma%20and%20medical%20products/pmp](https://www.mckinsey.com/~media/mckinsey/dotcom/client_service/pharma%20and%20medical%20products/pmp%20new/pdfs/2012%20death%20of%20a%20sales%20model%20or%20not.pdf)
[%20new/pdfs/2012%20death%20of%20a%20sales%20model%20or%20not.pdf](https://www.mckinsey.com/~media/mckinsey/dotcom/client_service/pharma%20and%20medical%20products/pmp%20new/pdfs/2012%20death%20of%20a%20sales%20model%20or%20not.pdf)

1 83. With respect to pharmaceutical marketing, the PMP group states, “We support
2 clients in creating high-impact strategies that maximize value, using customized tools. We also
3 have detailed market data for all major geographic regions.”⁴¹ PMP also works with pharma
4 clients regarding their sales force: “Our efforts span the entire organization—we can help train
5 and restructure sales forces, work directly in the field to provide coaching, maximize value from
6 back-office services, develop strategies to accelerate short-term sales, and assist with company-
7 wide commercial transformations.”⁴²

8 84. McKinsey has long considered itself a “leadership factory” for good reason.⁴³
9 Nowhere is this more apparent than the pharmaceutical industry, where, thanks to PMP’s efforts
10 under Pearson’s leadership, McKinsey continues to reign as the dominant management
11 consultant.

12 85. Consistent with PMP’s ambition that McKinsey be the dominant consultant in the
13 pharmaceutical industry, McKinsey has blanketed the entire pharmaceutical supply chain with
14 alumni.

15 86. Rajiv de Silva, for instance, was appointed CEO of Endo Pharmaceutical in
16 March 2013. Endo’s two top-selling drugs were pain medications. Endo—and de Silva,
17 individually—have been named in multiple lawsuits related to the ongoing opioid crisis.
18 Previously, de Silva worked with Pearson in a leadership position within PMP at McKinsey
19 before joining Rob Rosiello, a former McKinsey partner, and Pearson at Valeant.⁴⁴ McKinsey
20 advised Endo on its opioid business.

21 87. Likewise, Frank Scholz was a partner at McKinsey and a leader in the PMP group
22 for seventeen years prior to departing in 2013 to join Mallinckrodt, another opioid manufacturer
23 presently in bankruptcy after being named in numerous lawsuits relating to the ongoing opioid
24 crisis. In fact, Scholz was the President of the “Specialty Generics” division of Mallinckrodt

25 _____
26 ⁴¹ See <https://www.mckinsey.com/industries/pharmaceuticals-and-medical-products/how-we-help-clients/commercial>

27 ⁴² *Id.*

28 ⁴³ See Adam Jones, “Should business schools fear McKinsey’s leadership factory?,” *Financial Times*, May 22, 2016, available at: <https://www.ft.com/content/0d17f670-1612-11e6-b197-a4af20d5575e>

⁴⁴ David Sell, “Endo CEO downplays Valeant link,” *Philadelphia Inquirer*, November 5, 2015, available at https://www.inquirer.com/philly/business/20151106_Endo_CEO_downplays_Valeant_link.html

1 (formerly SpecGX LLC), which is the division that sold generic opioids. McKinsey advised
2 Mallinckrodt on its opioid business.

3 88. Teva Pharmaceuticals,⁴⁵ another opioid manufacturer named in numerous lawsuits
4 for its role in the opioid crisis, is led by President and Chief Executive Officer and McKinsey
5 alumnus, Kare Schultz. He joined the company in 2017, at which point he was also appointed to
6 Teva's board of directors. Through an asset manager named Deerfield, McKinsey's in-house
7 hedge fund held a financial stake in Teva Pharmaceuticals while McKinsey advised its numerous
8 clients on how to maximize opioid sales.⁴⁶

9 89. McKinsey's involvement with Teva has been long-term. In 2006, upon his
10 retirement from McKinsey, Roger Abravanel joined Teva's board of directors the following
11 year.⁴⁷ By 2011, Teva had acquired Cephalon, Inc., another manufacturer of opioids, as "a core
12 part of [Teva's] strategy" of "growth through acquisitions."⁴⁸ Befitting the pattern, Cephalon had
13 its own long-standing ties to McKinsey before being acquired by Teva. In 2008, when Cephalon's
14 Executive Vice President, General Counsel, and Secretary John E. Osborn retired, he accepted a
15 job as "an advisor on life sciences regulatory and compliance matters to the international
16 consulting firm McKinsey & Company, Inc."⁴⁹

17 90. McKinsey has ties to another notable opioid industry combination: the 2012
18 acquisition of Actavis, Inc. by Watson Pharmaceuticals, Inc. ("Watson") for €4.25 billion. In the
19 aftermath of the acquisition of the large European pharmaceutical company, Watson created a
20 "Global Integration Management Office" reporting directly to its CEO, Paul Bisaro, to focus "on
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22

23 ⁴⁵ "Teva Pharmaceuticals" or "Teva" refers to Teva Pharmaceutical Industries Ltd. and Teva
24 Pharmaceuticals USA, Inc., together.

25 ⁴⁶ Gretchen Morgenson, "Consulting giant McKinsey allegedly fed the opioid crisis. Now an affiliate may profit from
26 treating addicts.," *NBC News*, February 8, 2021, available at <https://www.nbcnews.com/news/us-news/consulting-giant-mckinsey-allegedly-fed-opioid-crisis-now-affiliate-may-n1256969>

27 McKinsey's in-house hedge fund is discussed further, below.

28 ⁴⁷ Form 20-F dated December 31, 2012, Teva Pharmaceutical Industries Limited, available at
<https://www.sec.gov/Archives/edgar/data/818686/000119312513050510/d450498d20f.htm>

⁴⁸ *Id.*

⁴⁹ "Cephalon General Counsel John E. Osborn to Resign Position," February 8, 2008, available at
https://www.sec.gov/Archives/edgar/data/873364/000110465908008569/a08-5085_1ex99d1.htm

1 planning and implementing the integration of Actavis.”⁵⁰ In order to achieve this critical task,
 2 Watson hired Marc Lehnen: “We were very pleased to recruit Marc from McKinsey & Company,
 3 Inc. to lead the Integration Management Office. Marc has years of experience in the generic
 4 industry and knows our culture and way of operating.”⁵¹ Notably, the press release indicates that
 5 McKinsey was already advising Watson regarding the acquisition: “*Although Marc does not*
 6 *formally join our Company until July*, he will nevertheless be involved in the integration planning
 7 during this interim period.”⁵²

8 91. Allergan,⁵³ another opioid manufacturer and defendant in the nationwide opioid
 9 litigation, has also relied on McKinsey as a source of management candidates. McKinsey Senior
 10 Adviser Christopher J. Coughlin joined Allergan’s board in 2014 and remains there today.

11 92. Abbott Labs, which partnered with Purdue in the early years of OxyContin to use
 12 Abbott’s sales force to market Purdue’s drug, has been led by CEO Miles White since 1998.
 13 White began his career at McKinsey around 1980.

14 93. As the preceding paragraphs make clear, McKinsey was in a truly unique position:
 15 given its dominance of pharmaceutical management consulting through PMP, practically all
 16 opioid industry participants were its clients. And those same clients routinely hire McKinsey
 17 consultants to leadership positions within their companies. While advising multiple industry
 18 participants regarding the sales of competing products, McKinsey was in a position to know
 19 confidential information and trade secrets of these clients “with the understanding that
 20 confidentiality is paramount.”⁵⁴

21 94. Because of its client relationships, McKinsey was, quite literally, the sole
 22 repository on Earth of this collective knowledge of industry-wide tactics regarding the sales and
 23 marketing of opioids, and the outcomes thereof. This unique collection of knowledge and
 24

25 ⁵⁰ “Watson Announces Formation of Global Integration Management Office to Support ending Actavis Acquisition,”
 26 PR Newswire, May 9, 2012, *available at* <https://www.prnewswire.com/news-releases/watson-announces-formation-of-global-integration-management-office-to-support-pending-actavis-acquisition-150755565.html>

27 ⁵¹ *Id.*

28 ⁵² *Id.* (emphasis added).

⁵³ Allergan is part of the same corporate family as Actavis and Watson.

⁵⁴ McDonald, *The Firm*, Pg. 308.

1 expertise made McKinsey a hub: even if any two given industry participants did not know what
2 each other was doing, McKinsey knew exactly what *both* were doing because both were clients.

3 95. McKinsey's relationships and influence carry far beyond the manufacturers. For
4 instance, current McKinsey director Nancy Killefer has also been an independent director of
5 Cardinal Health, Inc. ("Cardinal")—one of the "Big Three" Distributor Defendants in the
6 ongoing nationwide opioid litigation—since 2015. Chunhui Moi, Cardinal's current Vice
7 President of Corporate Strategy, was previously an associate principal at McKinsey, where he
8 worked for nine years. Michele Holcomb, Cardinal's current Executive Vice President, Chief
9 Strategy and Business Development Officer, was a partner in the Global Pharmaceutical Practice
10 at McKinsey.

11 96. McKinsey populates the "strategy" positions at the other opioid distributors as
12 well. At AmerisourceBergen, the "Director of Corporate Development and Strategy" was hired
13 away from McKinsey, where she had previously been a senior associate. AmerisourceBergen's
14 Executive Vice President and Chief Strategy Officer had previously been a partner at McKinsey.

15 97. At McKesson Corporation ("McKesson"), another McKinsey client, the President
16 of McKesson Specialty Health and, previously Vice President of Corporate Strategy, was Marc
17 Owen. "Prior to joining McKesson, Owen was a senior partner at McKinsey, advising
18 pharmaceutical manufacturers, healthcare providers, distributors and technology companies,
19 *including McKesson*, for more than a decade."⁵⁵ After Owen was promoted in 2012, McKesson
20 hired yet another Vice President of Corporate Strategy away from McKinsey.

21 98. In short, one way McKinsey adds value for a client is by knowing what all of its
22 competitors are doing. It possesses a greater body of knowledge about any given industry in
23 which it advises multiple participants than any individual participant does itself.

24 **3. The Transformational Relationship**

25 99. McKinsey has long touted the notion of a "transformational relationship." It is the
26 goal of every client relationship McKinsey develops and, McKinsey argues, the best way to

27 ⁵⁵ "Marc Owen Appointed President of McKesson Specialty Health," McKesson, January 31, 2012, *available at*
28 <https://www.mckesson.com/about-mckesson/newsroom/press-releases/2012/marc-owen-appointed-president-of-mckesson-specialty-health/> (emphasis added)

1 extract value from a client’s use of McKinsey’s services. McKinsey is not a one-off seller of
 2 advice for any given CEO’s problem of the day. Rather, McKinsey argues that real value for the
 3 client derives from an ongoing “transformational” relationship with the firm.⁵⁶

4 100. At its core, the “transformational relationship” is *long-term*. It is the antithesis of a
 5 one-off contract wherein McKinsey performs one discreet project for a client and then concludes
 6 its business. Rather, “once McKinsey is inside a client, its consultants are adept at artfully
 7 creating a feedback loop through their work that purports to ease executive anxiety but actually
 8 creates more of it.”⁵⁷ The long term result can be “dependence” on the McKinsey consultants.
 9 “We insinuate ourselves,” Ron Daniel, McKinsey’s then-managing partner, told *Forbes* in
 10 1987.⁵⁸

11 101. “They have follow-on work not just because they’re good at what they do, but
 12 because they are trained in how to manage these kinds of client relationships. They understand
 13 that the core reality is the relationship and the conversation, and that any particular engagement is
 14 merely epiphenomenal,” explained Alan Kantrow, formerly the editor of *McKinsey Quarterly*.⁵⁹

15 102. This strategy of weaving itself into all aspects of its clients’ business proved
 16 enormously successful for McKinsey over the years. It was a strategy McKinsey encouraged its
 17 consultants to take with clients to great effect:

18 The sell worked: Once ensconced in the boardrooms of the biggest corporate players
 19 in the world, McKinsey rarely left, ensuring a steady and growing flow of billings
 20 for years if not decades. In 2002, for example, *BusinessWeek* noted that at that
 21 moment, the firm had served four hundred clients for fifteen years or more.⁶⁰

22 ⁵⁶ Duff McDonald, *The Firm*, Pg. 136-37 (“McKinsey no longer pitched itself as a project-to-project firm; from this
 23 point forth [the late 1970s], it sold itself to clients as an ongoing prodder of change, the kind a smart CEO would keep
 around indefinitely.”).

24 ⁵⁷ *Id.* at pg. 6. Purdue provides a fine example of this feedback loop in action. In 2008, when McKinsey was advising
 Purdue regarding Risk Evaluation and Mitigation Strategies (“REMS”) for OxyContin required by the FDA, McKinsey
 25 partner Maria Gordian wrote to fellow partners Martin Elling and Rob Rosiello regarding progress in the “REMS work”
 as well as “Broader Strategy work.” Regarding the latter, Gordian noted that Purdue board members Jonathan Sackler
 26 and Peter Boer “basically ‘blessed’ [Craig Landau] to do whatever he thinks is necessary to ‘save the business.’ . . . *I*
 believe there is a good opportunity to get another project here.” MCK-MAAG-0117875 (emphasis added). Indeed,
 after the REMS work was completed, McKinsey continued to work on “Broader Strategy work” for another decade.

27 ⁵⁸ John Merwin, “We Don’t Learn from Our Clients, We Learn from Each Other,” *Forbes*, October 19, 1987.

28 ⁵⁹ Duff McDonald, *The Firm*, Pg. 185.

⁶⁰ *Id.* at pg. 136.

1 103. Another aspect of the transformational relationship McKinsey develops with
2 clients is the development and marketing of “leave-behind” products, such as software
3 applications, that are sold to clients as tools that can be used by the business on an on-going and
4 recurring basis, separate and apart from McKinsey’s project-based consulting work. As described
5 by Harvard Business School Professor Clayton Christensen, starting in 2007, “McKinsey &
6 Company initiated a series of business model innovations that could reshape the way the global
7 consulting firm engages with clients. One of the most intriguing of these is McKinsey Solutions,
8 software and technology-based analytics and tools that can be embedded at a client, providing
9 ongoing engagement outside the traditional project-based model.”⁶¹

10 104. McKinsey’s relationship with Purdue provides an example of the deployment of
11 these “leave-behind” products. One McKinsey Solution is a pharmaceutical sales and marketing
12 workforce optimization tool called FieldGuide, a proprietary software application McKinsey sells
13 to clients. “The FieldGuide tool optimizes salesforce deployment and territory design through
14 advanced geospatial analysis that leverages both market-potential insights across device
15 categories and advanced sales-response curve analysis.”⁶² McKinsey sold it to Purdue for the
16 purpose of optimizing Purdue’s OxyContin salesforce.

17 **D. McKinsey and Purdue: A Case Study in Transformation**

18 105. Indeed, McKinsey’s work with Purdue is a prime example of the transformational
19 relationship in action. McKinsey counted Purdue as a client at least as early as 2004, three years
20 *before* Purdue’s parent and officers first pleaded guilty to misbranding OxyContin in 2007.
21 McKinsey was actively working with Purdue to increase OxyContin sales despite that guilty plea
22 and continued to do so throughout the time period that Purdue and its advisors were bound by the
23 terms of the Corporate Integrity Agreement entered in to alongside the guilty plea. McKinsey’s
24 work with Purdue continued through at least 2018.

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27 ⁶¹ Clayton Christensen, Dina Wang, and Derek van Bever, “Consulting on the Cusp of Disruption,” *Harvard Business Review*, October 2013, available at <https://hbr.org/2013/10/consulting-on-the-cusp-of-disruption>

28 ⁶² <https://www.mckinsey.com/industries/pharmaceuticals-and-medical-products/how-we-help-clients/medtech/marketing-and-sales>

1 106. McKinsey staffed at least forty known consultants to Purdue, from senior partners
2 all the way down through engagement managers and entry-level associates. Throughout the
3 unfolding of the nationwide opioid crisis that only continued to worsen after the 2007 guilty plea,
4 McKinsey remained steadfast alongside the Sacklers and Purdue every step of the way. The *mea*
5 *culpas* would come only later.

6 107. McKinsey partner Maria Gordian, in her March 26, 2009 “EY 2009 Impact
7 Summary” internal report to McKinsey director Olivier Hamoir and McKinsey’s Personnel
8 Committee, recounted her accomplishments that year on the Purdue account. The document is an
9 annual self-assessment produced by McKinsey partners. In it, Gordian described the state of
10 firm’s relationship for Purdue:

11 With client work extending through the 3rd quarter, and several additional proposals
12 in progress, we continue to expand the depth and breadth of our relationships at
13 Purdue. We look forward to deepening our relationships with the Sackler family and
14 serving them on key business development issues, and to expanding our relationship
15 with [John] Stewart and other members of the senior management team.⁶³

16 108. Gordian even described herself as a counselor to Richard Sackler in the same
17 memorandum, in addition to being a “point of contact for the Board and Sackler family.”⁶⁴

18 109. The continued expansion of the depth and breadth of McKinsey’s relationship with
19 Purdue was an ever-present internal goal for McKinsey, as it was accompanied by recurring and
20 ever-increasing client billings.

21 110. By 2014, both the breadth and depth of McKinsey’s relationship with Purdue had
22 expanded dramatically. During the 2009 to 2014 period in particular, Purdue relied extensively on
23 McKinsey to develop and implement its sales and marketing strategy for OxyContin. But
24 McKinsey’s work for Purdue involved many other facets of Purdue’s business beyond sales and
25 marketing, including general and administrative consulting, review of product acquisition,

26 ⁶³ The Ad Hoc Group of Non-Consenting States’ Statement in Support of the Official Committee of Unsecured
27 Creditors’ Motions to Compel Production of Purportedly Privileged Documents for *In Camera* Review, Doc. No. 2012,
28 *In re Purdue Pharma, Inc.*, filed November 18, 2020, Case No. 19-23649 (S.D.N.Y.), Ex 7, Pg. 48; MCK-MAAG
0118669.

⁶⁴ *Id.*

1 evaluation of research and development, advising Purdue on the design of clinical studies, risk
2 management, and interactions with regulators.

3 111. McKinsey's sales and marketing work for Purdue focused on creating and
4 implementing strategies and tactics to bolster the sales of OxyContin, a Schedule II drug that is
5 widely recognized as among the most frequently diverted and abused opioids. As Purdue faced
6 growing scrutiny, McKinsey also helped the company protect its public image and profit from the
7 market for illicit opioids, which McKinsey's industry-wide efforts helped to promote and
8 maintain.

9 112. McKinsey understood the Sacklers' goals for Purdue and the work it would need
10 to perform to maintain and grow Purdue's opioid profits amidst a growing epidemic of addiction
11 and abuse. Part of McKinsey's work involved assessing the "underlying drivers" of OxyContin's
12 (financial) performance. As described below, these drivers boil down to two things: (1) a
13 widespread deceptive marketing campaign and (2) fueling an illicit market for non-medical use.
14 Purdue entered into guilty pleas arising out of both types of conduct in 2007 and 2020,
15 respectively. McKinsey delved into the "granular" aspects of Purdue's sales and promotion. And,
16 throughout the two companies' long-term relationship, McKinsey understood Purdue's business
17 "both in terms of content and culture," as its own renewed consulting agreement assured in 2013.

18 **1. 2004: McKinsey and Purdue Meet**

19 113. On March 1, 2004, McKinsey entered into a Master Consulting Agreement with
20 Purdue for services that would be defined from time to time.⁶⁵ The Agreement was signed on
21 McKinsey's behalf by Rob Rosiello, then a senior partner in the PMP practice group. After a
22 ruling that held patents on OxyContin unenforceable due to Purdue misleading the patent office,
23 McKinsey stepped in to help Purdue.⁶⁶

24 114. The Master Consulting Agreement [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 _____
28 ⁶⁵ PPLPC012000069192

⁶⁶ *Id.*

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[REDACTED]

115. From 2004 through 2008, McKinsey advised Purdue on research and development, business development, and product licensing related to Purdue’s opioid products.⁶⁹ Consistent with its business model, McKinsey leveraged these projects into growth of its “Broader Strategy work” also underway with Purdue.⁷⁰ Specifically, in October 2008, Purdue retained McKinsey for broad strategy work after two board members “blessed” Purdue executive Craig Landau with doing “whatever he thinks is necessary to ‘save the business’” after the 2007 criminal plea and introduction of generic competition to the older OxyContin.⁷¹

2. 2007: Purdue Pleads Guilty to Misbranding OxyContin and is Bound by a Corporate Integrity Agreement

116. On May 10, 2007, John Brownlee, United States Attorney for the Western District of Virginia, announced the guilty plea of the Purdue Frederick Company, the parent of Purdue Pharma, relating to the misbranding of OxyContin. Brownlee stated,

Even in the face of warnings from health care professionals, the media, and members of its own sales force that OxyContin was being widely abused and causing harm to our citizens, Purdue, under the leadership of its top executives, continued to push a fraudulent marketing campaign that promoted OxyContin as less addictive, less subject to abuse, and less likely to cause withdrawal. In the process, scores died as a result of OxyContin abuse and an even greater number of people became addicted to OxyContin; a drug that Purdue led many to believe was safer, less subject to abuse, and less addictive than other pain medications on the market.

117. Purdue Frederick Company as well as three of Purdue’s officers, pleaded guilty to the misbranding of OxyContin pursuant to various provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, *et seq.*

⁶⁷ *Id.*
⁶⁸ PPLPC020000034087
⁶⁹ PPLPC013000116218; PPLP004401340
⁷⁰ MCK-MAAG-0117875
⁷¹ *Id.*

1 118. Purdue admitted that “supervisors and employees, with the intent to defraud or
2 mislead, marketed and promoted OxyContin as less addictive, less subject to abuse and diversion,
3 and less likely to cause tolerance and withdrawal than other pain medications.” Part of this
4 deceptive messaging included highlighting OxyContin as a long-acting (“LA”) or extended
5 release (“ER”) opioid and suggesting it created less chance for addiction than “immediate
6 release” opioids because it had fewer “peak and trough” blood level effects or “did not cause a
7 ‘buzz’ or euphoria” in the same manner as these other opioids.

8 119. Concurrent with its guilty plea, Purdue entered into a Corporate Integrity
9 Agreement with the Office of Inspector General of the United States Department of Health and
10 Human Services on May 7, 2007. Purdue’s compliance obligations under the Corporate Integrity
11 Agreement ran for a period of five years, and ultimately terminated in January 2013.⁷²

12 120. Pursuant to the Corporate Integrity Agreement, Purdue was obligated to implement
13 written policies regarding its compliance program and compliance with federal health care
14 program and Food and Drug Administration requirements, including:

15 a. “selling, marketing, promoting, advertising, and disseminating Materials or
16 information about Purdue’s products in compliance with all applicable FDA requirements,
17 including requirements relating to the dissemination of information that is fair and accurate . . .
18 including, but not limited to information concerning the withdrawal, drug tolerance, drug
19 addiction or drug abuse of Purdue’s products”;

20 b. “compensation (including salaries and bonuses) for Relevant Covered
21 Persons engaged in promoting and selling Purdue’s products that are designed to ensure that
22 financial incentives do not inappropriately motivate such individuals to engage in the improper
23 promotion or sales of Purdue’s products”; and

24 c. “the process by which and standards according to which Purdue sales
25 representatives provide Materials or respond to requests from [health care providers] for
26 information about Purdue’s products, including information concerning withdrawal, drug
27 tolerance, drug addiction, or drug abuse of Purdue’s products,” including “the form and content of

28 ⁷² See <https://www.justice.gov/opa/press-release/file/1329576/download>

1 Materials disseminated by sales representatives,” and “the internal review process for the
2 Materials and information disseminated by sales representatives.”

3 121. Purdue was obligated to engage an Independent Review Organization to ensure its
4 compliance with the strictures of the Corporate Integrity Agreement and to file compliance
5 reports on an annual basis with the Inspector General.

6 122. In the wake of its accession to the Corporate Integrity Agreement, Purdue faced
7 newly imposed constraints on its sales and marketing practices. The Corporate Integrity
8 Agreement was a problem to solve. Despite the agreement’s constraints (i.e., do not lie about
9 OxyContin), Purdue and its controlling owners, the Sackler family, still intended to maximize
10 OxyContin sales.

11 3. **The Sacklers React to the “Concentration of Risk” Posed to Them by**
12 **the Opioid Business.**

13 123. The Sackler family has owned and controlled Purdue and its predecessors since
14 1952. At all times relevant to this Complaint, individual Sackler family members occupied either
15 six or seven of the seats on Purdue’s board of directors, and at all times held a majority of Board
16 seats. To advise the board of directors of Purdue Pharma was to advise the Sackler family. The
17 interests of the Sackler family and the Purdue board of directors, and Purdue itself, as a privately
18 held company, were all aligned. Practically, they were indistinguishable.⁷³

19 124. As a result of the 2007 guilty plea, the Sacklers made the strategic decision to
20 distance the family from Purdue, which was regarded, in the words of Richard Sackler, as an
21 increasingly dangerous “concentration of risk” for Purdue’s owners. Ten days after the guilty plea
22 was announced, David Sackler wrote to his father, Richard Sackler, and uncle, Jonathan Sackler,
23 describing precisely what that “risk” was: legal liability for selling OxyContin. In response to
24 Jonathan stating that “there is no basis to sue ‘the family,’” David replied:

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27 ⁷³ Craig Landau, soon to become CEO of Purdue, acknowledged in May 2017 that Purdue operated with “the Board of
28 Directors serving as the ‘de facto’ CEO.” The future CEO of the company, in other words, understood that he would
have little practical power despite his new title. The owners ran the business.

1 Message

2 **From:** David Sackler [REDACTED]
3 **Sent:** 5/17/2007 11:08:08 PM
4 **To:** 'Sackler, Jonathan' [REDACTED]; Sackler, Dr Richard [REDACTED]
5 **CC:** Ives, Stephen A. [REDACTED]
6 **Subject:** RE: Idea
7 **Attachments:** image001.jpg

8 Well I hope you're right, and under logical circumstances I'd agree with you, but we're living in America. This is the land
9 of the free and the home of the blameless. We will be sued. Read the op-ed stuff in these local papers and ask yourself
10 how long it will take these lawyers to figure out that we might settle with them if they can freeze our assets and threaten
11 us.

12 125. Given concern over this "concentration of risk," the two sides of the Sackler
13 family spent considerable time and energy debating the best way to achieve distance from Purdue,
14 and collectively considered a variety of options for doing so. One option was to sell the company
15 to or merge the company with another pharmaceutical manufacturer. They discussed Shire as a
16 possible target, as were Cephalon, UCB, and Sepracor, Inc. The proceeds of such a transaction
17 could then be re-invested in diversified assets, thereby achieving the Sacklers' desired distance
18 from opioids.

19 126. Mortimer D.A. Sackler advocated for a sale or merger in a February 21, 2008
20 email to Richard Sackler (a former president and co-chairman of Purdue) and several others,
21 writing, "The pharmaceutical industry has become far too volatile and risky for a family to hold
22 95% of its wealth in. It simply is not prudent for us to stay in the business given the future risks
23 we are sure to face and the impact they will have on the shareholder value of the business and
24 hence the family's wealth." The risk he referred to was, at least in significant part, further liability
25 related to OxyContin.

26 127. Another option was to have Purdue borrow money in order to assure Purdue had
27 adequate funds to continue operating while the Sacklers, as owners, began to make substantial
28 distributions of money from the company to themselves. Once again, the proceeds of the
distributions could then be re-invested in diversified assets, thereby achieving the Sacklers'
desired distance.

128. In order to pursue either of these options, the Sacklers needed to maximize opioid
sales in the short term so as to make Purdue — by then the subject of substantial public

1 scrutiny—appear either as an attractive acquisition target or merger partner to another
2 pharmaceutical manufacturer or as a creditworthy borrower to a lender.

3 129. In short, the Sacklers planned to engage in a final flurry of opioid pushing in order
4 to rid themselves of their pharmaceutical company dependency for good.

5 130. In fact, in the years after the 2007 guilty plea, Purdue would retain only the
6 absolute minimum amount of money within it as possible: \$300 million. Purdue was required to
7 retain that amount pursuant to a partnership agreement with separate company. Otherwise, all the
8 money was distributed to its owners.⁷⁴

9 131. Given the complexity of the problem, the Sacklers and Purdue realized that they
10 would need assistance in achieving these internally contradictory objectives. Purdue did not have
11 the capabilities in-house to design and implement a sales strategy for OxyContin that would
12 achieve the Sacklers’ objectives. They turned to the global management consulting firm
13 McKinsey, which had already been advising the Sacklers and Purdue for at least three years, for
14 help with their new problem.

15 132. Notably, under the terms of Paragraph II.C.1(b) of the Corporate Integrity
16 Agreement, McKinsey, as a contractor to Purdue performing sales and marketing functions for
17 the company, was itself a “Covered Person” subject to the strictures of the Agreement.⁷⁵

18 **4. Purdue Tasks McKinsey with Boosting Opioid Sales in Light of the**
19 **Guilty Plea and Corporate Integrity Agreement.**

20 133. The Sacklers faced a problem: the need to grow OxyContin sales as dramatically
21 as possible so as to make Purdue an attractive acquisition target or borrower, while at the same
22 time appearing to comply with the Corporate Integrity Agreement. As one Purdue executive
23 stated of Purdue’s attitude toward the Corporate Integrity Agreement: “They did not listen to their
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25 _____
26 ⁷⁴ See Jared S. Hopkins, *At Purdue Pharma, Business Slumps as Opioid Lawsuits Mount*, Wall Street Journal, June 30,
2019, available at: https://www.wsj.com/articles/purdue-pharma-grapples-with-internal-challenges-as-opioid-lawsuits-mount-11561887120?mod=hp_lead_pos6

27 ⁷⁵ The relevant language in the Corporate Integrity Agreement provides: “Covered Persons’ includes . . . all
28 contractors, subcontractors, agents, and other persons who perform sales, marketing, promotional, pricing, government
contract, or regulatory functions . . . on behalf of Purdue.” PDD1712900096.

1 critics and insisted they had just a few isolated problems. After the settlement, they didn't
2 change—the way the sales force was managed and incentivized, everything stayed the same.”⁷⁶

3 134. Purdue and the Sacklers were well aware of the constraints posed by the
4 Agreement. Indeed, during a May 20, 2009 Executive Committee Meeting, the discussion led to
5 whether Purdue should have a single sales force marketing all Purdue products, including
6 OxyContin, or instead to “create a separate Sales Force for Intermezzo (a sleeping pill) that would
7 be comprised of approximately 300 representatives.” John Stewart, Purdue’s then-CEO, saw an
8 opportunity, and asked if the Corporate Integrity Agreement would apply if Purdue were to
9 launch Intermezzo and another Purdue product, Ryzolt (a branded version of Tramadol, another
10 narcotic painkiller), using the separate sales force. Might the new drug launch fall outside of the
11 Corporate Integrity Agreement, he asked?⁷⁷

12 135. It would not, he was told by Bert Weinstein, Purdue’s Vice President of
13 Compliance.⁷⁸

14 136. Given the tension between compliance with the Corporate Integrity Agreement
15 and the desire to sell more OxyContin, Purdue needed help.

16 137. Ethan Rasiel, a former McKinsey consultant, has described the typical way
17 McKinsey begins working with a client: “An organization has a problem that they cannot solve
18 with their internal resources. That’s the most classic way that McKinsey is brought in.”⁷⁹

19 138. Such was the case with Purdue. Because it did not have the requisite expertise to
20 address the problems posed by the Corporate Integrity Agreement internally, Purdue expanded on
21 its already-existing relationship with McKinsey to devise a sales and marketing strategy to
22 increase opioid sales despite the Corporate Integrity Agreement and growing concern about the
23 “concentration of risk” that Purdue’s business of selling opioids posed to its owners.

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25
26 ⁷⁶ David Crow, *How Purdue’s ‘one-two’ punch fuelled the market for opioids*, Financial Times, September 9, 2018,
available at: <https://www.ft.com/content/8e64ec9c-b133-11e8-8d14-6f049d06439c>

27 ⁷⁷ PPLPC012000226606, Purdue Pharma Executive Committee Meeting Notes and Actions, May 20, 2009, Pg. 2.

28 ⁷⁸ *Id.*

⁷⁹ *How McKinsey Became One of the Most Powerful Companies in the World*, CNBC, June 6, 2019 available at:
https://www.youtube.com/watch?v=BBmmMj_maII

1 139. McKinsey’s task was to thread the needle: to increase OxyContin sales despite the
2 strictures imposed by the five-year Corporate Integrity Agreement. This McKinsey did,
3 turbocharging⁸⁰ the sales of a drug it knew fully well was addictive and deadly, while purporting
4 to respect to the Corporate Integrity Agreement.

5 140. In short, Purdue would pay money to McKinsey in exchange for McKinsey
6 enabling the company how to sell as much OxyContin as conceivably possible so that the
7 Sacklers could obtain cash to diversify their investment holdings away from Purdue, and keep
8 their money safe from the reach of court judgments, fines, and penalties they feared.

9 141. Consistent with their plan to dissociate themselves from the company, the Sacklers
10 appointed Mr. Stewart as the CEO of Purdue in 2007. The Sacklers viewed Stewart as someone
11 loyal to the family. He had previously worked for a division of Purdue in Canada. Stewart’s job
12 was to assist the Sacklers with the divestiture or eventual orderly wind-down of Purdue. Stewart
13 was paid more than \$25 million for his services to Purdue from 2007 through 2013.

14 142. Purdue’s Executive Committee discussed Stewart’s concerns regarding the
15 constraints posed by the Corporate Integrity Agreement on May 20, 2009. Within weeks,
16 McKinsey was working with Purdue to devise and implement new marketing strategies for
17 OxyContin.

18 143. Stewart, as CEO, was in charge of the relationship with McKinsey. He controlled
19 workflow to and from McKinsey and required his personal approval for any work orders with
20 McKinsey.

21 144. In addition, Purdue’s Vice President of Corporate Compliance, “responsible for
22 developing and implementing policies, procedures, and practices designed to ensure compliance
23 with the requirements set forth in the [Corporate Integrity Agreement],” reported directly to
24 Stewart.⁸¹

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28 ⁸⁰ If the description is overbearing, note that it is McKinsey’s own, as described below.

⁸¹ PDD1712900096.

1 145. Throughout their relationship, McKinsey routinely obtained information from,
2 advised, communicated with, and ultimately worked for the Purdue board of directors, controlled
3 by the Sackler family.

4 146. McKinsey would also work in granular detail with the Purdue sales and marketing
5 staff, led during the relevant period by Russell Gasdia, Vice President of Sales and Marketing.

6 147. From as early as June 2009 and continuing at least through July 14, 2014, Purdue
7 routinely relied upon McKinsey to orchestrate its sales and marketing strategy for OxyContin.
8 The relationship was characterized by ongoing interactions between teams from McKinsey and
9 Purdue regarding not only the *creation* of an OxyContin sales strategy, but also its
10 *implementation*. McKinsey was a real presence at Purdue. “A team of McKinsey analysts went
11 in-house, camping out in a conference room at Purdue headquarters.”⁸²

12 **5. Purdue Relies on McKinsey.**

13 148. Purdue hired McKinsey not only to give advice, but to devise and then implement
14 a deceptive marketing strategy. For example, for one “major initiative” with Purdue, “McKinsey
15 forecast[ed] a potential incremental increase in sales in the \$200-400mm range” over a three-year
16 period, “[w]hen properly implemented.”⁸³

17 149. McKinsey is not cheap, either. Indeed, hiring McKinsey is an expensive
18 proposition. A single junior consultant—typically a recent college or business school graduate—
19 runs clients millions of dollars annually.⁸⁴ McKinsey is a highly selective employer and
20 advertises that its employees join “for the opportunity to apply their talents to complex, important
21 challenges.”⁸⁵ “Talent” is key to McKinsey’s model; clients pay for the best and brightest.

22 150. A client does not choose to pay McKinsey unless it expects to receive benefits it
23 could not have obtained within its own organization. McKinsey offers solutions to clients facing

24 ⁸² Patrick Radden Keefe, *Empire of Pain* 302 (2021). In September, McKinsey named Mr. Keefe’s history of the
25 Sackler family and Purdue and the opioid crisis to its 2021 shortlist for “Business Book of the Year.” See
<https://www.mckinsey.com/about-us/new-at-mckinsey-blog/for-your-reading-list-the-2021-business-book-of-the-year-shortlist>

26 ⁸³ PPLPC012000257444

27 ⁸⁴ Ian MacDougal, *How McKinsey is Making \$100 Million (and Counting) Advising on the Government’s Bumbling
28 Coronavirus Response*, ProPublica (July 15, 2020), <https://www.propublica.org/article/how-mckinsey-is-making-100-million-and-counting-advising-on-the-governments-bumbling-coronavirus-response>.

⁸⁵ <https://www.mckinsey.com/about-us/overview>

1 challenges they feel they cannot adequately address on their own. This model has been a stunning
2 success for McKinsey. In 2008, McKinsey’s annual revenue was \$6 billion. Today, the firm earn
3 more than \$10 billion in revenue each year.⁸⁶

4 151. Clients pay these exorbitant rates for a reason: McKinsey’s plans and partnership
5 work. Even critics of the consulting industry recognize the unique efficacy of McKinsey’s work.
6 JPMorgan Chase CEO Jamie Dimon once derided consultants as “substituted management” and
7 stated that “consultants can become a disease for corporations.” Dimon made one exception to
8 this rule: McKinsey.⁸⁷ Given unique levels of trust, respect, and access by major corporations
9 across the United States and the world, McKinsey has unmatched power to affect how those
10 corporations behave.

11 152. When Purdue entered into a “Master Consulting Agreement” with McKinsey in
12 2004, Purdue explicitly recognized McKinsey “has a fine reputation as well as excellent
13 experience and relationships in our industry,” which Purdue was counting on to boost its opioids
14 business.⁸⁸

15 153. Purdue explicitly recognized that McKinsey stepped in to help Purdue “protect
16 [its] sales and continue to *grow our business*.”⁸⁹

17 154. Furthermore, that the Sacklers, as board members of Purdue, relied on McKinsey
18 in their conduct of Purdue affairs is an admitted fact. In a public filing in the recent Purdue
19 bankruptcy proceedings, the one side of the Sackler family conceded that they did so: “McKinsey
20 is widely recognized as ‘a leading management consulting firm’ and the Former Directors were
21 statutorily entitled to rely on such expertise.”⁹⁰

22 **6. McKinsey Delivers.**

23 155. Purdue, as a monoline manufacturer of opioids, relied on McKinsey in practically
24 all aspects of its business.

25 ⁸⁶ Forbes, *McKinsey & Company* (retrieved September 9, 2021), <https://www.forbes.com/companies/mckinsey-company/?sh=1201a12624c1>.

26 ⁸⁷ Duff McDonald. *Behind the singular mystique of McKinsey & Co.* The Guest Blog. CNBC. Sept 25, 2013. Available
27 at: <https://www.cnbc.com/2013/09/25/behind-the-singular-mystique-of-mckinsey-co.html>

28 ⁸⁸ PPLPC012000069192

⁸⁹ *Id.* (emphasis added).

⁹⁰ *In re: Purdue Pharma, L.P.*, No. 19-23649, Doc. 3441-1, at ¶ 328 (Aug. 5, 2021).

1 **a. Courting the Regulators: “We All Feel Responsible.”**

2 156. One critical aspect of Purdue’s operations, given its status as a producer of
3 controlled substances, was regulatory compliance. McKinsey guided Purdue through practically
4 all of its interactions with regulators whose efforts to protect the public might pose threats to
5 Purdue’s business.

6 157. McKinsey advised Purdue on how to approach the FDA in light of its criminal
7 conviction and retain business in light of the reputational damage to the company and to
8 OxyContin after the admissions in its guilty plea.

9 158. In 2008, Purdue submitted a New Drug Application for a reformulation of
10 OxyContin, ostensibly to make it more difficult to abuse by extracting the active ingredient from
11 it or otherwise defeating the time-release mechanism in OxyContin tablets—i.e., another product
12 Purdue would later deceptively promote as safer than and less prone to abuse than it was.

13 159. Having advised Purdue on the design of tests of reformulated OxyContin as part of
14 Purdue’s FDA submission, McKinsey knew that reformulated OxyContin could still be abused.
15 Purdue nonetheless touted its introduction of reformulated OxyContin and another ADF opioid as
16 evidence of its good corporate citizenship and commitment to protecting the public. McKinsey
17 worked with the Sacklers to prepare for Purdue’s meetings with the FDA.

18 160. On January 20, 2009, McKinsey partner Maria Gordian wrote to partners Rob
19 Rosiello and Martin Elling to update them on these ongoing efforts with Purdue:

20 We had a very good FDA rehearsal yesterday *with several family members present*.
21 The team did an outstanding job on the study. [P]reparing the client and executing
22 the mock meeting. We are off to DC today for the actually (sic) FDA meeting
 tomorrow.⁹¹

23 161. Gordian’s email to Rosiello and Elling forwarded encouraging words from
24 Richard Sackler. He wrote to his daughter, Marianna:

25 I am writing to tell you how impressed I was by the preparation for the FDA meeting.
26 Both the method and the process as well as the content was excellent and a major

27 _____
28 ⁹¹ The Ad Hoc Group of Non-Consenting States’ Statement in Support of the Official Committee of Unsecured
Creditors’ Motions to Compel Production of Purportedly Privileged Documents for *In Camera* Review, Doc. No. 2012,
In re Purdue Pharma, Inc., filed November 18, 2020, Case No. 19-23649 (S.D.N.Y.), Ex D, Pg. 25 (emphasis added).

1 departure from efforts like this in the past. Please share with the team my views and
2 best wishes for a successful interchange with the FDA.⁹²

3 Marianna forwarded the well-wishes to Gordian and the team at McKinsey.

4 162. In September 2009, Purdue made a presentation to the FDA advisory committee
5 considering its application for its reformulated OxyContin and stated that the new formulation
6 would deter abuse. According to metadata, the PowerPoint presentation was prepared by
7 McKinsey.

8 163. The FDA approved the reformulation of OxyContin in April 2010.⁹³

9 164. Having successfully navigated the approval process with McKinsey's chaperoning,
10 Purdue then proceeded to market the ADF version of OxyContin as a solution to opioid abuse and
11 as a reason that doctors could continue to safely prescribe their opioids.

12 165. In 2020, two FDA advisory committees evaluating the impact of the reformulated
13 OxyContin concluded that reformulated OxyContin did not, in fact, substantially reduce abuse.

14 166. At the same time as it worked to rehabilitate Purdue's image with the FDA,
15 McKinsey, in parallel, advised Purdue on how to limit FDA regulations aimed at mitigating the
16 risks of opioid use. In 2008, shortly after Purdue's criminal plea, the FDA requested Purdue
17 submit a proposed "Risk Evaluation and Mitigation Strategy" ("REMS") for OxyContin.
18 McKinsey provided Purdue with drafts of the submission.⁹⁴ Indeed, McKinsey was crucial in
19 devising Purdue's response to the FDA's request for a REMS proposal from Purdue. Gordian
20 informed Rosiello and Elling on October 23, 2008 that John Stewart, Purdue's CEO, "is aware of
21 the critical role we are playing in pulling REMs together and is very appreciative." In the same
22 email, she noted that "the family" was focused "on the response to the non-approval letter" from
23 the FDA.⁹⁵

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26 ⁹² *Id.*

⁹³ See <https://www.fda.gov/media/126835/download>

⁹⁴ PDD8901578031

⁹⁵ The Ad Hoc Group of Non-Consenting States' Statement in Support of the Official Committee of Unsecured
27 Creditors' Motions to Compel Production of Purportedly Privileged Documents for *In Camera* Review, Doc. No. 2012,
28 *In re Purdue Pharma, Inc.*, filed November 18, 2020, Case No. 19-23649 (S.D.N.Y.), Ex C, Pg. 22.

1 167. In 2009, the FDA expanded its scope to a class-wide extended release/long-acting
2 REMS program.

3 168. Seeking to avoid a requirement that prescribers undergo mandatory training on
4 OxyContin’s risks or management or obtain certification before prescribing OxyContin, which
5 would limit the numbers of available prescribers, Purdue turned to McKinsey. McKinsey found
6 the cost to Purdue of a system to verify completion of prescriber education before prescriptions
7 could be filled would be \$50 million—an estimate Purdue used to oppose efforts for more
8 rigorous risk management strategies.⁹⁶ [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED].⁹⁷

12 169. Armed with McKinsey’s analysis, Purdue’s strategy on REMS was effective. The
13 REMS program avoided verification and enrollment provisions that would harm Purdue’s profits.

14 170. Meanwhile, based on McKinsey’s work on extended release opioid REMS,
15 McKinsey was aware of warnings and adverse events included within the OxyContin medication
16 guide and communications plans, including risks of overdose and adverse events including
17 dizziness and lethargy.

18 171. In June 2009, McKinsey helped Purdue prepare for an FDA advisory committee
19 meeting. [REDACTED]

20 [REDACTED].⁹⁸

21 172. McKinsey prepared for Purdue an “FDA Advisory Committee on Reformulated
22 OxyContin: Question & Answer Book” in September 2009, with questions including “Why
23 should we trust you?” In response, McKinsey recommended Purdue say “We acknowledge
24 mistakes made in the past[;]” “We have x, y and z measures in place that did not exist before[;]”

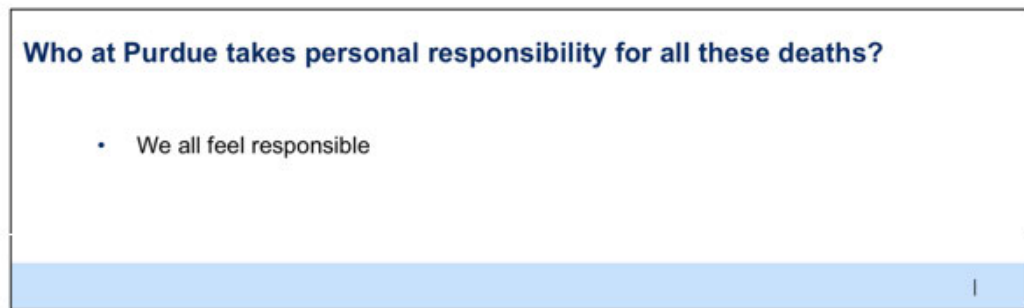
27 ⁹⁶ PDD8901530124

28 ⁹⁷ PPLPC019000622253

⁹⁸ PDD8901645845

1 and “[a]t all levels, Purdue’s focus is on maintaining the highest ethical standards and meeting the
2 needs of patients[.]”⁹⁹

3 173. Sometimes, McKinsey’s work was as obfuscating as it was self-revealing. To the
4 question of “Who at Purdue takes personal responsibility for all these deaths?[,]” McKinsey
5 offered the following response:¹⁰⁰



11 12

MCK-MAAG-0152135 |

12

13 **b. The Granularity of Growth**

14 174. To this end, McKinsey prides itself on certain managerial techniques it professes
15 to have detailed knowledge of and expertise in deploying. These techniques are generally
16 applicable to problems encountered by many businesses; they are conceptual frameworks that
17 McKinsey deploys when tasked with solving a problem for a client.

18 175. After Purdue’s first guilty plea, the Sacklers desired dramatic, short-term growth
19 of Purdue’s opioid sales so as to increase the company’s attractiveness as an acquisition target or
20 borrower while allowing the Sacklers to take money out of the company. One service McKinsey
21 offers to its clients is to tell them how to grow.

22 176. In order to identify growth opportunities for a client, McKinsey espouses a
23 “granular” approach to identifying which subsets of the client’s existing business are the sources
24 of growth, and exploiting them for all they are worth. In August 2008, McKinsey directors
25 Patrick Viguerie and Sven Smit, together with Mehrdad Baghai, published a treatise on the

26 _____
27 ⁹⁹ MCK-MAAG-0152135

28 ¹⁰⁰ The Ad Hoc Group of Non-Consenting States’ Statement in Support of the Official Committee of Unsecured Creditors’ Motions to Compel Production of Purportedly Privileged Documents for *In Camera* Review, Doc. No. 2012, *In re Purdue Pharma, Inc.*, filed November 18, 2020, Case No. 19-23649 (S.D.N.Y.), Ex F, Pg. 39.

1 matter: *The Granularity of Growth: How to Identify the Sources of Growth and Drive Enduring*
2 *Company Performance* (Wiley, April 2008). “The key is to focus on granularity, to breakdown
3 big-picture strategy into its smallest relevant components.”¹⁰¹

4 177. Previously, in an article in *McKinsey Quarterly* (coincidentally published the same
5 month that Purdue pled guilty), the authors explained:

6 Our research on revenue growth of large companies suggests that executives should
7 “de-average” their view of markets and develop a granular perspective on trends,
8 future growth rates, and market structures. Insights into subindustries, segments,
9 categories, and micromarkets are the building blocks of portfolio choice. Companies
will find this approach to growth indispensable in making the right decisions about
where to compete.¹⁰²

10 178. Additionally, McKinsey encouraged a granular assessment of the geography of
11 corporate growth. “The story gets more precise as we disaggregate the company’s performance
12 on the three growth drivers in 12 product categories for five geographic regions.”¹⁰³

13 179. One can imagine this strategy applied to a seller of, say, cartons of milk. If
14 McKinsey were to perform an analysis of the milk seller’s sales and marketing and discover that
15 the profit margin on milk cartons sold to university cafeterias in dairy-producing states is much
16 greater than the margin on cartons sold at convenience stores in the southwest, and further that the
17 milk seller has previously devoted equal amounts of time and resources selling to both university
18 cafeterias and convenience stores, then McKinsey would likely advise the client to deploy
19 additional resources towards selling milk to university cafeterias in dairy-producing states.
20 McKinsey’s “granular” approach to the milk seller’s business channels has identified a way to
21 increase higher margin sales, leading to newfound growth and profitability for the client.

22 180. Rather than milk, McKinsey deployed this strategy on OxyContin, a controlled
23 substance, after its manufacturer pled guilty to misrepresenting the addictive and deadly
24 properties of the drug.

26 ¹⁰¹ *The granularity of growth*, Book Excerpt, McKinsey & Company, March 1, 2008, available at:
27 <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/the-granularity-of-growth>

¹⁰² Mehrdad Baghai *et. al.*, *The granularity of growth*, McKinsey Quarterly, May 2007, available at:
28 <https://www.mckinsey.com/featured-insights/employment-and-growth/the-granularity-of-growth>

¹⁰³ *Id.*

1 **c. “Identifying Granular Growth Opportunities for OxyContin”**

2 181. McKinsey’s granular analysis of Purdue’s OxyContin sales efforts led to the
3 implementation of a number of strategies to sell more pills.

4 182. By January 2010, McKinsey informed Purdue, in accordance with the lessons of
5 McKinsey’s granular growth analysis, that Purdue could generate “\$200-400mm” in additional
6 annual sales of OxyContin by implementing McKinsey’s strategies.¹⁰⁴

7 183. In November 2010, a McKinsey report instructed sales reps to maximize profits by
8 “emphasizing [the] broad range of doses”—which meant pushing the doses that were highest and
9 most profitable.¹⁰⁵

10 184. In 2012, John Stewart assigned McKinsey to “understand the significance of each
11 of the major factors affecting OxyContin’s sales.”¹⁰⁶

12 185. This McKinsey did in excruciatingly granular detail, analyzing each sales channel
13 for Purdue’s opioids to identify weaknesses, opportunities, and to suggest courses of action to
14 improve performance. Many core themes of McKinsey’s work would be crystallized in a series of
15 presentations and updates made to the Sackler family and to Purdue’s board of directors in the
16 summer of 2013 entitled “Identifying Granular Growth Opportunities for OxyContin.”

17 **i. Marketing – Countering Emotional Messages**

18 186. From the outset of McKinsey’s known work for Purdue, the work was grim. In
19 June 2009, McKinsey teamed with Purdue’s then-Chief Medical Officer (and current CEO) Craig
20 Landau and his staff to discuss how best to “counter emotional messages from mothers with
21 teenagers that overdosed in [sic] OxyContin.”

22 187. Months later, McKinsey advised Purdue to market OxyContin based on the false
23 and misleading notion that the drug can provide “freedom” and “peace of mind” for its users, give
24 patients “the best possible chance to live a full and active life,” and concomitantly reduce stress
25 and isolation.¹⁰⁷

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27 ¹⁰⁴ PPLPC012000257443; PPLPC012000257446

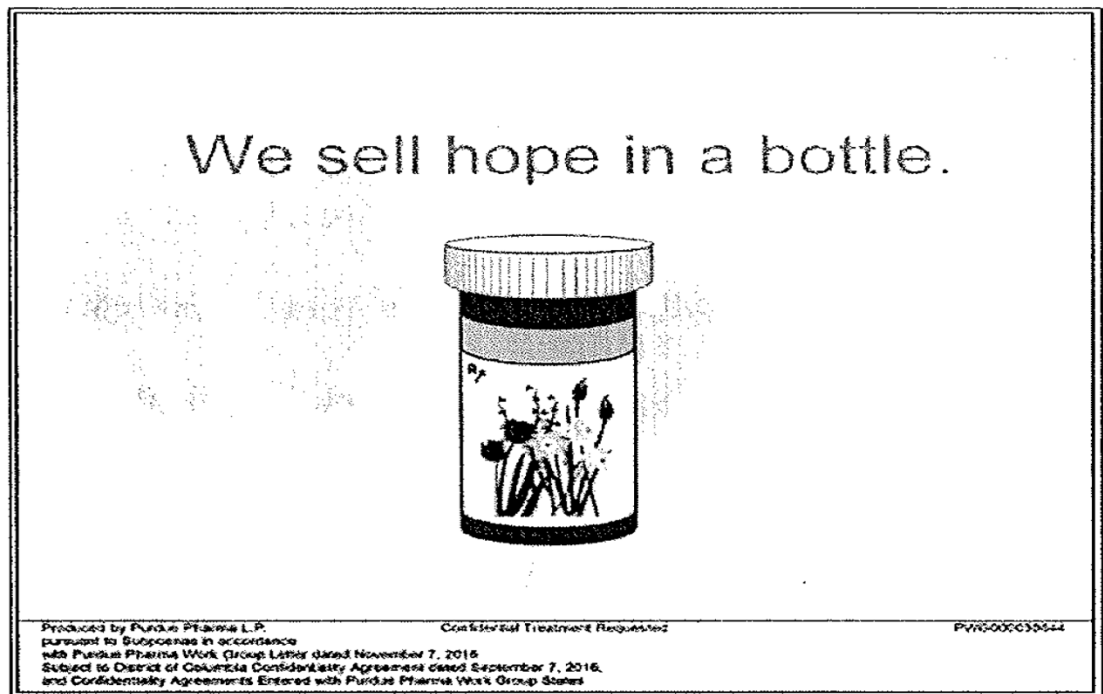
¹⁰⁵ PPLPC018000346294

¹⁰⁶ PPLPC020000587064

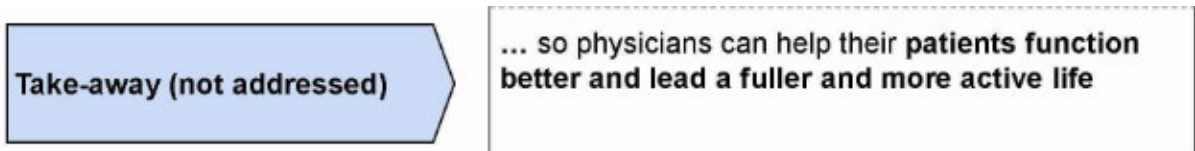
¹⁰⁷ PPLPC023000239858

1 188. These marketing claims were tailored to avoid any pitfalls that the Corporate
 2 Integrity Agreement might hold. While false and misleading, these claims regarding “freedom”
 3 and “peace of mind” of OxyContin users were narrowly tailored in order to avoid representations
 4 regarding “the withdrawal, drug tolerance, drug addiction or drug abuse of Purdue’s products,” as
 5 specified in Section III.B.2.c of the Corporate Integrity Agreement.¹⁰⁸

6 189. Purdue’s marketing materials from that time period are illustrative of the
 7 approach.¹⁰⁹



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 19 190. Likewise, McKinsey informed Purdue that by highlighting the ability to “tailor the
 20 dose” and treat a “broad range of appropriate patients,” the prescriber-takeaway would be that
 21 “physicians can help their patients function better and lead a fuller and more active life,” even
 22 though this conclusion was not to be explicitly addressed.¹¹⁰



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 27 ¹⁰⁸ PDD1712900096

¹⁰⁹ *Tennessee v. Purdue Pharma L.P.*, Case No. 1-173-18 (Compl. May 15, 2018) ¶ 24.

28 ¹¹⁰ PPLPC019000329253

1 191. Claims that OxyContin improved function and quality of life were not supported
2 by substantial evidence and, in addition, failed to take into account risks of addiction. The FDA
3 and other federal agencies have, for years, made clear the lack of evidence for claims that the use
4 of opioids for chronic pain improves patients' function and quality of life.¹¹¹ A Centers for
5 Disease Control and Prevention guideline, following a "systematic review of the best available
6 evidence," concluded that "[w]hile benefits for pain relief, function and quality of life with long-
7 term opioid use for chronic pain are uncertain, risks associated with long-term opioid use are
8 clearer and significant."¹¹² According to the CDC director, "for the vast majority of patients, the
9 known, serious, and too-often- fatal risks far outweigh the unproven and transient benefits [of
10 opioids for chronic pain]."¹¹³

11 192. In addition to crafting carefully-tailored quality of life assurances designed to
12 avoid the pitfalls of the Corporate Integrity Agreement, McKinsey invented other misleading
13 marketing efforts for Purdue.

14 193. For instance, McKinsey urged Purdue to capitalize on OxyContin's extended-
15 release characteristics in another way: marketing OxyContin's twelve-hour dosing as though
16 users only need to take OxyContin twice a day, thus requiring fewer pills. OxyContin in fact was
17 well known to wear off after eight to ten hours in many patients, however. What McKinsey called
18 "convenient," would later be called "a [d]escription of Hell."

19 194. This misleading assurance of twelve-hour relief is especially pernicious, as end-of-
20 dose failure renders OxyContin even more dangerous because patients begin to experience
21 withdrawal symptoms, followed by a euphoric rush with their next dose—a cycle that fuels a

22 _____
23 ¹¹¹ The FDA has warned other drug makers that claims of improved function and quality of life were misleading. *See*
24 *Warning Letter from Thomas Abrams, Dir., FDA Div. of Mktg., Adver., & Commc'ns, to Doug Boothe, CEO,*
25 *Actavis Elizabeth LLC (Feb. 18, 2010) (rejecting claims that Actavis' opioid, Kadian, had an "overall positive impact*
26 *on a patient's work, physical and mental functioning, daily activities, or enjoyment of life.").*

27 *ALLERGAN_MDL_00387583; Warning Letter from Thomas Abrams, Dir., FDA Div. of Mktg., Adver., &*
28 *Commc'ns, to Brian A. Markison, Chairman, President and Chief Executive Officer, King Pharmaceuticals, Inc.*
(March 24, 2008) (finding the claim that "patients who are treated with [Avinza (morphine sulfate ER)] experience
an improvement in their overall function, social function, and ability to perform daily activities . . . has not been
demonstrated by substantial evidence or substantial clinical experience."). *ALLERGAN_CA_00161496.* The FDA's
warning letters were available to McKinsey on the FDA website.

¹¹² CDC Guideline at 2, 18.

¹¹³ Thomas R. Frieden and Debra Houry, *New England Journal of Medicine*, "Reducing the Risks of Relief – The
CDC Opioid-Prescribing Guideline" at 1503 (Apr. 21, 2016).

1 craving for OxyContin. For this reason, Dr. Theodore Cicero, a neuropharmacologist at the
2 Washington University School of Medicine in St. Louis, called OxyContin’s twelve-hour dosing
3 “the perfect recipe for addiction.”¹¹⁴ Many patients will exacerbate this cycle by taking their next
4 dose ahead of schedule or resorting to a rescue dose of another opioid, increasing the overall
5 amount of opioids they are taking. Promotion of twelve-hour dosing, without disclosing its
6 limitations, is misleading because it implies that the pain relief supplied by each dose lasts twelve
7 hours.

8 195. In addition to designing misleading marketing messages, McKinsey even
9 suggested encouraging a new channel through which those messages could be delivered to
10 prescribers. McKinsey encouraged the tactic of “patient pushback,” wherein McKinsey and
11 Purdue would foment patients to directly lobby their doctors for OxyContin even when those
12 physicians expressed reservations regarding the administration of Purdue’s opioids.

13 196. The idea was that McKinsey and Purdue could spread their own message through
14 pain patients who would be perceived as more credible sources suggesting a need for controlled
15 or extended release opioid—even though the team devising this strategy would have known that
16 extended release opioids did not substantially control pain or thwart addiction better than lower-
17 dose, immediate release opioids.¹¹⁵

18 197. McKinsey also coached Purdue on building “trust” (which from its vantage point,
19 McKinsey knew was misplaced) in Purdue following its criminal conviction.

20 ii. **Targeting – Selling More OxyContin to Existing High**
21 **Prescribers**

22 198. Perhaps the key insight McKinsey provided was, using its granular approach, to
23 identify historically large prescribers and target ever more sales and marketing resources on them,
24 without any regard for, and indeed conscious disregard of, patient safety. Physician targeting
25 proved effective. McKinsey advised Purdue that visiting high-prescribing doctors many times per
26 year increased sales. This relentless drive to increase sales and create greater availability of

27 ¹¹⁴ Harriet Ryan, “‘You Want a Description of Hell?’ OxyContin’s 12-Hour Problem,” Los Angeles Times, May 5,
28 2016, available at <http://www.latimes.com/projects/oxycontin-part1/>.

¹¹⁵ PDD8901645845

1 opioids was made with no notable concern about the parallel increase in opioid-related deaths,
2 abuse, and misuse.

3 199. On January 20, 2010, Purdue’s board was informed of the ongoing work
4 McKinsey was performing concerning a new “physician segmentation” initiative whereby
5 McKinsey would analyze the opioid prescribing patterns of individual physicians to identify those
6 that had historically been the highest prescribers.¹¹⁶ McKinsey then worked with Purdue’s sales
7 and marketing staff to specifically target those prescribers with a marketing blitz to encourage
8 even further prescribing.

9 200. Purdue trained its sales force in tactics to market to these high prescribers based on
10 McKinsey’s insights and designed in conjunction with McKinsey.

11 201. Many of the historically highest prescribers of OxyContin—those same individuals
12 that McKinsey urged Purdue to target for ever more prescriptions—had prescribed Purdue’s
13 OxyContin *before* the 2007 guilty plea and had already been subjected to Purdue’s
14 misrepresentations regarding OxyContin that were the subject of that guilty plea.

15 202. McKinsey identified these physicians—those that had already been influenced by
16 Purdue’s misrepresentations and were thus already high prescribers—as optimal targets for a
17 massive marketing push to sell more OxyContin.

18 203. McKinsey worked assiduously with Purdue over many years to continually refine
19 this approach and required ever-more granular data for its analysis. More than three years after
20 the initial introduction of the physician segmentation initiative, McKinsey requested, and Purdue
21 provided, “prescriber-level milligram dosing data” so that McKinsey could further analyze the
22 individual amounts of OxyContin prescribed by individual physicians.

23 204. At the same time it requested this “prescriber-level milligram dosing data” from
24 Purdue, McKinsey urged the Sacklers to strictly manage the target lists of each sales
25 representative to assure that the maximum amount of each sales representative’s time was spent
26 with the most attractive customers.

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¹¹⁶ PPLPC012000257446

1 205. On July 23, 2013, Purdue’s board discussed concerns about “the decline in higher
2 strengths” of Purdue’s opioids as well as an observed decline in “tablets per Rx.” In order to
3 assure that the threat to OxyContin sales growth be addressed, McKinsey was assigned “to
4 actively monitor the number and size of opioid prescriptions written by individual doctors.”¹¹⁷

5 206. In unveiling Project Turbocharge to Purdue and the Sacklers, McKinsey stated that
6 the most prolific OxyContin prescribers wrote “25 times as many OxyContin scripts” as less
7 prolific prescribers and urged Purdue and the Sacklers to “make a clear go-no go decision to
8 ‘Turbocharge the Sales Engine’” by devoting substantial capital toward McKinsey’s plan.¹¹⁸

9 207. McKinsey also stated that increased numbers of visits by sales representatives to
10 these prolific prescribers would increase the number of opioid prescriptions that they would write.
11 This singular focus on increasing prescriptions was not coupled with colorable concern for the
12 patient population.

13 208. By November 2013, McKinsey had obtained the physician-level data they had
14 previously requested and continued to study ways to sell additional OxyContin prescriptions by
15 refining and targeting the sales pitch to them. The Purdue board was kept apprised of McKinsey’s
16 progress.

17 209. Not only did McKinsey identify which doctors prescribed the most of Purdue’s
18 opioids, McKinsey also recommended segmenting prescribers into “types” and tailoring messages
19 and tactics to the different prescriber profiles. For prescribers dubbed “Early Adopting Experts”
20 and “Proactive Teachers,” defined by a willingness to use extended release opioids, including in
21 opioid naïve patients (patients who were not already using opioids), McKinsey urged
22 emphasizing that its seven tablet strengths provide flexibility to “tailor the dose” to customer
23 needs.¹¹⁹ Upon information and belief, this message aimed to encourage prescribers to initiate and
24 maintain patients on OxyContin long-term by reminding them they could increase the dose as
25 patients became tolerant with long-term use (rather than discontinue use when the drug lost its
26 effectiveness).

27 ¹¹⁷ PPLP004307354

28 ¹¹⁸ PPLP004409890

¹¹⁹ MCK-MDL2296-0126522

1 OxyContin and reassured the Sacklers that “McKinsey would analyze the data down to the level
2 of individual physicians” in order to study ways to maximize the sales of the highest-dose
3 OxyContin pills.

4 215. Purdue implemented McKinsey’s suggestions through adopting the marketing
5 slogan to “Individualize the Dose” and by 2013 encouraged its sales representatives to “practice
6 verbalizing the titration message” when selling Purdue’s opioids to prescribers.¹²³

7 216. McKinsey would have known, however, that higher doses of opioids carry greater
8 risk. Patients receiving high doses of opioids (e.g., doses greater than 100 mg morphine
9 equivalent dose (“MED”) per day) as part of long-term opioid therapy are three to nine times
10 more likely to suffer overdose from opioid-related causes than those on low doses. As compared
11 to available alternative pain remedies, scholars have suggested that tolerance to the respiratory
12 depressive effects of opioids develops at a slower rate than tolerance to opioids’ analgesic effects.
13 The Centers for Disease Control and Prevention also recognize that higher doses of opioids tend
14 to increase overdose risks relative to any potential patient benefit.¹²⁴

15 217. Claims that opioids could be taken in ever-increasing strengths to obtain pain
16 relief, without disclosing that higher doses increased the risk of addiction and overdose, are
17 deceptive and misleading. They were particularly important to promotional efforts, however,
18 because patients on opioids for more than a brief period develop tolerance, requiring increasingly
19 high doses to achieve pain relief. Marketers needed to generate a comfort level among doctors to
20 ensure the doctors maintained patients on the drugs even at the high doses that became necessary.

21 218. Purdue adopted McKinsey’s [REDACTED] proposal.¹²⁵ [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 ¹²³ PPLP003450924

26 ¹²⁴ Dowell D, Haegerich TM, Chou R. CDC Guideline for Prescribing Opioids for Chronic Pain – United States,
2016. MMWR Recomm Rep 2016;65(No. RR-1):1–49. DOI: <http://dx.doi.org/10.15585/mmwr.rr6501e1>

27 ¹²⁵ PPLPC023000251226 ([REDACTED]); see also
28 PPLPC012000243668 ([REDACTED]); PPLPC012000245087 ([REDACTED])
[REDACTED]; PPLPC012000246009 ([REDACTED]); PPLPC021000265092 ([REDACTED])
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[REDACTED]

[REDACTED]¹²⁶

219. The titration messaging worked. Nationwide, based on an analysis by the *Los Angeles Times*, more than 52% of patients taking OxyContin longer than three months are on doses greater than sixty milligrams per day, which converts to the ninety MED that the CDC guideline urges prescribers to “avoid” or “carefully justify.”¹²⁷

iv. **Covered Persons – Sales Quotas and Incentive Compensation**

220. McKinsey urged the use of quotas and bonus payments to motivate Purdue’s sales force to sell as many OxyContin prescriptions as possible. As McKinsey described it, “[r]evision to incentive comp could better align reps to Purdue’s economics.”¹²⁸

221. Notably, this behavior was prohibited by the 2007 Corporate Integrity Agreement, which required Purdue to implement written policies regarding “compensation (including salaries and bonuses) for [sales representatives] engaged in promoting and selling Purdue’s products that are designed to ensure that financial incentives *do not inappropriately motivate such individuals to engage in the improper promotion or sales of Purdue’s products.*”¹²⁹

222. By 2010, Purdue had implemented a four-year plan, consistent with McKinsey’s strategy, to dramatically increase the quota of required annual sales visits by Purdue sales representatives to prescribers. The quota was 545,000 visits in 2010, 712,000 visits in 2011, 752,000 in 2012, and 744,000 visits in 2013.

223. On August 15, 2013, as part of their “Identifying Granular Growth Opportunities for OxyContin” presentation, McKinsey urged the Sacklers to “establish a revenue growth goal (e.g., \$150M incremental stretch goal by July 2014) and set monthly progress reviews with CEO and Board.”¹³⁰

224. In its “Identifying Granular Growth Opportunities for OxyContin” presentation to the Purdue board in July 2013, McKinsey nonetheless urged Purdue, in addition to increasing the

¹²⁶ PKY183123435

¹²⁷ CDC Guideline at 16.

¹²⁸ PPLPC012000441016

¹²⁹ PDD1712900096 (emphasis added).

¹³⁰ PPLP004409890

1 focus of the sales force on the top prescribers, to increase the overall quotas for sales visits for
 2 individual sales representatives from 1,400 to 1,700 annually.

3 225. In 2013, McKinsey identified one way that Purdue could squeeze more
 4 productivity out of its sales force: by slashing *one third* of the time that Purdue devoted to
 5 training its sales force (from 17.5 days per year to 11.5 days):

6 **One possible way to attain benchmark ~1500 calls per year is to decrease**
 7 **training days by ~6 days and increase calls per day by 5%** One possible route
to benchmark

Current call activity		Potential new allocation	
Number of "on territory" days per year		Number of "on territory" days per year	
Item	Days ¹	Item	Days ¹
Number of working days	260	Number of working days	260
Holidays	-11.3	Holidays	-11.3
Vacation and other time off	-27.2	Vacation and other time off	-27.2
Trainings and meetings	-17.5	Trainings and meetings	-11.5
Other company-related time off of field	-4.3	Other company-related time off of field	-4.3
Total days	199.7	Total days	205.7
Avg calls per day	x 7	Avg calls per day	x 7.35
Total calls per year	1398	Total calls per year	1512

1 Purdue 2012 Actual data was used for this analysis

SOURCE: Purdue team analysis

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20 226. By eliminating one third of the amount of time sales representatives were required
 21 to be in training, McKinsey projected that Purdue could squeeze an additional 5% of physical
 22 calls per day out of its newly less-trained sales force.

23 227. Additionally, McKinsey developed and advised Purdue on a new incentive
 24 compensation structure for the sales representatives, who were Covered Persons pursuant to the
 25 Corporate Integrity Agreement. McKinsey knew that, combined with the strictures of sales quotas
 26 and less training for the sales force, bonus/incentive compensation to the sales representatives
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1 based on the number of OxyContin prescriptions the representative produced could be a powerful
2 driver of incremental OxyContin sales, without regard for patient safety.

3 **7. Transformation: Purdue and McKinsey Adopt and Implement**
4 **McKinsey's Strategies.**

5 228. As early as September 11, 2009, McKinsey determined and told Purdue that it
6 could generate \$200 million to \$400 million in additional annual sales of OxyContin by
7 implementing McKinsey's strategy based on the opportunities its granular growth analysis had
8 identified. McKinsey reiterated its assurances regarding the hundreds of millions of dollars of
9 additional OxyContin sales on January 20, 2010.

10 229. Purdue accepted and, with McKinsey's ongoing assistance, implemented
11 McKinsey's strategies for selling and marketing OxyContin.

12 230. For instance, in January 2010, Purdue was training its sales and marketing force on
13 the new sales tactics based on a "physician segmentation" initiative that McKinsey urged. The
14 strategy developed as a result of McKinsey's granular analysis of OxyContin sales channels. The
15 initiative sought to identify the most prolific OxyContin prescribers and then devote significant
16 resources towards convincing those high prescribers to continue to prescribe ever more
17 OxyContin, in higher doses, for longer times, to ever more patients.

18 231. On January 20, 2010, the Purdue board was informed of the progress in
19 implementing McKinsey's "physician segmentation" initiative.

20 232. This transformative collaboration would continue over the course of the
21 relationship between Purdue and McKinsey.

22 233. During the time that McKinsey was working with Purdue, Purdue deliberately
23 minimized the importance of the Corporate Integrity Agreement. In 2008, Carol Panara joined the
24 Purdue sales force from rival Novartis. She would stay with the company until 2013, during
25 which time McKinsey was responsible for increasing OxyContin sales at Purdue, and culminating
26 with the implementation of McKinsey's "Project Turbocharge," beginning September 2013.

27 234. Ms. Panara stated that the 2007 guilty plea was deliberately minimized by the
28 company in presentations to its sales staff: "They said, 'We were sued, they accused us of mis-

1 marketing, but that wasn't really the case. In order to settle it and get it behind us we paid a fine.'
 2 You had the impression they were portraying it as a bit of a witch hunt."¹³¹ (Purdue and its
 3 executives paid \$634.5 million in fines.)

4 235. Consistent with McKinsey's mandate, McKinsey devised methods for sales staff to
 5 sell OxyContin to doctors while at the same time maintaining technical compliance with the
 6 Corporate Integrity Agreement. Ms. Panara stated that, though she was told she could not flatly
 7 claim that OxyContin was better or safer than other opioids, "she was trained to talk about
 8 product in ways that implied that it was safer." She might tout OxyContin's twelve-hour
 9 formulation to a prescriber. "You could say that with a shorter-acting medication that wears off
 10 after six hours, there was a greater chance the patient was going to jump their dosing schedule
 11 and take an extra one a little earlier. We couldn't say [it was safer], but I remember we were told
 12 that doctors are smart people, they're not stupid, they'll understand, they can read between the
 13 lines."¹³²

14 8. Project Turbocharge

15 236. The Corporate Integrity Agreement expired in January 2013. With this restriction
 16 lifted, McKinsey devised additional marketing and sales strategies for Purdue to further increase
 17 OxyContin sales.

18 237. On May 14, 2013, McKinsey entered into a "Statement of Services to the Master
 19 Consulting Agreement" (the "2013 Agreement") with Purdue to "conduct a rapid assessment of
 20 the underlying drivers of current OxyContin performance, identify key opportunities to increase
 21 near-term OxyContin revenue and develop plans to capture priority opportunities." [REDACTED]

22 [REDACTED]
 23 [REDACTED] ¹³³

24 238. The 2013 Agreement stated, "We have a long history of partnership with Purdue,
 25 and we would make best efforts to leverage our understanding of your business – both in terms of

26 _____
 27 ¹³¹ David Crow, *How Purdue's 'one-two' punch fuelled the market for opioids*, Financial Times, September 9, 2018,
 available at: <https://www.ft.com/content/8e64ec9c-b133-11e8-8d14-6f049d06439c>

28 ¹³² *Id.*

¹³³ PPLPC030000770531

1 content and culture.” It was signed by then-principal Arnab Ghatak, who would “lead the team
2 with senior leadership from Rob Rosiello and Martin Elling.” Elling was a leader of McKinsey’s
3 PMP group.¹³⁴

4 239. McKinsey was tasked with “Identifying Granular Growth Opportunities for
5 OxyContin,” conducting an “assessment of the underlying drivers of current OxyContin
6 performance,” identifying “key opportunities to drive near-term OxyContin performance,” and
7 developing “plans to capture priority opportunities.”¹³⁵

8 240. For purposes of the project, McKinsey would need “[f]ull access to work done to
9 date and key data.”¹³⁶ [REDACTED]

10 [REDACTED]¹³⁷

11 241. Staff told the Sacklers that McKinsey would study how to get doctors to prescribe
12 more OxyContin,¹³⁸ how to use incentive compensation to push reps to generate more
13 prescriptions, how to use “patient pushback” to get doctors to prescribe more opioids, and how to
14 keep patients on opioids longer.¹³⁹

15 242. The 2013 Agreement would lead to Project Turbocharge, McKinsey’s successful
16 bid to transform Purdue’s sales and marketing efforts for OxyContin now that Purdue was no
17 longer bound by the Corporate Integrity Agreement.

18 243. In the summer of 2013, McKinsey made multiple recommendations to Purdue’s
19 board to increase OxyContin revenue, and urged the Sackler family to “make a clear go-no-go
20 decision to ‘Turbocharge the Sales Engine.’”

21 244. Purdue, like McKinsey, recognized that the initiative was no small thing. An
22 internal Purdue email states that [REDACTED]

23 [REDACTED]¹⁴⁰

24
25 ¹³⁴ *Id.*

26 ¹³⁵ PPLPC030000770531 / MCK-MAAG-0024283

27 ¹³⁶ *Id.*

28 ¹³⁷ PPLPC012000431809

¹³⁸ PPLPC012000431262

¹³⁹ *Id.*; PPLPC012000431266

¹⁴⁰ PPLPC012000437344

1 245. The Sacklers were impressed. On August 15, 2013, Richard Sackler emailed
2 Mortimer D.A. Sackler, “[T]he discoveries of McKinsey are astonishing.”

3 246. Eight days later, on August 23, 2013, McKinsey partners met with the Sackler
4 family—not the Purdue board of directors—to pitch Project Turbocharge. Dr. Arnab Ghatak, one
5 of the McKinsey partners leading the Purdue account, recounted the meeting to fellow McKinsey
6 partner Martin Elling in an email exchange: “[T]he room was filled only with family, including
7 the elder statesman Dr. Raymond [Sackler] We went through exhibit by exhibit for about 2
8 hrs They were extremely supportive of the findings and our recommendations . . . and
9 wanted to strongly endorse getting going on our recommendations.”¹⁴¹

10 247. Elling, a co-leader of the Purdue account, remarked in the same email
11 correspondence that McKinsey’s “findings were crystal clear to” the Sacklers, and that the
12 Sacklers “gave a ringing endorsement of ‘moving forward fast.’”¹⁴²

13 248. As a result of the Sackler family endorsement of McKinsey’s proposals, the
14 following month Purdue implemented Project Turbocharge based on McKinsey’s
15 recommendations. In adopting “Project Turbocharge,” Purdue acknowledged the improper
16 connotations of the name, and re-christened the initiative the decidedly more anodyne “E2E:
17 Evolve to Excellence.”¹⁴³

18 249. Evolve to Excellence (“E2E”) was the theme of Purdue’s 2014 National Sales
19 Meeting.

20 250. CEO John Stewart also told sales staff that board member Paolo Costa was a
21 “champion for our moving forward with a comprehensive ‘turbocharge’ process,” referring to
22 McKinsey’s plan.

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26 ¹⁴¹ MCK-MDL2996-0403095

27 ¹⁴² *Id.*

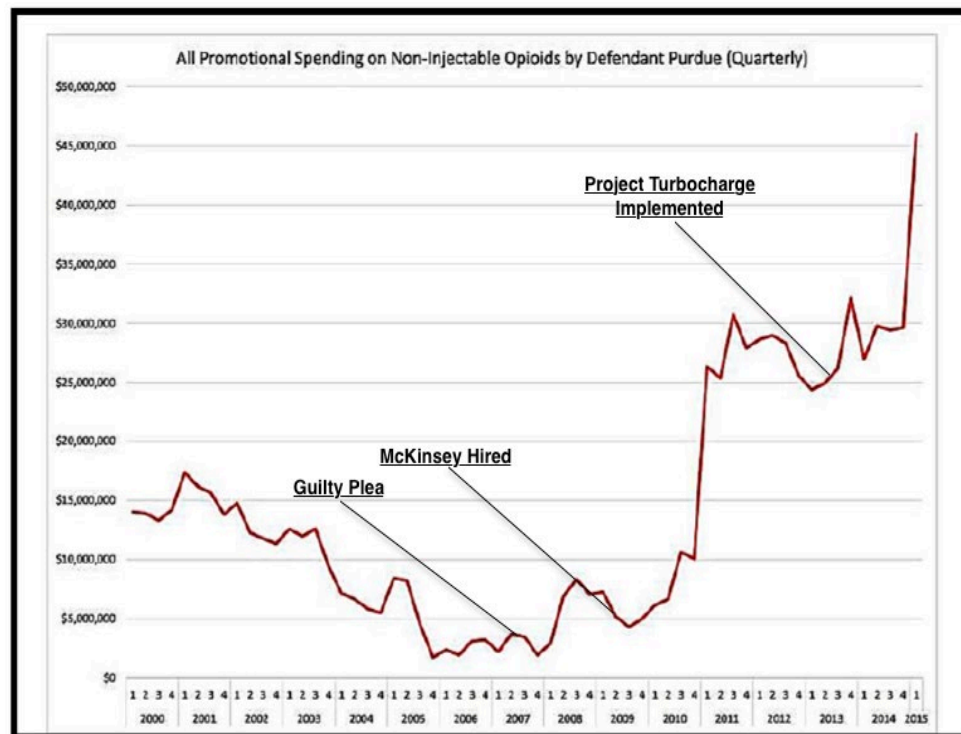
28 ¹⁴³ Regarding the name change, CEO John Stewart wrote to McKinsey partners Rob Rosiello and Arnab Ghatak on August 15, 2013: “Paolo Costa was especially engaged in the discussion and he (among others) will be a champion for our moving forward with a comprehensive ‘turbocharge’ process – *though we do need to find a better and more permanently appropriate name.*” PPLPC012000436626 (emphasis added).

1 251. After Purdue adopted McKinsey's recommendations, McKinsey continued to work
2 with Purdue sales and marketing staff reporting to Russell Gasdia during Purdue's
3 implementation of McKinsey's recommendations.

4 252. In fact, the entire E2E initiative was overseen by McKinsey and some Purdue
5 executives, who together comprised the E2E Executive Oversight Team and Project Management
6 Office.

7 253. At the same time, the Sacklers were kept informed of the implementation of
8 McKinsey's OxyContin strategy. According to a September 13, 2013 board agenda, the board
9 discussed with the Sacklers the ongoing implementation of McKinsey's sales tactics.

10 254. Evolve to Excellence called for a *doubling* of Purdue's sales budget. Under
11 McKinsey's prior tutelage, Purdue's promotional spending had already skyrocketed. McKinsey's
12 ongoing influence on Purdue's operations after the 2007 guilty plea is stark:



26 255. At the time of McKinsey's first known work for Purdue, Purdue spent
27 approximately \$5 million per quarter on sales and marketing. By the time McKinsey's Project
28

1 Turbocharge was implemented, total quarterly sales and marketing spending at Purdue exceeded
2 \$45 million, an increase of 800%.

3 256. Project Turbocharge continued despite the arrival of a new CEO at Purdue. On
4 January 17, 2014, new CEO Mark Timney received reports from McKinsey emphasizing that, in
5 order to increase profits, Purdue must again increase the number of sales visits to “high-value”
6 prescribers, i.e., those that prescribe the most OxyContin.¹⁴⁴

7 257. Purdue and McKinsey worked together to implement “Turbocharging the Sales
8 Engine.” [REDACTED]

9 [REDACTED]
10 [REDACTED]¹⁴⁵

11 258. McKinsey and Purdue also worked together on an “implementation plan” for E2E,
12 with McKinsey taking on the role of “executive oversight” of projects including the creation of
13 target lists, internal dashboards to track progress, and changes to Purdue’s incentive
14 compensation plan consistent with E2E.¹⁴⁶

15 **a. Targeting High Subscribers**

16 259. Project Turbocharge called for revising the existing process for targeting high-
17 prescribing physicians, with a shift from targeting solely on the basis of prescription deciles to
18 considering additional factors. Based on its analysis, McKinsey told Purdue that “[t]here is

19 _____
20 ¹⁴⁴ In fact, recent deposition testimony suggests McKinsey may have been responsible for the fact that Timney was
21 given the CEO job at Purdue in the first place. On October 30, 2020, Timney provided the following testimony
(emphasis added):

22 Q: Are you familiar with McKinsey & Company?

23 A: I decline to answer on the ground that I may not be compelled to be a witness against
24 myself in any proceeding.

25 Q: Did individuals at McKinsey assist you in getting hired as the CEO of Purdue?

26 A: I decline to answer on the ground that I may not be compelled to be a witness against
27 myself in any proceeding.

28 In fact, McKinsey appears to have played a substantial role in the succession of several Purdue CEO’s. Martin
Elling, in his 2018 annual self-assessment, provided the following example of “how I deliver impact:”
“Actively managing CEO/CXO transitions: ... from Michael Friedman to John Stewart (2007) to Mark
Timney (2014) to Craig Landau (2017) at Purdue.” MCK-MDL2996-0357931. “I drove our introduction of
Purdue in 2004 and then, with Rob Rosiello, built it into a substantial and sustaining client... We have served
across four CEOs and are now helping the new leadership team adapt to a world of headwinds for their core
product OxyContin,” he added. MCK-MDL2996-0357931.

¹⁴⁵ PPLPC021000615265

¹⁴⁶ MCK-MDL2996-0180338, at 0180340

1 significant opportunity to slow the decline of OxyContin by calling on more high-value
2 physicians” and that “[t]he revenue upside from sales re-targeting and adherence could be up to
3 \$250 million.”

4 260. The core objective of McKinsey’s initiative was to ensure that Purdue was
5 “making calls on the highest potential customers with the right frequency to maximize prescribing
6 potential.”

7 261. McKinsey determined and advised Purdue that the top half of prescribing
8 physicians “write on average 25 times more scripts per prescriber” than the lower half. McKinsey
9 advised that Purdue would see a greater return on its sales investment by focusing on these
10 targets, including on prescribers with alarming prescribing patterns that raised red flags they were
11 writing “prescriptions” for non-medical use. McKinsey’s plan aimed at boosting sales of
12 OxyContin by targeting the highest volume opioid prescribers, without addressing whether the
13 expanded sales would be for an illicit market.

14 262. McKinsey found that Purdue did not “focus on the highest potential docs,”
15 measured both by the number of prescriptions and reimbursement considerations.¹⁴⁷ One
16 McKinsey analyst urged McKinsey to recommend Purdue target “[l]iterally, at least all”
17 prescribers in the top 20% of prescribers, “minus another few percent who are no sees[.]”¹⁴⁸
18 McKinsey team lead Arnab Ghatak replied that “they probably have 20% no see[.], but i’d also
19 assume there are not many high writers that are no see.”¹⁴⁹ (“No see” prescribers are prescribers
20 who do not accept visits from pharmaceutical sales representatives. Thus, McKinsey recognized
21 that most of the highest volume prescribers, or “high writers” of prescriptions, were willing to
22 entertain sales visits from sales representatives.)

23 263. “To put this in perspective,” McKinsey stated,

24 the average prescriber in decile 5-10 [the top half of prescribers by volume] writes
25 25 times as many OxyContin scripts as a prescriber in decile 0-4. In Q1 2013 the
26 majority (52%) of OxyContin primary calls were made to decile 0-4 prescribers.
Including the secondary calls, 57% of the primary detail equivalents (PDEs) were

27 ¹⁴⁷ MCK-MDL2996-0364024

28 ¹⁴⁸ MCK-MDL2996-0364267

¹⁴⁹ *Id.*

1 made to decile 0-4 prescribers. Best practice in the industry is over 80% of effort on
2 higher value prescribers.”

3 McKinsey concluded: “Given that there are 14,000 uncalled physicians in deciles 5-10, there is
4 significant opportunity to shift calls to higher potential prescribers.”¹⁵⁰

5 264. McKinsey pointed to a “true physician example” in Wareham, Massachusetts, who
6 wrote 167 more OxyContin prescriptions after Purdue sales reps visited him.¹⁵¹

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True physician example		
	Specialty	: Anesthesiology
	Location	: Wareham, Massachusetts
	Market Decile	: 8
	12 months ending March 2012	12 months ending March 2013
Calls made on physician	0 P1 1 P2	18 P1 1 P2
OxyContin scripts written during 2 nd half of year	177	344

16 *Graphic from McKinsey presentation recommending targeting high prescribers*

17 265. To slow or reverse the decline in OxyContin sales, McKinsey recommended a shift
18 to “value deciles,” which purported to weigh prescribers according to factors including overall
19 opioid prescriptions, including the number of branded versus generic prescriptions; prescriber
20 rules in place limiting sales calls; managed care access; and the number of the prescribers new to
21 brand prescriptions, including new opioid patients and switches from other opioid products.¹⁵²
22 The cumulative effect of the value rankings was to shift detailer emphasis onto the highest-
23 volume prescribers. Further, McKinsey’s analysis found that the highest-volume prescribers were
24 themselves most influenced by detail visits.

27 ¹⁵⁰ MCK-MDL2996-0187168 / PPLP004409892

28 ¹⁵¹ PPLPC012000437356

¹⁵² PPLPC022000646874

1 266. Purdue moved quickly to do as McKinsey advised. All sales representatives
2 received a memo on December 23, 2013, identifying how to select “SuperCore” prescribers, or
3 the top ten targets,¹⁵³ in their territory according to the E2E high prescribing principles and
4 required that each SuperCore prescriber be visited at least twice a month.¹⁵⁴ [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]¹⁵⁵ As part of these changes, McKinsey’s plan involved *more* minimum sales calls
8 overall.¹⁵⁶

9 267. [REDACTED]
10 [REDACTED]
11 [REDACTED] who later plead guilty to criminal charges related to an opioid drug ring. The
12 prescriber also surrendered his license to practice after an Ohio Medical Board investigation
13 revealed that he prescribed excessive and dangerous combinations of opioids and muscle relaxers
14 and that he prescribed opioids to a patients who complained of headaches and others who showed
15 signs of addiction.¹⁵⁷ The same prescriber received at least sixty visits from Purdue from mid-
16 2013 through 2016.¹⁵⁸

17 268. [REDACTED]
18 [REDACTED]
19 [REDACTED] The doctor, who worked at a family practice, was
20 charged with involuntary manslaughter, Medicaid fraud, drug trafficking, grand theft, and other
21 offenses.

22 269. [REDACTED]
23 [REDACTED]

25 ¹⁵³ MCK-MDL2996-0316833

26 ¹⁵⁴ PURCHI-000005915

26 ¹⁵⁵ PPLPC022000686986

27 ¹⁵⁶ MCK-MDL2996-0187168

27 ¹⁵⁷ https://www.cnhinews.com/article_91ffac58-1b32-11e8-b264-6b34793bf5c3.html

28 ¹⁵⁸ Public information about visits at which a payment was made is available for this time period through “Open Payments.”

1 [REDACTED]¹⁵⁹ In 2018, the Drug Enforcement Administration issued an Order to Show Cause and
 2 Immediate Suspension Order to Dr. Khan-Jaffrey over concerns that her DEA registration
 3 “constituted an imminent danger to the public health and safety,” finding she prescribed opioids
 4 without a legitimate medical purpose and disregarded urine screens indicating abuse and
 5 diversion.¹⁶⁰ Dr. Khan-Jaffrey’s DEA registration was fully revoked on July 28, 2020.¹⁶¹ Dr.
 6 Louis Spagnoletti, of Marlton, New Jersey, [REDACTED]

7 [REDACTED]¹⁶² lost his state license to prescribe controlled substances in 2018.¹⁶³
 8 Similarly, Dr. Vivienne Matalon, a Decile 10 prescriber from Cherry Hill, New Jersey, [REDACTED]
 9 [REDACTED]¹⁶⁴ went on to lose her license in 2018 as well, for
 10 allegedly receiving kickbacks to prescribe the fentanyl drug Subsys to three patients, including
 11 one that died.¹⁶⁵

12 270. Another prescriber, Dr. Damon Cary of Wilmington, Delaware, [REDACTED]
 13 [REDACTED],¹⁶⁶ received an
 14 emergency suspension order in 2019 after prescribing controlled substances, including opioids, to
 15 undercover officers without performing any medical examinations.¹⁶⁷ Dr. Eva Dickinson, of
 16 Harrington, Delaware, [REDACTED]
 17 [REDACTED],¹⁶⁸ was arrested on marijuana charges in 2016 and had her license suspended in
 18 2017 for sharing drugs, including opioids, with her patients.¹⁶⁹

19 271. Dr. Michael Cozzi of Fort Wayne, Indiana, [REDACTED]
 20 [REDACTED] had his medical license
 21 suspended in 2016, where he had prescribed more controlled substances than any other Indiana

22 ¹⁵⁹ PPLPC014000257127

23 ¹⁶⁰ <https://www.federalregister.gov/documents/2020/07/29/2020-16387/kaniz-f-khan-jaffery-md-decision-and-order>

24 ¹⁶¹ *Id.*

25 ¹⁶² PPLPC014000257127

26 ¹⁶³ <https://patch.com/new-jersey/moorestown/state-suspends-doctor-accused-illegally-prescribing-opioids>

27 ¹⁶⁴ PPLPC014000257127

28 ¹⁶⁵ <https://nj.gov/oag/newsreleases18/pr20180504d.html>

¹⁶⁶ PPLPC014000257130

¹⁶⁷ <https://www.delawareonline.com/story/news/health/2019/08/05/doctor-prescribed-opioids-undercover-cops-failed-follow-protocol/1920386001/>

¹⁶⁸ PPLPC014000257130

¹⁶⁹ <https://www.delawareonline.com/story/news/health/2017/01/19/doctors-license-suspended-delaware-maryland/96779080/>

1 prescriber, with over two million doses of oxycodone, seeing ninety to 100 patients a day.¹⁷⁰ Dr.

2 Jamie Gurrero, [REDACTED]

3 [REDACTED]¹⁷¹ was sentenced to 100 months in prison in
4 2016 after pleading guilty to unlawful distribution or dispensing of controlled substances, health
5 care fraud, conspiracy, and money laundering.¹⁷²

6 272. [REDACTED]

7 [REDACTED] Misrepresentations to these prescribers were especially
8 insidious because they were aimed at general practitioners who lack the time and expertise to
9 closely manage higher-risk patients on opioids.

10 273. McKinsey also urged, consistent with continually refining its granular approach,
11 that sales representatives devote two-thirds of their time to selling OxyContin and one-third of
12 their time selling Butrans, another Purdue opioid product. Previously, the split had been fifty-
13 fifty.

14 **b. Circumventing Safeguards Against Abuse and Diversion**

15 274. Project Turbocharge also involved a granular analysis of Purdue's individual sales
16 channels. In its August 8, 2013 report to the Purdue board, McKinsey also attributed the decline
17 in OxyContin sales to safeguards to limit suspicious opioid sales. McKinsey informed Purdue that
18 "[t]he retail channel, both pharmacies and distributors, is under intense scrutiny and direct risk."
19 "There are reports of wholesalers stopping shipments entirely to an increasing number of
20 pharmacies," "[m]any wholesalers are also imposing hard quantity limits on orders based on prior
21 purchase levels," and "[p]harmacy chains are implementing guidelines for which patients can fill
22 opioid prescriptions[.]"¹⁷³

23 275. For instance, McKinsey recommended that Purdue circumvent pharmacies entirely
24 with a mail order program because enforcement by federal regulators was decreasing OxyContin

25 _____
26 ¹⁷⁰ <https://www.wane.com/news/fort-wayne-pain-doctors-medical-license-suspended/> (He later died in a tractor
accident, <https://www.journalgazette.net/news/local/police-fire/20180816/tractor-accident-kills-pain-doctor>)

27 ¹⁷¹ PPLPC014000257130

28 ¹⁷² [https://www.justice.gov/usao-wdky/pr/kentuckiana-anesthesiologist-sentenced-100-months-unlawful-distribution-
controlled](https://www.justice.gov/usao-wdky/pr/kentuckiana-anesthesiologist-sentenced-100-months-unlawful-distribution-controlled)

¹⁷³ MCK-MAAG-0024297

1 dispensing through Walgreens. McKinsey informed the Sacklers that “[d]eep examination of
2 Purdue’s available pharmacy purchasing data shows that Walgreens has reduced its units by
3 18%.” Further, “the Walgreens data also shows significant impact on higher OxyContin
4 dosages.”¹⁷⁴

5 276. In order to counter these perceived problems, McKinsey suggested that Purdue’s
6 owners lobby Walgreens specifically to increase sales and circumvent the safeguarding sales
7 limits. It also suggested the establishment of a direct-mail specialty pharmacy so that Purdue
8 could circumvent Walgreens and sell directly to Walgreens’ customers. Finally, McKinsey
9 suggested the use of opioid savings cards distributed in neighborhoods with Walgreens locations
10 to encourage the use of Purdue’s opioids despite Walgreens actions.

11 277. McKinsey’s initiative also included ways to circumvent these safeguards.
12 McKinsey recommended that the sales force distribute vouchers and “starter kits” for patients
13 who faced co-pays for OxyContin prescriptions.¹⁷⁵ In particular, McKinsey recommended
14 dispensing vouchers to outlets of a specific large national pharmacy chain where prescriptions
15 and OxyContin inventories were down.¹⁷⁶ This chain, as part of its own settlement with the Drug
16 Enforcement Administration, had removed pharmacist bonuses for dispensing opioids.¹⁷⁷

17 **c. Incentivizing Opioid Sales**

18 278. McKinsey’s “turbocharging” plan also had other elements. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]¹⁷⁸ [REDACTED]
22 [REDACTED]¹⁷⁹

23
24
25 _____
26 ¹⁷⁴ *Id.*

27 ¹⁷⁵ MCK-MDL2996-0290827.

28 ¹⁷⁶ MCK-MDL2996-0041646.

¹⁷⁷ MCK-MDL2996-0104431; MCK-MDL2996-0041646.

¹⁷⁸ PPLPC012000437346.

¹⁷⁹ *Id.*

1 **9. McKinsey’s Efforts Triple OxyContin Sales**

2 279. In 2013, despite significant headwinds, with marketing activities turbocharged,
3 OxyContin sales peaked. The restrictions on Purdue’s sales and marketing methods contained in
4 the Corporate Integrity Agreement should have resulted in fewer overall OxyContin sales; the
5 guilty plea identified a specific segment of existing OxyContin sales that were illegitimate and
6 should thus cease. All else being equal, OxyContin sales should have decreased to account for the
7 successful elimination of improper sales. In fact, OxyContin sales did decrease in the immediate
8 aftermath of the 2007 guilty plea.

9 280. And within five years, however, OxyContin sales would triple. McKinsey is
10 responsible for the strategy that accomplished this. It presented specific plans to Purdue, which
11 Purdue adopted and spent hundreds of millions of dollars implementing. The result: a final spasm
12 of OxyContin sales before the inevitable decline of the drug.¹⁸⁰

13 281. The Purdue McKinsey collaboration was a spectacular success. Between the 2008
14 and 2016, Purdue distributed in excess of \$4 billion to the Sackler family, with \$877 million
15 distributed in 2010 alone.

16 282. These distributions would not have been possible without the McKinsey’s work
17 dramatically increasing OxyContin sales.

18 283. The Sacklers were aware of the value McKinsey provided: on December 2, 2013,
19 CEO John Stewart informed Kathe Sackler and Vice President of Sales and Marketing Russell
20 Gasdia Project Turbocharge “was already increasing prescriptions and revenue.” Crucially, these
21 results were already being realized *before* the strategy was fully deployed as the theme of the
22 2014 National Sales Meeting. Stewart elaborated to Sackler that “trends are more positive than
23 was the case a few months back, and when the E2E Project (the changes arising out of the
24 McKinsey analysis) is fully implemented there will certainly be additional increases.”¹⁸¹

25
26
27 _____
¹⁸⁰ On February 10, 2018, Purdue announced that it is no longer marketing opioids, and disbanded its OxyContin sales
force.

28 ¹⁸¹ PPLPC012000454422

1 284. Later that month, [REDACTED]

2 [REDACTED]¹⁸²

3 285. McKinsey's contributions to Purdue's growth after 2007 are remarkable.
4 OxyContin sales should have naturally declined; the Department of Justice identified OxyContin
5 sales that were illegitimate because of Purdue's conduct, and the Inspector General of the
6 Department of Health and Human Services entered into a Corporate Integrity Agreement whereby
7 Purdue was monitored to assure that those sales did not continue.

8 286. In 2007, the year of Purdue's guilty plea, net sales of OxyContin totaled
9 approximately \$1 billion.¹⁸³

10 287. The guilty plea "did little to stem Purdue's blistering growth rate." In fact, by
11 2010, after McKinsey was advising Purdue on how to maximize sales, OxyContin sales exceeded
12 \$3 billion: a *tripling* of revenue from OxyContin sales.¹⁸⁴

13 288. Under McKinsey's guidance, OxyContin sales would reach their all-time peak in
14 2013, the year McKinsey proposed, and Purdue adopted, Project Turbocharge.¹⁸⁵ That OxyContin
15 sales peaked in 2013 is especially notable, given that *overall* opioid prescriptions had *already*
16 *peaked* three years earlier, in 2010.¹⁸⁶ McKinsey's efforts added a final boost to OxyContin sales
17 before the eventual unraveling, and Purdue's decision, in the end, to cease marketing the drug.

18 289. Project Turbocharge was a continuing success. [REDACTED]

19 [REDACTED],¹⁸⁷ and Chief Financial Officer Edward
20 Mahoney reported to the Purdue board that the effort "has resulted in significant improvement." [REDACTED]

23 ¹⁸² PPLPC012000457292

24 ¹⁸³ See David Crow, *How Purdue's 'one-two' punch fueled the market for opioids*, Financial Times, September 9, 2018,
available at: <https://www.ft.com/content/8e64ec9c-b133-11e8-8d14-6f049d06439c>

25 ¹⁸⁴ *Id.*

26 ¹⁸⁵ Phil McCausland and Tracy Connor, *OxyContin maker Purdue to stop promoting opioids in light of epidemic*, NBC
News, February 10, 2018, available at: <https://www.nbcnews.com/storyline/americas-heroin-epidemic/oxycontin-maker-purdue-stop-promoting-opioids-light-epidemic-n846726>

27 ¹⁸⁶ Gery P. Guy Jr, *at al.*, *Vital Signs: Changes in Opioid Prescribing Patterns in the United States, 2006-2015*, Centers
for Disease Control and Prevention, July 7, 2017, available at: <https://www.cdc.gov/mmwr/volumes/66/wr/mm6626a4.htm>

28 ¹⁸⁷ PPLPC037000159028

1 [REDACTED]

2 [REDACTED].¹⁸⁸

3 290. McKinsey was paid handsomely: it received more than [REDACTED] for its work for
4 Purdue from 2008 to 2013 alone.¹⁸⁹ In pursuit of these profits, McKinsey continued to help
5 Purdue grow opioid sales even after Purdue reached a 2015 Assurance of Discontinuance with
6 New York arising out of an investigation concerning its Abuse and Diversion Detection program
7 and media coverage highlighted its lack of attention to diversion control. McKinsey’s own work
8 elsewhere identified “reducing prescribing” as among the efforts to combat the opioid epidemic
9 and also showed that opioid prescribers were frequently writing prescription for patients with
10 known risks of abuse. Still, McKinsey continued to work to help opioid manufacturers increase
11 opioid sales, including through Purdue’s deceptive marketing campaign.

12 291. By 2014, according to Purdue, there were 5.4 million OxyContin prescriptions
13 written, 80% for twelve-hour dosing. Of those prescriptions, more than half were for doses
14 greater than sixty milligrams per day.

15 292. The Sackler family has withdrawn over \$10 billion from Purdue since 2008,
16 including \$1.7 billion in 2009 alone. These distributions were made possible by McKinsey’s
17 services and came at the expense of a deepening national opioid crisis.

18 **E. McKinsey’s Opioid-Related Work with Other Clients.**

19 293. Part of the unique value McKinsey provides is its deep knowledge of its clients’
20 competitors, often because it counts those same competitors as its clients. McKinsey generally
21 does not disclose to its clients its work for their competitors.

22 294. The opioid industry was no different. Indeed, McKinsey specifically worked to

23 [REDACTED]

24 [REDACTED]

25 [REDACTED].¹⁹⁰

27 ¹⁸⁸ PPLPC014000263961

28 ¹⁸⁹ PPLPC029000547371

¹⁹⁰ MCK-MDL2996-0041741.

1 **1. Endo**

2 295. While McKinsey was working for Purdue, McKinsey was also working for Endo
3 Pharmaceuticals. Arnab Ghatak was a principal McKinsey partner on both accounts at the same
4 time.¹⁹¹ There was additional overlap between the McKinsey teams staffed to Purdue and Endo,
5 including McKinsey partners Nicholas Mills and Laura Moran. After all, these particular
6 consultants had granular expertise in the specific subject-matter relevant to these opioid
7 manufacturers. That subject-matter expertise is a compelling reason why McKinsey is hired in the
8 first place. McKinsey advised both Endo and Purdue how to maximize the sales of their branded
9 opioid products—Belbuca (Buprenorphine), Butrans (Buprenorphine), Opana (Oxymorphone),
10 and OxyContin (Oxycodone) —all at once.

11 **a. New Blues**

12 296. Like Purdue, Endo was historically a pharmaceutical manufacturer focused on the
13 pain market. Like Purdue, Endo relied on opioid sales for a significant portion of its business. As
14 a matter of fact, Endo’s history with opioids predates the Sacklers’ ownership of Purdue. In 1950,
15 Endo’s predecessor, Intravenous Products of America, Inc., launched Percodan, an
16 Oxycodone/Aspirin tablet. In 1971, Endo, then owned by E.I. du Pont de Nemours and Company
17 (“DuPont”), launched Percocet, another oxycodone-based tablet.¹⁹²

18 297. In 1997, Endo separated from DuPont to become a standalone private company
19 retaining Percodan and Percocet.¹⁹³ In 2000, as the result of an acquisition, the company became
20 public.¹⁹⁴

21 298. In 2006, Endo launched its own branded oxymorphone products, Opana and
22 Opana ER.¹⁹⁵ With the legacy assets of Percodan and Percocet, Endo’s business had always been

23 ¹⁹¹ Ghatak’s familiarity with both Endo and Purdue is perhaps one reason why, on April 3, 2014, Ghatak was placed in
24 charge of analyzing a proposed *partnership* between Purdue and Endo to sell opioids. Luran Moran described the
25 “partnership workstream” that McKinsey was then performing for Purdue to identify ways for Purdue to obtain near-
26 term growth. She stated that Purdue and McKinsey “agreed the partnerships workstream should include the top 3
27 potential partners (Valeant, Endo and Pfizer for now). And for each what assets each partner would bring and what
28 growth (most importantly) would the deal bring. Arnie [Ghatak] and Phil to work out Endo and Valeant, John G and
29 Raul to do Pfizer tomo.” MCK-MDL2996-0421790.

¹⁹² <https://www.endo.com/about-us/history#fragment-25>

¹⁹³ <https://www.endo.com/about-us/history#fragment-24>

¹⁹⁴ <https://www.endo.com/about-us/history#fragment-21>

¹⁹⁵ <https://www.endo.com/about-us/history#fragment-15>

1 focused on opioid sales. Oxymorphone is not a new opioid, and Opana was not Endo's first
 2 oxymorphone product. It was first synthesized more than a century ago in Germany. Endo began
 3 selling it in the United States in 1959 under the name Numorphan.

4 299. Numorphan was referred to as "blues," after the color of the 10mg pills. It
 5 delivered a more euphoric high than heroin, according to some. In 1974, the National Institute on
 6 Drug Abuse noted in its "Drugs and Addict Lifestyle" report that Numorphan was popular as an
 7 abused drug for its quick and sustained effect.¹⁹⁶ By 1979, Endo withdrew Numorphan from the
 8 market. Upon information and belief, [REDACTED]

9 [REDACTED]¹⁹⁷

10 300. The memory of the 1970s Numorphan addiction crises did not fade quickly. In
 11 1989, the film *Drugstore Cowboy* featured Matt Dillon as an addict in the 1970s who robs drug
 12 stores to obtain drugs to sell in order to finance his opioid dependency.¹⁹⁸ In one scene, an addict
 13 asks Dillon's character if he has any "blues." Dillon's character explains that "blues" are
 14 increasingly hard to find, and offers to sell morphine sulfate to an addict instead. The addict
 15 explained that he much preferred the Numorphan, but settled for the morphine.¹⁹⁹

16 301. With the launch of Opana, Endo decided it was time for history to repeat itself.
 17 After Opana's approval in 2006, Endo solidified its position as a pain specialist among
 18 manufacturers. By 2012, opioid sales accounted for approximately \$403 million of Endo's \$3
 19 billion in revenue, more than 10%. From 2010 to 2013, total Opana ER revenue alone exceeded
 20 \$1.1 billion.

21 302. Opana and Numorphan were both oxymorphone. The brand name was the only
 22 thing that changed. What Endo removed from the market in 1979 due to abuse concerns, it re-

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 25 ¹⁹⁶ John Fauber & Kristina Fiore, *Abandoned Painkiller Makes a Comeback*, MedPage Today (May 10, 2015),
 available at: <https://www.medpagetoday.com/psychiatry/addictions/51448>

26 ¹⁹⁷ EPI000443330 [REDACTED]

27 [REDACTED] ENDO-OPIOID-MDL-06246554 (

28 [REDACTED]).

¹⁹⁸ See <https://www.imdb.com/title/tt0097240/>; <https://www.bionity.com/en/encyclopedia/Oxymorphone.html>

¹⁹⁹ Scene from *Drugstore Cowboy*, available at: https://www.youtube.com/watch?v=TksvZdrx9_A

1 introduced 27 years later. After 2006, Opana was on occasion referred to as “blue heaven,” or,
2 more to the point, “new blues.”²⁰⁰

3 303. In 2017, Endo would once again remove its branded oxymorphone product from
4 the market, and for the same reason. Endo’s abuse-deterrent formulation of Opana was removed
5 at the request of the FDA due to acute concerns about its abuse potential.

6 304. In addition to its branded products, Endo, through subsidiaries Qualitest
7 Pharmaceuticals, Inc. and, after its acquisition in 2015, Par Pharmaceuticals, also manufactured
8 generic versions of oxycodone, oxymorphone, hydromorphone, and hydrocodone. Over the
9 course of McKinsey’s relationship with Endo, McKinsey would repeatedly advise Endo how to
10 maximize its generics business in addition to sales of Endo’s branded opioids.

11 **b. Old Friends**

12 305. McKinsey’s relationship with Endo began as early as in 2006, the same year as the
13 Opana launch.

14 306. McKinsey’s earliest known work with Endo concerned the launch of Opana in
15 Europe, but its relationship with Endo would expand to encompass all aspects of Endo’s business,
16 including corporate organization and resource allocation, the launch of a new branded
17 Buprenorphine product, and sales force optimization efforts for Endo’s branded and generic
18 opioid products.

19 307. In 2007, McKinsey was shaping overall corporate strategy at Endo. In a
20 presentation to Endo’s board of directors in May of that year [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]²⁰¹

25 308. McKinsey’s partnership with Endo would last more than a decade, and, like its
26 relationship with Purdue, is an exemplary example of the transformational relationship in action.

27 _____
28 ²⁰⁰ https://www.deadiversion.usdoj.gov/drug_chem_info/oxymorphone.pdf

²⁰¹ ENDO-OPIOID_MDL-02899510.

1 309. In some ways, the McKinsey’s relationship with Endo was even more tightknit and
2 companionable than with Purdue. For instance, no one at Purdue previously worked for
3 McKinsey. In early 2013, Rajiv de Silva, previously a leader of McKinsey’s PMP group, was
4 appointed CEO of Endo. At Endo, McKinsey was now advising an old friend, one of its previous
5 senior partners.²⁰²

6 310. As de Silva himself explained, “[REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]”²⁰³

10 311. Under de Silva, Endo relied more heavily on McKinsey than ever before.
11 McKinsey consultants interacted directly and often *exclusively* with de Silva. McKinsey was so
12 close to the Endo CEO that it could intervene in direct reporting from one of de Silva’s
13 deputies.²⁰⁴ It is as if McKinsey had insinuated itself as a shadow layer of bureaucracy within
14 Endo.

15 312. McKinsey maintained weekly performance review meetings with de Silva and
16 senior Endo management. In these meetings, granular weekly sales data was reviewed for each of
17 Endo’s branded products, including Opana.²⁰⁵

18 313. McKinsey advised both Purdue and Endo contemporaneously for more than a
19 decade. With each client, the goal was the same: to maximize opioid sales. The work McKinsey
20 performed for each client was so similar that there was routinely confusion internally about
21 whether a specific project or task to perform was for Endo or Purdue.²⁰⁶

22 ²⁰² See “Rajiv De Silva Named President and CEO of Endo Health Solutions,” Press Release dated February 25, 2013,
23 available at: <https://investor.endo.com/news-releases/news-release-details/rajiv-de-silva-named-president-and-ceo-endo-health-solutions> (“Earlier in his career, he was a Principal at McKinsey & Company, where he served as a member
24 of the partnership group that led the global Pharmaceuticals and Medical Products practice.”)

25 ²⁰³ ENDO-OPIOID-DEPMAT-000047877 at pg. 320:22 – 321:3.

26 ²⁰⁴ See MCK-MDL2996-0405502 (Email from Ghatak to de Silva, stating that it “would be great for you to push Blaine
27 and Bob [both Endo employees] on why there are no slides showing the metrics on field call attainment . . . there was
28 an explicit agreement to track them. Setting the expectation that you want them included would really help”).

²⁰⁵ MCK-MDL2996-0062712.

²⁰⁶ In response to an internal email from Craig MacKenzie to other McKinsey consultants seeking “expert input on
labels for abuse deterrent formulations” in conjunction with McKinsey’s work on the Belbuca launch (discussed *infra.*),
McKinsey consultant Jeff Smith replied, “Craig – is this for Purdue or Endo? If for Endo, I am conflicted.” MCK-
MDL2996-0383805.

1 314. Despite McKinsey’s emphasis on confidentiality, the fact that McKinsey repeats
2 its work from one client to the next is well-known to the client. Indeed, it is part of the
3 justification in hiring McKinsey in the first place. McKinsey can tell you what everyone else is
4 doing. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]²⁰⁷

9 c. Opana

10 315. McKinsey’s earliest known work with Endo [REDACTED]
11 [REDACTED]. In a November 22, 2006 presentation²⁰⁸ entitled [REDACTED]
12 [REDACTED],” McKinsey advised [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]²⁰⁹

16 316. McKinsey noted, [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]²¹⁰

22 317. McKinsey also [REDACTED]
23 [REDACTED]

24 ²⁰⁷ ENDO-OPIOID-MDL-07619243.

25 ²⁰⁸ The McKinsey presentation was [REDACTED] ENDO-OPIOID_MDL-02936031. By 2007,
26 McKinsey had [REDACTED]

27 [REDACTED]” ENDO-OPIOID_MDL-06078889. Endo acquired Penwest in 2010. “Endo
28 Pharmaceuticals Agrees to Acquire Penwest Pharmaceuticals,” Fierce Biotech, August 10, 2010, *available at*:
<https://www.fiercebiotech.com/biotech/endo-pharmaceuticals-agrees-to-acquire-penwest-pharmaceuticals>

²⁰⁹ ENDO-OPIOID_MDL-02936031.

²¹⁰ *Id.*

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[REDACTED]

[REDACTED]

[REDACTED]²¹¹

318. McKinsey advised [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²¹²

319. McKinsey [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²¹³

320. Within a few years of its introduction in the United States, abuse of the drug became widespread. Endo then sought to introduce a reformulated version of Opana that it could market as abuse-deterrent by introducing a tamper-resistant coating to the pill.

321. In December 2011, Endo obtained FDA approval for a new formulation of Opana ER with the coating that Endo claimed was crush-resistant. The following month, however, the FDA told Endo that it could not market Opana ER, even after the reformulation, as abuse-deterrent.

322. Endo “did not submit any new clinical safety or efficacy data” as part of its application, but rather relied entirely on the “bioequivalence” of the new and old formulations of Opana. Obtaining approval of reformulated Opana ER on this basis allowed Endo to rely on the safety and efficacy of the original version of the drug as the basis for approval of the reformulated version.²¹⁴ The FDA found that such promotional claims “may provide a false sense of security

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Intervenor Impax Laboratories, Inc.’s (1) Cross-Motion to Dismiss; or, in the Alternative, (2) Opposition to Plaintiff’s Motion for a Preliminary Injunction, *Endo Pharmaceuticals Inc. v. U.S. Food and Drug Administration, et*

1 since the product may be chewed and ground for subsequent abuse.” In other words, Opana ER
 2 was still crushable. In December 2011, Endo admitted that “[i]t has not been established that this
 3 new formulation of Opana ER is less subject to misuse, abuse, diversion, overdose, or
 4 addiction.”²¹⁵

5 323. In 2013, an Endo training module directed key opinion leaders to instruct
 6 prescribers that OPANA ER with INTAC is the only oxymorphone designed to be “crush-
 7 resistant,” and advised the key opinion leaders to state during their speeches that “[t]he only way
 8 for your patients to receive oxymorphone ER in a formulation designed to be crush-resistant is to
 9 prescribe OPANA ER with INTAC.”²¹⁶ The speakers were advised to stress that generic versions
 10 of Oxymorphone “are not designed to be crush-resistant.”

11 324. These abuse-deterrent attributes of the reformulation—the very characteristics
 12 McKinsey and Endo touted as a reason to prescribe Opana—were a sham. The reformulation was
 13 designed to prevent the pill from being crushed and snorted through the nose. It did not prevent
 14 intravenous use, however. The result was that many users already dependent of Opana began
 15 using needles to inject the drug for the first time. As an internal Endo email put it, [REDACTED]

16 [REDACTED]”²¹⁷

17 325. Jeff, a veteran of the war in Iraq, explained the process. Jeff first became
 18 dependent on Percocet and Opana after returning from Iraq, where his back was injured when his
 19 Humvee rolled over in 2008. After being prescribed opioids for his back pain, Jeff became
 20 dependent, and began using Opana by snorting it. Endo then introduced the reformulated abuse-
 21 deterrent version of Opana in 2012. “[A]nd then they reformulated them,” he said, referring to the
 22 Opana pills. “And the only way you could really do them is inject them because if you actually
 23 swallow them, it – you – they really don’t do nothing.”²¹⁸

24 *al.* (“Impax Br.”), No. 1:12-cv-01936 Doc. 18 at 7 (D.D.C. Dec. 9, 2012); *see also* FDA Summary Review for
 25 Regulatory Action, NDA 201655 (Dec. 9, 2011) (stating that “[n]o new safety data were included in this submission”
 and “[n]o efficacy studies were submitted in this application.”).

26 ²¹⁵ Endo Dec. 12, 2011 News Release; Ex. A to Rurka Decl., *Endo Pharmaceuticals Inc. v. U.S. Food and Drug*
Administration, et al., No. 1:12-cv-01936 Doc. 18-2 (D.D.C. Dec. 9, 2012).

27 ²¹⁶ EPI000421543.

28 ²¹⁷ END00010732.

²¹⁸ Kelly McEvers, “Opioid Epidemic Sparks HIV Outbreak in Tiny Indiana Town,” NPR, March 31, 2016, *available*
 at: <https://www.npr.org/2016/03/31/472577254/opioid-epidemic-sparks-hiv-outbreak-in-tiny-indiana-town>

1 326. Jeff and his companion Joy showed the journalist how the drug was used. “You
2 want to see how to cook it?” Jeff asked. He and Joy then proceeded to place a portion of an
3 Opana pill on piece of aluminum and heat it with a lighter. “Right away, I can start to see this
4 hard, white coating just kind of floating off the piece of the pill. It looks like plastic,” described
5 the journalist witnessing the process.²¹⁹

6 327. Joy explained how the abuse-deterrent coating, once melted, was discarded by
7 using the filter of a cigarette: “Now you see the coating of – all that mess laying there still? . . .
8 That’s what the filter’s for.”²²⁰ The journalist described what then took place:

9 And Joy puts that cigarette filter into the liquid, and they Joy, Jeff and another guy
10 each take turns with their needles, sticking it into the filter and pulling the liquid
11 through. Joy and Jeff turn their back to me while they inject. And then it just gets
really, really quiet.

12 328. Joy couldn’t conceive of the position she was in. A nurse, she hurt her back at
13 work and began taking prescription pain medication. She began taking the pills by mouth, and
14 later began to snort them. Dependency began. But she told herself, “I’d never ever would use a
15 needle, never. I’m never going to do that.”²²¹

16 329. After Opana’s reformulation, Joy began using it intravenously. “I started using the
17 needle about – it was around the 6th of February,” she said. “I’m so ashamed I pack so much
18 shame, and I’m going to cry I pack so much shame from it. I do.”²²²

19 330. Endo’s 2012 reformulation of Opana caused outbreaks of HIV in populations of
20 intravenous Opana users. In Austin, Indiana, where Jeff and Joy resided, Opana was linked to an
21 outbreak of at least 200 HIV cases in a town with a population of 4,500.²²³

22 331. Intravenous use of reformulated Opana has also been associated with outbreaks of
23 Hepatitis C and Thrombotic Thrombocytopenic Purpura (“TTP”).²²⁴ The concerns even reached
24

25 ²¹⁹ *Id.*

26 ²²⁰ *Id.*

27 ²²¹ *Id.*

28 ²²² *Id.*

²²³ *Id.*

²²⁴ “Thrombotic Thrombocytopenic Purpura (TTP)–Like Illness Associated with Intravenous Opana ER Abuse — Tennessee, 2012,” *Morbidity and Mortality Weekly Report* (Jan. 11, 2013).

1 Wall Street, where an analyst asked Endo about a TPP outbreak in Tennessee associated with
2 Opana ER. Endo assured the analyst that the outbreak was, like the outbreak in Indiana, in “a
3 very, very distinct area of the country.”

4 332. Endo was well aware of these problems. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]²²⁵

9 333. In June of 2013, McKinsey [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]²²⁶

18 334. McKinsey indicated [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]²²⁷ [REDACTED]
22 [REDACTED]
23 [REDACTED]²²⁸

24 335. In addition to being neither feasible nor safe/ethical, the study was beside the
25 point. An insufflation study is meant to determine the abuse characteristics of a drug when used

26 _____
27 ²²⁵ ENDO00260151.

²²⁶ EPI002107711.

²²⁷ *Id.*

²²⁸ *Id.* (emphasis added).

1 nasally—i.e., by snorting the drug.²²⁹ The relevant concern for Opana’s reformulated version was
2 *injection*, not insufflation.

3 336. But the insufflation study worked for Purdue. Going forward, McKinsey suggested

4 [REDACTED].²³⁰

5 337. As the preceding paragraphs make clear, Endo and McKinsey were laser-focused
6 on maximizing overall sales of Endo products, and decidedly *not* on concerns over their actual
7 abuse potential or the appropriate *size* of the market for these products, given evident,
8 longstanding, and ever-present concerns about their abuse. To the point, McKinsey regarded
9 concerns about opioid abuse only as a means by which its clients could introduce *differentiated*
10 products (i.e., those with purported abuse-deterrent or tamper-resistant features) to continually
11 perpetuate overall opioids sales for their clients. In all instances, the parties desired for the size of
12 that overall opioids market to grow in line with the introduction of “differentiated” products like a
13 reformulated Opana.

14 338. Endo’s purported concern about deterring abuse of its drugs was laid bare as farce
15 by a particularly striking decision: to continue to sell the old formulation of Opana despite touting
16 the notion that the old formulation was purportedly dangerous in ways that the new formulation
17 was not. Endo [REDACTED]

18 [REDACTED].²³¹

19 339. Endo not only continued to distribute original Opana for nine months after the
20 reformulated version became available, it declined to recall original Opana ER despite its
21 dangers.²³² In fact, Endo also claimed in September 2012 to be “proud” that “almost all remaining
22 inventory” of the original Opana ER had “been utilized.”²³³

23
24 ²²⁹ See General Principles for Evaluating the Abuse Deterrence of Generic Solid Oral Opioid Drug Products, FDA
25 Center for Drug Evaluation and Research, November 2017, *available at*:
26 <https://www.fda.gov/files/drugs/published/General-Principles-for-Evaluating-the-Abuse-Deterrence-of-Generic-Solid-Oral-Opioid-Drug-Products-Guidance-for-Industry.pdf>

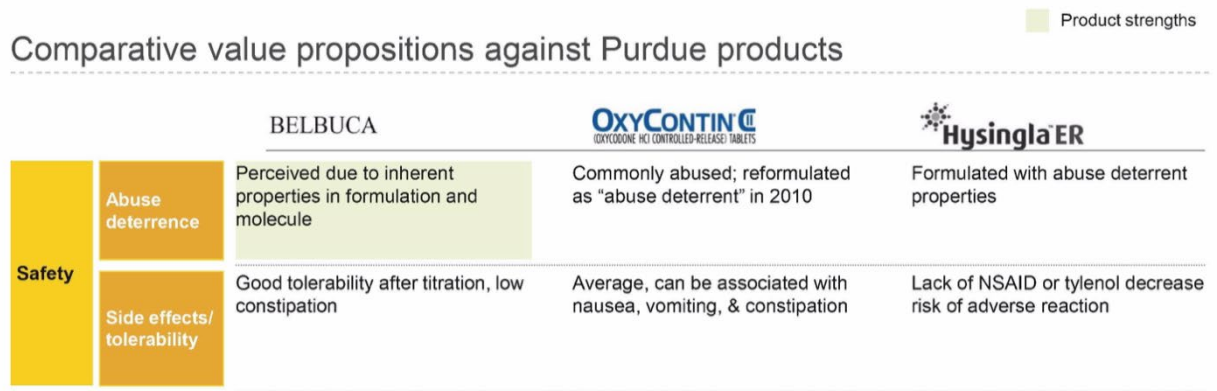
27 ²³⁰ EPI002107711.

28 ²³¹ ENDO-OPIOID-MDL-02324795.

²³² Impax Br. at 1.

²³³ *Id.*; Endo News Release, Sept. 6, 2012 (Ex. L to Rurka Decl) *Endo Pharmaceuticals Inc. v. U.S. Food and Drug Administration, et al.*, No. 1:12-cv-01936 (Doc. 18-4) (D.D.C. Dec. 9, 2012).

1 340. In June 2013, an Endo employee informed the McKinsey consultants of a [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED] ²³⁴



13 **d. Belbuca: Endo's Answer to Butrans**

14 341. Buprenorphine is another differentiated product. Opioid manufacturers began to
 15 introduce Buprenorphine products to the market after the introduction of OxyContin, Opana, and
 16 other branded opioids long-known to have abuse and dependency problems. Buprenorphine
 17 products were marketed as purportedly less dangerous than products such as OxyContin or
 18 Opana.

19 342. Of course, Endo and Purdue continued to assiduously market and sell OxyContin
 20 and Opana alongside their Buprenorphine products, and McKinsey worked with each at every
 21 step of the way, despite the implicit contradiction in marketing two products at the same time
 22 whose point of differentiation is one being *less addictive and dangerous* than the other.

23 343. For example, on August 13, 2015, McKinsey's Craig MacKenzie circulated a
 24 discussion document to Endo and McKinsey staff entitled "Belbuca value proposition," which
 25 laid out McKinsey's thoughts on how to differentiate Endo's buprenorphine product from other
 26

27
 28 ²³⁴ ENDO-OR-CID-00400235 (emphasis added).

1 opioids in the marketplace.²³⁵ One point of differentiation McKinsey noted was that OxyContin
2 was commonly abused, while Endo’s Belbuca hopefully would not be:²³⁶

3 344. The cognitive dissonance was palpable. At the same time that MacKenzie sent his
4 email differentiating Belbuca, and as described *supra*, McKinsey was *also* maximizing
5 OxyContin sales for Purdue—the opioid it was describing to Endo as commonly abused.

6 345. [REDACTED]
7 [REDACTED]
8 [REDACTED]

Butrans was Purdue’s buprenorphine product.

9 346. Once Butrans was launched at Purdue, McKinsey worked with Endo to create
10 another branded Buprenorphine product to compete with Butrans. These product planning and
11 launch processes are long-term affairs. McKinsey worked with Endo on this project for *four years*
12 before Endo’s Belbuca obtained FDA approval.

13 347. McKinsey remained in place at Endo to implement the launch of Endo’s
14 Buprenorphine product. The strategic goal of Belbuca—the key to its commercial success—was
15 to convert short acting opioid (“SAO”) users to Belbuca. As McKinsey explained to CEO Rajiv
16 de Silva, “The fundamental question is whether Belbuca will take share from the short-acting
17 opioids.”²³⁷

18 348. Ultimately, Belbuca was not a large commercial success for Endo because it failed
19 to transition a sufficient number of short acting opioid users to the long-acting Belbuca. As the
20 drug underperformed, Endo felt ever more pressure to stimulate sales. John Harlow described one
21 meeting with de Silva on April 8, 2016: “We just got out of the review with Rajiv and clearly our
22 TRx trends are not good and are behind other recently launched pain products . . . the request
23 from Rajiv was to do anything possible that could be implemented ASAP to stimulate RXs.”²³⁸

24 349. By July 6, 2016, McKinsey and Endo were increasingly focused on converting
25 short-acting opioid users. [REDACTED]

26 _____
27 ²³⁵ MCK-MDL2996-0410742.

²³⁶ MCK-MDL2996-0006669, at 0006675.

²³⁷ MCK-MDL2996-0210158.

²³⁸ MCK-MDL2996-0358973, at 0358975.

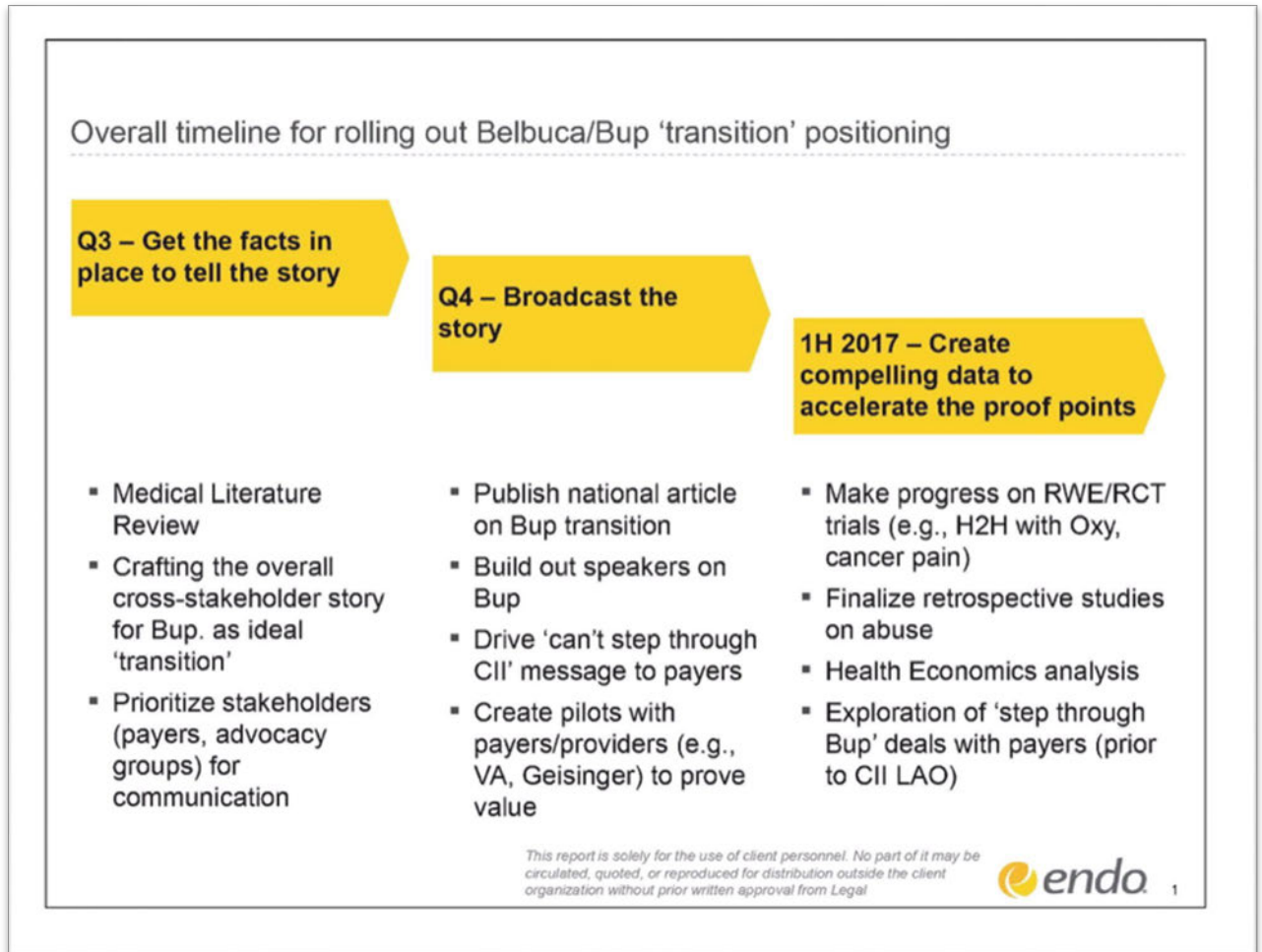
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[REDACTED]

[REDACTED]²³⁹ Notably, the goal was to increase *overall* buprenorphine prescriptions, not only those of Belbuca. The discussion document identified an objective to create “a new treatment paradigm for [Buprenorphine] and Belbuca at the transition between SAO and LAO.”²⁴⁰ In order to do so, the discussion group needed to determine “what medical support we need to position Buprenorphine as the best transition from SAO to LAO.”²⁴¹

²³⁹ ENDO-OPIOID_MDL-07264539
²⁴⁰ *Id.*
²⁴¹ *Id.*

1 350. McKinsey provided a slide to Endo describing the way that narrative would first
2 be *created* and then exploited for market positioning:²⁴²



351. McKinsey and Endo referred to this effort to revive Belbuca sales by promoting buprenorphine as a bridge to long-acting opioid use as a “moonshot.”²⁴³ One aspect of this “moonshot” would be that Belbuca (and Buprenorphine, generally) would convert short-acting opioid users to long-acting opioids users of products *other than Buprenorphine*. McKinsey and Endo instead conceived of Belbuca as an “*Initial ATC Opioid Therapy*.” It was to be positioned as “the *first* LAO for poorly controlled or dissatisfied chronic pain patients transitioning from

²⁴² MCK-MDL2996-0382731.

²⁴³ MCK-MDL2996-0382412.

1 353. McKinsey also knew that this same pathway that begins with opioid therapy after a
 2 serious injury also leads to opioid dependency and addiction. In 2011, McKinsey was working on
 3 “Project X.” which was the project to develop a buprenorphine product to compete with Butrans.
 4 (Belbuca, in other words, was the result of Project X.) McKinsey described the “opioid
 5 dependence treatment pathway” as follows:²⁴⁵

breakthrough thinking. collaboration. customer focus. accountability.

OPIOID DEPENDENCE TREATMENT PATHWAY

- Patient begins opioid therapy following serious injury/surgery
- Patient pain not controlled, dosages increase, patient seeks additional medication options
- Patient referred to pain specialist
- Patient shows up in ER, Clinic or seeks out addictionologist
- Addictionologist – Pain Specialist or Psychiatrist with additional license to prescribe Methadone, Subutex/Suboxone for opioid dependence
- Options
 - Methdone
 - Subutex initiation, followed by Suboxone treatment

Confidential Internal Document. Draft – Not Approved by Management. 13

21
 22 354. In the same presentation, McKinsey identified the key to a successful launch of a
 23 branded Buprenorphine product: “The challenge faced by Endo will not be to gain formulary
 24 approval, it will be to gain tier 2 status and *minimize restrictions on prescribing*.”²⁴⁶

25
 26
 27
 28 ²⁴⁵ MCK-MDL2996-0131500, at 0131512.

²⁴⁶ MCK-MDL2996-0131500, 0131525 (emphasis added).

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e. Turbocharging the Sales Force with a Blitz

355. In 2015, a McKinsey team led by Arnab Ghatak proposed to Endo a sales transformation to invigorate Endo’s product sales, including its opioids. At the suggestion of Ghatak, McKinsey used the Purdue Pharma Project Turbocharge model from the previous year as a template for the Endo proposal.²⁴⁷ Even the PowerPoint presentations used to create the proposal to Endo were drafted off the Project Turbocharge slides. On June 28, 2015, Sherin Ijaz of McKinsey emailed Ghatak, Nicholas Mills, and Laura Moran to circulate a draft proposal for an “Endo sales force transformation” PowerPoint presentation. Ijaz explained, “Laura, I heavily leveraged what you send (sic) from Purdue as it was all applicable.”²⁴⁸ All three of the recipients of Ijaz’s email regarding the Endo proposal had been working on the Purdue account for years.

356. Endo [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁴⁹

357. Endo’s Vice President & General Manager of its Pain Business Unit, John Harlow,
[REDACTED]
[REDACTED]
[REDACTED]²⁵⁰ [REDACTED]
[REDACTED]
[REDACTED]²⁵¹

358. The Endo and Purdue proposals were essentially identical sales transformations. The goals were the same: to maximize sales of opioids. Merely the names were changed. While McKinsey offered to “turbocharge” Purdue’s sales force, McKinsey proposed a “sales force blitz” for Endo.²⁵²

²⁴⁷ MCK-MDL2996-0075895.
²⁴⁸ MCK-MDL2996-0070237.
²⁴⁹ ENDO_AAC_00363406.
²⁵⁰ *Id.*
²⁵¹ *Id.*
²⁵² *E.g.*, MCK-MDL2996-0130803; MCK-MDL2996-0132851.

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359. In fact, the names weren't *entirely* changed. [REDACTED]

[REDACTED]

[REDACTED] ²⁵³

Overview of our approach: 'Turbocharging the Sales Engine'

- There are **5 key pillars** that should be addressed in the sales transformation effort
 - **Sales strategy and targeting:** Shift from decile-based to workload-based targeting approach provide right support to sales force, and build deep sales analytics capabilities
 - **Effective selling skills:** Mandate field adherence to the target list and compliance with targets
 - **Disciplined sales process:** Increase rep productivity and explore ways to increase time in field
 - **Efficient coverage:** Align resources with highest potential opportunities and consider re-alignment of territories and increasing overall field force size
 - **Behavior & mindset:** Establish performance management system and incentives aligned with corporate objectives, and establish a culture of continual improvement
- Comprehensive sales transformation programs **typically take 9 months**, which we recommend dividing into **three phases: Ready, Run, Refine**
 - **Ready:** Set the groundwork for the sales transformation, including creating leadership buy-in and establishing high-level objectives and targets
 - **Run:** Launch a major field force kickoff explaining the change and vision, followed by district meetings led by field and home office leaders, regional champions, and other support team members
 - **Refine:** Expand the impact to the next level with additional high impact levers such as expanding the field force and re-aligning territories
- There are a number of key **design and execution decisions** that need to be addressed before the sales transformation can begin in full
- We have developed a **14-workstream plan with specific owners** to execute on this vision



2

360. [REDACTED]

[REDACTED]

361. [REDACTED]

[REDACTED]

²⁵³ MCK-MDL2996-0069747, at 0069749. [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 362. Upon McKinsey’s suggestion, Endo began reallocating sales force resources to
4 Opana from other Endo products such as Sumavel, a migraine medication, and Voltaren, an anti-
5 inflammatory.²⁵⁴ Writing to the McKinsey team, Endo’s Alicia Logan stated the joint mission, “I
6 agree that our main goal is to maximize the increased promotional efforts for [Opana ER] without
7 disrupting/sacrificing [Sumavel] or [Voltaren] TRx volume and it appears that we [can]
8 accomplish this with your recommendation of addition another 500 targets.”²⁵⁵

9 363. With the Sales Force Blitz underway, Endo received good news in New York.
10 Years prior, Endo had initiated patent litigation against generic manufacturers of Opana ER,
11 arguing that the generic versions of the drug infringed on Endo’s patents. In part because of the
12 perceived impending loss of exclusivity, Endo had in recent years allocated its sales force
13 capacity away from Opana and to other Endo products.

14 364. On August 14, 2015, Endo received a favorable initial ruling declaring that the
15 generic versions of Opana violated Endo’s patents, and enjoined their further sale. The ruling
16 provided additional patent exclusivity for Opana, and Endo was keen to exploit its advantage.

17 365. That afternoon, [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]²⁵⁶

22 366. The following week, Harlow wrote to the McKinsey team working for Endo to
23 focus their attention on Opana ER. “Now with our litigation victory from last week, plus our
24 UHC opportunity, there is an increased need to increase FF support to drive Sep-Dec
25 business. . . . With this win, I am now willing to go broader with OER targeting.”²⁵⁷

26 _____
27 ²⁵⁴ MCK-MDL2996-0409466.

²⁵⁵ MCK-MDL2996-0409436, at 0409437 (sic).

²⁵⁶ ENDO-OPIOID_MDL-02279530.

²⁵⁷ MCK-MDL2996-0358871, at 0358872; ENDO-OPIOID_MDL-02201117 .

1 367. McKinsey and Endo proceeded to design and implement retargeting strategies to
2 boost Opana sales in late 2015.

3 **2. Johnson & Johnson**

4 368. McKinsey also working with Johnson & Johnson, whose role overseeing and
5 contributing to the opioid crisis has been exhaustively detailed in other complaints. *See, e.g., City*
6 *and County of San Francisco v. Purdue Pharma L.P.*, N.D. Cal. No. 18-2591, Doc. 128 (Mar. 13,
7 2020). Johnson & Johnson occupied multiple roles within the opioids industry. Through its
8 subsidiary, Janssen Pharmaceuticals (“Janssen”), it marketed and sold branded opioid products,
9 including Duragesic (a transdermal fentanyl patch) and Nucynta (tramadol tablets and oral
10 solution). Through its Noramco and Tasmanian Alkaloids subsidiaries, Johnson & Johnson
11 farmed the poppy plant in New Zealand and created the precursor chemical and raw materials
12 necessary to manufacture *all* opioids. Noramco and Tasmanian Alkaloids sold these raw materials
13 to the other opioid manufacturers: Purdue, Endo, Mallinckrodt, and others. Johnson & Johnson
14 was the origin point in the entire opioids supply chain.

15 369. Just like McKinsey’s relationships with Purdue, Endo, and the others, McKinsey’s
16 opioid-related work for Johnson & Johnson spanned decades.

17 370. Just as Endo was led by former partner McKinsey partner Rajiv de Silva, Johnson
18 & Johnson similarly relied on McKinsey as a pipeline for its own management timber. As
19 described above, McKinsey alumni tend to move on to positions with McKinsey clients.
20 Janssen’s current Director of Customer Marketing & Value Based Care was hired from
21 McKinsey’s PMP group. The relationship flows both ways: Janssen’s former Vice President of
22 Sales and Marketing for Janssen Pharmaceuticals is currently a McKinsey partner. Moreover, Ian
23 Davis has been an independent director since 2010 and currently sits on the Audit and Regulatory
24 Compliance committees of Johnson & Johnson’s board. Previously, he was a Senior Partner at
25 McKinsey, “having served as Chairman and Worldwide Managing Director from 2003 until
26 2009.”²⁵⁸

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²⁵⁸ <https://www.jnj.com/leadership/ian-e-l-davis>

1 371. Kevin Sneader, until recently McKinsey’s global managing partner, and one of
 2 Davis’ successors, described Davis as a “mentor” who was the managing partner of McKinsey’s
 3 London office when Sneader was working there and “worked on one of his teams.”²⁵⁹ Given
 4 Frazier’s presence on the board, Johnson & Johnson was obviously an important account for
 5 McKinsey. At present, it is not known which McKinsey partner(s) was the Director(s) of Client
 6 Services for the Johnson & Johnson account.

7 372. What is known, however, is that McKinsey [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]”²⁶⁰ On July 6,
 11 2011, Ghatak attended an internal McKinsey call with the consultants working on the Johnson &
 12 Johnson account to discuss the “J&J Nucynta sales force disruption.”²⁶¹ The same day, Laura
 13 Moran, who like Ghatak worked both the Purdue and Endo accounts, also provided internal
 14 advice regarding Nucynta to her McKinsey partner Gerti Pellumbi, who was leading Nucynta
 15 sales efforts for the Johnson & Johnson account, and engagement manager Bryan Reinholt, who
 16 was with Pellumbi on the Johnson & Johnson account.²⁶² Martin Elling, one of the lead
 17 McKinsey partners on the Purdue account alongside Ghatak, attended internal McKinsey calls on
 18 March 25, 2010,²⁶³ and again on May 27, 2011 to discuss McKinsey’s work for Johnson &
 19 Johnson’s Nucynta.²⁶⁴ Then, on December 13, 2011, Elling attended a meeting with Johnson &
 20 Johnson personnel regarding “acceleration opportunities.”²⁶⁵ Aamir Malik attended the meeting
 21 with Elling, and, naturally, also worked on the Endo account.²⁶⁶ Malik and Ghatak had an internal
 22
 23

24 ²⁵⁹ See Interview with Kevin Sneader, Harvard Project for Asian & International Relations, January 31, 2021, *available*
 25 *at* <https://www.youtube.com/watch?v=qed53EGG8kU>

26 ²⁶⁰ JAN-NH-00167575.

27 ²⁶¹ MCK-MDL2996-0222833.

28 ²⁶² MCK-MDL2996-0419348.

²⁶³ MCK-MDL-2996-0256186.

²⁶⁴ MCK-MDL-2996-0255907.

²⁶⁵ MCK-MDL-2996-0255926.

²⁶⁶ *Id.*; see also MCK-MDL-2996-0348536 (Example of Malik’s work on Endo account).

1 McKinsey meeting amongst themselves regarding the “Nucynta Kickoff” at Johnson & Johnson
2 six months prior, on June 3, 2011.²⁶⁷

3 a. Noramco

4 373. Janssen was not the only Johnson & Johnson unit [REDACTED]
5 [REDACTED], and Janssen was not Johnson & Johnson’s only division involved in the
6 narcotics trade.

7 374. Opioids—all of them—are derivatives of opium, which is derived from the poppy
8 plant. In order to sell opioids, someone needs to farm the opium poppy and process the harvest
9 into the raw materials necessary for opioid manufacturers—all of them—to make their products.

10 375. Johnson & Johnson was that farmer. It owned Noramco and Tasmanian Alkaloids,
11 which grew poppies in New Zealand and sold the raw ingredients for opioids to practically all
12 manufacturers.

13 376. On August 19, 2009, McKinsey’s [REDACTED]
14 [REDACTED]
15 [REDACTED].²⁶⁸

16 377. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED].²⁶⁹

21 378. Seven years later, in 2016, Johnson & Johnson exited the business by selling
22 Noramco and Tasmanian Alkaloids to SK Capital, a private equity firm focused on the
23 pharmaceuticals business, for approximately \$800 million.²⁷⁰ [REDACTED]
24 [REDACTED]

25 _____
26 ²⁶⁷ MCK-MDL-2996-0261694.

27 ²⁶⁸ NORAMCO_TX_01136410.

28 ²⁶⁹ NORAMCO_TX_01136411, slide 4.

²⁷⁰ Gareth Macdonald, “US Investor buys J&J’s opiate API business and announces restructuring,” *Outsourcing Pharma*, July 20, 2016, available at: <https://www.outsourcing-pharma.com/Article/2016/07/21/US-investor-buys-J-J-s-opiate-API-business-and-announces-restructuring>

1 [REDACTED] Not only was McKinsey's advice
2 invaluable to Johnson & Johnson, the perspective McKinsey gained of the overall opioid market
3 from advising the principal upstream supplier to the entire industry would be invaluable in to its
4 own work with its other opioid manufacturer clients.

5 **b. Duragesic**

6 379. Fentanyl was first synthesized by Paul Janssen and his pharmaceutical company
7 Janssen Pharmaceuticals in 1959. In the 1990s, the company (by then owned by Johnson &
8 Johnson) developed Duragesic, which is a transdermal patch that administers fentanyl to the
9 patient wearing it.

10 380. "Duragesic proved to be one of the most successful analgesic pharmaceutical
11 products ever developed, with sales in 2004 (its last year of patent life) exceeding \$2.4 billion.
12 The success of the fentanyl patch caused many generic companies to produce equivalents once it
13 went off patent."²⁷¹

14 381. McKinsey was an integral part of fentanyl's success. As early as 2002, McKinsey
15 was advising Johnson & Johnson regarding methods to boost sales of its opioids. For example, on
16 March 14, 2002, McKinsey prepared a confidential report for Johnson & Johnson's subsidiary
17 Janssen regarding how to market their opioid Duragesic. Incredibly, one of the recommendations
18 McKinsey provided to Johnson & Johnson was that they concentrate their sales and marketing
19 efforts on doctors that were *already* prescribing large amounts of Purdue's OxyContin.²⁷²

20 382. In other words, as early as 2002, McKinsey had such intricate knowledge of the
21 sales and marketing practices of opioid manufacturers, generally, and Purdue's efforts with
22 OxyContin, specifically, that it was able to recommend to *a competitor of Purdue* that it boost its
23 own opioid sales by *following in the footsteps of Purdue*.

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26 ²⁷¹ Theodore Stanley, "The Fentanyl Story," The Journal of Pain, Vol. 15, No. 12 (December), 2014, pg. 1220, *available*
27 *at*: [https://www.jpain.org/article/S1526-5900\(14\)00905-5/pdf](https://www.jpain.org/article/S1526-5900(14)00905-5/pdf)

28 ²⁷² Chris McGreal, *Johnson & Johnson faces multibillion opioids lawsuit that could upend big pharma*, The Guardian,
June 23, 2019, *available at*: <https://www.theguardian.com/us-news/2019/jun/22/johnson-and-johnson-opioids-crisis-lawsuit-latest-trial>

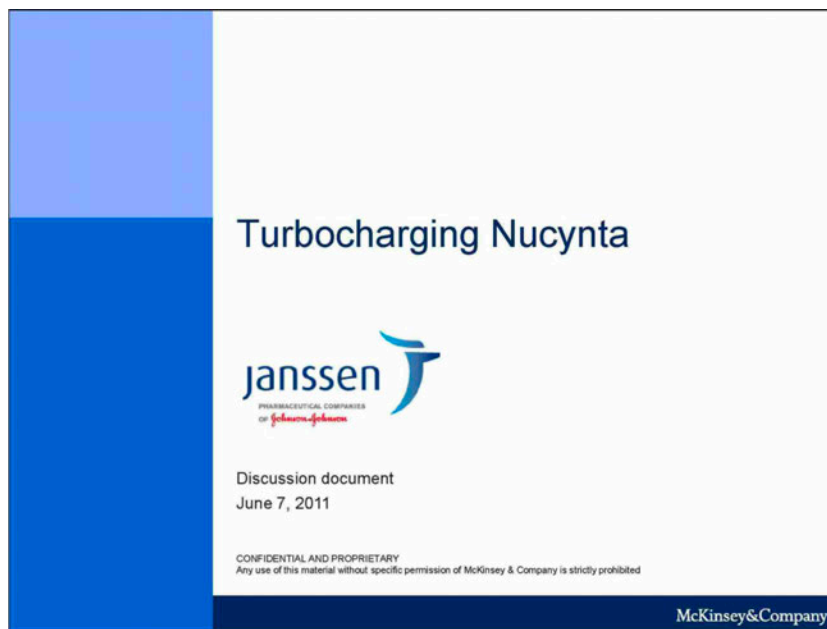
1 383. McKinsey also advised Johnson & Johnson to target Duragesic on “high abuse-
2 risk patients (e.g., males under 40).” This targeting would take advantage of the marketing claim
3 that Duragesic “was harder to abuse than other opioids on the market.”²⁷³

4 384. McKinsey helped Janssen target its opioid marketing by identifying “priority
5 growth opportunities” and growth strategies for Duragesic.²⁷⁴ In 2002, McKinsey considered
6 “[w]hat are settings of care for opioid high-prescribers and treaters of back pain,” listing the
7 “elderly” as an example;²⁷⁵ [REDACTED]

8 [REDACTED].²⁷⁶

9 c. Turbocharging Nucynta

10 385. McKinsey’s infamous Project Turbocharge to boost OxyContin sales at Purdue in
11 2013 and 2014—the same project detailed in Purdue’s 2020 guilty plea with the Department of
12 Justice—was not McKinsey’s first experience turbocharging opioid sales. Before OxyContin,
13 there was Nucynta:²⁷⁷



25 ²⁷³ Julia Lurie, “*Inside Johnson and Johnson’s Quiet Domination of the Opioid Market*,” June 11, 2019, Mother Jones, available at <https://www.motherjones.com/politics/2019/06/johnson-and-johnson-opioid-poppies-tasmania-oklahoma-lawsuit/>

26 ²⁷⁴ *Oklahoma v. Johnson & Johnson*, Oklahoma Proposed Findings & Conclusions, citing 5/30/19pm Tr. & S-1253; see also JAN-MS-00481545 (Deem-Eshleman Ex 73).

27 ²⁷⁵ *Oklahoma v. Johnson & Johnson*, 5/30/19 Tr. At 46:1-15.

28 ²⁷⁶ JAN-MS-00481547 (Deem-Eshleman Ex 74) .

²⁷⁷ MCK-MDL-2996-0135636.

1 386. Nucynta was Janssen’s branded tapentadol product. Tapentadol is generally
2 regarded as a moderately strong opioid. Nucynta was first approved as a Schedule II controlled
3 opioid agonist tablet and oral solution in 2008, and indicated for “relief of moderate to severe
4 acute pain in patients 18 years of age or older.” In 2011, Janssen obtained approval for a long-
5 acting version Nucynta ER, which was indicated for “management of moderate to severe chronic
6 pain in adults and neuropathic pain associated with diabetic peripheral neuropathy (DPN) in
7 adults.”

8 387. McKinsey is a repeat opioid sales turbocharger. McKinsey’s efforts to turbocharge
9 Nucynta sales resembled those it later deployed in more robust form at Purdue a few years later.
10 For example, “physician prescribing habits,” and “switching behavior,” were external factors
11 McKinsey identified as key issues “impacting future Nucynta growth.” Understanding these
12 issues at a granular level would be crucial, including “What is physician/market awareness of
13 Nucynta ER? By physician segment?”²⁷⁸ These same factors drove McKinsey’s later work
14 turbocharging OxyContin.

15 388. Along the way, McKinsey [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]²⁷⁹

19 389. Despite this ambivalence about tamper-resistance, in a status update on June 23,
20 2011, McKinsey informed Janssen that its “initial physician interview findings” indicate Nucynta
21 ER has “lower addictive/abuse potential and side-effect profile as key differentiators vs.
22 Oxycontin ER.”²⁸⁰

23 390. As part of the turbocharge process, [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 ²⁷⁸ MCK-MDL-2996-0135636.

28 ²⁷⁹ JAN-MS-00322271.

²⁸⁰ MCK-MDL-2996-0009526, at 0009529.

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3. Other Manufacturers

394. McKinsey worked with numerous other manufacturers to promote the sale of opioids. To date, Plaintiffs have identified as McKinsey clients [REDACTED]²⁸⁷ and [REDACTED]²⁸⁸

395. Coordination among these industry participants was a natural outgrowth of the fact that McKinsey had existing client relationships with each participant. For instance, on May 7, 2009, Richard Sackler’s personal counselor, McKinsey partner Maria Gordian, [REDACTED]²⁸⁹

396. [REDACTED]²⁹⁰

397. [REDACTED]²⁹¹

Prepared by: The Industry Working Group (IWG)
The IWG includes:
Actavis Group hf.
Apotex, Inc.
Endo Pharmaceuticals, Inc.
Janssen Pharmaceuticals, Inc.
Lavipharm Laboratories, Inc.
Mallinckrodt, Inc.
Mylan Technologies, Inc.
Noven Pharmaceuticals, Inc.
Pfizer, Inc.
Purdue Pharma L.P.
Ranbaxy Pharmaceuticals, Inc.
Rhodes Pharmaceuticals L.P.
Roxane Laboratories, Inc.
Sandoz, Inc.
Teva Pharmaceuticals USA, Inc.
The PharmaNetwork, LLC
Upsher-Smith Laboratories, Inc.
VistaPharm, Inc.
Watson Laboratories, Inc.

²⁸⁷ MNK-MDL_001756041; MNK-T1_0000968026; MN-T1_0004715842; MNK-T1_0005985720.
²⁸⁸ TEVA_CHI_00187019.
²⁸⁹ TEVA_CHI_00187019.
²⁹⁰ TEVA_CHI_00187023.
²⁹¹ See ALLERGAN_MDL_00637407. [REDACTED]

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4. McKinsey’s Work with Opioid Distributors

398. McKinsey worked with opioid distributor AmerisourceBergen [REDACTED]
[REDACTED].²⁹²

399. McKinsey worked with opioid distributor McKesson on the company’s [REDACTED]
[REDACTED].²⁹³

5. McKinsey’s Work with the FDA

400. As described above, McKinsey assisted Purdue and others to confront FDA regulations that posed threats to their clients’ ability to maximize revenues from their opioid products. McKinsey’s role in shepherding its clients through regulatory interactions takes on a different hue when considered in light of one of McKinsey’s other clients: the Food and Drug Administration itself.

401. Indeed, the FDA has proved a massive client for McKinsey, who since 2000 has endeavored to expand its public sector practice under the direction and leadership of Nancy Killefer, a now-retired senior partner and director of the firm.²⁹⁴ Since 2008, the FDA has paid McKinsey more than \$140 million.²⁹⁵ A significant portion of that work for the FDA related to the FDA’s Center for Drug Evaluation and Research (“CDER”). The CDER is the principal division tasked with approving, among other classes of drugs, opioids. Since 2008, McKinsey has been awarded at least 17 contracts worth at least \$48 million for CDER work.²⁹⁶

402. The REMS protocols, discussed above, that McKinsey assisted Purdue and others in surmounting beginning in 2008 and culminating in 2012, were overseen by CDER.²⁹⁷

403. Meanwhile, in 2010, McKinsey advised the FDA on building a monitoring system called “track and trace” to assist in the identification of potentially improper distribution of harmful prescription drugs, such as opioids. “The ‘track and trace’ system deeply impacted

²⁹² ABDCMDL12135609, slide 5.
²⁹³ MCKSTCT00753097; MCKSTCT00753098.
²⁹⁴ Duff McDonald, *The Firm*. Killefer is also a director of Cardinal Health, one of the distributor defendants in the ongoing nationwide opioid litigation, and a company subject to FDA regulations.
²⁹⁵ Letter to Dr. Janet Woodcock from Senator Margaret Hassan et al, August 23, 2021, *available at*: https://www.hassan.senate.gov/imo/media/doc/fda-mckinsey_letter-final-210823.pdf (“Hassan Letter”)
²⁹⁶ *Id.*
²⁹⁷ *Id.*

1 McKinsey clients, including the nation’s three largest drug distributors—McKesson,
2 AmerisourceBergen, and Cardinal Health [where Killefer has been a director since 2015].”²⁹⁸

3 404. Under one contract, McKinsey developed a roadmap and implemented plans to
4 modernize CDER’s new drug regulatory program. Under another, McKinsey developed a
5 framework to increase information technology project delivery across CDER.²⁹⁹

6 405. In 2007, Congress passed the Food and Drug Administration Amendments Act
7 (“FDAAA”), which placed new restrictions on the use of certain high risk prescription drugs,
8 including opioids. The new law mandated that FDA require manufacturers of certain drugs to
9 create REMS.

10 406. The FDAAA also required the Secretary of Health and Human Services “to
11 develop standards and identify and validate effective technologies for the purpose of securing the
12 drug supply chain against counterfeit, diverted, subpotent, substandard, adulterated, misbranded,
13 or expired drugs.” 21 U.S.C. § 355e(a).

14 407. In 2010 and 2011, under the FDAAA, the FDA awarded McKinsey contracts to
15 design a “track and trace” system to monitor prescription drugs, including opioids, throughout the
16 supply chain and to streamline the drug approval process. The track and trace system had the
17 greatest effect on drug distributors, including McKinsey clients McKesson, AmerisourceBergen,
18 and Cardinal Health.³⁰⁰

19 408. Under these contracts, McKinsey was required to consult with “supply chain
20 stakeholders,” which likely included these three McKinsey clients as well as pharmaceutical
21 manufacturers.³⁰¹

22 409. In 2011, McKinsey also won a \$1.8 million contract with CDER’s Office of
23 Surveillance and Epidemiology (“OSE”), which monitors and evaluates the safety profiles of
24 drugs available to American consumers.³⁰² OSE “evaluates more than 2 million adverse event

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26 ²⁹⁸ See <http://cg.cardinalhealth.com/board-of-directors/default.aspx>; Hassan Letter.

27 ²⁹⁹ Letter to Senator Chuck Grassley from Andrew Tantillo, Oct. 22, 2021, available at:
https://www.grassley.senate.gov/imo/media/doc/fda_to_grassley_-_mckinsey_conflicts_of_interest.pdf

28 ³⁰⁰ Hassan Letter.

³⁰¹ *Id.*

³⁰² <https://www.documentcloud.org/documents/21071060-mckinsey-ose-contract>

1 reports submitted every year to FDA’s MedWatch program” and provides “risk management
2 expertise on development and implementation of programs and initiatives to support [CDER’s]
3 policies related to [REMS] authorities.”³⁰³

4 410. The OSE contract tasked McKinsey with a widespread mission of understanding
5 how OSE functions within the context of a broader system of drug safety in CDER and ultimately
6 developing and implementing a new operating model. In other words, McKinsey helped to
7 restructure a key body that has oversight over the opioid supply chain.

8 411. The 2012 Food and Drug Administration Safety and Innovation Act required the
9 FDA to modernize Sentinel, a system meant to monitor the safety of drugs once they are on the
10 market.³⁰⁴ According to the FDA, “Sentinel generates *real-world evidence* to support regulatory
11 actions aimed at protecting the public’s health,” which in turn “inform[s] healthcare provider
12 decision-making for patients.”³⁰⁵

13 412. A 2014 contract with the FDA charged McKinsey with assessing the “strengths,
14 limitations and appropriate use” of Sentinel. Like the track and trace contract, the Sentinel project
15 required McKinsey to interview “external stakeholders,” including “industry organizations” and
16 “drug and device industry leaders.”³⁰⁶ McKinsey also evaluated how the FDA employees used
17 Sentinel to inform regulatory decision making.³⁰⁷

23 ³⁰³ <https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/cder-office-surveillance-and-epidemiology>

24 ³⁰⁴ https://www.documentcloud.org/documents/21071047-r_sentinel_assessment_award_contract_sow-redacted-pr
25 ³⁰⁵ <https://www.fda.gov/files/about%20fda/published/Sentinel-System-Overview—Presentation.pdf>;
<https://www.healthaffairs.org/doi/10.1377/hpb20150604.936915/full/>

26 ³⁰⁶ Ian MacDougall, “McKinsey Never Told the FDA It Was Working for Opioid Makers While Also Working for the
Agency,” *ProPublica* (Oct. 4, 2021), available at <https://www.propublica.org/article/mckinsey-never-told-the-fda-it-was-working-for-opioid-makers-while-also-working-for-the-agency>

27 ³⁰⁷ Letter to Bob Sternfels from Representative Carolyn B. Maloney, Nov. 5, 2021, available at:
28 <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-11-05.CBM%20to%20Sternfels-McKinsey%20re%20Document%20and%20Information%20Request%20%28001%29.pdf>

1 413. McKinsey performed similar work for the FDA as recently as 2019,³⁰⁸ when it
2 signed a contract extension with the agency for work relating to the FDA's efforts to modernize
3 the process by which it regulates new drugs.³⁰⁹

4 414. The FDA's drug tracking programs have been panned as failures.³¹⁰

5 415. A theme was emerging: as new legislation and regulatory systems were enacted
6 that could have hampered the opioid supply chain, McKinsey stepped in as a key consultant for
7 the FDA. Each time, the new system failed to reign in the out-of-control opioid market. While the
8 FDA was not solely responsible for regulating the opioid industry and McKinsey was not wholly
9 responsible for the FDA's inaction, tools like Sentinel and track and trace could have been
10 implemented in a way to provide new information to combat the country's growing opioid crisis.

11 416. At the same time it was consulting for the FDA, McKinsey was working with its
12 opioid industry clients on how skirt the FDA's regulatory systems.

13 417. For example, McKinsey advised Purdue on how to soften the FDA's proposed
14 REMS and on coordinating with other opioid manufacturers to advocate against strict
15 oversight.³¹¹ The finalized REMS for opioid products was largely devoid of the restrictions that
16 FDA had initially proposed.³¹²

17 418. McKinsey's work with the FDA was a key factor in why pharmaceutical industry
18 clients tapped McKinsey for FDA-related work. For example, in endorsing McKinsey's proposed
19 strategy of banding together with other opioid manufacturers, Purdue CEO John Stewart
20 suggested that the consultant itself facilitate the pharmaceutical group's approach to FDA. He
21 wrote: "Perhaps a consultant such as McKinsey who did similar work in the industry and FDA on
22

23 ³⁰⁸ Ian MacDougall, "McKinsey Never Told the FDA It Was Working for Opioid Makers While Also Working for the
24 Agency," *ProPublica* (Oct. 4, 2021), available at <https://www.propublica.org/article/mckinsey-never-told-the-fda-it-was-working-for-opioid-makers-while-also-working-for-the-agency>

25 ³⁰⁹ Letter to Bob Sternfels from Representative Carolyn B. Maloney, Nov. 5, 2021, available at:
<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-11-05.CBM%20to%20Sternfels-McKinsey%20re%20Document%20and%20Information%20Request%20%28001%29.pdf>

26 ³¹⁰ Sabrina Tavernise, "F.D.A. Faulted for Problems With Drug Tracking" *The New York Times*, Jan. 14, 2016,
27 available at <https://www.nytimes.com/2016/01/15/health/fda-faulted-for-problems-with-drug-tracking.html>;
<https://www.gao.gov/assets/gao-16-192.pdf>

28 ³¹¹ Hassan Letter.

³¹² Hassan Letter; Maloney Letter.

1 some aspects of clinical trials or a healthcare-related group that would be interested in playing an
2 active role in the program’s development and delivery would be a good choice.”³¹³

3 419. McKinsey performed work for the FDA without disclosing its potential conflicts
4 of interest to the FDA in violation of the contracts between the company and the agency.

5 420. The FDA typically includes conflict of interest clauses in its contracts and relies on
6 contractors to assess and report any conflicts. McKinsey’s contracts with the FDA related to
7 CDER processes contained such provisions. One contract required McKinsey to “make an
8 immediate and full disclosure, in writing, . . . of any potential or actual organizational conflict of
9 interest or the existence of any facts that may cause a reasonably prudent person to question the
10 contractor’s impartiality because of the appearance or existence of bias.”³¹⁴

11 421. But McKinsey never disclosed its work on behalf of opioid supply clients to the
12 FDA despite having a hand in developing some of the FDA’s most important regulatory
13 processes.³¹⁵

14 422. Disclosing its conflicts might have turned off the lucrative tap to not only FDA
15 contracts but also to pharmaceutical industry clients, given the clear value such clients placed on
16 McKinsey’s work for the FDA.

17 423. McKinsey’s manipulation of regulatory requirements—whether to skirt its own
18 contractual requirements or to bend processes that regulate its clients—is nothing new. McKinsey
19 has come under fire from the Office of Inspector General for the General Services Administration
20 for contract procurement violations³¹⁶ and from the Justice Department related to violation of
21 Chapter 11 bankruptcy rules.³¹⁷ Most recently, six senators have begun to investigate the
22

23 ³¹³ Purdue Bankruptcy, Doc. 2166-5, at 58-59.

24 ³¹⁴ Ian MacDougall, McKinsey Never Told the FDA It Was Working for Opioid Makers While Also Working for the
Agency, *ProPublica* (Oct. 4, 2021), available at <https://www.propublica.org/article/mckinsey-never-told-the-fda-it-was-working-for-opioid-makers-while-also-working-for-the-agency>

25 ³¹⁵ *Id.*; Letter to Senator Chuck Grassley from Andrew Tantillo, Oct. 22, 2021, available at:
26 https://www.grassley.senate.gov/imo/media/doc/fda_to_grassley_-_mckinsey_conflicts_of_interest.pdf

27 ³¹⁶ Ian MacDougall, How McKinsey Makes Its Own Rules, *ProPublica* (Dec. 14, 2019), available at
<https://www.propublica.org/article/how-mckinsey-makes-its-own-rules>

28 ³¹⁷ Mary Williams Walsh and Emily Flitter, McKinsey Faces Criminal Inquiry Over Bankruptcy Case Conduct, *New York Times*, Nov. 8, 2019, available at <https://www.nytimes.com/2019/11/08/business/mckinsey-criminal-investigation-bankruptcy.html>

1 relationship between McKinsey and the FDA³¹⁸ the House Committee on Oversight and Reform
2 is exploring its abusive conduct in connection with the opioid industry.³¹⁹

3 424. As one commentator noted, McKinsey's conduct suggests that it "behaves as if it
4 believes the rules should bend to its way of doing things, not the other way around."³²⁰

5 **F. McKinsey's Efforts to Increase the Overall Size of the Opioid Market: the**
6 **Larger the Pie, the Larger the Slice**

7 425. McKinsey advised multiple opioid manufacturers regarding how to grow opioid
8 sales. In order to benefit all its clients, McKinsey engaged in efforts to grow the entire opioid
9 market, and not only each individual client's share of it. The theory, basically, is that a rising tide
10 lifts all boats.

11 426. For example, Purdue incentivized its sales staff "to increase not just sales of
12 OxyContin but also generic versions of extended release oxycodone." Typically, one would not
13 wish to encourage the sales of generic competitors that offer a similar product to one's own. If,
14 however, the goal is to position a company so as to look like an attractive acquisition target, the
15 growth of the overall opioid market is just as important as one's own market share: "Whereas
16 pharma salespeople are usually compensated based on their ability to grow sales of a particular
17 medicine, part of the bonus for Purdue's staff was calculated in relation to the size of the overall
18 market."³²¹ McKinsey designed that plan.³²²

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20 ³¹⁸ Hassan Letter.

³¹⁹ Maloney Letter.

³²⁰ Ian MacDougall, How McKinsey Makes Its Own Rules, *ProPublica* (Dec. 14, 2019), available at
21 <https://www.propublica.org/article/how-mckinsey-makes-its-own-rules>

³²¹ See David Crow, *How Purdue's 'one-two' punch fuelled the market for opioids*, Financial Times, September 9,
22 2018, available at: <https://www.ft.com/content/8e64ec9c-b133-11e8-8d14-6f049d06439c>

³²² Worth noting is that this strategy of increasing overall opioid sales directly benefitted the Sacklers through their
23 ownership of Rhodes Pharma, a generic opioid manufacturer. Naturally, McKinsey worked with the Sacklers in
24 connection with Rhodes as well, including proposing ideas for synergizing Purdue and Rhodes. See, e.g., MCK-
MDL2996-0324955; MCK-MDL2996-0285201. Especially worth noting is that this strategy also benefitted
25 McKinsey's other opioid clients as well. As one observer wrote: "They have a huge amount of inside information,
26 which raises serious conflict issues at multiple levels," stated a former consultant, referring to McKinsey's influential
27 role as advisor to multiple participants in a given industry, such as opioid manufacturing. It "puts them in a kind of
oligarchic position." Michelle Celarier, *The Story McKinsey Didn't Want Written*, Institutional Investor, July 8, 2019,
28 available at: <https://www.institutionalinvestor.com/article/b1g5zjdc97k2y/The-Story-McKinsey-Didn-t-Want-Written>.

For example, in an August 15, 2013 presentation to Purdue management entitled "Identifying OxyContin
Growth Opportunities," McKinsey noted that "McKinsey's knowledge of the ways other pharma companies operate

1 427. This notion that the size of a company’s market share is not as important as the
 2 size of the *overall* market in which it competes is a core insight of McKinsey’s granular approach
 3 to identifying corporate growth opportunities. Describing their authors’ conclusions in *The*
 4 *Granularity of Growth*, McKinsey stated, “One of their most surprising conclusions is that
 5 increased market-share is seldom a driver of growth. They contend, instead, that growth is driven
 6 by where a company chooses to compete: which market segments it participates in . . . the key is
 7 to focus on granularity, to breakdown big-picture strategy into its smallest relevant
 8 components.”³²³

9 428. In other words, “Purdue’s marketing force was indirectly supporting sales of
 10 millions of pills marketed by rival companies.”³²⁴ “It’s the equivalent of asking a McDonald’s
 11 store manager to grow sales of Burger King and KFC,” stated a government official with the
 12 Department of Health and Human Services.³²⁵

13 **G. McKinsey’s Work Kills People.**

14 429. The deceptive marketing strategies McKinsey developed and helped to implement
 15 were successful. Its granular growth tactics, myopically focused on increased revenues for its
 16 clients, substantially contributed to an explosion in the use of opioids across the country.
 17 Approximately 20% of the population between the ages of 30 and 44, and nearly 30% of the
 18 population over 45, have used opioids. Opioids are the most common treatment for chronic pain,
 19 and as of 2016, 20% of office visits for non-cancer pain included the prescription of an opioid.³²⁶

20 430. In 2009, Dr. Van Zee identified the *precise tactics* that McKinsey deployed for all
 21 of its opioid clients, including Purdue, as a source of OxyContin misuse and abuse, and suggested
 22 that regulation may be appropriate to curtail the use of the McKinsey’s tactics: “The use of
 23 prescriber profiling data to target high-opioid prescribers—coupled with very lucrative incentives

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 suggests Purdue should reassess the roles of MSL and HECON Groups – and further drive the salesforce to be more
 responsive to formulary coverage changes.” (emphasis added).

25 ³²³ *The granularity of growth*, Book Excerpt, McKinsey & Company, March 1, 2008, available at:
 26 <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/the-granularity-of-growth>

27 ³²⁴ See David Crow, *How Purdue’s ‘one-two’ punch fueled the market for opioids*, Financial Times, September 9, 2018,
 available at: <https://www.ft.com/content/8e64ec9c-b133-11e8-8d14-6f049d06439c>

28 ³²⁵ *Id.*

³²⁶ Deborah Dowell, Tamara M. Haegerich, and Roger Choi, *CDC Guideline for Prescribing Opioids for Chronic Pain*
 – *United States, 2016*, CDC (March 18, 2016), <https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1.htm>

1 for sales representatives—would seem to fuel increased prescribing by some physicians—perhaps
2 the most liberal prescribers of opioids and, in some cases, the least discriminate.”³²⁷

3 431. In time, additional evidence mounted supporting the conclusion that McKinsey’s
4 tactics were demonstrably exacerbating the nationwide opioid crisis. One way of demonstrating
5 the link between aggressive sales and marketing of opioids and worsened mortality outcomes
6 arose out of a quirk of Purdue’s own marketing tactics.

7 432. In 1996, when OxyContin was introduced, five states maintained “triplicate”
8 programs that required prescribers of Schedule II controlled substances to fill out prescriptions in
9 triplicate.³²⁸ One of the triplicate copies would then be filed with the state agency in charge of
10 maintaining a prescription database intended to monitor diversion and other potential issues
11 relating to the over-dissemination of Schedule II narcotics. Because Purdue viewed these
12 triplicate requirements as an overly burdensome hindrance on prescribing, the company chose to
13 focus its marketing efforts in other states that did not impose these constraints.

14 433. This resource-allocation decision by Purdue to focus more marketing efforts in
15 states with fewer regulations regarding the prescribing of controlled substances provided a way to
16 test whether *marketing* of OxyContin, by itself, was a cause of not only increased overdose rates
17 for OxyContin, but of *all* opioid-related overdoses, *including* those involving illicit opioids such
18 as heroin and fentanyl.

19 434. The results were stark. In 2019, economists from the University of Pennsylvania,
20 Notre Dame, and the RAND Corporation analyzed the disparate outcomes in overall opioid
21 overdose mortality experienced in the triplicate states where Purdue did not primarily focus its
22 marketing efforts and non-triplicate states where Purdue did primarily focus those efforts.³²⁹

23 435. The economists found that “OxyContin distribution was about 50% lower in
24 ‘triplicate states’ in the years after the launch. While triplicate states had higher rates of overdose

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26 ³²⁷ Art Van Zee, *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*, 99 AM.
J. PUB. HEALTH 221, 221, 224 (Feb. 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2622774/pdf/221.pdf>.

27 ³²⁸ Patrick Radden Keefe, *Empire of Pain*, Pg. 407.

28 ³²⁹ Abby E. Alpert, William N. Evans, Ethan M.J. Lieber, and David Powell, *Origins of the Opioid Crisis and its
Enduring Impacts*, NBER Working Paper No. 26500, November 2019, *available at*: <https://www.nber.org/papers/w26500>

1 deaths prior to 1996, this relationship flipped shortly after the launch [of OxyContin] and
2 triplicate states saw substantially slower growth in overdose deaths, continuing even twenty years
3 after OxyContin's introduction. *Our results show that the introduction and marketing of*
4 *OxyContin explain a substantial share of overdose deaths over the last two decades.*"³³⁰

5 436. A 2017 *Journal of American Medical Association* study found that physicians
6 ordered fewer promoted brand-name medications and prescribed more cost-effective generic
7 versions if they worked in hospitals that instituted rules about when and how pharmaceutical sales
8 representatives were allowed to detail prescribers.³³¹ The changes in prescribing behavior
9 appeared strongest at hospitals that implemented the strictest detailing policies and included
10 enforcement measures. Another study involved the research of four different practices which
11 included visits by sales representatives, medical journal advertisements, direct-to-consumer
12 advertising, and pricing, and found that sales representatives have the strongest effect on driving
13 drug utilization. An additional study found that doctor meetings with sales representatives are
14 related to changes in doctor prescribing practices and requests by physicians to add the drugs to
15 hospitals' formularies.

16 437. A more recent *Journal of American Medical Association* study analyzed the
17 Centers for Medicare and Medicaid Services' Open Payments database regarding pharmaceutical
18 company marketing efforts towards doctors, as well as CDC data on prescription opioid overdose
19 deaths and prescribing rates, in order to assess whether pharmaceutical marketing of opioids to
20 physicians affected the rate of prescription opioid overdose deaths. Notably, the study analyzed
21 these marketing practices beginning August 1, 2013 and ending December 31, 2015.³³²

22 438. Those dates are significant, as the study captures the same timeframe that
23 McKinsey's Project Turbocharge, re-christened E2E, was implemented.

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³³⁰ *Id.* (emphasis added).

26 ³³¹ Ian Larkin et al., *Association Between Academic Medical Center Pharmaceutical Detailing Policies and*
Physician Prescribing, 317 *J. Am. Med. Ass'n* 1785 (2017).

27 ³³² Scott E. Hadland et al., *Association of Pharmaceutical Industry Marketing of Opioid Products with Mortality from*
Opioid-Related Overdoses, *JAMA Network*, January 18, 2019, available at: <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2720914>.

1 439. The study noted “physician prescribers are the most frequent source of prescription
2 opioids for individuals who use opioids nonmedically.”³³³

3 440. The study found that “increased county-level opioid marketing was associated
4 with elevated overdose mortality 1 year later, an association mediated by opioid prescribing rates;
5 per capita, *the number of marketing interactions with physicians demonstrated a stronger*
6 *association with mortality* than the dollar value of marketing.”³³⁴

7 441. Referring to the sales and marketing tactics McKinsey specialized in
8 implementing, the authors concluded, “amid a worsening opioid crisis, our results suggest that
9 industry marketing to physicians may run counter to current efforts to curb excessive opioid
10 prescribing.”³³⁵

11 442. The authors’ proposed solution was plain and simple, and echoed Dr. Van Zee’s
12 congressional testimony from 2002: “Pharmaceutical companies might also consider, as one
13 manufacturer recently did, *voluntarily ceasing marketing opioid products directly to*
14 *physicians.*”³³⁶

15 443. The dangers of opioids were known to McKinsey at the time it engaged in the
16 misconduct described in this Complaint. The addictive potential of opioids and the need for
17 control and restraint in their use was internally understood, as was the likelihood of large-scale
18 opioid addiction, abuse, overdoses, illness, and early death resulting from sharply increased use.

19 444. McKinsey also performed its own research in evaluating the anticipated effects of
20 Project Turbocharge. An April 2014 implementation update observed an increase in sales calls, as
21 well as that “OxyContin [health care providers] with increased calls consistently outperform
22 HCPs with decreasing or no change in call frequency.”

23 445. The evidence of a direct link between increased opioids marketing and sales and
24 increased opioid abuse was everywhere. A 2007 study found “a very strong correlation between
25 therapeutic exposure to opioid analgesics, as measured by prescriptions filled, and their abuse.”³³⁷

26 ³³³ *Id.*

27 ³³⁴ *Id.* (emphasis added)

28 ³³⁵ *Id.*

³³⁶ *Id.* (emphasis added).

³³⁷ Theodore J Cicero *et al.*, *Relationship Between Therapeutic Use and Abuse of Opioid Analgesics in Rural*,

1 McKinsey evidently understands this. In a September 2016 online article, McKinsey asserts that
2 “[t]here is no doubt that more consistent use of best practices – across geographic areas,
3 institutions, and clinicians – would provide tremendous help in combating the crisis” and
4 describes certain examples of such practices as “successful in reducing prescribing.”³³⁸

5 446. There is a “parallel relationship between the availability of prescription opioid
6 analgesics through legitimate pharmacy channels and the diversion and abuse of these drugs and
7 associated adverse outcomes.”³³⁹ The opioid epidemic is “directly related to the increasingly
8 widespread misuse of powerful opioid pain medications.”³⁴⁰

9 447. In a 2016 report, the CDC explained that “[o]pioid pain reliever prescribing has
10 quadrupled since 1999 and has increased in parallel with [opioid] overdoses.” Patients receiving
11 opioid prescriptions for chronic pain account for the majority of overdoses. For these reasons, the
12 CDC concluded that efforts to rein in the prescribing of opioids for chronic pain are critical “to
13 reverse the epidemic of opioid drug overdose deaths and prevent opioid-related morbidity.”³⁴¹

14 448. Compounding the harm from deceptive marketing, McKinsey worked with Purdue
15 to continue and grow the opioid sales of prescribers that raised red flags of diversion, despite
16 Purdue’s legal obligations to report and halt supply. In doing so, it enabled an oversupply of
17 opioids, which allows non-patients to become exposed to opioids, and facilitates access to opioids
18 for both patients who could no longer access or afford prescription opioids and addicts struggling
19 with relapse.

20 449. Most of the illicit use originates from prescribed opioids. It has been estimated that
21 60% of the opioids that are abused come, directly or indirectly, through physicians’ prescriptions.

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Suburban, and Urban Locations in the United States, 16.8 *Pharmacoepidemiology and Drug Safety*, 827-40 (2007),
available at <https://onlinelibrary.wiley.com/doi/10.1002/pds.1452>.

25 ³³⁸ <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/why-we-need-bolder-action-to-combat-the-opioid-epidemic>

26 ³³⁹ Dart, MD, *et al.*, *Trends in Opioid Analgesic Abuse and Mortality in the United States*, *New Engl. J. Med.*, 372:241-
248 (Jan. 15, 2015).

27 ³⁴⁰ Califf, MD, *et al.*, *A Proactive Response to Prescription Opioid Abuse*, *New Engl. J. Med.* (Apr. 14, 2016).

28 ³⁴¹ CDC, January 1, 2016 Morbidity and Mortality Weekly Report; Rudd, Rose A., *et al.* “Increases in drug and
opioid overdose deaths – United States, 2000–2014.” *American Journal of Transplantation* 16.4 (2016): 1323-1327.

1 450. As McKinsey itself has recognized in citing a study reaching this conclusion,
2 roughly 80% of heroin users previously used prescription opioids.³⁴² As many as one in four
3 patients who receive prescription opioids long-term for chronic pain in primary care settings
4 struggles with addiction. And, the link between prescription narcotic painkiller abuse and
5 subsequent and/or simultaneous heroin abuse continues to grow.

6 451. In fact, people who are addicted to prescription opioid painkillers are 40 times
7 more likely to be addicted to heroin. The CDC identified addiction to prescription pain
8 medication as the strongest risk factor for heroin addiction. A more recent, and even more deadly
9 problem stemming from the prescription opioid epidemic involves fentanyl, a powerful opioid
10 prescribed for cancer pain or in hospital settings that, in synthetic form, has made its way into
11 Plaintiffs' communities.

12 452. Carfentanil, a powerful derivative of fentanyl, has increasingly been found in
13 heroin and fentanyl sold illicitly. Carfentanil is so strong that it is typically used in veterinary
14 medicine to sedate large wild animals such as elephants, and has been researched as a chemical
15 weapon. A dose the size of a grain of salt can rapidly lead to deadly overdose in humans.

16 453. No demographic is untouched by this epidemic. Nationally, one in five deaths
17 among younger adults in 2016 involved opioids, according to one study. And, deaths involving
18 both prescription and illicit opioids have risen sharply, nearly doubling since 2009.

19 454. Opioids were involved in 42% of all fatal drug overdoses in 2015, and another
20 25% involved heroin. According to the CDC, between 1999 and 2015, more than 183,000 people
21 died in the United States from prescription-related overdoses.

22 455. Rising opioid use and abuse have negative social and economic consequences far
23 beyond overdoses in other respects as well. According to a recent analysis by a Princeton
24 University economist, approximately one out of every three working age men who are not in the
25 labor force take daily prescription pain medication. The same research finds that opioid
26 prescribing alone accounts for 20% of the overall decline in the labor force participation for this

27 _____
28 ³⁴² <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/why-we-need-bolder-action-to-combat-the-opioid-epidemic>

1 group from 2014 to 2016, and 25% of the smaller decline in labor force participation among
2 women. Many of those taking painkillers still said they experienced pain daily.

3 **H. McKinsey Knew that OxyContin Was Highly Abusable, Addictive, and**
4 **Dangerous, and that Its Marketing Strategies Increased Those Harms.**

5 456. McKinsey continued working with Purdue long after the severity of the opioid
6 crisis was well known. McKinsey knew that high dose OyxContin prescriptions carried a serious
7 risk of overdose. In 2017, over half of Purdue’s opioids prescriptions exceeded the ninety mg
8 morphine equivalence threshold a day—the recommended maximal dose per the 2016 CDC
9 Guideline for Prescribing Opioids for Chronic Pain.

10 457. Purdue’s 2007 guilty plea put McKinsey on notice of Purdue’s misconduct. By
11 that time, McKinsey had access to public information indicating that OxyContin and other
12 opioids pose significant risk of addiction and misuse.

13 458. McKinsey was well aware of the risks of OxyContin based on its extensive
14 experience in the pharmaceutical industry, close collaboration with Purdue, and participation in
15 the regulatory submissions for reformulated OxyContin.³⁴³

16 459. The first bullet point of Purdue’s 2007 “Observations and Activities Requiring an
17 [Abuse, Diversion, and Detection] Report” was “[a]n apparent pattern of an excessive number of
18 patients for the practice type[.]”³⁴⁴ Thus, McKinsey knew or should have known that there was a
19 higher risk of abuse and diversion among high-volume prescribers.

20 460. What is more, on September 13, 2013 McKinsey briefed Purdue on the ongoing
21 concerns regarding OxyContin addiction and diversion among prescribers:

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23
24
25

26 _____
27 ³⁴³ McKinsey [REDACTED] PPLPC0390000347612 ([REDACTED]
28 [REDACTED]); McK-MAAG-0118819 (email chain).

³⁴⁴ PPLPC010000033944.

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Findings on messaging and positioning

PRELIMINARY

- Opioids overall are still viewed as effective and necessary class of painkillers, though side effects and addiction are concerns
- Key themes from prescriber interviews on abuse deterrents include:
 - Prescriber awareness of abuse deterrence and label change is mixed
 - Opinions on impact/efficacy of abuse deterrence vary
 - Most prescribers are concerned about abuse, but attempt to establish measures to protect themselves
 - Concerns remain that technology does not address oral abuse
 - Less informed prescribers ask for additional information and education around abuse deterrent formulations
- Existing market research suggests that most physicians do not feel that reformulation positively impacts their prescribing behavior, and that diversion, abuse and regulatory concerns continue to weigh on prescribers

McKinsey & Company | 27

McKinsey & Company | 27

461. In a PowerPoint slide entitled “Findings on messaging and positioning,” part of a presentation to Purdue entitled “OxyContin growth opportunities: Phase 1 Final Report: Diagnostic,” McKinsey noted that “most prescribers are concerned about abuse,” and that “most physicians do not feel that [OxyContin] reformulation positively impacts their prescribing behavior, and that diversion, abuse and regulatory concerns continue to weigh on prescribers.”

462. In an August 2017 presentation, McKinsey recognized that the opioid epidemic was “triggered, in large part, by a massive increase in prescribed opioids in the early 2000’s.”

463. McKinsey’s presentations to Purdue included extensive discussion of doctors’ concerns about opioid misuse and side effects, demonstrating McKinsey’s awareness of the dangers of opioids. Rather than working to limit these disastrous effects, McKinsey treated doctors’ misgivings as obstacles to confront with new messaging.

464. Indeed, one reason that *Purdue* had knowledge that their own products were addictive and dangerous is because McKinsey told them.

465. If McKinsey was not aware of the adverse consequences of OxyContin, the drug it was paid to sell, such ignorance could not survive the granular reality of its relationship with

1 Purdue. For example, in June 2009, McKinsey worked to “counter the emotional messages from
2 mothers with teenagers that overdosed on OxyContin.”³⁴⁵

3 466. Within a few years of countering these emotional messages, McKinsey even
4 developed a method to identify geographic hot spots of OxyContin abuse and diversion. Once
5 developed, however, McKinsey simply never used it to decrease these harms.

6 467. Paul Coplan [REDACTED]
7 [REDACTED]
8 [REDACTED]³⁴⁶

9 468. In deposition testimony in prior opioid-related litigation, Coplan was asked,
10 “While you were at Purdue, did Purdue make an effort to identify hot spots for opioid abuse and
11 addiction or not?”³⁴⁷

12 469. “[REDACTED]
13 [REDACTED]
14 [REDACTED]”³⁴⁸
15 [REDACTED].³⁴⁹

16 470. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]”³⁵⁰

21 471. Instead, McKinsey focused on increasing opioid sales for its clients, despite
22 knowing the harmful consequences of doing so. In yet another indication that OxyContin sales
23 should not be turbocharged: during McKinsey’s work for Purdue, Purdue was unable to purchase
24 product liability insurance to cover its practice of selling OxyContin.

25 _____
26 ³⁴⁵ PDD8901645845.
27 ³⁴⁶ Paul M. Coplan 1/18/19 Dep. Tr. At 16:18 -17:17.
28 ³⁴⁷ *Id.* at 355:10.
³⁴⁸ *Id.* at 355:14–356:11.
³⁴⁹ *Id.* at 357:8-16.
³⁵⁰ *Id.* at 357:22–358:6.

1 472. The basic premise of McKinsey’s work put it on notice of the harmful
2 consequences that would ensure. It was tasked with advising a monoline manufacturer of opioids
3 about sales and marketing practices for its addictive products while that manufacturer was bound
4 by a five-year Corporate Integrity Agreement covering the very same opioid sales and marketing
5 practices. In 2012, OxyContin accounted for 94% of Purdue’s revenue.³⁵¹ As late as 2018, it
6 remained 84% of Purdue’s revenue.³⁵² According to the U.S. Department of Justice, “[f]rom 2010
7 to 2018, Purdue’s profits were almost entirely driven by its success in selling OxyContin.”³⁵³ In
8 2015 alone, it obtained \$3 billion in annual opioid sales—a four-fold increase from its 2006 sales
9 of \$800 million.

10 473. McKinsey’s mandate was to increase Purdue’s opioid sales during a time when
11 Purdue was obligated to restrict its previous marketing strategies because those strategies had
12 caused the *overprescribing of opioids* and the inevitable consequences thereof. McKinsey’s job
13 was to counter the intended results of the Corporate Integrity Agreement; to devise strategies to
14 sell as many pills as conceivably possible. Under McKinsey’s tutelage, Purdue’s growth
15 continued its upward trajectory unabated, the Corporate Integrity Agreement notwithstanding.

16 **I. McKinsey Portrays Itself as Part of a Solution to a Problem It was Integral in**
17 **Creating.**

18 474. McKinsey’s work on the other side of the aisle—helping clients address opioid
19 abuse and addiction—further proves that it was well aware of the risks of OxyContin, and thus
20 the risks of pushing OxyContin sales and high dose sales, and targeting the highest-volume
21 prescribers. McKinsey advised Purdue on “Project Tango,” a 2014 plan to enter the addiction
22 drug market.³⁵⁴ McKinsey noted the [REDACTED]

23 [REDACTED]”³⁵⁵

25 ³⁵¹ Gerald Posner, *Pharma*, pg. 524 (Simon & Schuster 2020).

26 ³⁵² *Id.*

27 ³⁵³ <https://www.justice.gov/opa/press-release/file/1329571/download>

28 ³⁵⁴ See David Armstrong, OxyContin Maker Explored Expansion Into “Attractive” Anti-Addiction Market, ProPublica (Jan. 30, 2019), available at <https://www.propublica.org/article/oxycontin-purdue-pharma-massachusetts-lawsuit-anti-addiction-market>.

³⁵⁵ PPLPC023000714734.

1 475. More than assisting specific clients with addressing the crisis itself, McKinsey saw
2 the ongoing opioid crisis as an opportunity to posture itself as contributing more broadly to
3 *society*. McKinsey likes to think of itself as a change agent capable of solving problems that truly
4 matter, and the opioid crisis is one McKinsey realizes matters. Dr. Sarun Charumilind, a
5 McKinsey partner in Philadelphia, “has led the firm’s support to clients and *society* to combat the
6 opioid crisis.”³⁵⁶

7 476. In Detroit, partner Razili Lewis also helps “clients and *society* combat the opioids
8 crisis.” She does so by providing “insights, expertise, analytics, and technology.”³⁵⁷

9 477. Over in Cleveland, senior partner Tom Latkovic also “helps clients and *society*
10 combat the opioids crisis.”³⁵⁸

11 478. Kana Enomoto, a senior expert in Washington, D.C., is a “national leader in
12 mental health and substance-use policy,” who acted as a “content director” on a study to “raise
13 awareness about opioid-use disorders.” She also provided strategic guidance to the United States
14 Surgeon General regarding efforts to “combat the opioid epidemic” when she was his Chief of
15 Staff.³⁵⁹

16 479. McKinsey consistently states that it takes its obligations to society seriously.
17 Indeed, the firm has established a center:³⁶⁰

18 The Center for Societal Benefit through Healthcare was established to build on the
19 long-standing mission of McKinsey’s Public & Social Sector and Healthcare
20 Systems & Services Practices to improve healthcare. The Center’s work is funded
21 solely by McKinsey; it is not commissioned by any business, government, or other
22 institution. The Center brings a range of capabilities to bear, including McKinsey’s
23 healthcare expertise, advanced analytics, functional knowledge, technology assets,
24 network, and investment capacity.

25 The Center aspires to collaborate with other organizations to drive positive
26 innovation to improve overall health and well-being and reduce healthcare
27 disparities.

28 ³⁵⁶ See <https://www.mckinsey.com/our-people/sarun-charumilind>

³⁵⁷ See <https://www.mckinsey.com/our-people/razili-lewis>

³⁵⁸ See <https://www.mckinsey.com/our-people/tom-latkovic>

³⁵⁹ See <https://www.mckinsey.com/our-people/kana-enomoto>

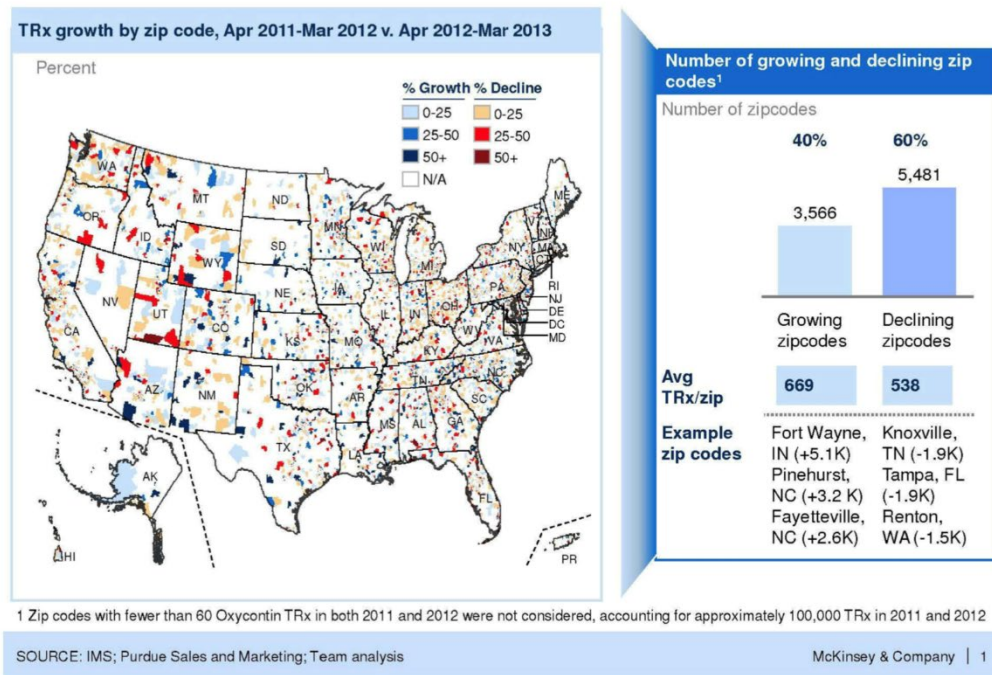
³⁶⁰ See <https://www.mckinsey.com/industries/healthcare-systems-and-services/how-we-help-clients/center-for-societal-benefit-through-healthcare/overview>

1 480. The Center has focused on addressing the impacts of the opioid crisis on society.
 2 One of the metrics that McKinsey uses to track the opioid crisis *as a matter of public health* is the
 3 “opioid prescribing rate” per 100 people in every county in the United States.³⁶¹

4 481. As McKinsey’s data visualization makes clear, there is an association between
 5 areas with higher opioid prescribing rates and higher instances of opioid use disorder.

6 482. The Center’s data visualization is also reminiscent of similar work McKinsey did
 7 for Purdue in 2013, although the analysis McKinsey did for Purdue was more granular, analyzing
 8 opioid prescribing patterns on the *zip-code* level in all 50 states, as opposed to the county level.³⁶²

9 **Exhibit 1: OxyContin growth by geography**



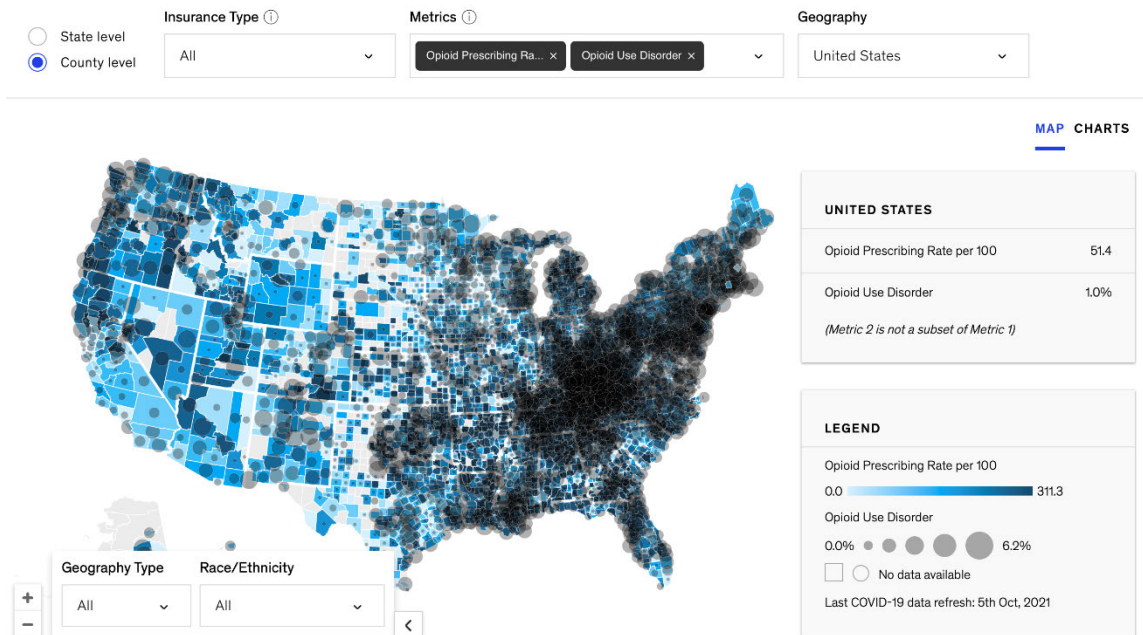
361 See https://csbh-dashboard.mckinsey.com/#/data-insights?chart=SC&geo=County&lob=All&metric1=opioid_rxrate&metric2=oud&tab=Map

362 MCK-MAAG-0024283.

1 483. In other words, the “opioid prescribing rate” was a metric McKinsey worked with
2 its client to boost for years. Now McKinsey measures the extent of the crisis by the same metric:

3 **Vulnerable Populations: Data By Geography**

4 Explore state and county-level data on the distribution of populations with serious underlying physical conditions,
5 behavioral health conditions, long-term care needs, maternal health needs or unmet social needs.



16 484. Meanwhile, McKinsey has partnered with Shatterproof, a national non-profit
17 organization dedicated to reversing the addiction crisis in the United States, to prepare a report on
18 overcoming stigma associated with opioid use disorder.³⁶³ McKinsey touts the Shatterproof
19 partnership on its webpage as an example of “our societal impact.”³⁶⁴

20 485. In August 2017, McKinsey prepared a presentation entitled “Perspectives on
21 Combatting the Opioid Crisis,” which referenced its work on combatting opioid addiction for
22 various other entities:

³⁶³ See <https://www.shatterproof.org/sites/default/files/2020-07/A-Movement-to-End-Addiction-Stigma.pdf>

³⁶⁴ See <https://www.mckinsey.com/us/our-societal-impact>

RECENT CLIENT EXPERIENCE

- » Designed and helped launch a health home program to expand resources and accountability for **substance abuse treatment**
- » Conducted a **state wide assessment of opioid prescriber performance** in terms of prescribing rate, dosage, and duration
- » Defined clinically relevant opioid quality measures for a **portfolio of episodes-of-care**
- » Defined clinically relevant opioid quality measures for a **Patient Centered Medical Home and Accountable Care Organizations**
- » Used predictive analytics to develop multi-faceted approach to **assess patient risk** for opioid addiction
- » Used geo-spatial and social network analytics to **assess intensity of opioid abuse and treatment needs**
- » Integrated claims and PDMP data to **generate transparency on provider prescribing practices**
- » Developed a **substance abuse episode of care** focused on priority patient journeys

486. In June 2018, Dr. Charumilind and Mr. Latkovic, along with fellow McKinsey partner Elena Mendez-Escobar, published a public report, “Ten insights on the Opioid crisis from claims data analysis,” stating information about the risks of opioids that McKinsey knew while advising Purdue to sell more opioids and higher dose opioids, and target the highest volume prescribers:

a. “Providers frequently prescribe opioids to patients with known or potential risk factors for abuse[;]”

b. “Approximately 35% of the patients given opioid prescriptions in our analysis had features that put them at increased risk for opioid abuse[;]”

c. “Most opioids are prescribed by providers other than the natural ‘quarterback’ of a patient’s underlying complaint or condition. . . . This finding makes clear that high-dose prescribers and multi-prescriber patterns are separate issues—and both are important to address[;]” and

d. “A small portion of opioid use originates in emergency departments.”³⁶⁵

³⁶⁵ <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/ten-insights-on-the-us-opioid-crisis-from-claims-data-analysis>

1 487. Two months later, the same authors, joined by Ms. Lewis, published “Why we
2 need bolder action to combat the opioid epidemic.”³⁶⁶ “Our research suggests that much broader –
3 and bolder – action is required,” they announced.³⁶⁷

4 **J. Coda**

5 488. Marvin Bower, the McKinsey legend who admonished, “Deliver bad news if you
6 must, but deliver it properly,” died in 2003, one year before the firm began working with Purdue.

7 489. McKinsey’s work with Purdue would have been unrecognizable to Bower, one of
8 the founders of modern management consulting. Instead of acknowledging the elephant in the
9 room—that Purdue’s business was knowingly maximizing the amount of addictive and deadly
10 opioids sold in the United States—and delivering that bad news promptly properly to the client,
11 McKinsey instead committed to partner with Purdue to maximize opioid sales without regard to
12 the consequences.

13 490. On October 23, 2017, the president of the United States declared the ongoing
14 nationwide opioid epidemic a “public health emergency.” Even at this late hour in the crisis,
15 McKinsey continued to propose solutions to the Sacklers and Purdue to further boost opioid sales.
16 These solutions were fashioned, in perfect McKinsey parlance, as “high impact interventions to
17 rapidly address market access challenges.”

18 491. Less than two months after the public health emergency declaration, McKinsey
19 proposed these high impact interventions to Purdue and its board. Among them was perhaps
20 McKinsey’s most audacious gambit of the entire Purdue relationship: paying money—
21 “rebates”—to health insurers whenever someone overdosed on Purdue’s drug.

22 492. These payments for future OxyContin overdoses were christened “Event-Based
23 contracts.”³⁶⁸

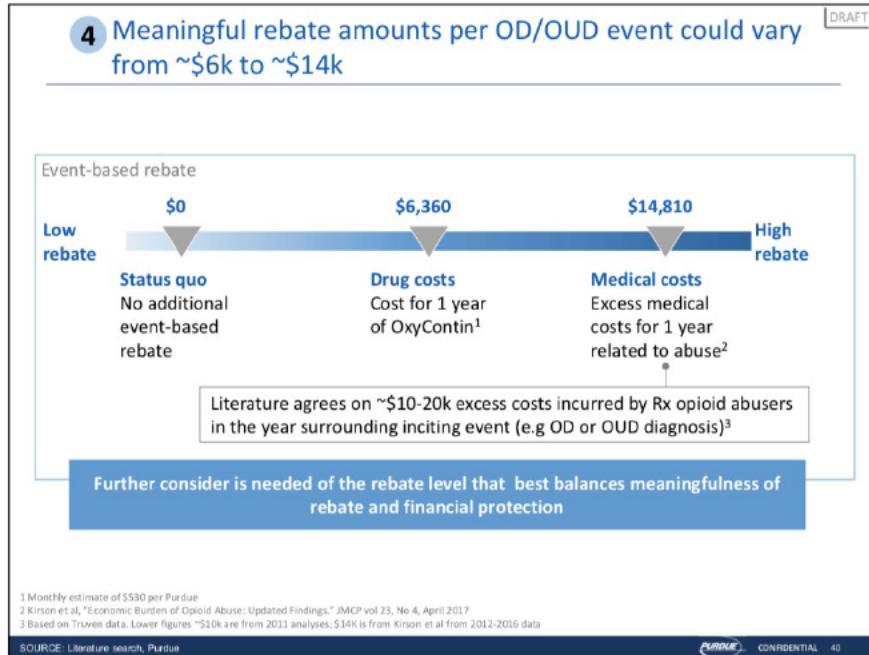
24 _____
25 ³⁶⁶ See <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/why-we-need-bolder-action-to-combat-the-opioid-epidemic>

26 ³⁶⁷ *Id.*

27 ³⁶⁸ “Consultant-ese,” when applied to work as grim as maximizing opioid sales in the face of a national disaster, led
28 one former McKinsey consultant to state: “This is the banality of evil, M.B.A. edition.” Walt Bogdanich and Michael Forsythe, *McKinsey Proposed Paying Pharmacy Companies Rebates for OxyContin Overdoses*, New York Times, November 27, 2020, available at: <https://www.nytimes.com/2020/11/27/business/mckinsey-purdue-oxycontin-opioids.html>

1 493. Helpfully, McKinsey provided estimates for the future costs of these “events.”³⁶⁹
 2 McKinsey noted that, if Purdue were to start making overdose payments, it would “need to
 3 determine which payment amount is optimal.”

4 494. A “meaningful” amount, according to McKinsey, would be somewhere between
 5 six and fifteen thousand dollars for each person who overdoses or develops opioid-use disorder as
 6 a result of Purdue’s drugs:



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 19 495. The money would be paid to health insurers for the increased costs of additional
 20 medical services that resulted from the fact that Purdue’s medications caused opioid-use disorder
 21 and overdoses in people whose health care costs were the payors’ obligation. The money
 22 McKinsey proposed Purdue pay out in these circumstances would not go to the individuals
 23 afflicted, nor the estates of the dead.

24 496. McKinsey’s analysis also suggested that it could predict the number of people who
 25 would become addicted to opioids or overdose on pills sold through Purdue’s downstream

28 ³⁶⁹ McKinsey defined an “event” as “first occurrence for overdose or opioid use disorder.”

1 customers. McKinsey “projected that in 2019, for example, 2,484 CVS customers would either
 2 have an overdose or develop an opioid use disorder.”³⁷⁰

3 497. It is little surprise, then, that McKinsey was concerned with its legal liability for
 4 this work. Within months of recommending “event-based contracts” to Purdue, Martin Elling
 5 raised this concern with Arnab Ghatak and suggested corrective action: destroying evidence.

6
 7 **Message**

8 **From:** Martin Elling [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP
 (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B33C3264F744B04AF05FA59341271BE-MARTIN ELLI]
 9 **Sent:** 7/4/2018 12:10:13 PM
 10 **To:** A G [drarnabghatak@gmail.com]
 11 **Subject:** Re: [EXT]Re: Howdy

12 Have a great fourth. M

13 > On Jul 4, 2018, at 2:01 PM, A G <drarnabghatak@gmail.com> wrote:

14 > Thanks for the heads up. Will do.

15 >> On Jul 4, 2018, at 7:57 AM, Martin Elling <martin_elling@mckinsey.com> wrote:

16 >> Just saw in the FT that Judy Lewent is being sued by states attorneys general for her role on the
 Purdue Board. It probably makes sense to have a quick conversation with the risk committee to see if we
 should be doing anything other than eliminating all our documents and emails. Suspect not but as things
 get tougher there someone might turn to us. M

17 >> +=====+
 >> This email is confidential and may be privileged. If you have received it
 >> in error, please notify us immediately and then delete it. Please do not
 >> copy it, disclose its contents or use it for any purpose.
 >> +=====+

18 498. Elling’s prediction that things would “get tougher” for Purdue would prove
 19 prescient.

20 **1. Guilty Again - 2020**

21 499. On October 20, 2020, Purdue—McKinsey’s co-conspirator—agreed with the
 22 United States Department of Justice to plead guilty to improper marketing of OxyContin and
 23 other opioids again (the “2020 Settlement Agreement”). This time the plea agreement concerned
 24 conduct from 2010 to 2018. The agreement includes \$8.3 billion in penalties from Purdue and
 25 \$225 million from the Sackler family.

26
 27 ³⁷⁰ Walt Bogdanich and Michael Forsythe, *McKinsey Proposed Paying Pharmacy Companies Rebates for OxyContin*
 28 *Overdoses*, N.Y. Times (Nov. 27, 2020, updated Dec. 17, 2020), <https://www.nytimes.com/2020/11/27/business/mckinsey-purdue-oxycontin-opioids.html>

1 500. Purdue pleaded guilty to a dual-object conspiracy to defraud the United States and
2 to violate the Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 331, 353, violating anti-kickback laws,
3 and “using aggressive marketing tactics to convince doctors to unnecessarily prescribe opioids—
4 frivolous prescriptions that experts say helped fuel a drug addiction crisis that has ravaged
5 America for decades.”

6 501. The new plea agreement does not identify Purdue’s co-conspirators, and
7 McKinsey is not identified by name in the agreement. Instead, McKinsey is referred to as the
8 “consulting company.”

9 502. Purdue’s new guilty plea concerns Covered Conduct (as defined in the plea
10 agreement) that directly implicates McKinsey in the conspiracy. It is the same conduct described
11 in this Complaint.

12 503. Indeed, the plea agreement signed by McKinsey’s co-conspirator states bluntly:
13 “Purdue, *in collaboration with [McKinsey]*, implemented many of [McKinsey’s]
14 recommendations.” (emphasis added).

15 504. Further, Purdue admitted that E2E “*was overseen by [McKinsey]* and some of
16 Purdue’s top executives through the creation of the E2E Executive Oversight Team (‘EOT’) and
17 Project Management Office (‘PMO’)” (emphasis added).

18 **2. A Mea Culpa**

19 505. On December 5, 2020, six weeks after Purdue’s second guilty plea, McKinsey
20 issued a rare public statement regarding its work with a specific client on its website. The client
21 was Purdue, and the statement was issued in response to Purdue’s second guilty plea and recent
22 media reports regarding McKinsey’s work selling OxyContin after 2007:
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McKinsey statement on its past work with Purdue Pharma

December 5, 2020—As we look back at our client service during the opioid crisis, we recognize that we did not adequately acknowledge the epidemic unfolding in our communities or the terrible impact of opioid misuse and addiction on millions of families across the country. That is why last year we stopped doing any work on opioid-specific business, anywhere in the world.

Our work with Purdue was designed to support the legal prescription and use of opioids for patients with legitimate medical needs, and any suggestion that our work sought to increase overdoses or misuse and worsen a public health crisis is wrong. That said, we recognize that we have a responsibility to take into account the broader context and implications of the work that we do. Our work for Purdue fell short of that standard.

We have been undertaking a full review of the work in question, including into the 2018 email exchange which referenced potential deletion of documents. We continue to cooperate fully with the authorities investigating these matters.

506. As the statement indicates, McKinsey stopped doing work “anywhere in the world.” Given that Purdue’s operations addressed only the United States, the global reach of McKinsey’s regret is noteworthy.

507. In August 2013, when the Sacklers adopted McKinsey’s “Project Turbocharge” for Purdue, Tim Reiner, a long-time McKinsey consultant, joined Mundipharma. Mundipharma is a separate company—also owned by the Sacklers—that sells opioids internationally.

508. As late as 2019, Mundipharma has been asserting many of the same misleading claims about opioids that previously led to criminal liability in the United States.³⁷¹ McKinsey has long assisted the Sacklers in growing Mundipharma’s opioids market.³⁷² By 2015, McKinsey’s workload with Mundipharma was large enough to merit formal coordination and incorporation with the overall McKinsey team servicing the Purdue account. Around this time, McKinsey’s Elling agreed to assume “a real operational DCS” role with respect to the work that McKinsey was performing for the various Sackler interests, including “integrat[ing] the

³⁷¹ See Kinetz, Erika, *Fake doctors, pilfered medical records drive OxyChina sales*, Associated Press, November 19, 2019, available at: <https://apnews.com/article/4122af46fdb42119ae3db30aa13537c>

³⁷² See, e.g., MCK-MDL2996-0256120; MCK-MDL2996-0327127; MCK-MDL2996-0183279; MCK-MDL2996-0238998; MCK-MDL2996-0286490.

1 Mundipharma stuff.”³⁷³ Even if the various components of the Sackler “family conglomerate”
 2 were nominally independent, McKinsey consolidated its own treatment of its work for all of these
 3 companies as serving just a single client.

4 3. A Hedge Fund

5 509. On February 4, 2021, forty-nine state attorneys general announced a multistate
 6 settlement with McKinsey related to its work for opioid manufacturers. McKinsey agreed to pay
 7 almost \$600 million dollars. At the time of the announcement, most of the participating states
 8 each filed a complaint and consent decree finalizing the settlement.

9 510. Three days after the settlement, it came to light that McKinsey appears to have
 10 benefitted from its work promoting opioids not only through the fees paid to McKinsey by its
 11 clients, but also through investments in opioid-related business made by McKinsey’s own hedge
 12 fund, the McKinsey Investment Office (“MIO”). MIO is the hedge fund referenced above, with
 13 respect to McKinsey’s investment in Teva Pharmaceutical.

14 511. Consultants don’t typically have in-house hedge funds overseeing retirement
 15 accounts and partners’ personal investments. In fact, McKinsey is the only one. “Most large
 16 companies, including all the major consulting firms, hire third-party firms . . . to oversee their
 17 employees’ retirement accounts.”³⁷⁴ MIO manages approximately \$31 billion on behalf of
 18 McKinsey partners, employees, and former partners.³⁷⁵

19 512. Through MIO, McKinsey was heavily invested in the opioid industry, and stood to
 20 gain financially from the continuation of the opioid crisis. It even invested in opioid addiction
 21 treatment businesses—a growing industry, as McKinsey knew.

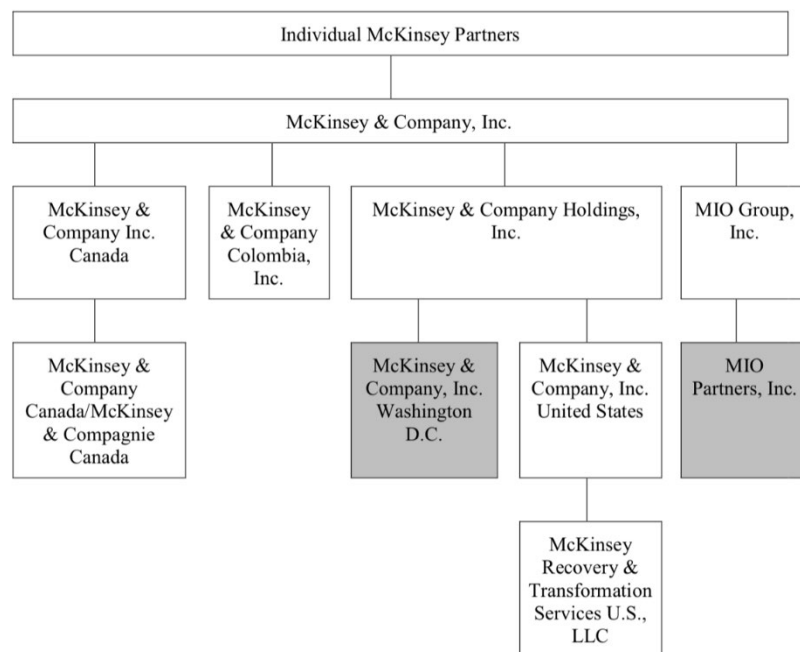
25 ³⁷³ MCK-MDL2996-0210149

26 ³⁷⁴ Gretchen Morgenson, “Consulting giant McKinsey allegedly fed the opioid crisis. Now an affiliate may profit from
 treating addicts,” *NBC News*, February 8, 2021, available at <https://www.nbcnews.com/news/us-news/consulting-giant-mckinsey-allegedly-fed-opioid-crisis-now-affiliate-may-n1256969>

27 ³⁷⁵ SEC Order dated November 19, 2020 at Para. 5, available at: <https://www.sec.gov/litigation/admin/2021/ia-5912.pdf>. That \$31 billion under management would make MIO Partners the thirteenth largest hedge fund on Earth.
 28 See <https://www.pionline.com/interactive/largest-hedge-fund-managers-2021>.

1 513. In short, “during the years McKinsey was helping opioid makers propel sales of
2 the drugs, MIO Partners held stakes in companies that profited from increased usage.”³⁷⁶

3 514. To understand MIO, an organizational chart of McKinsey is helpful:



16 515. MIO Group, Inc., and MIO Partners, Inc. are directly-owned subsidiaries of
17 McKinsey & Company, Inc. Given that McKinsey advises countless large corporations,
18 McKinsey’s hedge fund inevitably invests in McKinsey’s clients.

19 516. MIO manages money for pension plans sponsored by McKinsey in which current
20 and former McKinsey employees participate, as well as privately-offered investment funds
21 available to partners and former partners. Today, nine of MIO’s eleven directors are current or
22 former McKinsey partners. Prior to 2017, there were no outside directors at MIO.

23 517. MIO structures its investment activities in three principal ways: (1) approximately
24 50-60% of MIO’s assets are managed by third-party money managers, who have sole discretion
25 on what securities to buy with MIO’s money, and where MIO may or may not have information
26 regarding which securities the third-party money manager has purchased for MIO’s benefit; (2)

27 ³⁷⁶ Gretchen Morgenson, “Consulting giant McKinsey allegedly fed the opioid crisis. Now an affiliate may profit from
28 treating addicts,” *NBC News*, February 8, 2021, available at <https://www.nbcnews.com/news/us-news/consulting-giant-mckinsey-allegedly-fed-opioid-crisis-now-affiliate-may-n1256969>

1 “separately managed accounts,” comprising approximately 40% of MIO’s holdings, are portfolios
2 of securities managed by a third-party money manager, but where MIO “knows what securities
3 are held through each account,” and; (3) direct investments, where MIO invests its own money
4 directly, which comprises approximately 10% of MIO’s investments.

5 518. In other words, for *at least 40%* of MIOs holdings, McKinsey partners are able to
6 know the specific investments held by the various MIO funds. “MIO has a ledger for every
7 security in their managed accounts.”³⁷⁷ That comprises a pool of capital worth more than \$6
8 billion.

9 519. MIO is run for the benefit of McKinsey’s partners and, to a separate extent,
10 McKinsey’s employees. Those individuals (and, crucially, former McKinsey partners) invest their
11 own money in MIO, and their access to those investment opportunities constitutes a meaningful
12 and important component of those individuals’ compensation. MIO has, “at a minimum, the
13 ability to view the individual securities that account for approximately 40 to 50 percent.” This is
14 approximately \$6 billion dollars of invested capital. What is more, MIO *directly invests*
15 approximately 10% of its assets. That is \$1.5 billion MIO directly invests in securities without the
16 use of any outside money manager. These numbers exclude leverage.

17 520. From a conflicts perspective, the fact that *former* partners may participate in MIO
18 investments merits consideration. With respect to McKinsey’s opioid investments, it is notable to
19 consider just who some of those “former partners” are. As noted above, Rajiv de Silva, Chief
20 Executive Officer of opioid defendant Endo Pharmaceuticals, is a former McKinsey partner. Kare
21 Shultz, Chief Executive Officer of opioid defendant Teva Pharmaceutical, is a former McKinsey
22 partner. Frank Scholz, President of opioid defendant SpecGX, a subsidiary of Mallinckrodt, is a
23 former McKinsey partner. Marc Owen, President of opioid defendant McKesson, is a former
24 McKinsey partner. This list is merely illustrative; it is not exhaustive.

25 521. The result is the prospect of individual executives at various opioid manufacturing
26 and distribution companies obtaining financial gain from the ongoing propagation of the opioid

27 ³⁷⁷ Michelle Celarier, *McKinsey’s Managed Accounts Come Under Scrutiny in Trial*, Institutional Investor, February
28 5, 2020, *available at*: <https://www.institutionalinvestor.com/article/b1k6wnn251s472/McKinsey-s-Managed-Accounts-Come-Under-Scrutiny-in-Trial>

1 crisis *not* via compensation from their employers, but via participating in investments alongside
2 their *former* employer (and, in many cases, current consultant).

3 522. Three days after McKinsey and the state attorneys general announced their
4 settlement, NBC News reported that MIO, McKinsey’s hedge fund, owned opioid-related
5 investments during the time that it advised its opioid clients.

6 523. One is Deerfield Management Co., “a \$10 billion dollar health care investment
7 firm based in New York.”³⁷⁸ As ever, “two top Deerfield executives previously worked at
8 McKinsey.” A retirement fund managed by MIO held a \$108 million stake in funds managed by
9 Deerfield and invested in opioid industry participants. “In 2017, for example, Deerfield was a 6
10 percent shareholder in Mallinckrodt, a major opioid maker.”³⁷⁹ From 2011 through 2016,
11 Deerfield held a stake of up to \$90 million in Teva. Deerfield also took stakes in the distributors
12 described above, including McKesson and Cardinal Health.³⁸⁰

13 524. McKinsey is also invested in treatment, an inevitable growth industry sprouting
14 from the over-selling of opioids. Separate from its investments with Deerfield, MIO is also
15 invested in Adamis Pharmaceuticals, “a company that develops products to treat opioid
16 overdoses,” and therefore “may also benefit from opioid settlement funds” paid by McKinsey as a
17 result of its settlement with the states. As of 2020, MIO owned 26% of the Adamis’ preferred
18 shares through another outside investment manager (not Deerfield).³⁸¹ Separately, Deerfield
19 invested \$331 million in Recovery Centers of America, an addiction treatment company that
20 operates facilities in states that McKinsey recently settled with.³⁸²

21 525. These relationships and investments give a glimpse into the myriad means
22 McKinsey deploys to make money. Consulting is more than giving advice. Indeed, On November
23 19, 2021, MIO Partners agreed to pay an \$18 million fine to the SEC due to MIO’s possession of
24 material nonpublic information related to its holdings, information obtained through consulting.

25 ³⁷⁸ Gretchen Morgenson, “Consulting giant McKinsey allegedly fed the opioid crisis. Now an affiliate may profit from
26 treating addicts.,” *NBC News*, February 8, 2021, *available at* <https://www.nbcnews.com/news/us-news/consulting-giant-mckinsey-allegedly-fed-opioid-crisis-now-affiliate-may-n1256969>

27 ³⁷⁹ *Id.*

28 ³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

1 **VI. TOLLING OF STATUTES OF LIMITATIONS**

2 526. McKinsey is equitably estopped from relying upon a statute of limitations defense.
3 Alongside its clients, McKinsey undertook active efforts to deceive the Plaintiffs and to
4 purposefully conceal its unlawful conduct and fraudulently assure the public, including Plaintiffs,
5 that opioids were non-addictive, effective, and safe for the treatment of long-term chronic pain
6 and non-acute, non-cancer pain with the goal of increased sales, greater availability and access to
7 opioids, and maximizing profits.

8 527. McKinsey and its clients were deliberate in taking steps to conceal their
9 conspiratorial behavior and active role in the deceptive marketing of opioids. This deceptive
10 marketing—which included the above falsehoods that opioids were safer, less subject to abuse,
11 and less addictive than other pain medications—was a substantial factor in the oversupply of
12 opioids through overprescribing and suspicious sales, all of which fueled the opioid epidemic.

13 528. McKinsey deliberately advised its clients on marketing strategies and tactics to
14 bolster their opioid products as non-addictive, safe, and efficacious without reliable scientific
15 evidence to support same. McKinsey's consulting services were given confidentially, and both
16 McKinsey and its clients concealed the content of those services from the public. In doing so,
17 McKinsey concealed its role in shaping, editing, and providing the content of the false and
18 misleading materials addressing pain management and opioids that were widely disseminated to
19 regulators, prescribers, and the public at large, including Plaintiffs.

20 529. McKinsey also concealed from Plaintiffs the existence of the Plaintiffs' claims by
21 hiding it and its client's lack of cooperation with law enforcement. For example, in May 2007,
22 Purdue and three of its executives pled guilty to federal charges of misbranding OxyContin in
23 what the company acknowledged was an attempt to mislead doctors about the risk of addiction
24 and entered into a Corporate Integrity Agreement explained above. Purdue was ordered to pay
25 \$600 million in fines and fees. In its plea, Purdue admitted that its promotion of OxyContin was
26 misleading and inaccurate, misrepresented the risk of addiction, and was unsupported by science.
27 Additionally, Michael Friedman, the company's president, pled guilty to a misbranding charge
28 and agreed to pay \$19 million in fines; Howard R. Udell, Purdue's top lawyer, also pled guilty

1 and agreed to pay \$8 million in fines; and Paul D. Goldenheim, its former medical director, pled
2 guilty as well and agreed to pay \$7.5 million in fines.

3 530. Nevertheless, even after the guilty pleas, Purdue continued to pay doctors on
4 speakers' bureaus to promote the liberal prescribing of OxyContin for chronic pain and fund
5 seemingly neutral organizations to disseminate the message that opioids were non-addictive as
6 well as other misrepresentations. Purdue also assembled an army of lobbyists to fight any
7 legislative actions that might encroach on its business. Between 2006 and 2015, Purdue and other
8 painkiller producers, along with their associated nonprofits, spent nearly \$900 million dollars on
9 lobbying and political contributions—eight times what the gun lobby spent during that period.
10 McKinsey participated extensively in these actions and provided Purdue with strategies and
11 assistance to maximize sales as described in this Complaint. McKinsey knew that the actions it
12 took with Purdue were unlawful, and yet deliberately proceeded in order to increase Purdue's
13 sales and profits, and in turn to serve McKinsey's financial interests.

14 531. McKinsey affirmatively sought to convince the public that its clients' legal duties
15 to report suspicious sales of opioids had been satisfied through public assurances that they were
16 working to curb the opioid epidemic. For example, after the 2007 Purdue guilty plea described
17 above, McKinsey provided services to protect the company's public image and sales, aiding in
18 the concealment of the addictive nature and dangers associated with opioid use and denying
19 blame for the epidemic, attributing it instead solely to abuse and inappropriate prescribing. At the
20 guidance and advice of McKinsey, Purdue and other McKinsey clients publicly portrayed
21 themselves as committed to working diligently with law enforcement and others to prevent
22 diversion of these dangerous drugs and curb the opioid epidemic, and they made broad promises
23 to change their ways, insisting they were good corporate citizens. Instead, McKinsey assisted
24 Purdue, for example, with marketing campaigns and messaging that continued business as usual,
25 indiscriminately targeting high prescribers and promoting opioids as safe but avoiding the pitfalls
26 of the Corporate Integrity Agreement. These repeated misrepresentations misled regulators,
27 prescribers, and the public, including the Plaintiffs, and deprived Plaintiffs of actual or implied
28 knowledge of facts sufficient to put the Plaintiffs on notice of potential claims.

1 532. Plaintiffs did not discover the nature, scope, and magnitude of McKinsey's
2 misconduct, and its full impact on Plaintiffs, and could not have acquired such knowledge earlier
3 through the exercise of reasonable diligence.

4 533. Prior to the applicable limitations period, Plaintiffs did not suspect, and had no
5 reason to suspect, that McKinsey's conduct caused their injuries, including the consumption of
6 Plaintiffs' resources as the opioid epidemic remains unabated.

7 534. McKinsey intended that its actions and omissions made with its clients would be
8 relied upon, including by the Plaintiffs. The Plaintiffs did not know and did not have the means to
9 know the truth due to McKinsey and its clients' actions and omissions.

10 535. The Plaintiffs reasonably relied on the affirmative statements developed by
11 McKinsey and made by its clients regarding their purported compliance with their obligations
12 under the law and consent orders, which were false and only intended to save the clients' public
13 image.

14 536. McKinsey's fraudulent concealment has tolled the running of any statute of
15 limitations. Through it and its clients' affirmative misrepresentations and omissions, McKinsey
16 actively concealed from Plaintiffs the risks associated with opioids that led to the opioids crisis.
17 The wrongdoing, misrepresentations, and omissions by McKinsey has not ceased because the
18 public nuisance remains unabated.

19 **VII. HARM CAUSED TO SUBDIVISION PLAINTIFFS**

20 537. By increasing opioid prescriptions and use, McKinsey fueled the opioid epidemic
21 alongside its clients. The deceptive marketing strategies McKinsey developed and helped to
22 implement worked, as described above. Deceptive marketing, including marketing McKinsey
23 worked to develop and implement, substantially contributed to an explosion in the use of opioids
24 across the country. Approximately 20% of the population between the ages of 30 and 44, and
25 nearly 30% of the population over 45, have used opioids. Opioids are the most common treatment
26 for chronic pain, and 20% of office visits now include the prescription of an opioid.

27 538. Compounding the harms from deceptive marketing, McKinsey's strategy and
28 implementation also expanded Purdue's role in supplying opioids beyond even what an expanded

1 market could bear. It sought to increase the sales from prescribers who would have raised red
2 flags of potential diversion, and profiting from Purdue’s role in funneling opioids into Plaintiffs’
3 communities beyond what any legitimate market, even an expanded market for chronic pain,
4 could bear.

5 539. Scientific evidence demonstrates a close link between opioid prescriptions and
6 opioid abuse. For example, a 2007 study found “a very strong correlation between therapeutic
7 exposure to opioid analgesics, as measured by prescriptions filled, and their abuse.”³⁸³ McKinsey
8 evidently understands this. In a September 2016 on-line article, McKinsey asserts that “[t]here is
9 no doubt that more consistent use of best practices—across geographic areas, institutions, and
10 clinicians—would provide tremendous help in combating the crisis” and describes examples of
11 such practices as “successful in reducing prescribing.”³⁸⁴

12 540. There is a “parallel relationship between the availability of prescription opioid
13 analgesics through legitimate pharmacy channels and the diversion and abuse of these drugs and
14 associated adverse outcomes.”³⁸⁵ The opioid epidemic is “directly related to the increasingly
15 widespread misuse of powerful opioid pain medications.”³⁸⁶

16 541. Compounding the harm from deceptive marketing, McKinsey worked with Purdue
17 to continue and grow the opioid sales of prescribers that raised red flags of diversion, despite
18 Purdue’s legal obligations to report and halt supply. In doing so, it enabled an oversupply of
19 opioids, which has allowed non-patients to become exposed to opioids, and facilitates access to
20 opioids for both patients who could no longer access or afford prescription opioids and addicts
21 struggling with relapse.

22 542. Most of the illicit use originates from *prescribed* opioids. It has been estimated
23 that 60% of the opioids that are abused come, directly or indirectly, through physicians’
24 prescriptions.

25 ³⁸³ Theodore J Cicero *et al.*, *Relationship Between Therapeutic Use and Abuse of Opioid Analgesics in Rural,*
26 *Suburban, and Urban Locations in the United States*, 16.8 *Pharmacoepidemiology and Drug Safety*, 827-40 (2007).

27 ³⁸⁴ <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/why-we-need-bolder-action-to-combat-the-opioid-epidemic>

28 ³⁸⁵ Dart, MD, *et al.*, *Trends in Opioid Analgesic Abuse and Mortality in the United States*, *New Engl. J. Med.*, 372:241-248 (Jan. 15, 2015).

³⁸⁶ Califf, MD, *et al.*, *A Proactive Response to Prescription Opioid Abuse*, *New Engl. J. Med.* (Apr. 14, 2016).

1 543. As McKinsey itself has recognized in citing a study reaching this conclusion,
2 roughly 80% of heroin users previously used prescription opioids.³⁸⁷ Ohio’s Prescription Drug
3 Abuse Task Force similarly has found that individuals addicted to prescription opioids often
4 transition to heroin due to its lower cost, ready availability, and similar high. Likewise, a study by
5 the Ohio Substance Abuse Monitoring Network reported on the connection between oxycodone use and
6 heroin addiction, finding that “[y]oung new heroin abusers seeking treatment reported OxyContin abuse
7 prior to becoming addicted to heroin,” that several reporting resorting to heroin after OxyContin became
8 too expensive or difficult to obtain, and that “[a]buse of OxyContin prior to the abuse of heroin appears
9 to be a common pattern.”³⁸⁸

10 544. In fact, people who are addicted to prescription opioid painkillers are 40 times
11 more likely to be addicted to heroin. The CDC identified addiction to prescription pain
12 medication as the strongest risk factor for heroin addiction. A more recent, and even more deadly
13 problem stemming from the prescription opioid epidemic involves fentanyl—a powerful opioid
14 prescribed for cancer pain or in hospital settings that, in synthetic form, has made its way into
15 Plaintiffs’ communities. Carfentanil, a powerful derivative of fentanyl, has increasingly been
16 found in heroin and fentanyl sold illicitly. Carfentanil is so strong that it is typically used in
17 veterinary medicine to sedate large wild animals such as elephants, and has been researched as a
18 chemical weapon. A dose the size of a grain of salt can rapidly lead to deadly overdose in
19 humans.

20 545. This epidemic of opioid addiction, abuse, and use, has caused harm to Plaintiffs
21 and the Class. The types of harm incurred by various Plaintiff subdivisions are:

22 a. Decreases in funding available for public services for which funding was
23 lost because it was diverted to other public services designed to address the opioid epidemic;

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26 ³⁸⁷ <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/why-we-need-bolder-action-to-combat-the-opioid-epidemic>

27 ³⁸⁸ Ohio Substance Abuse Monitoring Network, OSAM Rapid Response Investigation Reveals Connection Between
28 OxyContin Abuse and Heroin Addiction in Some Individuals, *available at*
<http://mha.ohio.gov/Portals/Wassets/Learning/OSAMaan02ConnxtsOxy.pdf>

1 b. Increased costs for providing healthcare and medical care, additional
2 therapeutic and prescription drug purchases, and other treatments for patients suffering from
3 opioid-related addiction or disease, including overdoses and deaths;

4 c. Increased costs of training emergency and/or first responders and other city
5 employees in the proper treatment of drug overdoses;

6 d. Increased costs associated with providing police officers, firefighters,
7 emergency and/or first responders, and other city employees with naloxone – an opioid antagonist
8 used to block the deadly effects of opioids in the context of overdose;

9 e. Increased costs associated with emergency responses by police officers,
10 firefighters, emergency and/or first responders, and other city employees to opioid overdoses;

11 f. Increased costs for providing mental-health services, treatment, counseling,
12 rehabilitation services, and social services to victims of the opioid epidemic and their families;

13 g. Increased costs associated with the destruction of Plaintiffs’ property and
14 public infrastructure, including damages caused by improper needle and syringe disposal; and

15 h. Increased costs associated with maintaining incarceration systems,
16 including training and equipment to detect opioids being sent into the jails;

17 i. Replacing Plaintiff-owned property damaged by, e.g., the improper
18 disposal of needles;

19 j. Purchases of opioid antagonists to prevent overdose fatalities;

20 k. Costs of caring for children from homes with drug abuse, including
21 children themselves addicted to opioids;

22 l. Increased costs associated with increased drug crimes, including costs for
23 prosecutors, jail, adult probation, indigent defense, common pleas court operations, drug court
24 operations, juvenile court operations, and juvenile probation and detention;

25 m. Increased costs associated with substance use disorder treatment, including
26 outreach, screening and assessment, outpatient counseling, intensive outpatient counseling, family
27 counseling, home-based counseling, and referral; and

28 n. Costs associated with running needle exchanges.

1 546. Plaintiffs seek to recover for harm caused to, and damages incurred by,
2 themselves, not for harm or damages incurred by individual residents or by the Plaintiffs' States.

3 **VIII. CLASS ACTION ALLEGATIONS**

4 547. Plaintiffs reallege all of the foregoing allegations and incorporate them by
5 reference as if fully set forth in their following Claims for Relief.

6 548. Plaintiffs bring this case on behalf of themselves and as a class action under Fed.
7 R. Civ. P. 23(b)(1), 23(b)(2), 23(b)(3), and 23(c)(4) on behalf of all members of the following
8 Class:

9 any (1) General Purpose Government (including, but not limited to, a municipality,
10 county, county subdivision, city, town, township, parish, village, borough, gore, or
11 any other entity that provides municipal-type government), (2) Special District
12 within a State, and (3) any other subdivision, subdivision official (acting in an
13 official capacity on behalf of the subdivision) or sub-entity of or located within a
14 State (whether political, geographical or otherwise, whether functioning or non-
15 functioning, regardless of population overlap, and including, but not limited to,
16 nonfunctioning governmental units and public institutions). The foregoing shall
17 specifically include but not be limited to the litigating subdivisions listed in
18 Schedule A. The foregoing shall exclude any sub-entity of Indiana, American
19 Samoa, the Commonwealth of Guam, the Commonwealth of the Northern Mariana
20 Islands, the U.S. Virgin Islands, and all school districts. "General Purpose
Government," and "Special District" shall correspond to the "basic types of local
governments" recognized by the U.S. Census Bureau and match the 2017 list of
Governmental Units.³⁸⁹ The General Purpose Governments are county, municipal,
and township governments.³⁹⁰ "Fire District," "Health District," "Hospital
District," and "Library District" shall correspond to categories of Special Districts
recognized by the U.S. Census Bureau.³⁹¹ References to a State's Subdivisions or
to a Subdivision "in," "of," or "within" a State include Subdivisions located within
the State even if they are not formally or legally a sub-entity of the State; provided,
however, that a "Health District" that includes any of the following words or phrases

21 ³⁸⁹ <https://www.census.gov/data/datasets/2017/econ/gus/public-use-files.html>.

22 ³⁹⁰ *E.g.*, U.S. Census Bureau, "Technical Documentation: 2017 Public Use Files for State and
23 Local Government Organization" at 7 (noting that "the Census Bureau recognizes five basic types
24 of local governments," that three of those are "general purpose governments" (county governments,
municipal governments, and township governments), and that the other two are "school district and
special district governments"), [https://www2.census.gov/programs-surveys/gus/datasets/2017/
2017_gov_org_meth_tech_doc.pdf](https://www2.census.gov/programs-surveys/gus/datasets/2017/2017_gov_org_meth_tech_doc.pdf).

25 ³⁹¹ A list of 2017 Government Units provided by the Census Bureau identifies 38,542 Special
26 Districts and categorizes them by "FUNCTION_NAME." "Govt_Units_2017_Final" spreadsheet,
"Special District" sheet, included in "Independent Governments – list of governments with
27 reference information," [https://www.census.gov/data/datasets/2017/econ/gus/public-use-
28 files.html](https://www.census.gov/data/datasets/2017/econ/gus/public-use-files.html). As used herein, "Fire District" corresponds to Special District function name "24 –
Local Fire Protection," "Health District" corresponds to Special District function name "32 –
Health," "Hospital District" corresponds to Special District function name "40 – Hospitals," and
"Library District" corresponds to Special District function name "52 – Libraries." *See id.*

1 in its name shall not be considered a Subdivision: mosquito, pest, insect, spray,
2 vector, animal, air quality, air pollution, clean air, coastal water, tuberculosis, and
sanitary.

3 549. Plaintiffs reserve the right to amend or modify the Class definition with greater
4 specificity or further division into subclasses or limitation to particular issues.

5 550. **Numerosity.** The potential members of the Class as defined are so numerous that
6 joinder of all members is unfeasible and not practicable. While the precise number of Class
7 Members has not been determined at this time, Plaintiffs are informed and believe there are
8 approximately 3,142 counties and 19,495 incorporated municipalities within the United States.

9 551. **Commonality and Predominance.** There are questions of law and fact common
10 to the Class that predominate over any questions affecting only Individual Class Members. These
11 common questions of law and fact include, without limitation:

12 a. Defendants' conduct in creating, proposing, and implementing sales and
13 marketing strategies for opioids manufactured by Purdue before and after Purdue's first guilty
14 plea in 2007 relating to misbranding of OxyContin;

15 b. Whether Defendants performed reasonable due diligence in ascertaining
16 the risks associated with Defendants' strategies for "turbocharging" OxyContin sales at Purdue in
17 2013 and thereafter;

18 c. Whether Defendants' implementation of its own sales and marketing
19 strategies for its client, Purdue, caused or contributed to an increase in opioid addiction;

20 d. Whether Defendants' conduct with respect to developing and
21 implementing nationwide opioid sales and marketing practices at Purdue was negligent, grossly
22 negligent, or reckless;

23 e. Whether Defendants' conduct with respect to developing and
24 implementing nationwide opioid sales and marketing practices at Purdue caused or contributed to
25 causing a public nuisance;

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1 f. Whether Defendants' conduct with respect to developing and
2 implementing nationwide opioid sales and marketing practices at Purdue constituted fraudulent
3 misrepresentations to healthcare providers regarding the safety of Purdue's opioid products;

4 g. Whether Defendants conspired with or aided and abetted Purdue with
5 respect to developing and implementing nationwide opioid sales and marketing practices at
6 Purdue; and

7 h. Whether Defendants' acceptance of funds from Purdue and other opioid
8 manufacturers regarding Defendants' work promulgating and implementing nationwide opioid
9 sales and marketing strategies constitutes unjust enrichment.

10 552. **Typicality.** The claims of the named Plaintiffs are typical to the claims of the
11 Class. Plaintiffs and all Class Members were exposed to undeviating behavior and sustained
12 damages arising out of and caused by Defendants' unlawful conduct.

13 553. **Adequacy of Representation.** Plaintiffs will fairly and adequately represent and
14 protect the interests of the members of the Class. Plaintiffs have retained counsel with substantial
15 experience in prosecuting complex litigation and class actions. Plaintiffs and their counsel are
16 committed to vigorously prosecuting this action on behalf of the Class Members and have the
17 financial resources to do so. None of the Plaintiffs or their counsel have any interest adverse to
18 those of the other Class Members.

19 554. **Superiority of Class Action.** A class action is superior to other available methods
20 for the fair and efficient adjudication of this controversy since joinder of all the members of the
21 Class is impracticable. Furthermore, the adjudication of this controversy through a class action
22 will avoid the possibility of inconsistent and potentially conflicting adjudication of the claims
23 asserted herein and/or varying legal outcomes that would establish incompatible standards of
24 conduct. A class action would provide a superior vehicle for resolving the issues for all similarly
25 affected and situated. Moreover, based upon the considerable anticipated expense of the
26 litigation, completion of individual cases is not financially feasible for most Class Members,
27 especially considering the amount of damages in play for each member of the Class. There will
28 be no difficulty in the management of this action as a class action.

1 555. **Policies Generally Applicable to Class.** Defendants have acted and failed to act
2 on grounds generally applicable to Plaintiffs and other Class Members, requiring the Court’s
3 imposition of uniform relief to ensure compatible standards of conduct toward the Class.

4 556. **Notice to the Class.** Plaintiffs contemplate that the eventual issuance of notice to
5 the proposed Class Members would set forth the subject and nature of the instant action.
6 Plaintiffs believe that information related to the total number of counties and municipalities in the
7 United States at issue are sufficient for email notice to reach the vast majority of putative Class
8 Members. To the extent that any further notices may be required, published notice in appropriate
9 newspapers, professional publications, and journals can also be provided.

10 **IX. CLAIMS FOR RELIEF**

11 557. Plaintiffs reallege all of the foregoing allegations and incorporate them by
12 reference as if fully set forth in their following Claims for Relief.

13 **B. Multiple States’ Plaintiffs**

14 1. **Racketeer Influenced and Corrupt Organizations (RICO), 18 U.S.C.**
15 **§ 1961, et seq.**
16 **(All Plaintiffs who pleaded RICO claims in underlying complaints)**

17 558. This claim is brought by all Plaintiffs, and by Named Plaintiffs on behalf of
18 themselves and the Class against McKinsey for actual damages, treble damages, and available
19 injunctive and/or equitable relief under 18. U.S.C. § 1964, for violations of 18 U.S.C. § 1961, *et*
20 *seq.*, specifically, 18 U.S.C. § 1962(c) and (d).

21 559. Section 1962(c) makes it “unlawful for any person employed by or associated with
22 any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to
23 conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a
24 pattern of racketeering activity” 18 U.S.C. § 1962(c).

25 560. At all relevant times, McKinsey is and has been a “person” under 18 U.S.C. §
26 1961(3) because it is capable of holding, and does hold, “a legal or beneficial interest in
27 property.”
28

1 561. Plaintiffs and the Class Members are each a “person,” as the term is defined in 18
2 U.S.C. § 1961(3), and have standing to sue under 18 U.S.C. § 1964(c) as they were and are
3 injured in their business and/or property “by reason of” the RICO Act violations described herein.

4 562. Section 1962(d) makes it unlawful for “any person to conspire to violate” Section
5 1962(c), among other provisions. *See* 18 U.S.C. § 1962(d).

6 563. McKinsey conducted the affairs of an enterprise through a pattern of racketeering
7 activity, in violation of 18 U.S.C. § 1962(c) and § 1962(d).

8 **Description of the Enterprise**

9 564. Section 1961(4) defines an enterprise as “any individual, partnership, corporation,
10 association, or other legal entity, and any union or group of individuals associated in fact although
11 not a legal entity.” 18 U.S.C. § 1961(4).

12 565. Under 18 U.S.C. § 1961(4), a RICO “enterprise” may be an association-in-fact
13 that, although it has no formal legal structure, has (i) a common purpose, (ii) relationships among
14 those associated with the enterprise, and (iii) longevity sufficient to pursue the enterprise’s
15 purpose. *See Boyle v. United States*, 556 U.S. 938, 946 (2009).

16 566. Opioid manufacturers, including Purdue, Johnson & Johnson, Janssen, Cephalon,
17 Endo, and Mallinckrodt (collectively the “Opioid Manufacturers”), together with McKinsey,
18 which participated in the marketing and sale of opioids as described in this Complaint,
19 (collectively, the “Opioid Marketing Enterprise Members” or the “Enterprise Members”) engaged
20 in a scheme to unlawfully increase sales of opioids—and grow their share of the prescription
21 painkiller market and the market as a whole—through repeated and systematic
22 misrepresentations, concealments, and omissions of material fact about the safety and efficacy of
23 opioids for treating long-term chronic pain, together with other deceptive and fraudulent acts and
24 practices, as described in the Factual Allegations section of this Complaint.

25 567. In order to unlawfully increase the demand for opioids and thereby increase their
26 own profits despite their knowledge of the harmful effects that would follow, the Opioid
27 Marketing Enterprise Members formed an association-in-fact enterprise (the “Opioid Marketing
28 Enterprise” or the “Enterprise”). The Opioids Manufacturers worked together to accomplish their

1 aims, with McKinsey serving as a go-between that held all of the companies together and helped
2 coordinate the deceptive marketing and sales strategies. Through McKinsey and their own
3 personal relationships, the members of the Opioid Marketing Enterprise had the opportunity to
4 form and take actions in furtherance of the Opioid Marketing Enterprise’s common purpose: lying
5 to prescribers and Plaintiffs in order to increase sales of addictive and dangerous drugs and line
6 the enterprise members’ pockets. The Opioid Marketing Enterprise Members’ substantial
7 financial contributions to the Opioid Marketing Enterprise and the advancement of opioids-
8 friendly messaging fueled the U.S. opioid epidemic.

9 568. In the alternative, the association-in-fact Opioid Marketing Enterprise existed just
10 between McKinsey and Purdue, who worked together to unlawfully increase sales of opioids—
11 and grow Purdue’s share of the prescription painkiller market—through repeated and systematic
12 misrepresentations about the safety and efficacy of opioids for treating long-term chronic pain.
13 McKinsey knew Purdue was marketing its opioids illegally and fueling an opioid epidemic, but
14 using the knowledge it gained from its work with other opioid manufacturers, McKinsey joined
15 forces with Purdue to turbocharge the opioids market in order to profit from this crisis.

16 569. The Controlled Substances Act (the “CSA”) and its implementing regulations
17 require that “[e]very person who manufactures, distributes, dispenses, imports, or exports any
18 controlled substance,” including opioids, become a “registrant.” *See* 21 U.S.C. § 823(a)-(b); 21
19 C.F.R. § 1301.11(a). These registrants, including opioid manufacturer and distributors, must
20 maintain a system to identify and report suspicious orders, including orders of unusual size or
21 frequency, or orders deviating from a normal pattern, and maintain effective controls against
22 diversion of controlled substances. *See* 21 U.S.C. § 823; 21 C.F.R. § 1301.74(b).

23 570. Despite these duties, McKinsey and the other Enterprise Members engaged in a
24 scheme with the overarching purpose of materially expanding prescription opioid use by altering
25 the medical community’s opioid prescribing practices through repeated fraudulent statements and
26 misrepresentations. The Opioid Marketing Enterprise’s scheme was sophisticated, well-
27 developed, and fraudulent and was designed to increase the prescription rate for opioid
28 medications the Enterprise Members knew were dangerous and highly addictive. At all relevant

1 times, McKinsey was aware of the conduct of the Enterprise, was a knowing and willing
2 participant in that conduct, and reaped profits from that conduct in the form of payments from
3 other Enterprise Members as a reward for work done to increase sales and distribution of
4 prescription opioids.

5 **The Common Purpose and Scheme of the Opioid Marketing Enterprise.**

6 571. The Opioid Marketing Enterprise Members, through the Opioid Marketing
7 Enterprise, concealed the true risks and dangers of opioids from the medical community and
8 Plaintiffs and made misleading statements and misrepresentations about opioids that downplayed
9 the risk of addiction and exaggerated the benefits of opioid use. These misleading statements
10 included: (1) that addiction is rare among patients taking opioids for pain; (2) that addiction risk
11 can be effectively managed; (3) that symptoms of addiction exhibited by opioid patients are
12 actually symptoms of an invented condition, which the Opioid Marketing Enterprise Members
13 named “pseudoaddiction”; (4) that withdrawal is easily managed; (5) that increased dosing
14 presents no significant risks; (6) that long-term use of opioids improves function; (7) that the risks
15 of alternative forms of pain treatment are greater than the adverse effects of opioids; (8) that use
16 of time-released dosing prevents addiction; and (9) that abuse-deterrent formulations provide a
17 solution to opioid abuse.

18 572. The scheme devised, implemented, and conducted by the Opioid Marketing
19 Enterprise Members was a common course of conduct designed to ensure that the Opioid
20 Marketing Enterprise Members unlawfully increased their sales and profits through concealment
21 and misrepresentations about the addictive nature and effective use of the Opioid Manufacturers’
22 drugs. The Opioid Marketing Enterprise Members acted together for a common purpose and
23 perpetuated the Opioid Marketing Enterprise’s scheme.

24 573. There was regular communication between the Opioid Marketing Enterprise
25 Members in which information was shared, misrepresentations were coordinated, and payments
26 were exchanged. The Opioid Marketing Enterprise Members functioned as a continuing unit for
27 the purpose of implementing the Opioid Marketing Enterprise’s scheme and common purpose,
28 and each agreed and took actions to hide the scheme and continue its existence.

1 574. As public scrutiny and media coverage focused on how opioids ravaged
2 communities throughout the United States, McKinsey did not challenge Purdue or other
3 manufacturers' misrepresentations, seek to correct their previous misrepresentations, terminate
4 their role in the Opioid Marketing Enterprise, nor disclose publicly that the risks of using opioids
5 for chronic pain outweighed their benefits and were not supported by medically acceptable
6 evidence. Instead, despite its knowledge of the ongoing fraud and the danger it posed, McKinsey
7 continued to participate in the Opioid Marketing Enterprise for financial gain.

8 575. The impact of the Opioid Marketing Enterprise's scheme is still in place—i.e., the
9 opioids continue to be prescribed and used for chronic pain throughout the United States, and the
10 epidemic continues to injure Plaintiffs and the Class and consume the resources of Plaintiffs and
11 the Class.

12 576. The evidence shows that the Opioid Marketing Enterprise Members, including
13 McKinsey, were each willing participants in the Opioid Marketing Enterprise, had a common
14 purpose and interest in the object of the scheme, and functioned within a structure designed to
15 effectuate the Enterprise's purpose.

16 **The Conduct of the Opioid Marketing Enterprise Violated Civil RICO.**

17 577. From at least 2004 to the present, each of the Opioid Marketing Enterprise
18 Members played some part in directing the affairs of the Opioid Marketing Enterprise and
19 participated in the operation or management of the affairs of the Opioid Marketing Enterprise,
20 directly or indirectly, in the following ways:

21 578. Creating and providing a body of deceptive, misleading, and unsupported medical
22 and popular literature about opioids that

- 23 a. understated the risks and overstated the benefits of long-term use;
- 24 b. appeared to be the result of independent, objective research; and
- 25 c. was thus more likely to be relied upon by physicians, patients, and payors;

26 579. Creating and providing a body of deceptive, misleading, and unsupported
27 electronic and print advertisements about opioids that (i) understated the risks and overstated the
28

1 benefits of long-term use; (ii) appeared to be the result of independent, objective research; and
2 (iii) was thus more likely to be relied upon by physicians, patients, and payors;

3 580. Creating and providing a body of deceptive, misleading, and unsupported sales and
4 promotional training materials about opioids that (i) understated the risks and overstated the
5 benefits of long-term use; (ii) appeared to be the result of independent, objective research; and
6 (iii) was thus more likely to be relied upon by physicians, patients, and payors;

7 581. Devising and implementing marketing schemes that included targeting and
8 misleading physicians, unlawfully incentivizing sales representatives to maximize prescriptions
9 and dosages, and evading regulatory constraints; and

10 582. Disseminating many of their false, misleading, imbalanced, and unsupported
11 statements through unbranded materials that appeared to be independent publications.

12 583. The scheme devised and implemented by the Opioid Marketing Enterprise
13 Members amounted to a common course of conduct intended to enrich themselves by increasing
14 sales of prescription opioids by convincing doctors to prescribe and patients to use opioids,
15 including for long-term chronic pain, despite the Opioid Marketing Enterprise Members'
16 knowledge of the addictions and deaths that would occur as a result. The scheme was a
17 continuing course of conduct, and many aspects of it continue through to the present.

18 **The Opioid Marketing Enterprise Members Conducted or Participated, Directly or**
19 **Indirectly, in the Conduct of the Enterprise's Affairs.**

20 584. “[T]o conduct or participate, directly or indirectly, in the conduct” of an enterprise,
21 “one must participate in the operation or management of the enterprise itself.” *Reves v. Ernst &*
22 *Young*, 507 U.S. 170, 185 (1993).

23 585. As described herein, the Opioid Marketing Enterprise Members participated in the
24 conduct of the Enterprise through a pattern of racketeering activity, and McKinsey was the
25 mastermind of marketing schemes deployed by the Enterprise members to defraud prescribers
26 and Plaintiffs and the Class by using the mail and wires in furtherance of plans that were designed
27 with specific intent to defraud.
28

1 586. The Opioid Marketing Enterprise Members conducted an association-in-fact
2 enterprise and/or participated in the conduct of an enterprise through a pattern of illegal activities
3 (the predicate racketeering acts of mail and wire fraud) to carry-out the common purpose of the
4 Opioid Marketing Enterprise, i.e., to unlawfully increase profits and revenues from the continued
5 prescription and use of opioids for long-term, chronic pain. Through the racketeering activities of
6 the Opioid Marketing Enterprise, the Opioid Marketing Enterprise Members sought to further the
7 common purpose of the Enterprise through a fraudulent scheme to change prescriber habits and
8 public perception about the safety and efficacy of opioid use. In so doing, each of the Opioid
9 Marketing Enterprise Members knowingly conducted and participated in the conduct of the
10 Enterprise by engaging in mail and wire fraud, in violation of 18 U.S.C. §§ 1962(c) and (d).

11 587. The Opioid Marketing Enterprise is an association-in-fact enterprise that consists
12 of the Opioid Marketing Enterprise Members.

13 588. Each of the Opioid Marketing Enterprise Members conducted and participated in
14 the conduct of the Opioid Marketing Enterprise by playing a distinct role in furthering the
15 Enterprise's common purpose of increasing profits and sales through the knowing and intentional
16 dissemination of false and misleading information about the safety and efficacy of long-term
17 opioid use, and the risks and symptoms of addiction, in order to increase the market for
18 prescription opioids by changing prescriber habits and public perceptions.

19 589. Specifically, the Opioid Marketing Enterprise Members each worked together to
20 coordinate the Enterprise's goals and conceal their role, and the Enterprise's existence, from
21 prescribers and Plaintiffs by, among other things, (i) funding, editing, and distributing
22 publications that supported and advanced their false messages; (ii) funding key opinion leaders
23 ("KOLs") to further promote their false messages; and (iii) tasking their own employees to direct
24 deceptive marketing materials and pitches directly at physicians.

25 590. Further, each of the Opioid Marketing Enterprise Members had systematic links to,
26 and personal relationships with, each other through joint participation in lobbying groups, trade
27 industry organizations, contractual relationships, and continuing coordination of activities. The
28 systematic links and personal relationships that were formed and developed allowed the Opioid

1 Marketing Enterprise Members the opportunity to form the common purpose and agree to
2 conduct and participate in the conduct of the Opioid Marketing Enterprise. Specifically, each of
3 the Opioid Marketing Enterprise Members coordinated their efforts through the same KOLs and
4 front groups, based on their agreement and understanding that the front groups and KOLs were
5 industry friendly and would work together with the Opioid Marketing Enterprise Members to
6 advance the common purpose of the Opioid Marketing Enterprise; and each of the individuals and
7 entities who formed the Opioid Marketing Enterprise acted to enable the common purpose and
8 fraudulent scheme of the Opioid Marketing Enterprise.

9 591. At all relevant times, the Opioid Marketing Enterprise: (a) had an existence
10 separate and distinct from each Opioid Manufacturer and its members; (b) was separate and
11 distinct from the pattern of racketeering in which the Opioid Marketing Enterprise Members
12 engaged; (c) was an ongoing and continuing organization consisting of individuals, persons, and
13 legal entities, including each of the Opioid Marketing Enterprise Members; (d) was characterized
14 by interpersonal relationships between and among each member of the Opioid Marketing
15 Enterprise; and (e) had sufficient longevity for the Enterprise to pursue its purpose and functioned
16 as a continuing unit.

17 592. The Opioid Marketing Enterprise Members conducted and participated in the
18 conduct of the Opioid Marketing Enterprise through a pattern of racketeering activity that
19 employed the use of mail and wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and §
20 1343 (wire fraud), to increase profits and revenue by changing prescriber habits and public
21 perceptions in order to increase the prescription and use of prescription opioids and expand the
22 market for opioids.

23 593. The Opioid Marketing Enterprise Members each committed, conspired to commit,
24 and/or aided and abetted in the commission of at least two predicate acts of racketeering activity
25 (i.e., violations of 18 U.S.C. §§ 1341 and 1343) within the past ten years. The multiple acts of
26 racketeering activity that the Opioid Marketing Enterprise Members committed, or aided and
27 abetted in the commission of, were related to each other, posed a threat of continued racketeering
28 activity, and therefore constitute a “pattern of racketeering activity.” The racketeering activity

1 was made possible by the Opioid Marketing Enterprise Members' regular use of the facilities,
2 services, distribution channels, and employees of the Opioid Marketing Enterprise, the U.S. Mail,
3 and interstate wire facilities. The Opioid Marketing Enterprise Members participated in the
4 scheme to defraud by using mail, telephones, and the internet to transmit communications and
5 payments in interstate or foreign commerce.

6 **The Conduct was More than a Typical Business Relationship.**

7 594. There were strong relationships among those associated with the Opioid Enterprise
8 and sufficient longevity among Enterprise associates to pursue the Enterprise's common purpose.
9 The common purpose was to increase opioid revenues unlawfully by misrepresenting and lying
10 about opioids in order to changing prescriber habits and the perception regarding the safety and
11 efficacy of opioids for chronic pain and long-term use. The Enterprise's deceit was, in part, in its
12 failure to disclose that increasing strength and dosing actually increased the risk of addiction and
13 overdose and that patients on opioids for more than a brief period develop tolerance, requiring
14 increasingly high doses to achieve pain relief.

15 595. On March 1, 2004, McKinsey entered into a "Master Consulting Agreement" with
16 Purdue for "services that would be defined from time to time."³⁹² The Master Consulting
17 Agreement was signed by then-McKinsey director Rob Rosiello."³⁹³

18 596. From 2004 through 2008, McKinsey advised Purdue on research and development,
19 business development, and product licensing related to Purdue's opioid products.³⁹⁴ Consistent
20 with its business model, McKinsey leveraged these projects into growth of its "Broader Strategy
21 work" also underway with Purdue.³⁹⁵ Specifically, in October 2008, Purdue retained McKinsey
22 for broad strategy work after two board members "blessed" Purdue executive Craig Landau with
23 doing "whatever he thinks is necessary to 'save the business'" after the 2007 criminal plea and
24 introduction of generic competition to the older OxyContin.³⁹⁶ Purdue relied heavily on

25
26 ³⁹² MCK-MDL2996-0085849; PPLPC012000069192

27 ³⁹³ MCK-MDL2996-0085849, at 0085880.

28 ³⁹⁴ PPLPC013000116218; PPLP004401340

³⁹⁵ MCK-MAAG-0117875

³⁹⁶ MCK-MAAG-0117875

1 McKinsey to help Purdue publicly portray itself as a good corporate citizen who could now be
2 trusted and was even working on an “abuse-deterrent” or “ADF” form of OxyContin.

3 597. Over their many years of working together, McKinsey and Richard Sackler
4 developed a close relationship. Indeed, one McKinsey partner, Maria Gordian, describes herself
5 as a counselor to Richard Sackler in an “Ey 2009 Impact Summary.”³⁹⁷

6 598. The Opioid Marketing Enterprise was more than a typical business relationship.
7 Rather, the members of the Enterprise knew that opioids were addictive and causing serious harm
8 to people and communities but chose to work together to lie to prescribers, Plaintiffs, and the
9 Class about these drugs in order to increase their bottom lines. McKinsey worked closely with the
10 Opioid Manufacturers to achieve these aims. McKinsey, as an advisor of multiple Opioid
11 Manufacturers, also had access to information about multiple players and was able to coordinate
12 the fraud occurring across the Enterprise. As discussed below, McKinsey was particularly
13 embedded in Purdue’s organizational structure and the relationship’s longevity was sufficient to
14 pursue the Enterprise’s purposes. During the 2009-2014 period in particular, Purdue relied
15 extensively on McKinsey to develop its sales and marketing strategy for OxyContin.

16 599. The intent to defraud is evident in the McKinsey’s attempts to strengthen its
17 relationship with Purdue and assist Purdue in selling opioids after Purdue’s 2007 criminal guilty
18 plea. As part of the guilty plea, Purdue admitted that its “supervisors and employees, with the
19 intent to defraud or mislead, marketed and promoted OxyContin as less addictive, less subject to
20 abuse and diversion, and less likely to cause tolerance and withdrawal than other pain
21 medication.”³⁹⁸ But rather than be deterred by this, McKinsey dove in. In a March 2009 self-
22 assessment, Ms. Gordian described McKinsey’s progress in having “continue[d] to expand the
23 depth and breadth of [its] relationships with Purdue” and plans to “deepen[]” McKinsey’s
24 “relationship with the Sackler family,” including by “serving them on key business development
25 issues” and “expanding” McKinsey’s relationship with members of Purdue’s senior management
26 team.³⁹⁹

27 ³⁹⁷ MCK-MAAG-0118669

28 ³⁹⁸ Information at pp. 5-6, *United States v. Purdue Frederick Co.*, No. 07-cr-29-JPJ (W.D. Va. May 10, 2007), Doc. 5.

³⁹⁹ MCK-MAAG-0118669

1 600. By August 2009, Richard Sackler had convened a meeting of Purdue board
2 members and staff to discuss efforts to “reverse the decline in the OxyContin tablets market.”⁴⁰⁰
3 During the 2009-2014 period in particular, Purdue relied extensively on McKinsey to develop its
4 sales and marketing strategy for OxyContin. McKinsey worked closely with Purdue on both the
5 creation and implementation of OxyContin sales strategy. McKinsey’s work for Purdue included
6 consulting, review of product acquisition, evaluation of research and development, advising
7 Purdue on the design of clinical studies, risk management, and product marketing.⁴⁰¹

8 601. On May 28, 2013, McKinsey entered into a “Statement of Services to the Master
9 Consulting Agreement” (the “2013 Agreement”) with Purdue to “conduct a rapid assessment of
10 the underlying drivers of current OxyContin performance, identify key opportunities to increase
11 near-term OxyContin revenue and develop plans to capture priority opportunities.”⁴⁰² The 2013
12 Agreement stated, “We have a long history of partnership with Purdue, and we would make best
13 efforts to leverage our understanding of your business—both in terms of content and culture.”
14 The 2013 Agreement was signed by then-principal Arnab Ghatak who would “lead the team with
15 senior leadership from Rob Rosiello and Martin Elling.”

16 602. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]⁴⁰³

20 603. Thereby, even after the 2007 guilty plea, Purdue, with McKinsey’s aid, saw
21 growing profits from opioid sales. In 2015 alone, Purdue obtained \$3 billion in annual opioid
22 sales—a four-fold increase from its 2006 sales of \$800 million.

23 604. McKinsey’s relationship with Purdue went far beyond a typical business
24 relationship. McKinsey worked closely with Purdue on both the creation and implementation of
25

26 ⁴⁰⁰ PPLPC061000045395

27 ⁴⁰¹ PPLPC029000547371

28 ⁴⁰² Excerpt from U.S. Department of Justice Plea Agreement with Purdue Pharma L.P. October 20, 2020. 18, ¶88.
<https://www.justice.gov/opa/press-release/file/1329576/download>.

⁴⁰³ PPLPC018001462324 [REDACTED]

1 OxyContin sales strategy, a strategy McKinsey knew had been based on misleading and
2 defrauding doctors and patients alike about a dangerous and highly addictive drug.

3 605. Further, McKinsey had access to detailed prescribing information enabling it to
4 determine if there were suspicious or problematic prescribing patterns. Rather than using this
5 information to help its clients prevent diversion of controlled substances, McKinsey and the
6 Opioid Marketing Enterprise used this information in furtherance of their scheme to defraud
7 prescribers and Plaintiffs, target and increase sales to prescribers who were overprescribing, and
8 continue to fuel opioid addiction and the resulting epidemic.

9 **The Fraudulent Schemes**

10 606. As detailed above, the operation of the Opioid Marketing Enterprise, included
11 several schemes to defraud that helped to further the goals its members—i.e., to expand the
12 market and increase profits and sales through the knowing and intentional dissemination of false
13 and misleading information about the safety and efficacy of long-term opioid use, and to increase
14 profits for the Enterprise Members via expanding the market for opioids.

15 **Fraudulent Marketing Scheme: Deceptive Messaging Regarding Opioid Use**

16 607. As described throughout, McKinsey sought to unlawfully increase profits and
17 revenues from the continued prescription and use of opioids for long-term, chronic pain by
18 changing prescriber habits and public perception regarding the safety and efficacy of opioids.
19 McKinsey's fraud specifically targeted prescribers and set out to convince them that they should
20 prescribe more and more opioids, overcoming what could otherwise be a check on opioid
21 manufacturers ability to increase sales of addictive products.

22 608. Despite McKinsey knowing that reformulated OxyContin could still be abused,
23 having advised Purdue on the design of tests of reformulated OxyContin as part of Purdue's FDA
24 submission,⁴⁰⁴ in furtherance of the scheme to defraud, McKinsey spread messages that
25 prescribing opioids could provide "freedom" and "peace of mind" for its users and that physicians
26 could "tailor the dose."

27
28 ⁴⁰⁴ McK-MAAG-0118669

1 609. After Purdue’s 2007 criminal plea for illegally marketing OxyContin, McKinsey
 2 created strategies to repair Purdue’s reputation and boost OxyContin sales. In 2008, Purdue
 3 submitted a New Drug Application for a reformulation of OxyContin, ostensibly to make it more
 4 difficult to abuse by extracting the active ingredient from it or otherwise defeating the time-
 5 release mechanism in OxyContin tablets—i.e., another product Purdue would later deceptively
 6 promote as safer than and less prone to abuse than it was.

7 610. In June 2009, McKinsey helped Purdue prepare for an FDA advisory committee
 8 meeting. [REDACTED]

9 [REDACTED] ⁴⁰⁵ [REDACTED]
 10 [REDACTED]
 11 [REDACTED] ⁴⁰⁶

12 611. McKinsey prepared for Purdue an “FDA Advisory Committee on Reformulated
 13 OxyContin: Question & Answer Book” in September 2009, with questions including “Why
 14 should we trust you?” In response, McKinsey recommended Purdue say “We acknowledge
 15 mistakes made in the past[;]” “We have x, y and z measures in place that did not exist before[;]”
 16 and “[a]t all levels, Purdue’s focus is on maintaining the highest ethical standards and meeting the
 17 needs of patients[.]”⁴⁰⁷ To the question of “Who at Purdue takes personal responsibility for all
 18 these deaths?[.]” McKinsey recommended Purdue say, “We all feel responsible[.]”

19 612. McKinsey and the other Opioid Marketing Enterprise Members knew the changes
 20 Purdue made would not make opioids non-addictive or prevent them from being used to create
 21 and further substance abuse problems. For example, in 2009, the FDA noted in permitting ADF
 22 labeling that “the tamper-resistant properties will have no effect on abuse by the oral route (the
 23 most common mode of abuse).” Similarly, in approving reformulated OxyContin, the FDA
 24 cautioned that the reformulation “is not completely tamper resistant and those intent on abusing
 25 this new formulation will likely find a means to do so. In addition, the product can still be
 26

27 ⁴⁰⁵ PDD8901645845

28 ⁴⁰⁶ *Id.*

⁴⁰⁷ MCK-MAAK-0152135

1 misused or abused and result in overdose by simply administering or ingesting larger than
2 recommended oral doses.”⁴⁰⁸

3 613. Despite this knowledge, the Opioid Marketing Enterprise pursued messaging and a
4 strategy that was deceptive and was designed to deceive doctors in particular. Even after Purdue
5 pleaded guilty to offenses related to its marketing and distribution of addictive opioids, McKinsey
6 advised Purdue to market OxyContin to encourage more prescriptions (that it knew would lead to
7 abuse and overdose events) into higher dose prescriptions by a smaller number of loyalist
8 prescribers.

9 614. Far from the deception of doctors being an unforeseen consequence, McKinsey
10 intentionally set out to target doctors as a cog in the Enterprise’s scheme to defraud. Indeed,
11 deceiving doctors was part of the marketing scheme, and doctors were utilized in furtherance of
12 the marketing scheme. Medical providers were not a break in the causal chain of harm to
13 Plaintiffs but were targeted players in the scheme to defraud and key links in the casual chain.

14 615. The marketing scheme involved using data to target high prescribers and training
15 marketers to make misleading statements with the goal to increase high dose prescriptions which
16 McKinsey and Opioid Marketing Enterprise Members knew were more likely to be abused.
17 Enterprise Members knew that overdoses were expected and that such overdoses would lead to
18 need for increased services.

19 616. Purdue’s 2020 guilty plea acknowledged its role in using aggressive marketing to
20 convince doctors to prescribe opioids unnecessarily, fueling the drug addiction crisis. McKinsey
21 was the mastermind of marketing scheme following Purdue’s 2007 guilty plea. McKinsey
22 developed and helped implement these strategies.

23 617. In an October 26, 2009 presentation, “OxyContin – driving growth through
24 stronger brand loyalty,” McKinsey proposed tactics to turnaround declining sales, “[e]nhance
25 loyalty to OxyContin among loyalist prescribers,” “convert[ing] ‘fence sitters’ into more loyal
26 OxyContin prescribers,”⁴⁰⁹ and “protect OxyContin’s market share[.]”⁴¹⁰ In other words,

27 ⁴⁰⁸ FDA Summary Review, https://www.accessdata.fda.gov/drugsatfda_docs/nda/2010/022272s000SumR.pdf

28 ⁴⁰⁹ MCK-MDL2996-0126522

⁴¹⁰ *Id.* at 2

1 McKinsey proposed increasing sales by pushing both willing and reluctant physicians to prescribe
2 more OxyContin.

3 618. McKinsey recommended segmenting prescribers and tailoring messages and
4 tactics to different segments. For prescribers dubbed “Early Adopting Experts” and “Proactive
5 Teachers,” defined by a willingness to use extended release opioids, including in patients who
6 were not already using opioids, McKinsey urged emphasizing that its 7 tablet strengths provide
7 flexibility to “tailor the dose” to customer needs.⁴¹¹ Upon information and belief, this message
8 aimed to encourage prescribers to initiate and maintain patients on OxyContin long-term by
9 reminding them they could increase the dose as patients became tolerant with long-term use
10 (rather than discontinue use when the drug lost its effectiveness).

11 619. Purdue adopted McKinsey’s [REDACTED] proposal.⁴¹² [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]⁴¹³

15 620. As detailed throughout, McKinsey and Opioid Marketing Enterprise Members
16 were aware of the catastrophic injury inflicted on the public by selling harmful, addictive opioid
17 products. Yet when promoting opioids and engaging in doctor detailing, the Enterprise Members
18 intentionally hid the potential for abuse and addiction by marketing OxyContin’s 12-hour dosing
19 as meaning that users only need to take OxyContin twice a day, thus requiring fewer pills.

20 621. It was foreseeable that this marketing strategy would lead to greater addiction
21 because OxyContin wore off after 8 to 10 hours in many patients. Prescribing 12-hour dosing led
22 to “end of dose failure,” which led to a vicious cycle that became “the perfect recipe for
23
24

25 _____
26 ⁴¹¹ *Id.* at 12.
27 ⁴¹² PPLPC023000251226 ([REDACTED]); see also
28 PPLPC012000243668 ([REDACTED]); PPLPC012000245087 ([REDACTED])
[REDACTED]; PPLPC012000246009 ([REDACTED]); PPLPC021000265092 ([REDACTED])
⁴¹³ PKY183123435

1 addiction.”⁴¹⁴ As a result, what McKinsey marketed as “convenient” led to what was described as
2 “a [d]escription of Hell.”⁴¹⁵

3 622. The marketing scheme worked. Nationwide, based on an analysis by the Los
4 Angeles Times, more than 52% of patients taking OxyContin longer than three months are on
5 doses greater than 60 milligrams per day—which converts to the 90 morphine equivalent dose
6 that the CDC Guideline urges prescribers to “avoid” or “carefully justify.”⁴¹⁶

7 623. A key element of the marketing scheme that fueled the deadly epidemic of opioid
8 abuse was doctor detailing using detailed prescriber data.

9 **Data Scheme: Use of Prescriber Data for Intentional Targeting of High Opioid Prescribers-**
10 **Not Diversion Prevention**

11 624. McKinsey was an advisor to DEA registrants and Opioid Marketing Enterprise
12 Members, who had a legal duty to guard against diversion and report suspicious orders of
13 controlled substances. Rather than assisting in reporting suspicious orders, McKinsey used its
14 position and access to detailed prescriber information to actually divert resources to target high
15 volume prescribers to sell more opioids.

16 625. Distributors of controlled substances have a legal duty to report suspicious orders,
17 and to report those that deviate substantially from a normal pattern and orders of unusual size and
18 frequency. *See* 21 U.S.C. § 823; 21 C.F.R. § 1301.74(b). These obligations included a legal duty
19 to maintain effective controls and procedures to guard against diversion of controlled substances
20 and a legal duty to maintain a system to identify and report suspicious orders of controlled
21 substances. *See* 21 C.F.R. §§ 1301.7(a) (b); 1301.74(b). Rather than advising their registrant
22 clients on how to comply with their legal duties to maintain effective controls to guard against
23 diversion and how to operate a system to identify and report suspicious orders, in furtherance of
24 the scheme, McKinsey and the Opioid Marketing Enterprise Members used detailed data to target
25 prescribers to increase the opioid market.

26 _____
27 ⁴¹⁴ Harriet Ryan, “‘*You Want a Description of Hell?*’ *OxyContin’s 12-Hour Problem*,” Los Angeles Times, May 5,
2016, available at <http://www.latimes.com/projects/oxycontin-part1/>.

28 ⁴¹⁵ *Id.*

⁴¹⁶ CDC Guideline at 16.

1 626. Consistent with the Enterprise’s purpose of increasing profit by deceptively
2 marketing opioids, McKinsey was tasked with “Identifying Granular Growth Opportunities for
3 OxyContin,” conducting an “assessment of the underlying drivers of current OxyContin
4 performance,” identifying “key opportunities to drive near-term OxyContin performance,” and
5 developing “plans to capture priority opportunities.”⁴¹⁷

6 627. McKinsey received physician-level sales data to develop its marketing strategy to
7 increase OxyContin performance after Purdue’s 2007 guilty plea. Rather than using this access to
8 the granular data to avoid diversion and to prevent Enterprise members from targeting prescribers
9 with suspicious prescribing patterns, McKinsey used this information to help the Opioid
10 Marketing Enterprise members push more opioids on high volume prescribers in furtherance of
11 its schemes to defraud. The targets were chosen based on their history of prescribing high doses
12 of opioids in large quantities.

13 628. One of the services the Enterprise used in furtherance of this scheme concerned the
14 use of data to help Purdue meet its goals. McKinsey’s analysis for the “Evolve to Excellence”
15 proposal shows that it had detailed information from which it could discern, as could Purdue,
16 whether a prescriber had problematic patterns suggesting operation as a “pill mill,” including a
17 shift to other opioids after OxyContin’s reformulation. Yet, McKinsey urged Purdue to target, and
18 seek to increase the prescribing of, all of these prescribers from whom it perceived Purdue could
19 obtain greater profits.

20 629. McKinsey found that Purdue did not “focus on the highest potential docs,”
21 measured both by the number of prescriptions and reimbursement considerations.⁴¹⁸ A McKinsey
22 analyst urged McKinsey to recommend Purdue target “[I]terally, at least all” prescribers in the
23 top 20% of prescribers, “minus another few percent who are no sees[.]” McKinsey team lead
24 Arnab Ghatak replied that “they probably have 20% no see[], but i’d also assume there are not
25 many high writers that are no see.”⁴¹⁹ (“No see” prescribers are prescribers who do not accept
26 visits from pharmaceutical sales representatives. Thus, upon information and belief, McKinsey

27 ⁴¹⁷ PPLPC030000770531

28 ⁴¹⁸ MCK-MDL2996-0364024

⁴¹⁹ MCK-MDL2996-0364267

1 recognized that most of the highest volume prescribers, or “high writers” of prescriptions, were
2 willing to entertain sales visits from sales representatives.)

3 630. The Opioid Marketing Enterprise used data for intentional targeting of high
4 prescribers and not for diversion prevention. McKinsey advised Purdue to raise sales of
5 Oxycontin by focusing on high dose sales and deceptively messaging to physicians that
6 OxyContin would improve function and quality of life. McKinsey urged Purdue to maximize
7 sales by dictating which prescribers its sales representatives would target. For example,
8 McKinsey advised Purdue that it should take “specific actions” to increase sales of OxyContin,
9 including “Prescriber Targeting” and “Turbocharg[ing] Purdue’s Sales Engine.”

10 631. McKinsey targeted not just doctors but also nurse practitioners and physician
11 assistants, recommending Purdue “[d]ouble down on nurse practitioners and physician
12 assistants . . . as they represent a growing market segmentation of prescribers.”⁴²⁰

13 632. The Enterprise’s scheme also explored ways to increase the amount of time sales
14 representatives spent in the field increasing opioid sales, and prioritizing OxyContin in incentive
15 compensation targets.⁴²¹

16 633. By April 24, 2014, the plan was working and McKinsey reported that Purdue’s
17 “sales force is selecting an increasing percentage of high-value OxyContin prescribers as
18 targets.”⁴²²

19 634. McKinsey ensured Purdue would benefit from the lessons learned by other
20 Enterprise members, stating that “its experience with other pharmaceutical companies suggests
21 that such a comprehensive Sales transformation program takes nine months.”⁴²³ Likewise,
22 McKinsey recommended physician targeting to other Enterprise members, including Endo and
23 Janssen.⁴²⁴

24 635. By targeting physicians based on their prescribing patterns, the Opioid Marketing
25 Enterprise was working toward the common purpose of deceptively convincing doctors to

26 ⁴²⁰ MCK-MDL2996-0303399

27 ⁴²¹ PPLPC012000437346

⁴²² MCK-MDL2996-0104840; PPLPC035000220406

⁴²³ MCK-MDL2996-0187168

28 ⁴²⁴ MCK-MDL2996-0130803; MCK-MDL2996-0135713

1 prescribe more opioids and thereby increase their own profits. By developing “Evolve to
2 Excellence,” which was implemented as a plan to “turbocharge” opioid sales, McKinsey advised
3 that Purdue would see a greater return on its sales investment by focusing its targets, including on
4 prescribers with alarming prescribing patterns that raised red flags they were writing
5 “prescriptions” for non-medical use. The plan aimed at boosting sales of OxyContin by targeting
6 the highest volume opioid prescribers, which McKinsey and the other members of the Opioid
7 Marketing Enterprise knew and/or should have known would result in the expansion of the illicit
8 opioid market.

9 636. The Enterprise sought to grow opioid sales to prescribers who raised red flags of
10 diversion and orders it knew or should have known were likely to be diverted or fuel an illegal
11 market. Purdue had a legal obligation not to target these prescribers; rather, it was obligated to
12 report their conduct to law enforcement. Yet the Enterprise used access to prescriber data not to
13 report diversion but to enhance diversion.

14 **Pattern of Racketeering Activity**

15 637. McKinsey together with the other Opioid Marketing Enterprise Members engaged
16 in a scheme to unlawfully increase sales of opioids—and grow their share of the prescription
17 painkiller market—through repeated and systematic misrepresentations about the safety and
18 efficacy of opioids for treating long-term chronic pain. As a unique consulting entity with
19 knowledge of both the addictive properties and abuse potential of opioids and with access to data
20 regarding internal prescribing behaviors of its targets, McKinsey perpetrated a number of
21 fraudulent schemes using the mails and wires, including advising Purdue to market more opioids,
22 in higher doses, to high volume prescribers while helping Purdue avoid mandatory prescriber
23 education regarding the risks of opioids. McKinsey fueled the epidemic alongside its clients.
24 Through targeted marketing that McKinsey worked to develop, “turbocharge,” and implement,
25 McKinsey substantially contributed to an explosion in the use of opioids across the United States.
26 McKinsey is an enterprise that is engaged in and affects interstate commerce because the
27 company advised opioid manufacturers on the sale of opioid products across the United States, as
28 alleged herein.

1 638. The Opioid Marketing Enterprise Members devised and knowingly carried out this
2 illegal scheme and artifice to defraud by means of materially false or fraudulent pretenses,
3 representations, promises, or omissions of material facts regarding the safe, non-addictive and
4 effective use of opioids for long-term chronic, non-acute, and non-cancer pain. They knew that
5 these representations deviated from the FDA-approved use of these drugs and were not supported
6 by actual evidence. The Opioid Marketing Enterprise Members intended that their common
7 purpose and scheme to defraud would, and did, deceive consumers, prescribers, regulators,
8 Plaintiffs, and other intended victims and they used the U.S. Mail and interstate wire facilities
9 with the specific intent to advance, and for the purpose of executing, their illegal scheme.

10 639. By intentionally concealing the material risks and affirmatively misrepresenting
11 the benefits of using opioids for chronic pain, the Opioid Marketing Enterprise Members engaged
12 in a fraudulent and unlawful course of conduct constituting a pattern of racketeering activity.

13 640. To achieve the common goal and purpose of the Opioid Marketing Enterprise, the
14 Opioid Marketing Enterprise Members hid from the consumers, prescribers, regulators, and
15 Plaintiffs: (a) the fraudulent nature of the Opioid Marketing Enterprise Members' marketing
16 scheme; (b) the fraudulent nature of statements made by the Opioid Marketing Enterprise
17 Members regarding the safety and efficacy of prescription opioids; and (c) the true nature of the
18 relationship between the members of the Opioid Marketing Enterprise.

19 641. The Opioid Marketing Enterprise Members with knowledge and intent, to the
20 overall objective of the Opioid Marketing Enterprise Members' fraudulent scheme and
21 participated in the common course of conduct to commit acts of fraud and indecency in marketing
22 prescription opioids.

23 642. Indeed, for the Opioid Marketing Enterprise Members' fraudulent scheme to work,
24 each of them had to agree to implement similar tactics regarding fraudulent marketing of
25 prescription opioids. This coordination was accomplished via their relationships with each other
26 and via McKinsey's relationships and contacts with key opioids manufacturers.

27 643. The Opioid Marketing Enterprise Members' predicate acts all had the purpose of
28 creating the opioid epidemic that substantially injured Plaintiffs and the Class, while

1 simultaneously generating billion-dollar revenues and profits for the Opioid Marketing Enterprise
2 Members. The predicate acts were committed or caused to be committed by the Opioid Marketing
3 Enterprise Members through their participation in the Opioid Marketing Enterprise and in
4 furtherance of its fraudulent scheme.

5 644. The Opioid Marketing Enterprise Members' scheme described herein was
6 perpetrated, in part, through multiple acts of mail fraud and wire fraud, constituting a pattern of
7 racketeering activity. McKinsey in particular used mail and wire transmission, directly or
8 indirectly, in furtherance of this scheme by transmitting deliberately false and misleading
9 statements to prescribers and the public.

10 645. McKinsey had a specific intent to deceive and defraud prescribers, regulators and
11 Plaintiffs. For example, as alleged above, McKinsey made repeated and unequivocal statements
12 through the mails and wires that were false and misleading. McKinsey advised Purdue to market
13 OxyContin based on the false and misleading notion that the drug can provide "freedom" and
14 "peace of mind" for its users, and concomitantly reduce stress and isolation.

15 646. Similarly, they caused to be transmitted through the mails and wires false and
16 misleading statements regarding the addiction potential of opioids. Moreover, McKinsey had
17 direct involvement in marketing statements and thus caused the statements to be made,
18 notwithstanding that they knew they were false for the reasons detailed above.

19 647. The marketing scheme is especially egregious since the public relies on physicians
20 as a position of trust and authority in the community regarding their health and well-being.
21 McKinsey intentionally deceived physicians regarding the abuse potential of opioids. It intended
22 prescribers and the public to rely on its false statements. McKinsey intended reliance on these
23 false statements as it was their goal for doctors to prescribe more and higher quantities of these
24 dangerous pills to the public. This scheme was therefore reasonably calculated to deceive not only
25 persons of ordinary prudence and comprehension but also educated physicians in a place of high
26 trust in the community.

27 **Predicate Acts**

1 648. To carry out, or attempt to carry out, the scheme, the Enterprise Members, each of
2 whom is a person associated-in-fact with the Enterprise, did knowingly conduct or participate in,
3 directly or indirectly, the affairs of the Enterprise through a pattern of racketeering activity within
4 the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c), and employed the use of the mail and
5 wire facilities, in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

6 649. Specifically, the Enterprise Members have committed, conspired to commit,
7 and/or aided and abetted in the commission of, at least two predicate acts of racketeering activity
8 (i.e., violations of 18 U.S.C. §§ 1341 and 1343), within the past ten years.

9 650. The multiple acts of racketeering activity which the Enterprises Members
10 committed, or aided or abetted in the commission of, were related to each other, posed a threat of
11 continued racketeering activity, and therefore constitute a “pattern of racketeering activity.”

12 651. The racketeering activity was made possible by the Enterprise’s regular use of the
13 facilities, services, distribution channels, and employees of the Enterprise Members.

14 652. The Opioid Marketing Enterprise Members participated in the schemes by using
15 mail, telephone, and the internet to transmit mailings and wires in interstate or foreign commerce.

16 653. The Enterprise Members used, directed the use of, and/or caused to be used,
17 thousands of interstate mail and wire communications in service of their schemes through
18 common misrepresentations, concealments, and material omissions.

19 654. In devising and executing the illegal schemes, the Opioid Marketing Enterprises
20 Members devised and knowingly carried out a material scheme and/or artifice to defraud
21 Plaintiffs and prescribers and to obtain money by means of materially false or fraudulent
22 pretenses, representations, promises, or omissions of material facts.

23 655. For the purpose of executing the illegal schemes, the Enterprise Members
24 committed these racketeering acts, which number in the thousands, intentionally and knowingly
25 with the specific intent to advance the illegal schemes.

26 656. The Opioid Marketing Enterprise Members’ predicate acts of racketeering (18
27 U.S.C. § 1961(1)) include, but are not limited to the conduct described in the Factual Allegations
28 section of this Complaint, and:

1 657. Mail Fraud: The Opioid Marketing Enterprise Members violated 18 U.S.C. § 1341
2 by sending or receiving, or by causing to be sent and/or received, materials via U.S. mail or
3 commercial interstate carriers for the purpose of executing the unlawful scheme to design,
4 manufacture, market, and sell the prescription opioids by means of false pretenses,
5 misrepresentations, promises, and omissions.

6 658. Wire Fraud: The Opioid Marketing Enterprise Members violated 18 U.S.C. § 1343
7 by transmitting and/or receiving, or by causing to be transmitted and/or received, materials by
8 wire for the purpose of executing the unlawful scheme to design, manufacture, market, and sell
9 the prescription opioids by means of false pretenses, misrepresentations, promises, and omissions.

10 659. The Opioid Marketing Enterprise Members' use of the U.S. Mail and interstate
11 wire facilities to perpetrate the opioids marketing scheme involved thousands separate instances
12 of the use of the U.S. Mail or interstate wire facilities in furtherance of the unlawful Opioid
13 Marketing Enterprise, including essentially uniform misrepresentations, concealments, and
14 material omissions regarding the beneficial uses and non-addictive qualities for the long-term
15 treatment of chronic, non-acute, and non-cancer pain, with the goal of profiting from the
16 increased sales of the Opioid Marketing Enterprise Members' drugs that occurred because
17 consumers, prescribers, regulators, and Plaintiffs relied on the Opioid Marketing Enterprise
18 Members' misrepresentations. These uses of the U.S. Mail or interstate wires included, inter alia:

19 660. Marketing materials about opioids and their risks and benefits, which the Opioid
20 Marketing Enterprise Members sent to health care providers, transmitted through the internet and
21 television, and published across the country, including in counties and cities and on Tribal
22 Reservations and to Plaintiffs;

23 661. Written representations and telephone calls among the Opioid Marketing
24 Enterprise Members and between the Opioid Marketing Enterprise Members regarding the
25 misrepresentations, marketing statements, and claims about opioids, including the non-addictive,
26 safe use of opioids for chronic, long-term pain generally;

27 662. E-mails, telephone calls, and written communications among the Opioid
28 Marketing Enterprise Members agreeing to or implementing the opioids marketing scheme;

1 663. Communications among the Opioid Marketing Enterprise Members and between
2 the Opioid Marketing Enterprise Members and the media regarding the publication, drafting, and
3 dissemination of treatment guidelines as part of the Opioid Marketing Enterprise;

4 664. Written and oral communications directed to prescribers, the public, Plaintiffs, and
5 the Class that fraudulently misrepresented the risks and benefits of using opioids for chronic pain;
6 and

7 665. Receipts of increased profits sent through the U.S. Mail and interstate wire
8 facilities—the wrongful proceeds of the scheme.

9 666. Many of the precise dates of the fraudulent uses of the U.S. mail and interstate
10 wire facilities are not obtainable (e.g., each time a McKinsey trained marketer “calls” or reached
11 out to a physician using the mails or wires in furtherance of the marketing scheme). Because the
12 Opioid Marketing Enterprise Members disguised their participation in the Enterprise, and worked
13 to keep the Enterprise’s existence secret, many of the precise dates of the Opioid Marketing
14 Enterprise’s uses of the U.S. Mail and interstate wire facilities (and corresponding predicate acts
15 of mail and wire fraud) have been hidden and cannot be alleged without access to the books and
16 records maintained by the Opioid Marketing Enterprise Members. Indeed, an essential part of the
17 successful operation of the Opioid Marketing Enterprise alleged herein depended upon secrecy.
18 Plaintiffs have, however, described the types of predicate acts of mail and/or wire fraud, including
19 the specific types of fraudulent statements upon which, through the mail and wires, McKinsey
20 engaged in fraudulent activity in furtherance of their scheme.

21 667. Below, Plaintiffs also describe examples of occasions on which the Opioid
22 Marketing Enterprise Members disseminated misrepresentations and false statements to
23 consumers, prescribers, regulators, Plaintiffs, and the Class and how those acts were in
24 furtherance of the scheme.

From	To	Date	Description
Purdue	Prescribers and Plaintiffs	2007	Statements that pain relief from opioids improves patients’ function and quality of life in advertising and a book
Purdue	Prescribers	Continuous	Telephonic and electronic communications by its sales representatives indicating that opioids will improve patients’ function

1	Purdue	FDA advisory committee	September 2009	Presentation prepared by McKinsey indicating that its reformulated OxyContin will deter abuse
2	Purdue	Prescribers and Plaintiffs	2010 onwards	Statements that the reformulated OxyContin will deter abuse and therefore doctors can continue to safely prescribe opioids
3	Purdue	Prescribers and Plaintiffs	2010-2020	Statements from Purdue at McKinsey's direction that opioids can provide "freedom," "peace of mind," and give patients "the best possible chance to live a full and active life"
4	Purdue	Prescribers and Plaintiffs	Advertising produced in 2016	Advertising from Purdue that "We sell hope in a bottle."
5	Purdue	Prescribers and Plaintiffs	2010 onwards	Statements that OxyContin's 12-hour dosing would allow patients to only need to take OxyContin twice a day, thus requiring fewer pills
6	Purdue	Prescribers and Plaintiffs	2013 onwards	Statements from Purdue at McKinsey's direction that OxyContin allowed physicians to "Individualize the Dose" and that the dose of OxyContin can safely be increased or tailored as the patients adapt to a certain dose
7	Endo	Prescribers and Plaintiffs	2009	Statements made on an Endo-sponsored website, PainKnowledge.com, indicating that patients who take opioids as prescribed usually do not become addicted
8	Endo	Prescribers and Plaintiffs	2009	Statements made on another Endo-sponsored website, PainAction.com, indicating that most chronic pain patients do not become addicted to opioid medications
9	Endo	Prescribers and Plaintiffs	Various	Statements in pamphlets and publications described by Endo indicating that most people who take opioids for pain relief do not develop an addiction
10	Endo	Prescribers and Plaintiffs	Various	Statements made on the Endo-run website, Opana.com, indicating that opioid use does not result in addiction
11	Endo	Prescribers and Plaintiffs	Various	Statements made on the Endo-run website, Opana.com, indicating that opioid dependence can be addressed by dosing methods such as tapering
12	Endo	Prescribers and Plaintiffs	Various	Statements made on its website, PainKnowledge.com, that opioid dosages could be increased indefinitely
13	Endo	Prescribers and Plaintiffs	Various	Statements made in a publication entitled "Understanding Your Pain: Taking Oral Opioid Analgesics" suggesting that opioid doses can be increased indefinitely
14	Endo	Prescribers	Various	Electronic and telephonic communications to its sales representatives indicating that the formula for its medicines is "crush resistant"
15	Endo	Prescribers and Plaintiffs	2007	Statements that pain relief from opioids improves patients' function and quality of life in advertising and a book
16	Endo	Prescribers	Various	Telephonic and electronic communications by its sales representatives indicating that opioids will improve patients' function
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1	Janssen	Prescribers and Plaintiffs	Various	Statements on its website, PrescribeResponsibly.com, indicating that concerns about opioid addiction are overestimated
2	Janssen	Prescribers and Plaintiffs	2009	Statements in a 2009 patient education guide claiming that opioids are rarely addictive when used properly
3	Janssen	Prescribers and Plaintiffs	2009	Statements included on a 2009 Janssen-sponsored website promoting the concept of opioid pseudoaddiction
4	Janssen	Prescribers and Plaintiffs	Various	Statements on its website, PrescribeResponsibly.com, advocating the concept of opioid pseudoaddiction
5	Janssen	Prescribers and Plaintiffs	Various	Statements on its website, PrescribeResponsibly.com, indicating that opioid addiction can be managed
6	Janssen	Prescribers and Plaintiffs	2009	Statements in its patient education guide indicating the risks associated with limiting the dosages of pain medicines
7	McKinsey	Purdue (with prescribers as the planned target)	July 18, 2013	Discussion of McKinsey plan to increase calls to doctors' offices to fraudulently promote OxyContin, including via "phone, video and even Google like proprietary tools" ⁴²⁵
8	McKinsey	Purdue (with prescribers as the planned target)	April 24, 2017	Plan to promote OxyContin to "no-see" physicians through "remote interactions" including presenting "brand interaction and materials" "over the phone/internet" ⁴²⁶
9	McKinsey	McKinsey	July 14, 2013	Internal emails interpreting "the Purdue situation" and discussing OxyContin sales strategy including sales benchmarks and "focus on the highest potential docs" ⁴²⁷
10	McKinsey	Purdue (with prescribers as the planned target)	September 23, 2013	Evolve 2 Excellence PowerPoint planning execution of the scheme and discussing targeted performance metrics including "sales management calls per day, calls per year and adhering to target list" ⁴²⁸
11	McKinsey	Purdue	July 30, 2013	Presentation showing "Scope of potential OxyContin growth opportunities" with proposed process including "Generate target list" and using "Reps/DMs [to] perform call planning (including refining target list)" ⁴²⁹

⁴²⁵ MCK-MDL2996-0104431, at 0104442

⁴²⁶ MCK-MDL2996-0104840

⁴²⁷ MCK-MDL2996-0364024

⁴²⁸ MCK-MDL2996-0316833, at 0316834

⁴²⁹ MCK-MDL2996-0303399

1 668. Each of these fraudulent mailings and interstate wire transmissions constitutes
2 racketeering activity and collectively, these violations constitute a pattern of racketeering activity,
3 through which the Opioid Marketing Enterprise Members defrauded and intended to defraud
4 consumers, prescribers, regulators, Plaintiffs, and other intended victims.

5 669. These were not isolated incidents. Instead, the Opioid Marketing Enterprise
6 Members engaged in a pattern of racketeering activity by committing thousands of predicate acts
7 in a five-year period, in the form of mail and wire fraud, and there remains a threat that such
8 conduct will continue in the future.

9 670. Each instance of racketeering activity alleged herein was related, had similar
10 purposes, involved the same or similar participants and methods of commission, and had similar
11 results affecting similar victims, including consumers, prescribers, regulators, and Plaintiffs. The
12 Opioid Marketing Enterprise Members calculated and intentionally crafted the scheme and
13 common purpose of the Opioid Marketing Enterprise to ensure their own profits remained high.
14 In designing and implementing the scheme, the Opioid Marketing Enterprise Members
15 understood and intended that those in the opioid distribution chain rely on the integrity of the
16 pharmaceutical companies and ostensibly neutral third parties to provide objective and scientific
17 evidence regarding the Opioid Marketing Enterprise Members' products.

18 671. Opioid Marketing Enterprise Members' pattern of racketeering activity alleged
19 herein and the Opioid Marketing Enterprise are separate and distinct from each other. Likewise,
20 the Opioid Marketing Enterprise Members are distinct from the Opioid Marketing Enterprise.

21 672. The racketeering activities conducted by the Opioid Marketing Enterprise
22 Members amounted to a common course of conduct, with a similar pattern and purpose, intended
23 to deceive consumers, prescribers, regulators, and Plaintiffs. Each separate use of the U.S. Mail
24 and/or interstate wire facilities employed by the Opioid Marketing Enterprise was related, had
25 similar intended purposes, involved similar participants and methods of execution, and had the
26 same results affecting the same victims, including consumers, prescribers, regulators, and
27 Plaintiffs. The Opioid Marketing Enterprise Members have engaged in the pattern of racketeering
28

1 activity for the purpose of conducting the ongoing business affairs of the Opioid Marketing
2 Enterprise.

3 673. Each of the Opioid Marketing Enterprise Members aided and abetted others in the
4 violations of the above laws, thereby rendering them indictable as principals in the 18 U.S.C. §§
5 1341 and 1343 offenses.

6 674. As described herein, the Opioid Marketing Enterprise Members engaged in a
7 pattern of related and continuous predicate acts for many years. The predicate acts constituted a
8 variety of unlawful activities, each conducted with the common purpose of obtaining significant
9 money and revenue from the marketing and sale of their highly addictive and dangerous drugs.
10 The predicate acts also had the same or similar results, participants, victims, and methods of
11 commission. The predicate acts were related and not isolated events.

12 675. The Opioid Marketing Enterprise Members' violations of law and pattern of
13 racketeering activity directly and proximately caused Plaintiffs' injury in their business and
14 property. The Opioid Marketing Enterprise Members' pattern of racketeering activity logically,
15 substantially, and foreseeably caused an opioid epidemic. The injuries of Plaintiff, as described
16 herein, were not unexpected, unforeseen, or independent. Rather, as Plaintiffs allege, the Opioid
17 Marketing Enterprise Members as a whole and McKinsey in particular knew that the opioids were
18 unsuited to treatment of long-term chronic, non-acute, and non-cancer pain, or for any other use
19 not approved by the FDA, and knew that opioids were highly addictive and subject to abuse.
20 Nevertheless, the Opioid Marketing Enterprise Members engaged in a scheme of deception that
21 utilized the mail and wires in order to carry out the Opioid Marketing Enterprise's fraudulent
22 scheme, thereby increasing sales of their opioid products.

23 676. It was foreseeable and expected that the Opioid Marketing Enterprise Members
24 creating and then participating in the Opioid Marketing Enterprise through a pattern of
25 racketeering activities to carry out their fraudulent scheme would lead to a nationwide opioid
26 epidemic, including increased opioid addiction and overdose and the injuries that occurred as a
27 result.

28

The Enterprise Was Well Aware of Risks of Abuse Before It “Turbocharged” its Marketing Scheme.

677. These devastating results were eminently foreseeable by the Opioid Marketing Enterprise Members.

678. When Purdue pleaded guilty in 2007, it was evident that Purdue’s behavior and excessive prescribing was directly linked to a drug addiction crisis that caused severe and extensive damage to America. Purdue’s methods included “using aggressive marketing tactics to convince doctors to unnecessarily prescribe opioids – frivolous prescriptions that experts say helped fuel a drug addiction crisis that has ravaged America for decades.”⁴³⁰

679. McKinsey cannot deny knowledge regarding Purdue’s 2007 guilty plea. At that point, McKinsey knew that opioids were addictive. McKinsey knew that OxyContin was being widely abused and causing harm to people and entities like Plaintiffs. And McKinsey knew that Purdue had been fraudulently marketing OxyContin as less addictive, less subject to abuse, and less likely to cause withdrawal. And yet, years later, in 2013, McKinsey orchestrated a scheme to continue to aggressively promote opioids despite knowledge that people were still dying from overdoses.

680. Thus, McKinsey continued to add fuel to this fire by persisting in aggressively marketing to physicians and continuing to fuel the opioid crisis after Purdue’s guilty plea. It was foreseeable that continuing to do so would devastate American communities.

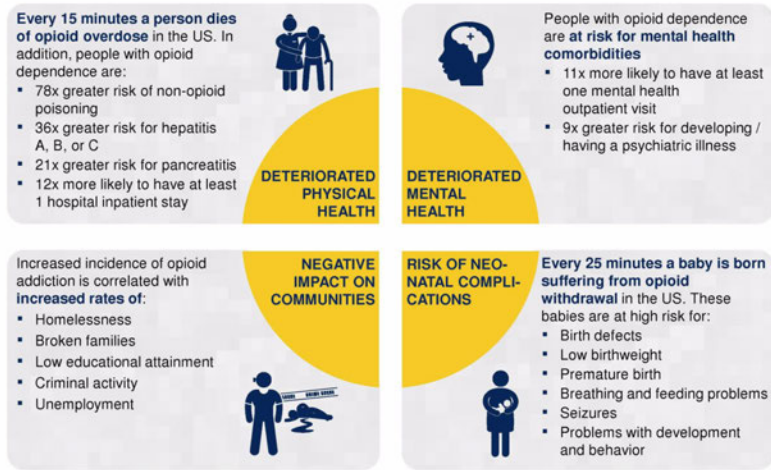
681. [REDACTED]

⁴³⁰ Jan Hoffman & Katie Benner, *Purdue Pharma Pleads Guilty to Criminal Charges for Opioid Sales*, N.Y. Times (updated Dec. 17, 2020), <https://www.nytimes.com/2020/10/21/health/purdue-opioids-criminal-charges.html>.

⁴³¹ MCK-MDL2996-0070516, at 0070517 [REDACTED]

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More than two million Americans are addicted to opioids, which has devastating consequences for communities and individuals

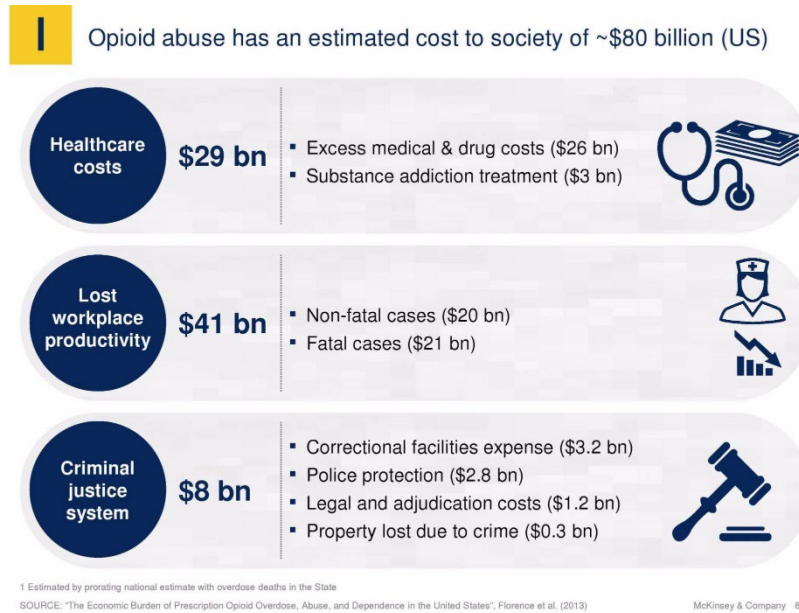


SOURCE: NIH. "A review of potential adverse effects of long-term opioid therapy: a practitioner's guide", Baldini A et al. "Direct costs of opioid abuse in an insured population in the United States", White AG, Blumberg HG, Mareva MN, et al. National Survey on Drug Use and Health, 2014. "Societal Costs of Prescription Opioid Abuse, Dependence, and Misuse in the United States", Blumberg et al. (2011) McKinsey & Company 7

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683. Similarly, news stories across the nation reported additional consequences of wide scale opioid addiction: needles littered around public property, posing costs to the governments and danger to residents.⁴³²

684. The foreseeability of the abuse and need for additional services that would be required following the misleading marketing and increased prescribing and use of high dose opioids is also evidenced by McKinsey’s attempt to put a price tag on overdoses. McKinsey suggested payment amounts for event-based contracts: \$6,000 to \$15,000 (paid to health insurers for increased medical services). Indeed, McKinsey was well aware that increased prescriptions would lead to overdoses and to an additional financial burden for social and health services.

685. McKinsey is liable for its successful efforts to increase OxyContin sales after Purdue’s 2007 guilty plea for misbranding the drug. Indeed, McKinsey’s focus on increasing opioid sales after Purdue’s guilty was incendiary to escalating and perpetuating the opioid epidemic by: (a) using data to specifically target high volume prescribers; (b) persuading sales of higher doses of opioids; (c) tailoring marketing messages to conceal their addictive principles; and (d) by reducing the training of sales representatives.

⁴³² See, e.g., <https://www.bostonglobe.com/metro/regionals/south/2014/10/25/hypodermic-needles-litter-landscape-south-boston/pzgmgbjyYFCD967TePDyiM/story.html>

1 686. In 2012, when the consent decree expired (which obligated Purdue to submit
2 annual compliance reports regarding its marketing), McKinsey helped Purdue reengage in its
3 nefarious conduct of targeting and deceiving doctors about the abuse potential of opioids.

4 687. After Purdue’s guilty plea, McKinsey identified physicians—that had already been
5 influenced by Purdue’s misrepresentations and were thus already high prescribers—as optimal
6 targets for a massive marketing push to sell more OxyContin. McKinsey monitored the
7 prescription behaviors of individual doctors and utilized the prescriber-level data and urged
8 Purdue to allocate its time and resources to high prescribing physicians.

9 688. By November 2013, McKinsey had obtained the physician-level data it had
10 previously requested and continued to study ways to sell additional OxyContin prescriptions by
11 refining and targeting the sales pitch to them.

12 689. In 2013, Project Turbocharge began. McKinsey proposed Project Turbocharge, a
13 marketing strategy to increase opioids sales by hundreds of millions of dollars annually. With
14 McKinsey’s assistance, Purdue trained its sales representatives to operate using McKinsey’s
15 strategy for selling OxyContin. It is not coincidental to the Enterprise scheme that as soon as the
16 constraints associated with its guilty plea and consent agreement ended, McKinsey assisted
17 Purdue in turbocharging sales.

18 690. While McKinsey was pushing hard to turbocharge and promote the sale of opioids,
19 it anticipated and expected that people would die from opioid overdoses. It acknowledged this
20 when in 2017, it proposed that Purdue pay health insurers or other entities in the distribution
21 chain rebates “for every OxyContin overdose attributable to pills they sold.”⁴³³

22 691. McKinsey cannot deny that it was not aware of the abuse and overdose potential of
23 opioids when it provided estimates for the future costs of overdose or opioid use disorder events.

24 692. McKinsey and the other Opioid Marketing Enterprise Members marketed a
25 product, through intentionally deceptive means, that it knew would result in consumer deaths and
26 harm to Plaintiffs and the Class. This is not an attenuated causal chain. Rather, aggressively

27 ⁴³³ Walt Bogdanich & Michael Forsythe, *McKinsey Proposed Paying Pharmacy Companies Rebates for OxyContin*
28 *Overdoses*, N.Y. Times (updated Nov. 5, 2021), <https://www.nytimes.com/2020/11/27/business/mckinsey-purdue-oxycontin-opioids.html>

1 marketing to high prescribing individuals, and training to not fully disclose the risk of abuse, were
2 integral parts of the marketing scheme. Deceptive messaging to targeted prescribers who were
3 likely to prescribe more pills in a dose with an anticipated abuse potential was part and parcel of
4 the scheme to defraud.

5 693. As a result, Plaintiffs have shouldered the burden of these anticipated increased
6 services and harm to business and property that are inherently tied to opioid abuse and misuse,
7 and both the increased services and harms were reasonably and actually expected from increased
8 prescribing.

9 694. The Enterprise's goal was to increase opioid prescribing, and the Enterprise
10 Members knew that doing so would also result in the need for increased medical services. It was
11 also foreseeable that increased prescriptions would also result in increased costs to Plaintiffs and
12 Class Members throughout the United States.

13 695. But for the increase in prescribed opioids, Plaintiffs and the Class would not have
14 to expend additional resources or suffered other harm to business and property as a result of
15 harms associated with opioid addiction. The Enterprise persisted in targeting prescribers to
16 prescribe high doses of opioids and knew that doing so would result in adverse health and social
17 outcomes, including overdoses, neo-natal complications, harm to communities like Plaintiffs and
18 the Class, hazardous waste in Plaintiffs' and the Class' communities, as well as and increased
19 expenditures on services to combat such ill effects.

20 **Plaintiffs' Business and Property Have Been Damaged by the Enterprise's RICO**

21 **Violations.**

22 696. The Opioid Marketing Enterprise's misleading marketing and failure to prevent
23 prescription opioid diversion damaged Plaintiffs and the Class. In addition to medical services,
24 the Opioid Marketing Enterprise's misconduct has contributed to a range of social problems,
25 including violence and delinquency. Adverse social outcomes include child neglect, family
26 dysfunction, babies born addicted to opioids, criminal behavior, poverty, property damage,
27 unemployment, and social despair. These very harms were acknowledged by McKinsey during
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1 the course of this fraudulent scheme. As a result, more and more of the resources of Plaintiffs and
2 the Class are being devoted to responding to the opioid epidemic.

3 697. Notably, Plaintiffs and the Class have experienced vast harm to business and
4 property directly, proximately, and foreseeably caused by the racketeering enterprise. The full
5 extent of each Plaintiff's damage cannot be captured fully in this pleading but can be fleshed out
6 during the bellwether process. Below are some discrete examples that demonstrate the common
7 and typical universal harm to Plaintiffs and the Class and the specific types of harm foreseeably
8 caused by the Opioid Marketing Enterprise.

9 698. Specifically, the Opioid Marketing Enterprise Members' creation of, and then
10 participation in, the Opioid Marketing Enterprise through a pattern of racketeering activities to
11 carry out their fraudulent scheme has injured Plaintiffs and the Class in the form of substantial
12 losses of money and property that logically, directly and foreseeably arise from the opioid
13 epidemic. The injuries to Plaintiffs and the Class, as alleged throughout this Complaint, and
14 expressly incorporated herein by reference, include:

15 a. Costs associated with hazardous waste and removal of such waste from
16 communities of Plaintiffs, including on real property of Plaintiffs and the Class;

17 b. Costs for providing healthcare and medical care, including additional
18 therapeutic care, prescription drug purchases, and other treatments for patients suffering from
19 opioid-related addiction or disease, including overdoses and deaths;

20 c. Costs of training first responders in the proper treatment of drug overdoses;

21 d. Costs associated with providing first responders with naloxone—an opioid
22 antagonist used to block the deadly effects of opioids in the context of overdose;

23 e. Costs associated with emergency responses by first responders to opioid
24 overdoses;

25 f. Costs for providing mental health services, treatment, counseling,
26 rehabilitation services, and social services to victims of the opioid epidemic and their families;

27 g. Costs associated with the injuries to the health and welfare of the residents
28 who reside in the jurisdiction of Plaintiffs caused by the opioid epidemic;

1 h. Costs associated with providing care for children whose parents suffer
2 from opioid-related disability or incapacitation; and

3 i. Losses caused by the diversion of revenue to address the opioid epidemic
4 that would otherwise have been used to provide other services.

5 699. The injuries to Plaintiffs and the Class were directly and proximately caused by
6 these racketeering activities because they were the logical, substantial, and foreseeable cause of
7 the injuries to Plaintiffs and the Class. But for the opioid epidemic the Opioid Marketing
8 Enterprise Members created through their Opioid Marketing Enterprise, Plaintiffs and the Class
9 would not have lost money or property, and the health and welfare of citizens would not have
10 been harmed.

11 700. Plaintiffs and the Class have been injured by the Enterprise's conduct, and such
12 injury would not have occurred but for the predicate acts, which also constitute acts taken in
13 furtherance of the conspiracy pursuant to Section 1962(d). By working to expand the opioid
14 market, fraudulently concealing the abuse potential of opioids, targeting high volume prescribers,
15 and deceiving prescribers and the public in order to allow opioids to continue to remain on the
16 market, the Enterprise caused the expansion of opioid prescribing and thus a large number of
17 people across the United States, and in Plaintiffs' and the Class' communities, to become
18 addicted to opioids, thereby forcing Plaintiffs and the Class to expend, time, money and resources
19 to address the opioid epidemic that McKinsey and the Enterprise created through their conduct.
20 Indeed, McKinsey intentionally deceived doctors and public health workers in order to continue
21 to grow the opioid market. The repeated fraudulent misstatements by the Opioid Marketing
22 Enterprise Members contributed to an explosion in the use of opioids across the country.

23 701. Plaintiffs and the Class were direct victims of McKinsey's misconduct. The
24 Enterprise displayed a wanton disregard for public health and safety by intentionally deceiving
25 doctors about the addiction potential of opioids and by marketing higher doses to physicians. The
26 harm created by McKinsey required Plaintiffs and the Class to expend financial and other
27 resources to mitigate the health crisis of opioid misuse and addiction. The expansion of the opioid
28 market was the goal of the Enterprise and was critical to its success. Therefore, the harm suffered

1 by Plaintiffs and the Class to their property and their forced expenditure of resources beyond
2 ordinary costs of services to combat the opioid epidemic, was directly foreseeable, and in fact,
3 and intentional result of the Enterprise's misconduct. In fact, McKinsey anticipated overdose
4 events and actually estimated price premiums on these expected overdose events. McKinsey
5 knew that the products it was marketing were highly addictive and could lead to deadly overdoses
6 yet continued to "turbocharge" sales by fraudulently pushing the product on doctors through its
7 deceptive marketing scheme.

8 702. The creation and implementation of the marketing scheme that McKinsey
9 developed and deployed through the Opioid Marketing Enterprise, directly harmed Plaintiffs and
10 the Class by imposing costs on their businesses and properties. Plaintiffs' injuries are not solely
11 the result of routine government expenses. Instead, as a result of the Enterprise's misconduct,
12 Plaintiffs have been and will be forced to go far beyond what a governmental entity might
13 ordinarily be expected to pay to enforce laws and to promote the general welfare in order to
14 combat the opioid epidemic, whose primary origins were in prescription opioids administered by
15 prescribers to whom McKinsey directed the targeting of the marketing scheme. This includes
16 providing new programs and new services as a direct result and in direct response to the
17 Enterprise's misconduct. In addition, Plaintiffs and the Class have suffered losses to their property
18 as a direct result of the kind of inevitable consequences of the drug addiction and criminal
19 behavior that McKinsey predicted. As a result of the conduct of the Enterprise, Plaintiffs and the
20 Class have incurred and will continue to incur costs that far exceed the norm.

21 703. The injuries to Plaintiffs and the Class were directly and proximately caused by
22 these racketeering activities because they were the logical, substantial, and foreseeable cause of
23 the injuries to Plaintiffs. But for the opioid epidemic the Opioid Marketing Enterprise Members
24 created through their Opioid Marketing Enterprise, Plaintiffs and the Class would not have lost
25 money or property, and the health and welfare of residents in Plaintiffs' and the Class'
26 jurisdictions would not have been harmed. Moreover, McKinsey's internal documents show that
27 it in fact foresaw many of the harms that resulted from its conduct.
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1 704. There are no intervening acts or parties that could interrupt the causal chain
2 between McKinsey’s mail and wire fraud and Plaintiffs’ and the Class’ injuries. McKinsey, in
3 furtherance of the Enterprise’s common purpose, caused to be made false and misleading
4 statements directly to prescribers (who consumers rely on to provide health advice), patients, and
5 Plaintiffs. Prescribers are not a break in the causal chain. Instead, the Enterprise Members as a
6 whole, and McKinsey in particular, intentionally targeted doctors and sought to deceive them.
7 That the doctors were then deceived and behaved as the Enterprise wanted, prescribing more and
8 more opioids, was the purpose of the scheme, not an intervening cause.

9 705. The Enterprise’s violations of 18 U.S.C. § 1962(c) have directly and proximately
10 caused injuries and damages to Plaintiffs and the Class, and Plaintiffs are entitled to bring this
11 action for three times their actual damages, as well as for injunctive/equitable relief, costs and
12 reasonable attorneys’ fees and costs pursuant to 18 U.S.C. § 1964(c).

13 2. **Negligence**
14 **(All Plaintiffs)**

15 706. This claim is brought by all Plaintiffs, and by Named Plaintiffs on behalf of
16 themselves and the Class against McKinsey.

17 707. McKinsey, through its work with Purdue and other opioid manufacturers, owed
18 Plaintiffs and the Class duties, including but not limited to, a duty to not deceive, encourage, and
19 facilitate the over-marketing and over-prescribing of a controlled substance known at the time to
20 be addictive and known at the time to be a threat to public health, safety, and welfare.

21 708. McKinsey also owed such a duty as a “Covered Person” under the Corporate
22 Integrity Agreement.

23 709. McKinsey breached this duty by, for years, devising and assisting Purdue with
24 implementing an aggressive sales and predatory marketing campaign, including Project
25 Turbocharge, which promoted misleading claims regarding OxyContin to significantly bolster
26 the amount of OxyContin prescribed and distributed throughout Plaintiffs’ community.
27
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1 710. Plaintiffs and the Class have suffered harm directly, proximately, and foreseeably
2 caused by Defendants' breaches of duties. Defendants' negligence was a substantial factor in
3 causing Plaintiffs' harm.

4 711. It was reasonably foreseeable that McKinsey's breaches of the duties would cause
5 harm to Plaintiffs and the Class in the form of higher costs related to opioid use, as well as
6 opioid abuse, addiction, and opioid related deaths—costs that would not have been paid but for
7 Defendants' wrongful conduct. Thus, Plaintiffs have suffered monetary costs incurred to abate
8 the effects of the opioid epidemic proximately caused by McKinsey's breaches of its duties.

9 712. McKinsey's breaches of the common-law duties owed to Plaintiffs are the direct
10 and proximate cause of Plaintiffs' harm and harm to the Class.

11 713. McKinsey is also liable for Purdue's negligence as a result of a joint enterprise or
12 joint venture between the two companies. Although the Master Consulting Agreement indicated
13 that no partnership or joint venture was created between McKinsey and Purdue as a result of that
14 agreement, the relationship between the parties, not the formal terms of the agreement, controls,
15 particularly with respect to third parties, including Plaintiffs and the Class. McKinsey and Purdue
16 agreed to carry on a joint enterprise to promote sales of opioids and formed a partnership lastly
17 nearly fifteen years.

18 714. In carrying out their common enterprise, McKinsey and Purdue shared a common
19 purpose: to increase sales of OxyContin.

20 715. Each company contributed its expertise and labor to the venture: McKinsey, its
21 consulting services and marketing know-how and Purdue, its development of OxyContin.

22 716. McKinsey and Purdue shared a common pecuniary interest in the promotion of
23 opioids. Purdue paid McKinsey handsomely for its consulting services, and Purdue in turn reaped
24 profits as a result of the strategies McKinsey provided. While the Master Consulting Agreement
25 made clear that McKinsey was entitled to monthly payments from Purdue, it also made clear that
26 with Purdue's success, McKinsey would further profit. For example, as Purdue's own ventures
27 intensified, it would increase the services it called for from McKinsey. Similarly, through its
28 support of Purdue's Research & Development Department, McKinsey had the opportunity to

1 generate further profits for itself if Purdue was successful. The converse was also true: with
2 Purdue's failures or losses, McKinsey was likely to lose business.

3 717. McKinsey had an equal right to a voice in the direction of its joint enterprise with
4 Purdue, which gave it an equal right of control. McKinsey and Purdue met extensively over the
5 course of more than a decade to develop their strategy together. McKinsey provided minute
6 direction to Purdue as part of its consulting work, such as how many times sales representatives
7 should visit particular doctors. McKinsey and Purdue together had the right and the duty of joint
8 control.

9 **3. Gross Negligence**
10 **(Florida, Pennsylvania, Virginia, and Washington Plaintiffs)**

11 718. This claim is brought by Florida, Pennsylvania, Virginia, and Washington State
12 Plaintiffs, and by Named Plaintiffs on behalf of the Florida, Pennsylvania, Virginia, and
13 Washington Class Members.

14 719. Plaintiffs re-allege and incorporate the allegations contained in the Negligence
15 cause of action.

16 720. The opioid epidemic to which McKinsey contributed constituted an imminent or
17 clear and present danger amounting to more than normal and usual peril.

18 721. McKinsey knew that opioids were addictive and deadly, and that Purdue's
19 representations about its products were false, misleading, and would create, contribute to, and
20 exacerbate the opioid crisis.

21 722. McKinsey had chargeable knowledge of the imminent or clear and present danger.

22 723. Despite this knowledge, McKinsey acted with conscious disregard of the
23 consequences when advising and assisting Purdue.

24 **4. Negligence Per Se**
25 **(All Plaintiffs)**

26 724. This claim is brought by all Plaintiffs, and by Named Plaintiffs on behalf of
27 themselves and the Class against McKinsey.
28

1 725. Plaintiffs re-allege and incorporate the allegations contained the allegations in the
2 Negligence cause of action.

3 726. A presumption of negligence (negligence per se) is established where McKinsey’s
4 negligence involves the violation of a statute or regulation, where the plaintiff is within the class
5 of persons that the statute or regulation was designed to protect, and the violation is a substantial
6 factor in the plaintiff’s harm.

7 727. McKinsey contributed to and aided and abetted violations of the Controlled
8 Substances Act, as well as state-specific controlled substances laws identified elsewhere in this
9 Complaint. McKinsey also violated state-specific statutory nuisance laws, as identified elsewhere
10 in this Complaint.

11 728. Plaintiffs and the Class are within the class of persons the statutes were designed
12 to protect. The Controlled Substances Act and analogous state laws were enacted in part to
13 protect communities like Plaintiffs and the Class from the harm traceable to unregulated
14 distribution of dangerous, addictive substances. State nuisance statutes were enacted in part to
15 protect communities like Plaintiffs and the Class from the costs of public nuisances.

16 5. **Common Law Nuisance**
17 **(Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, New York,**
18 **Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, Washington, and**
19 **West Virginia Plaintiffs)**

20 729. This claim is brought by Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan,
21 New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, Washington, and West Virginia
22 Plaintiffs, and by Named Plaintiffs on behalf of themselves and Florida, Illinois, Indiana,
23 Kentucky, Louisiana, Michigan, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia,
24 Washington, and West Virginia Class Members.

25 730. McKinsey created, exacerbated, and maintained a public nuisance which
26 proximately caused injury to Plaintiffs and the Class.

27 731. A public nuisance is an unreasonable interference with a right common to the
28 general public. McKinsey’s conduct has created an ongoing, significant, unlawful, and

1 unreasonable interference with rights common to the general public, including the public health,
2 welfare, safety, peace, comfort, and convenience of Plaintiffs' communities. *See* Restatement
3 (Second) of Torts § 821B.

4 732. McKinsey has created and maintained a public nuisance by developing and
5 implementing deceptive marketing strategies and efforts to boost opioid sales in ways that
6 unreasonably interfere with the public health, welfare, and safety in Plaintiffs' communities.
7 Plaintiffs, the Class, and their residents have a common right to be free from such conduct and to
8 be free from conduct that creates a disturbance and reasonable apprehension of danger to person
9 and property.

10 733. The interference is unreasonable because McKinsey's nuisance-creating conduct:

11 a. Involves a significant interference with the public health, the public safety,
12 the public peace, the public comfort, and/or the public convenience;

13 b. Was and is proscribed by state and/or federal laws and regulations at all
14 relevant times; and/or

15 c. Is of a continuing nature and, as Defendants know, has had and continues
16 to have a significant effect upon rights common to the general public, including the public health,
17 the public safety, the public peace, the public comfort, and/or the public convenience.

18 734. The significant interference with rights common to the general public is described
19 in detail throughout this Complaint and includes:

20 a. The creation and fostering of an illegal, secondary market for prescription
21 opioids;

22 b. Easy access to prescription opioids by children and teenagers;

23 c. A staggering increase in opioid abuse, addiction, overdose, injuries, and
24 deaths;

25 d. Infants being born dependent on opioids due to prenatal exposure, causing
26 severe withdrawal symptoms and lasting developmental impacts;

27 e. Employers losing the value of productive and healthy employees; and
28

1 f. Increased costs and expenses for Plaintiffs relating to healthcare services,
2 law enforcement, the criminal justice system, social services, and education systems.

3 735. McKinsey is liable for creating the public nuisance because its intentional and
4 unreasonable and/or unlawful conduct was a substantial factor in producing the public nuisance
5 and harm to Plaintiffs.

6 736. McKinsey is also liable for creating the public nuisance because it aided and
7 abetted opioid manufacturers' production of the nuisance.

8 737. McKinsey's wrongful conduct of deceptively marketing and pushing as many
9 opioids onto the market as possible led directly to the public nuisance and harm to Plaintiffs—
10 exactly as would be expected when medical-grade heroin in the form of prescription opioids are
11 deceptively marketed, flood the community, and are diverted into an illegal, secondary market.

12 738. McKinsey had control over its conduct in Plaintiffs' communities and that conduct
13 has had an adverse effect on rights common to the general public. McKinsey controlled deceptive
14 advertising and efforts to mislead the public, and also influenced acts and omissions by Purdue in
15 detailing by sales representatives and other means described in this Complaint. McKinsey also
16 controlled its conduct in seeking to grow opioid sales to prescribers who raised red flags of
17 diversion and orders it knew or should have known were likely to be diverted or fuel an illegal
18 market.

19 739. It was reasonably foreseeable that McKinsey's actions and omissions would result
20 in the public nuisance and harm to Plaintiffs and the Class described herein

21 740. The externalized risks associated with McKinsey's nuisance-creating conduct as
22 described herein greatly exceed the internalized benefits.

23 741. The nuisance created by McKinsey's conduct is abatable.

24 742. As a direct and proximate result of McKinsey's tortious conduct and the public
25 nuisance created by McKinsey, Plaintiffs and the Class have taken proactive measures to abate
26 the public nuisance, and Plaintiffs seek to expand these efforts.

27 743. In order to abate the public nuisance, Plaintiffs and the Class have incurred
28 expenditures for special programs over and above their ordinary public services.

1 744. McKinsey’s misconduct alleged in this case was ongoing and persistent for many
2 years.

3 745. McKinsey’s misconduct alleged in this case does not concern a discrete event or
4 discrete emergency of the sort a political subdivision would reasonably expect to occur, and is not
5 part of the normal and expected costs of a local government’s existence. Plaintiffs and the Class
6 allege wrongful acts which are neither discrete nor of the sort a local government can reasonably
7 expect.

8 746. Plaintiffs and the Class have suffered an indivisible injury as a result of
9 McKinsey’s tortious conduct and that of the manufacturers with which it worked.

10 **6. Civil Conspiracy**
11 **(All Plaintiffs)**

12 747. The pleading of a separate claim for civil conspiracy in certain states does not waive
13 any claim for vicarious liability under conspiracy principles even if not pleaded as an independent
14 tort. Plaintiffs and the Class reserve the right to establish joint and several liability under
15 conspiracy principles.

16 748. McKinsey and Purdue engaged in a civil conspiracy in their unlawful marketing of
17 opioids and/or efforts to boost the sale of opioids into Plaintiffs’ communities. McKinsey entered
18 into an agreement with Purdue to increase the sales of OxyContin by unfair, deceptive, and
19 unconscionable means, in violation of Ohio and federal consumer protection and controlled
20 substances laws.

21 749. McKinsey and Purdue engaged in a civil conspiracy to commit fraud and
22 misrepresentation in conjunction with their unlawful marketing of opioids and/or distribution of
23 opioids into Plaintiffs’ communities.

24 750. McKinsey and Purdue employed unlawful means of evading Purdue’s reporting
25 and compliance obligations to the Inspector General of the United States Department of Health
26 and Human Services for the five years in which Purdue was subject to a Corporate Integrity
27 Agreement, after Purdue pled guilty to criminal misbranding in 2007. McKinsey unlawfully
28

1 assisted Purdue with evading these reporting and compliance obligations to accomplish the lawful
2 act of maximizing Purdue's OxyContin revenue.

3 751. McKinsey aided Purdue in unlawfully failing to act to prevent diversion and failing
4 to monitor for, report, and prevent suspicious orders of opioids.

5 752. McKinsey aided Purdue in unlawfully marketing opioids in Plaintiffs' communities
6 in furtherance of that conspiracy.

7 753. McKinsey's conspiracy and acts in furtherance thereof are alleged in detail in this
8 Complaint, including, Plaintiffs' common law and statutory nuisance claims.

9 754. McKinsey's overt acts in furtherance of this conspiracy include, but are not limited
10 to, designing and implementing marketing messages that:

11 a. Comprised untrue, false, unsubstantiated, and misleading marketing,
12 directly and with and through third parties in violation of 21 C.F.R. § 202.1(e), thereby causing
13 opioid drugs to be misbranded;

14 b. Promoted other purported advantages of OxyContin, including but not
15 limited to improved function and quality of life in violation of FDA regulations, including 21
16 C.F.R. § 202.1(e);

17 c. Promoted higher sales, higher dose sales, and targeted the highest volume
18 prescribers of a highly abusable, addictive, and dangerous drug;

19 d. Promoted higher dose OxyContin prescriptions, known to pose greater
20 risks; and

21 e. Targeted the highest-prescribing physicians, without addressing whether
22 those prescribers may be engaged in abuse and diversion and should not be targeted, to induce
23 them to increase prescriptions of OxyContin further.

24 755. The conspiracy was the product of agreement between McKinsey and Purdue, who
25 were operating in close collaboration. When McKinsey's role in the conspiracy threatened to be
26 exposed, upon information and belief, it took efforts to conceal its participation by attempting to
27 destroy inculcating emails and files.
28

1 756. McKinsey’s conspiracy, and McKinsey’s actions and omissions in furtherance
2 thereof, caused the direct and foreseeable losses alleged herein.

3 757. McKinsey’s actions demonstrated both malice and also aggravated and egregious
4 fraud. McKinsey engaged in the conduct alleged herein with a conscious disregard for the rights
5 and safety of other persons, even though that conduct had a great probability of causing
6 substantial harm. McKinsey’s fraudulent wrongdoing was done with a particularly gross and
7 conscious disregard.

8 7. **Fraud**
9 **(All Plaintiffs)**

10 758. This claim is brought by all Plaintiffs, and by Named Plaintiffs on behalf of
11 themselves and the Class, against McKinsey.

12 759. McKinsey committed fraud by acting to conceal and advising the concealment of
13 the true dangers of opioids and Purdue’s prior and ongoing misconduct while working to
14 increase sales of opioids through its work for Purdue and others, and concealing all of this
15 information from regulators, the public, Plaintiffs, and the Class. McKinsey made, and caused to
16 be made, false representations to healthcare providers working in Plaintiffs’ communities, and/or
17 omitted material facts regarding the risks, efficacy, and medical necessity of opioids, generally,
18 and Purdue’s opioids, specifically. McKinsey knew these representations were false, made
19 recklessly without knowledge of the truth, and/or had no reasonable ground for believing such
20 assertions. Specifically, McKinsey knowingly and/or recklessly:

21 a. downplayed the substantial risks of addiction and other side-effects of
22 opioids, generally and Purdue’s opioids, specifically, including crafting Purdue’s marketing plan
23 to affirmatively state in sales calls and other marketing channels that Purdue’s drugs were not as
24 addictive or prone to abuse as they truly are, stating that classic signs of addiction were actually an
25 indication of “pseudoaddiction” requiring additional administration of opioids, and omitting the
26 high risks of addiction actually present;

1 b. overstated the efficacy of opioids, generally, and Purdue’s opioids,
2 specifically, including making false statements regarding the effectiveness of the drugs for
3 treating specific subsets of the patient population (i.e., those with osteoarthritis) and their ability
4 to improve patient function; and

5 c. misrepresented the medical usefulness and necessity of opioids, generally,
6 and Purdue’s opioids, specifically, including affirmatively marketing their drugs for off label uses
7 (i.e., osteoarthritis) without solicitation and not in response to questions from healthcare
8 providers.

9 760. McKinsey and Purdue’s misrepresentations and omissions had a tendency to
10 deceive others, to violate public confidence, and/or injure public interests. McKinsey, having
11 chosen to craft the marketing plan used by Purdue to make representations to healthcare providers
12 regarding their opioids, was under a duty to disclose the whole truth, and not disclose partial and
13 misleading truths.

14 761. McKinsey intended healthcare providers to rely upon McKinsey’s false assertions
15 regarding the risks, efficacy, and medical necessity of opioids, generally, and Purdue’s opioids,
16 specifically, to increase the number of opioid prescriptions made by healthcare providers.

17 762. Healthcare providers working in Plaintiffs’ communities did in fact rely on the
18 false representations made in Purdue’s marketing plan created by McKinsey and implemented
19 with McKinsey’s assistance.

20 763. As a proximate result of McKinsey’s conduct, Plaintiffs and the Class have
21 incurred excessive costs related to the diagnosis, treatment, and cure of addiction or risk of
22 addiction to opioids. Plaintiffs and the Class have borne the massive costs of these illnesses and
23 conditions by having to provide necessary resources for care, treatment facilities, law
24 enforcement services, and to allocate limited resources to combat the devastating social effects of
25 the opioid epidemic.

1 **8. Aiding And Abetting**
2 **(All Plaintiffs)**

3 764. This claim is brought by all Plaintiffs, and by Named Plaintiffs on behalf of
4 themselves and the Class, against McKinsey.

5 765. The pleading of a separate claim for aiding and abetting in certain states does not
6 waive any claim for vicarious liability under aiding and abetting principles under the laws of any
7 state. Plaintiffs reserve the right to establish joint and several liability under aiding and abetting
8 principles.

9 766. McKinsey gave substantial assistance and/or encouragement to Purdue and the
10 Sacklers regarding conduct McKinsey knew to be tortious and/or in violation of a duty owed by
11 Purdue and the Sacklers to third persons, including Plaintiffs and the Class. McKinsey assisted
12 and encouraged Purdue over many years to commit unlawful acts relating to the sales and
13 marketing of Purdue’s opioid products that McKinsey knew to be misleading and in violation of a
14 reasonable standard of care. McKinsey gave substantial assistance and/or encouragement to
15 Purdue to use unlawful means to commit unlawful acts as part of these marketing efforts and
16 sales.

17 767. Further, McKinsey gave substantial assistance and/or encouragement to Purdue to
18 take actions that violated state laws, including but not limited to public nuisance and statutory
19 prohibitions, through McKinsey’s misleading and predatory marketing campaign.

20 768. McKinsey and Purdue knowingly made or caused to be made false or misleading
21 representations as to the characteristics, ingredients, uses, and benefits of opioids, generally, and
22 Purdue’s opioids, specifically, by downplaying the risks of addiction and abuse, overstating the
23 efficacy, and misrepresenting the medical necessity of opioids, generally, and Purdue’s opioids,
24 specifically.

25 769. McKinsey acted with intent to facilitate the spread of misleading information by
26 Purdue, specifically with regard to the misrepresentations about the addictiveness of opioids in
27 Purdue’s marketing efforts and sales.
28

1 770. McKinsey, Purdue, and the Sacklers acted jointly in furtherance of the conspiracy.

2 771. McKinsey, Purdue, and the Sacklers agreed to deploy unlawful sales and
3 marketing tactics to achieve their shared objective of maximizing revenue of a closely held
4 company.

5 772. McKinsey's support was a substantial factor in causing harm to third parties,
6 including Plaintiffs and the Class.

7 **9. Wanton Intentional Conduct**
8 **(Alabama, Indiana, Louisiana, and Tennessee Plaintiffs)**

9 773. This claim is brought by Alabama, Indiana, Louisiana, and Tennessee Plaintiffs, and
10 by Named Plaintiffs on behalf of the Alabama, Indiana, Louisiana, and Tennessee Class Members.

11 774. Defendants' actions were the product of conscious and/or reckless disregard of the
12 rights and safety of Plaintiffs, with the attendant awareness that harm would likely result.

13 775. Defendants' conduct was willful.

14 776. Defendants knew their breach of their legal duties would exacerbate the opioid
15 epidemic, causing harm to Plaintiffs and the Class.

16 **10. Declaratory Relief**
17 **(28 U.S.C. § 2201; N.Y. CPLR § 3001)**
18 **(All Plaintiffs)**

19 777. This claim is brought by all Plaintiffs, and by Named Plaintiffs on behalf of
20 themselves and the Class, against McKinsey.

21 778. 28 U.S.C. § 2201 authorizes "any court of the United States" to "declare the rights
22 and other legal relations of any interested party seeking such declaration," and "[a]ny such
23 declaration shall have the force and effect of a final judgment."

24 779. New York CPLR § 3001 authorizes state courts to "render a declaratory judgment
25 having the effect of a final judgment as to the rights and other legal relations of the parties to a
26 justiciable controversy."

27 780. The Master Agreement between McKinsey and Purdue contains an
28 indemnification provision pursuant to which Purdue agrees to indemnify and hold harmless

1 McKinsey and its Associated Companies and the directors, officers, stockholders, agents and
2 employees of McKinsey and such Associated Companies from and against all actions,
3 proceedings and claims brought by third parties against Purdue and/or McKinsey relating to or
4 arising out of the services provided by McKinsey under the agreement.

5 781. Plaintiffs are claimants in the Purdue bankruptcy. Any claim for indemnity made
6 by McKinsey in the Purdue bankruptcy under the Master Agreement could have the effect of
7 reducing the value of Plaintiffs' claims in the Purdue bankruptcy.

8 782. Plaintiffs allege in their proofs of claim that their claims arise from Purdue's
9 tortious, deceptive, unreasonable, or otherwise unlawful conduct with respect to the marketing,
10 promotion, sale, and/or distribution of prescription opioid products. They further allege that
11 Purdue acted jointly with others. McKinsey has argued that claims such as those made by
12 Plaintiffs in this action, if successful, could give rise to indemnification and/or contribution
13 claims by McKinsey against Purdue and therefore may affect property of Purdue's bankruptcy
14 estate.

15 783. It would be contrary to public policy for McKinsey to be indemnified by, or to
16 receive contribution from Purdue for the wrongdoing alleged herein.

17 784. The doctrine of *in pari delicto* bars McKinsey from being indemnified by, or to
18 receive contribution from Purdue for the wrongdoing alleged herein.

19 785. Plaintiffs are entitled to a declaration that under New York law McKinsey is not
20 entitled to indemnification or contribution from Purdue for any liability arising from the
21 wrongdoing alleged herein.

22 **C. Alabama Plaintiffs**

23 **1. Public Nuisance (Ala. Code §§ 6-5-121, 6-5-122, 11-1-2)**

24 786. This claim is brought by Alabama Plaintiffs, and by Named Plaintiffs on behalf of
25 the Alabama Class Members, against McKinsey.
26
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1 787. Alabama Plaintiffs and Class Members have standing to pursue nuisance claims
2 for public nuisance pursuant to Ala. Code § 6-5-121.

3 788. Alabama Plaintiffs and Class Members have standing to pursue nuisance claims
4 against the Defendants for public nuisance pursuant to Ala. Code § 11-1-2.

5 789. Pursuant to Alabama law, a nuisance includes “anything that works hurt,
6 inconvenience or damage to another” and a public nuisance is defined as anything “which
7 damages all persons who come within the spear of its operation, though it may vary in its effects
8 on individuals.” Ala. Code § 6-5-121 and 122.

9 790. Defendants, in concert with opioid manufacturers, have created and fueled an
10 opioid epidemic that has created harm, damage and inconvenience to the Plaintiffs. Defendants
11 have created a nuisance and damaged the public by engaging in the following conduct:

12 a. downplayed the substantial risks of addiction and other side-effects of
13 opioids, generally, and Purdue’s opioids, specifically, including crafting Purdue’s marketing plan
14 to affirmatively state in sales calls and other marketing channels that Purdue’s drugs were not as
15 addictive or prone to abuse as they truly are, stating that classic signs of addiction were actually
16 an indication of “pseudoaddiction” requiring additional administration of opioids, and omitting
17 the high risks of addiction actually present;

18 b. overstated the efficacy of opioids, generally, and Purdue’s opioids,
19 specifically, including making false statements regarding the effectiveness of the drugs for
20 treating specific subsets of the patient population (i.e., those with osteoarthritis) and their ability
21 to improve patient function; and

22 c. misrepresented the medical usefulness and necessity of opioids, generally,
23 and Purdue’s opioids, specifically, including affirmatively marketing their drugs for off label uses
24 (i.e., osteoarthritis) without solicitation and not in response to questions from healthcare
25 providers.

26 791. Defendants’ actions are continuing in nature and have negatively impacted the
27 rights of the citizens of Plaintiffs’ communities to live without unreasonable interference to the
28 public health, safety, welfare, peace, comfort and convenience, unreasonable threat of crime, and

1 the right to be free from disturbance without the unreasonable apprehension of danger to personal
2 property resulting from the opioid epidemic.

3 792. Defendants' actions have been and continue to be a substantial factor in opioids
4 becoming widely available and widely used for non-medical purposes. Defendants have a
5 responsibility, and legal obligation, within the system of opioid distribution and marketing to
6 refrain from conduct that would create a widespread nuisance which negatively affects Plaintiffs'
7 communities, creating an enormous public health crisis resulting from the overuse of prescription
8 opioids and heroin.

9 793. Defendants' conduct is a direct and proximate cause of death, injury, and damage
10 to the citizens of Alabama Plaintiffs' communities, which has caused financial damage to
11 Plaintiffs, and if allowed to continue, unabated, will continue to threaten the health, safety and
12 welfare of Plaintiffs' communities.

13 **2. Drug Nuisance (Ala. Code § 6-5-155)**

14 794. This claim is brought by Alabama Plaintiffs, and by Named Plaintiffs on behalf of
15 the Alabama Class Members, against McKinsey.

16 795. Defendants' actions have created consumption of opioid related drugs that has
17 become dangerous and harmful to the public welfare. Prescription opioid abuse has led to
18 increased crime and criminal activity in the State of Alabama and in Plaintiffs' communities and
19 in those of Class Members.
20

21 796. In Plaintiffs' communities, the nationwide opioid epidemic has been especially
22 damaging, impacting people from all walks of life from newborns to the elderly, including all
23 races and socio-economic levels of the population. By their conduct, Defendants have created a
24 drug related nuisance in Plaintiffs' communities.

25 797. Alabama recognizes that drugs can have a tremendous negative impact on
26 communities, such as Plaintiffs' communities. The Alabama Code defines a "Drug-Related
27 Nuisance" as the "sale, distribution, possession, storage, transportation or manufacture of any
28

1 controlled substance in violation of the controlled substances acts, or similar act of the United
2 States or any other state” that causes harm to a community. Ala. Code § 6-5-155.

3 798. There is a duty and corresponding right provided under Alabama law for any
4 person to take action against drug related nuisances to “file an action in the circuit courts of this
5 state to abate, enjoin, and prevent the drug-related nuisance.” Ala. Code § 6-5-155(2).

6 799. The Alabama Uniform Controlled Substance Act, the federal Controlled
7 Substances Act and regulations promulgated by the Alabama State Board of Pharmacy proscribe
8 the manufacture and distribution of opioids while failing to maintain effective controls against
9 diversion. *See, e.g.*, 21 C.F.R. § 1301.74(b); 21 U.S.C. § 823(a)(1), (b)(1); Ala. Code §§ 20-2-56
10 and 57; Ala. Admin. Code §680-X-3-.05. This manufacture and distribution in violation of the
11 controlled substance acts or similar act of the United States constitutes a Drug-Related Nuisance.
12 As a result of the drug-related nuisance created by McKinsey, Plaintiffs and Alabama Class
13 Members have sustained damages, harm and unreasonable jeopardy to the health, morals,
14 comfort, welfare and safety of their communities and to their residents.

15 **D. California Plaintiffs**

16 **1. Public Nuisance (Cal. Civ. Code §§ 3479, 3480)**

17 800. This claim is brought by California Plaintiffs, and by Named Plaintiff County of
18 Santa Cruz on behalf of itself, and Named Plaintiffs on behalf of the California Class Members,
19 against McKinsey.

20 801. Civil Code § 3479 provides that “[a]nything that is injurious to health ... or is
21 indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere
22 with the comfortable enjoyment of life or property ... is a nuisance.”

23 802. Civil Code § 3480 defines a “public nuisance” as “one which affects at the same
24 time an entire community or neighborhood, or any considerable number of persons, although the
25 extent of the annoyance or damage inflicted upon individuals may be unequal.”

26 803. Civil Code § 3490 states that “[n]o lapse of time can legalize a public nuisance,
27 amounting to an actual obstruction of public right.”
28

1 804. Pursuant to § 731 of the California Code of Civil Procedure, this section is brought
2 by California Plaintiffs and Named Plaintiff County of Santa Cruz on behalf of California Class
3 Members to abate the public nuisance created by McKinsey.

4 805. McKinsey, individually and acting in concert with Purdue, has created, assisted, or
5 permitted the creation of a condition that is harmful to public health, indecent or offensive to the
6 sense, and was an obstruction to the free use of property, so as to interfere with the comfortable
7 enjoyment of life and/or property of entire communities or neighborhoods. This condition
8 affected any considerable and substantial number of persons in Plaintiffs' communities at the
9 same time, in violation of Civil Code §§ 3479 and 3480.

10 806. The public nuisance is substantial and unreasonable. McKinsey's actions caused
11 and continue to cause the public health epidemic described above in Plaintiffs, and the
12 seriousness of the harm outweighs the social utility of McKinsey's conduct

13 807. McKinsey knew or should have known that their promotion of opioids was false
14 and misleading and that their deceptive marketing scheme and other unlawful, unfair, and
15 fraudulent action would create or assist in the creation of the public nuisance – i.e., the opioid
16 epidemic.

17 808. McKinsey's actions were, at the very least, a substantial factor in opioids
18 becoming widely available and widely used – causing harm to Plaintiffs and California Class
19 Members. McKinsey's actions were, at the very least, a substantial factor in deceiving doctors
20 and patients about the risks and benefits of opioids for the treatment of chronic pain. Without
21 McKinsey's marketing scheme, opioid use, misuse, abuse, and addiction would not have become
22 so widespread, and the opioid epidemic that now exists would have been averted or much less
23 severe.

24 809. As Purdue's management consulting company, McKinsey was in a unique position
25 to observe the flow of opioids and take action when orders were placed for suspicious quantities
26 and suspect intervals, among other things. Instead, McKinsey breached its duties by honing in on
27 these prescribers as cash cows for Purdue. McKinsey's role in marketing opioids and facilitating
28 access to opioid drugs for long-term use contributed to a vast increase in opioid overuse and

1 addiction, including in Plaintiffs' communities. McKinsey's conduct thus directly caused a public
2 health crisis, including costs for excessive prescribing, addiction related treatment, law
3 enforcement and costs related to deaths, lost productivity of the workforce, and caring for
4 children born addicted or with addicted parents.

5 810. McKinsey's acts and omissions offend decency and include marketing opioids and
6 facilitating access to opioid drugs for long-term use, which contributed to the increase in opioid
7 overuse and addiction in Plaintiffs' and California Class Members' communities.

8 811. Plaintiffs and California Class Members did not consent, expressly or impliedly, to
9 the wrongful conduct of McKinsey.

10 812. As a direct and legal result of the conduct of McKinsey, Plaintiffs and California
11 Class Members suffered harm that is different from the type of harm suffered by the general
12 public. Defendants' acts and omissions proximately caused injury to Plaintiffs and California
13 Class Members, including costs for excessive prescribing addiction related treatment costs, law
14 enforcement costs, costs related to deaths, costs related to lost productivity of the workforce, and
15 costs related to caring for children born addicted or with addicted parents.

16 813. McKinsey has a duty to abate the nuisance caused by the prescription opioid
17 epidemic. The public nuisance – i.e., the opioid epidemic – created, perpetuated, and maintained
18 by McKinsey can be abated and further recurrence of such harm and inconvenience can be abated.

19 **E. Florida Plaintiffs**

20 **1. Civil Remedies For Criminal Practices Act**
21 **(Fla. Stat. §§ 772.101 et seq.)**

22 814. This claim is brought on behalf of Florida Plaintiffs, and by Named Plaintiffs on
23 behalf of Florida Class Members.

24 815. Plaintiffs re-allege and incorporate the allegations contained in the RICO cause of
25 action.

26 816. McKinsey, Purdue, and other opioid manufacturers constituted an "enterprise"
27 within the meaning of Fla. Stat. §772.102(3) because they are associated in fact.
28

1 817. McKinsey, Purdue, and other opioid manufacturers shared the common purpose
2 of enriching themselves through a common course of conduct, i.e., ensuring the prescription of
3 opioids for chronic pain and boosting opioid sales through deceptive marketing and turning a
4 blind eye to signs of potential diversion.

5 818. McKinsey was associated with the enterprise and conducted or participated,
6 directly or indirectly, in that enterprise.

7 819. The enterprise possesses sufficient longevity for its members to carry out its
8 purpose in that the enterprise has operated since at least 2004, and operated until at least 2019.

9 820. Said pattern of criminal activity included violations of the federal wire fraud
10 statute and the Controlled Substances Act.

11 **F. Georgia Plaintiffs**

12 **1. Public Nuisance (O.C.G. § 41-2-2)**
13 **(Georgia County Plaintiffs)**

14 821. This claim is brought by Georgia Plaintiffs, and by Named Plaintiffs on behalf of
15 Georgia Class Members.

16 822. The County Attorney of Peach County, Georgia brings this claim on behalf of the
17 citizens of Peach County pursuant to the statutory authority granted under O.C.G. § 41-2-2 to
18 abate a public nuisance.

19 823. Georgia statutory law provides that “[a] nuisance is anything that causes hurt,
20 inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall
21 not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such
22 as would affect only one of fastidious taste, but it shall be such as would affect an ordinary,
23 reasonable man.” O.C.G. § 41-1-1. Georgia law further defines “[a] public nuisance [as] one
24 which damages all persons who come within the sphere of its operation, though it may vary in its
25 effects on individuals.” O.C.G. § 41-1-2.

26 824. The Georgia nuisance statute also provides that “[u]pon filing of a petition as
27 provided in Code Section 41-2-2, any nuisance which tends to the immediate annoyance of the
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1 public in general, is manifestly injurious to the public health or safety, or tends greatly to corrupt
2 the manners and morals of the public may be abated” O.C.G. § 41-2-1.

3 825. The improper efforts of McKinsey, working with Purdue and others, to promote
4 the use of opioids generally, and Purdue’s opioids specifically, in Peach County and surrounding
5 communities has led to dramatic increases in opioid addiction and mortality, as well as associated
6 increases in crime and human suffering, which has resulted in an ongoing public nuisance in
7 Peach County that has strained the County’s resources.

8 826. McKinsey knew that prescription opioids were dangerous because those drugs are
9 defined under federal and state law, and are generally recognized, as substances posing a high
10 potential for abuse, addiction, and death.

11 827. The conduct of McKinsey has contributed to the existence of an ongoing,
12 significant, unlawful, and unreasonable interference with the public health, public safety, public
13 peace, public welfare, and the public comfort of the citizens of Peach County. McKinsey’s
14 conduct has obstructed and caused inconvenience and annoyance to the citizens of Peach County
15 and is manifestly injurious to public health and safety.

16 828. The significant interference with rights common to the public includes:

17 829. The creation and fostering of an illegal, secondary market for prescription opioids;

18 830. Easy access to prescription opioids by children and teenagers;

19 831. A staggering increase in opioid abuse, addiction, overdose, injuries, and deaths;

20 832. Infants being born addicted to opioids due to prenatal exposure, causing severe
21 withdrawal symptoms and lasting developmental impacts;

22 833. Employers have lost the value of productive and healthy employees; and

23 834. Increased costs and expenses for Plaintiffs relating to healthcare services, law
24 enforcement, the criminal justice system, social services, and education systems.

25 835. When McKinsey engaged in the conduct described herein, McKinsey either knew,
26 was substantially certain, or should have known that by failing to act reasonably and lawfully
27 with respect to its work with Purdue and others, and by participating in the false marketing of
28

1 opioids in Peach County and the surrounding communities, diversion and the associated harms
2 and resulting interference with public health, safety, and welfare would occur.

3 836. McKinsey’s conduct was negligent, reckless, and malicious.

4 837. McKinsey’s conduct was a proximate or other legal cause of the public nuisance
5 that exists in Peach County.

6 838. The public nuisance in Peach County is abatable. However, McKinsey lacks the
7 infrastructure and expertise needed to abate the public nuisance it created, contributed to, and/or
8 maintained in Peach County. McKinsey’s conduct - including its lack of regard for the well-being
9 of the citizens of Peach County and surrounding communities by elevating its own business
10 interests, the interests of Purdue and others, and the pursuit of profit over the safety and health of
11 the Plaintiffs’ and Class Members’ communities, also renders McKinsey unfit to oversee the
12 abatement of the public nuisance it created, contributed to, and/or maintained.

13 **2. Drug Dealer Liability Act (O.C.G. § 51-1-46)**

14 839. This claim is brought by Georgia Plaintiffs, and by Named Plaintiffs on behalf of
15 Georgia Class Members.

16 840. McKinsey is liable for its knowing participation in the illegal marketing of
17 controlled substances in Georgia pursuant to O.C.G. § 51-1-46(d). To participate in illegal
18 marketing includes “manufacturing, distributing, or delivering or attempting or conspiring to
19 manufacture, distribute, or deliver, a controlled substance.” O.C.G. § 51-1-46(e)(9)(B).

20 841. Plaintiffs are governmental entities that are “persons” entitled to sue under the Act.
21 O.C.G. § 51-1-46(d).

22 **G. Kentucky Plaintiffs**

23 **1. Failure to Warn**

24 842. This claim is brought by Kentucky Plaintiffs, and by Named Plaintiffs on behalf
25 of Kentucky Class Members.
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1 843. McKinsey had a duty to exercise reasonable care in the marketing, promotion,
2 distribution and sale of opioids manufactured by Purdue that were marketed, promoted,
3 distributed and sold pursuant to McKinsey's plans and the implementation of those plans as part
4 of its ongoing relationship with Purdue as alleged above, and that duty to exercise reasonable
5 care included the duty to warn adequately of the potential dangers associated with the use of
6 Purdue's opioids as alleged above.

7 844. McKinsey knew, or in the exercise of reasonable care should have known, that
8 opioids were highly addictive, and both inappropriate and unsafe for the treatment of chronic
9 pain. McKinsey also knew, or in the exercise of reasonable care, should have known, the dangers
10 associated with the use of Purdue's opioids, as alleged above.

11 845. McKinsey further knew, or in the exercise of reasonable care should have known,
12 that widespread opioid addiction and abuse was harmful to men and women, including pregnant
13 women, and their children, friends, families, communities, and to those like Plaintiffs who are
14 responsible for paying for government services for those exposed to opioids, as well as for health
15 care costs associated with opioid addiction and abuse among their insureds.

16 846. Nonetheless, McKinsey unreasonably persisted in spreading misinformation and
17 burying the truth about the safety and efficacy of opioids. McKinsey breached its duty and failed
18 to take reasonable precautions to warn of the dangers of opioids when presenting opioids to the
19 public in conjunction with Purdue. Further, McKinsey was reckless and consciously indifferent
20 to the consequences of its actions and inactions.

21 847. By failing to adequately warn the public, including prescribing doctors and
22 Plaintiffs, of the dangers of opioids, McKinsey's conduct directly injured Plaintiffs. Because of
23 McKinsey's misinformation campaign, and failure to warn, Plaintiffs became obligated and have
24 paid and will continue to pay for further and additional government services for residents
25 exposed to opioids, and paid for or otherwise reimbursed the cost of unnecessary and/or
26 inappropriate opioid prescriptions, as well as the health care costs associated, disability benefits
27 and worker's compensation.
28

1 848. As a consequence of McKinsey’s breach of its duty to warn, which was a
2 continuing duty, Plaintiffs have suffered damages and will continue to suffer damages as alleged
3 above.

4 **H. Louisiana Plaintiffs**

5 **1. False Advertising**
6 **(La. Rev. Stat. § 40:6245(A))**

7 849. This claim is brought by Louisiana Plaintiffs, and by Named Plaintiffs on behalf of
8 Louisiana Class Members.

9 850. Louisiana Revised Statute § 40:625(A) states that “An advertisement of
10 a...drug...is false if it is false or misleading in any particular regarding the...drug...Any
11 representation concerning any effect of a drug...is false under this Sub-section if it is not supported
12 by demonstrable scientific facts of substantial and reliable medical or scientific opinion.”

13 851. “Advertisement” includes all representations of fact or opinion disseminated to the
14 public in any manner, or by any means other than labelling. La. R.S. § 40:601.

15 852. Defendants violated La. R.S. § 40:625, because they engaged in false advertising in
16 the conduct of a business, trade, or commerce in this state.

17 853. At all times relevant to this Petition, Defendants, directly, through control of third
18 parties, and by aiding and abetting third parties, violated La. R.S. § 40:625 by making and
19 disseminating untrue, false, and misleading advertisements to Louisiana consumers to promote the
20 sale and use of opioids to treat chronic pain, and by causing untrue, false, and misleading
21 advertisements about opioids to be made or disseminated to Louisiana consumers in order to
22 promote the sale and use of opioids to treat chronic pain. The untrue, false, and misleading
23 statements in advertisements and other patient brochures included, but were not limited to:

- 24 a. Misrepresenting the truth about how opioids lead to addiction;
25 b. Misrepresenting that opioids improve function;
26 c. Misrepresenting that addiction risk can be managed;
27 d. Misleading patients through the use of misleading terms like
28 “pseudoaddiction”;

- 1 e. Falsely claiming that withdrawal is simply managed;
- 2 f. Misrepresenting that increased doses pose no significant addiction risks;
- 3 and
- 4 g. Falsely omitting or minimizing the adverse effects of opioids and
- 5 overstating the risks of alternative forms of pain treatment.

6 854. At all times relevant, Defendants, directly, through its control of third parties, and
7 by aiding and abetting third parties, also violated La. R.S. § 40:625 through misleading
8 advertisements in various marketing channels, including but not limited to: advertisements,
9 brochures, and other patient educational materials that omitted or concealed material facts to
10 promote the sale and use of opioids to treat chronic pain. Defendants and third-party allies
11 repeatedly failed to disclose or minimized material facts about the risks of opioids, including the
12 risk of addiction, and its risks compared to alternative treatments. Such material omissions were
13 deceptive and misleading in their own right, and further rendered even otherwise truthful
14 statements about opioids untrue, false, and misleading, creating a misleading impression of the
15 risks, benefits, and superiority of opioids for treatment of chronic pain.

16 855. Defendants knew at the time of making or disseminating these misstatements and
17 material omissions, or causing these misstatements and material omissions statement to be made or
18 disseminated, that they were untrue, false, or misleading and therefore likely to deceive the public.
19 In addition, Defendants knew or should have known that its marketing and promotional efforts
20 created an untrue, false, and misleading impression of the risks, benefits, and superiority or opioids.

21 856. In sum, Defendants: (a) directly engaged in untrue, false, and misleading
22 advertising; (b) disseminated the untrue, false, and misleading advertisements through third parties;
23 and (c) aided and abetted the untrue, false, and misleading advertising by third parties.

24 857. All of this conduct, separately and collectively, was intended to deceive Louisiana
25 consumers who used or paid for opioids for chronic pain and Louisiana payors, including Plaintiff,
26 who purchased, or covered the purchase of, opioids for chronic pain; and the political subdivisions
27 of the state charged with maintaining law and order in the parishes who bore increased costs
28 associated with foreseeable criminal activity arising from the rise in addition that was a direct

1 consequence of Defendants' promotions of misleading advertisements about opioid risks and
2 benefits.

3 858. By reason of the foregoing, Louisiana Class Members were injured and continues
4 to be injured by Defendants' false advertisements that caused consumers to request, doctors to
5 prescribe, and payors such as Louisiana Class Members to pay for long-term opioid treatment
6 that they would not have otherwise paid for were it not for Defendants' false advertising. But for
7 Defendants' false advertising, Louisiana Class Members would not have incurred increased law
8 enforcement and social services costs associated with addiction and criminal activity directly
9 attributable to Defendants' misconduct. Defendants caused and are responsible for those costs
10 and claims. Louisiana Class Members have been injured by reason of Defendants' violation of
11 La. R.S. § 40:625.

12 **I. Michigan Plaintiffs**

13 **1. Drug Dealer Liability Act (MCL 691.1402 et seq.)**

14 859. This claim is brought by Michigan Plaintiffs, and by Named Plaintiffs on behalf of
15 Michigan Class Members.

16 860. McKinsey is liable for its knowing participation in the illegal marketing of
17 controlled substances in Michigan pursuant to MCL 691.1401 et. seq. To participate in illegal
18 marketing includes "manufacturing or delivering, or attempting or conspiring to manufacture or
19 deliver, a controlled substance." MCL 691.1604(3)(a).

20 861. McKinsey conspired with numerous opioid manufacturer clients including Purdue
21 Pharma, Endo, Mallinckrodt, and Johnson & Johnson to illegally market opioids in the state of
22 Michigan in violation of the DDLA.

23 862. Michigan Class Members are "persons" that may assert a cause of action for civil
24 damages against persons who knowingly participated in illegal marketing of a controlled
25 substance pursuant to Act. MCL 691.1604(4).
26
27
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1 **J. Ohio Plaintiffs**

2 **1. Absolute Public Nuisance**

3 863. This claim is brought by Ohio Plaintiffs, and by Named Plaintiffs on behalf of Ohio
4 Class Members.

5 864. Plaintiffs re-allege and incorporate the allegations contained in the Common Law
6 Nuisance cause of action.

7 865. The public nuisance is an absolute public nuisance because McKinsey’s nuisance-
8 creating conduct was intentional and unreasonable and violated statutes that established specific
9 legal requirements for the protection of others.

10 866. McKinsey has created and maintained an absolute public nuisance through its
11 participation in the deceptive marketing of opioids, which are dangerously addictive drugs, and
12 efforts to boost opioid sales without regard to whether those sales were legitimate, in a manner
13 which caused prescriptions and sales of opioids to skyrocket in Plaintiffs’ communities,
14 contributed to the oversupply of opioids in Plaintiffs’ communities, and facilitated and
15 encouraged the flow and diversion of opioids into an illegal, secondary market, resulting in
16 devastating consequences to Plaintiffs, Ohio Class Members, and their residents.

17 867. McKinsey knew, and has known, that its intentional, unreasonable, and unlawful
18 conduct would cause, and has caused, opioids to be used and possessed illegally and that its
19 conduct has produced an ongoing nuisance that has had, and will continue to have, a detrimental
20 effect upon the public health, welfare, safety, peace, comfort, and convenience of Plaintiffs and
21 their residents.

22 868. McKinsey, in a joint effort with and on behalf of, Purdue and other opioid
23 manufacturers, intentionally and unreasonably and/or unlawfully marketed and participated in
24 Purdue and other opioid manufacturers pushing as many opioids onto the market as possible,
25 fueling addiction to and diversion of these powerful narcotics, resulting in increased addiction
26 and abuse, an elevated level of crime, death and injuries to the residents of Ohio Class Members’
27 and abuse, an elevated level of crime, death and injuries to the residents of Ohio Class Members’
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1 communities, a higher level of fear, discomfort and inconvenience to the residents of Ohio Class
2 Members' communities, and direct costs to Ohio Class Members.

3 869. A violation of any rule or law controlling the sale and/or distribution of a drug of
4 abuse in Ohio Class Members' communities constitutes an absolute public nuisance. *See e.g.* R.C.
5 § 4729.35 ("The violation by a . . . person of any laws of Ohio or of the United States of America
6 or of any rule of the board of pharmacy controlling the distribution of a drug of abuse . . .
7 constitute[s] a public nuisance[.]").

8 870. In the marketing and efforts to boost sales of opioids in Ohio Class Members'
9 communities, McKinsey violated federal law, including, but not limited to 18 U.S.C. § 2 and 21
10 U.S.C. § 846 with respect to Purdue's violation of 21 U.S.C.A. § 823 and 21 C.F.R. § 1301.74,
11 and Ohio law, including, but not limited to, R.C. § 2923.03 with respect to Purdue's violations of
12 R.C. § 4729.01(F), R.C. §§ 4729.51-4729.53, and O.A.C. §§ 4729-912, 4729-9-16, and 4729-
13 928.

14 871. McKinsey's unlawful nuisance-creating conduct includes aiding and abetting the
15 violation of, and conspiracy with another to violate, federal and Ohio statutes and regulations,
16 including the controlled substances laws, by:

17 a. Aiding, abetting, conspiring in, and expanding the distribution and sale of
18 opioids in ways that facilitated and encouraged their flow into the illegal, secondary market;

19 b. Aiding, abetting, conspiring in, and expanding the distribution and sale of
20 opioids without maintaining effective controls against the diversion of opioids; and

21 c. Aiding, abetting, conspiring in, and expanding distribution and sale of
22 opioids prescribed by "pill mills" when McKinsey knew or should have known the opioids were
23 being prescribed by "pill mills."

24 872. McKinsey's intentional and unreasonable nuisance-creating conduct, for which the
25 gravity of the harm outweighs the utility of the conduct, includes:

26 a. Aiding, abetting, conspiring in, and expanding the distribution and sale of
27 opioids in ways that facilitated and encouraged their flow into the illegal, secondary market;

1 b. Aiding, abetting, conspiring in, and expanding the distribution and sale of
2 opioids without maintaining effective controls against the diversion of opioids; and

3 c. Aiding, abetting, conspiring in, and expanding distribution and sale of
4 opioids prescribed by “pill mills” when McKinsey knew or should have known the opioids were
5 being prescribed by “pill mills.”

6 873. McKinsey intentionally and unreasonably aided, abetted, conspired in, and
7 encouraged the distribution and sale of opioids that it knew would be diverted into the illegal,
8 secondary market and would be obtained by persons with criminal purposes.

9 874. McKinsey intentionally and unreasonably engaged in, and helped to increase the
10 impact of, a deceptive marketing scheme that was designed to, and successfully did, change the
11 perception of opioids and cause their prescribing and sales to skyrocket in Plaintiffs’
12 communities.

13 875. McKinsey’s conduct violated the Ohio Consumer Sales Practices Act, R.C.
14 § 1345.01 *et seq.*, which prohibits unfair, deceptive, or unconscionable acts or practices in
15 connection with a consumer transaction. Its conduct also violates O.A.C. § 09:4-3-10, which
16 provides that it is a deceptive act or practice for a supplier (which includes a “person engaged in
17 the business of effecting or soliciting consumer transactions” and need not be a person who “deals
18 directly with the consumer,” R.C. § 1345.01(C)), in connection with a consumer transaction to
19 “[m]ake any representations, claims, or assertions of fact, whether orally or in writing, which
20 would cause a reasonable consumer to believe such statements are true, unless, at the time such
21 representations, claims or assertions are made, the supplier possesses or relies upon a reasonable
22 basis in fact such as factual, objective, quantifiable, clinical or scientific data or other competent
23 or reliable evidence which substantiates such representations, claims, or assertions of fact.”

24 876. McKinsey’s unfair, deceptive, and unconscionable acts and practices include, but
25 are not limited to:

26 a. Engaging in untrue, false, unsubstantiated, and misleading marketing,
27 directly, and with and through third parties, in violation of 21 C.F.R. § 202.1(e), thereby causing
28 opioid drugs to be misbranded;

1 b. Promoting other purported advantages of OxyContin, including but not
2 limited to improved function and quality of life in violation of FDA regulations, including 21
3 C.F.R. § 202.1(e);

4 c. Promoting higher sales, higher dose sales, and targeting the highest volume
5 prescribers of a highly abusable, addictive, and dangerous drug;

6 d. Promoting higher dose OxyContin prescriptions, known to pose greater
7 risks; and

8 e. Targeting the highest-prescribing physicians, without addressing whether
9 those prescribers may be engaged in abuse and diversion and should not be targeted, to induce
10 them to increase prescriptions of OxyContin further.

11 877. McKinsey worked to undermine public policy, enshrined by regulations contained
12 in state and federal law, aimed at ensuring honest marketing and safe and appropriate use of
13 pharmaceutical drugs.

14 878. In the connection with the marketing and sale of opioids in Ohio and Plaintiffs'
15 communities, McKinsey violated and/or aided and abetted violations of R.C. § 2925.02(A), which
16 states: "No person shall knowingly do any of the following:

17 (1) By force, threat, or deception, administer to another or induce or cause another
18 to use a controlled substance; . . . or

19 (3) By any means, administer or furnish to another or induce or cause another to use
20 a controlled substance, and thereby cause serious physical harm to the other person,
or cause the other person to become drug dependent."

21 879. McKinsey's marketing strategies were also oppressive in fueling addiction and
22 diversion of drugs specifically known to McKinsey to be dangerous because, inter alia, these
23 drugs are defined under federal and state law as substances posing a high potential for abuse and
24 addiction.

25 880. McKinsey's tortious conduct was a substantial factor in creating the absolute
26 public nuisance.

1 881. McKinsey acted with actual malice because McKinsey acted with a conscious
2 disregard for the rights and safety of other persons, and said actions had a great probability of
3 causing substantial harm.

4 882. Ohio Plaintiffs and Named Plaintiffs on behalf of Ohio Class Members assert this
5 Cause of Action as a common law tort claim for absolute public nuisance and not as a “product
6 liability claim” as defined in R.C. § 2307.71. In this Count, Ohio Plaintiffs do not seek damages
7 for death, physical injury to person, emotional distress, or physical damage to property, as defined
8 under the Ohio Product Liability Act.

9 **2. Injury through Criminal Acts (R.C. § 2307.60)**

10 883. This claim is brought by Ohio Plaintiffs, and by Named Plaintiffs on behalf of Ohio
11 Class Members.

12 884. Plaintiffs re-allege and incorporate the allegations contained in the Common Law
13 Nuisance cause of action.

14 885. R.C. § 2307.60(A)(1) provides that:

15
16 Anyone injured in person or property by a criminal act has, and may recover full
17 damages in, a civil action unless specifically excepted by law, may recover the costs
18 of maintaining the civil action and attorney’s fees if authorized by any provision of
19 the Rules of Civil Procedure or another section of the Revised Code or under the
20 common law of this state, and may recover punitive or exemplary damages if
21 authorized by section 2315.21 or another section of the Revised Code.

22 886. In the marketing and efforts to increase the sale of opioids in Ohio Class Members’
23 communities, McKinsey violated R.C. § 2925.02(A), which states:

24 (1) By force, threat, or deception, administer to another or induce or cause another
25 to use a controlled substance; . . . or

26 (3) By any means, administer or furnish to another or induce or cause another to use
27 a controlled substance, and thereby cause serious physical harm to the other person,
28 or cause the other person to become drug dependent.”

887. McKinsey’s actions in deceptively marketing opioids and to expand opioid profits
in the face of potential diversion, as described throughout this Complaint, knowingly induced or

1 caused members of Ohio Class Members' communities to use a controlled substance by
2 deception, in violation of R.C. § 2925.02(A).

3 888. Through McKinsey's actions as described in this Complaint, including deceptive
4 marketing and aiding, abetting, conspiring in, and encouraging the deliberate disregard of
5 obligations to maintain effective controls against diversion, McKinsey participated in furnishing
6 controlled substances to residents of Plaintiffs' communities, or induced or caused residents of
7 Plaintiffs' communities to use a controlled substance, thereby causing serious physical harm to
8 those persons and causing them to become drug dependent, in violation of R.C. § 2925.02(A)(3).

9 889. The exemption in R.C. § 2925.02 only applies to drug manufacturers and other
10 persons when their "conduct is in accordance with Chapters R.C. § 3719., 4715., 4723., 4729.,
11 4730., 4731., and 4741." R.C. § 2925.02(B). McKinsey and its clients were not in compliance
12 with said Chapters and had thereby forfeited the protection provided by the exception.

13 890. In connection with the sale of opioids in Ohio and Plaintiffs' communities,
14 McKinsey aided, abetted, conspired in, and encouraged the violation of R.C. § 2925.02(A)(2),
15 which makes it a crime to: "Prepare for shipment, ship, transport, deliver, prepare for
16 distribution, or distribute a controlled substance or a controlled substance analog, when the
17 offender knows or has reasonable cause to believe that the controlled substance or a controlled
18 substance analog is intended for sale or resale by the offender or another person."

19 891. McKinsey may claim an exemption to R.C. § 2925.03(A)(2) only if its "conduct
20 is in accordance with Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. of the
21 Revised Code." McKinsey was not in compliance with said Chapters and had thereby forfeited
22 the protection provided by the exception.

23 892. McKinsey engaged in additional criminal acts detailed in Plaintiffs' Absolute
24 Public Nuisance claim.

25 893. It was foreseeable to McKinsey that its misconduct alleged in this Count would
26 lead to addiction, abuse, misuse, and diversion of opioids, both in Plaintiffs' communities and
27 throughout the United States.
28

1 894. Ohio Class Members were within the zone of interest protected by these criminal
2 laws.

3 895. As a direct and proximate result of McKinsey’s criminal acts as described in this
4 Count, Plaintiffs suffered injury and damages, for which Plaintiffs are entitled to recover
5 pursuant to R.C. § 2307.60(A)(1).

6 896. McKinsey’s misconduct alleged in this case was ongoing and persistent for many
7 years.

8 897. McKinsey’s misconduct alleged in this case does not concern a discrete event or
9 discrete emergency of the sort a political subdivision would reasonably expect to occur, and is
10 not part of the normal and expected costs of a local government’s existence. Plaintiffs allege
11 wrongful acts which are neither discrete nor of the sort a local government can reasonably
12 expect.

13 898. Ohio Class Members have incurred expenditures for special programs over and
14 above their ordinary public services.

15 899. McKinsey acted with actual malice because it acted with a conscious disregard
16 for the rights and safety of other persons, and said actions had a great probability of causing
17 substantial harm.

18 **3. Engaging in a Pattern of Corrupt Activity (R.C. 2923.21 et seq.)**

19 900. This claim is brought by Ohio Plaintiffs and by Named Plaintiffs on behalf of Ohio
20 Class Members.

21 901. Plaintiffs re-allege and incorporate the allegations contained in the RICO cause of
22 action.

23 902. McKinsey and the opioid manufacturers with which it conspired are “persons”
24 within the meaning of R.C. 2923.31(G) who conducted the affairs of an enterprise—the “Opioid
25 Marketing Enterprise”— through a pattern of corrupt activity in violation of R.C. 2923.31.

26 903. Plaintiffs are “person[s],” as that term is defined in R.C. 2923.31, who were injured
27 as a result of McKinsey’s wrongful conduct.
28

1 904. Under R.C. 2923.32:

2 (A)(1) No person employed by, or associated with, any enterprise shall conduct or
3 participate in, directly or indirectly, the affairs of the enterprise through a pattern of
4 corrupt activity or the collection of an unlawful debt.

5 (2) No person, through a pattern of corrupt activity or the collection of an unlawful
6 debt, shall acquire or maintain, directly or indirectly, any interest in, or control of,
7 any enterprise or real property.

8 (3) No person, who knowingly has received any proceeds derived, directly or
9 indirectly, from a pattern of corrupt activity or the collection of any unlawful debt,
10 shall use or invest, directly or indirectly, any part of those proceeds, or any proceeds
11 derived from the use or investment of any of those proceeds, in the acquisition of
12 any title to, or any right, interest, or equity in, real property or in the establishment
13 or operation of any enterprise.

14 905. Description of the Enterprise

15 a. McKinsey, Purdue, and other opioid manufacturers were members of a
16 legal entity enterprise within the meaning of R.C. 2923.31(C). McKinsey and these opioid makers
17 formed an association-in-fact enterprise –the “Opioid Marketing Enterprise.” The Opioid
18 Marketing Enterprise consists of McKinsey, including its employees and agents, and the opioid
19 manufacturers, including Purdue, described above.

20 b. Alternatively, McKinsey and each of its co-conspirators constitutes a single
21 legal entity or associated-in-fact “enterprise” within the meaning of R.C. 2923.31(C), through
22 which the members of the enterprise conducted a pattern of corrupt activity. The Opioid
23 Marketing Enterprise was, for years, an ongoing and continuing business organization that
24 created and maintained systematic links for a common purpose: to ensure the prescription of
25 opioids for chronic pain and to boost opioid sales through deceptive marketing and turning a blind
26 eye to signs of potential diversion.

27 c. McKinsey and the participating opioid manufacturers formed the Opioid
28 Marketing Enterprise for the purpose of unlawfully increasing demand for, and thus sales of and
revenues and profits from prescription opioids by maintaining an oversupply of prescription
opioids through illegal practices, including committing fraud and drug offenses (as laid out above
and below). McKinsey and these manufacturers, through the Opioid Marketing Enterprise,
concealed the true risks and dangers of opioids from the medical community and the public,

1 including the Plaintiffs, and made misleading statements and misrepresentations about opioids
2 that downplayed the risk of addiction and exaggerated the benefits of opioid use — and sought to
3 profit from, and increase opioid prescribing even in the face of signs of potential diversion. At all
4 relevant times, the Opioid Marketing Enterprise: (a) had an existence separate and distinct from
5 McKinsey; (b) was separate and distinct from the pattern of corrupt activity in which McKinsey
6 engaged; (c) was an ongoing and continuing organization consisting of individuals, persons, and
7 legal entities, including McKinsey; (d) was characterized by interpersonal relationships between
8 and among each member of the Opioid Marketing Enterprise, including McKinsey; (e) had
9 sufficient longevity for the enterprise to pursue its purpose and functioned as a continuing unit.

10 d. Upon information and belief, McKinsey and the other members of the
11 Opioid Marketing Enterprise had a systematic link to each other through contractual relationships,
12 financial ties, and continuing coordination of activities, as spearheaded by the opioid
13 manufacturers and McKinsey. They coordinated for example, through McKinsey’s urging to
14 spread messaging through pain patients seemingly more credible than Purdue and encouragement
15 for Purdue to band together with other manufacturers, described above. Their coordination can
16 also be inferred through the consistent misrepresentations described in this Complaint and
17 Plaintiffs prior complaints against the manufacturers.

18 e. McKinsey and Purdue also created an organizational structure for the
19 “E2E” program.

20 f. Through their personal relationships, the members of the Opioid Marketing
21 Enterprise had the opportunity to form and take actions in furtherance of the Opioid Marketing
22 Enterprise’s common purpose.

23 g. Upon information and belief, McKinsey and Purdue exerted substantial
24 control over the Opioid Marketing Enterprise through communications with each other.

25 h. There was, upon information and belief, regular communication between
26 McKinsey, Purdue, and other opioid manufactures, in which information was shared,
27 misrepresentations and/or strategies are coordinated, and payments were exchanged. Typically,
28 the coordination, communication and payment occurred, and continues to occur, through the

1 repeated and continuing use of the wires and mail, including, but not limited to, e-mail
2 correspondence and use of the mails. McKinsey and the opioid manufacturer members functioned
3 as a continuing unit for the purpose of implementing the Opioid Marketing Enterprise's scheme
4 and common purpose, and each agreed and took actions to hide the scheme and continue its
5 existence.

6 i. Taken together, the interaction and length of the relationships between and
7 among McKinsey and Purdue as well as, upon information and belief, Janssen and Endo, reflects
8 a deep level of interaction and cooperation between two groups in a tightly knit industry with a
9 common interest in preserving and expanding a broader market for opioids.

10 906. Conduct of the Enterprise

11 a. During the time period alleged in this Complaint, McKinsey exerted
12 control over, conducted and/or participated in the Opioid Marketing Enterprise by developing and
13 implementing plans for fraudulently marketing opioids for the treatment of chronic pain and
14 profiting from, and even expanded opioid sales and use through prescribers who raised red flags
15 of potential diversion. In devising and executing the illegal scheme, the members of the Opioid
16 Marketing Enterprise devised and knowingly carried out a material scheme and/or artifice to
17 defraud the Plaintiffs and the public to obtain money by means of materially false or fraudulent
18 pretenses, representations, promises, or omissions of material facts regarding the risks, benefits,
19 and superiority of opioids in general and their opioids in particular.

20 b. In addition, as part of this scheme, McKinsey and Purdue misled the public
21 regarding their role in the opioid epidemic and commitment to combatting opioid addiction and
22 abuse.

23 907. Pattern of Corrupt Activity

24 a. McKinsey conducted and participated in the conduct of the affairs of the
25 Opioid Marketing Enterprise, through a pattern of corrupt activity as defined in R.C. 2923.31(E)
26 & (I)(2).

27 b. Corrupt activities as defined in R.C. 2923.31(I) include, among other
28 things: engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or

1 intimidating another person to engage in any conduct defined as racketeering activity under the
2 Organized Crime Control Act of 1970, 84 Stat. 941, 18 U.S.C. § 1961(1)(B), (1)(C), (1)(D), and
3 (1)(E), as amended; and, any “violation of section . . . 2913.05.”

4 c. A “pattern of corrupt activity” means two or more incidents of corrupt
5 activity, whether or not there has been a prior conviction, that are related to the affairs of the same
6 enterprise, are not isolated, and are not so closely related to each other and connected in time and
7 place that they constitute a single event.” R.C. 2923.31(E).

8 d. Incidents of corrupt activity include, but are not limited to:

- 9 i. Wire Fraud: The members of Opioid Marketing Enterprise violated
10 18 U.S.C. § 1343 by transmitting and/or receiving, or by causing to
11 be transmitted and/or received, fraudulent materials by wire for the
12 purpose of selling opioids for chronic pain.
- 13 ii. Telecommunications Fraud: The members of Opioid Marketing
14 Enterprise violated R.C. 2913.05 by “knowingly disseminat[ing],
15 transmit[ing], or caus[ing] to be disseminated or transmitted by
16 means of a wire, radio, satellite, telecommunication,
17 telecommunications device, or telecommunications service any
18 writing, data, sign, signal, picture, sound, or image with purpose to
19 execute or otherwise further the scheme to defraud.”
- 20 iii. Violation of Controlled Substances Act. The members of the
21 Opioid Marketing Enterprise violated 21 U.S.C. § 483(a)(4), which
22 makes it unlawful “for any person to knowingly or intentionally
23 furnish false or fraudulent information in, or omit any material
24 information form, any application, report, record or other document
25 required to be made, kept or filed under this subchapter,” and a
26 violation of which is punishable by up to four years in jail, *see* 21
27 U.S.C. § 483(d)(1), making it a felony.

28 e. Defendants used, directed the use of, and/or caused to be used, thousands
of interstate wire communications in furtherance of these Enterprise’s fraudulent scheme and
common course of conduct to preserve and expand the market for their opioids and increase their
profits through misleading and deceptive marketing and turning a blind eye to potential diversion.
This conduct in furtherance of the Opioids Marketing Enterprise involved numerous separate
communications.

1 f. The multiple acts of corrupt activity which the members of the Opioid
2 Marketing Enterprise committed, or aided or abetted in the commission of, were related to each
3 other, posed a threat of continued racketeering activity, and therefore constitute a “pattern of
4 corrupt activity.”

5 g. McKinsey’s participation in the Opioid Marketing Enterprise was
6 necessary for the successful activity in which it engaged. The scheme devised and implemented
7 by members of the Opioid Marketing Enterprise amounted to a common and continuing course of
8 conduct intended to increase the profits and sales from prescription opioids by encouraging the
9 prescribing and use of opioids for long-term chronic pain and seeking to increase sales even to
10 prescribers potentially engaged in diversion. The scheme was a continuing course of conduct that
11 went on for years.

12 h. As detailed above, McKinsey aided Purdue in committing various
13 fraudulent acts which constitute fraud and a scheme to defraud. These intentional omissions of
14 material fact and affirmative representations made through McKinsey’s strategies and projects
15 were false when made and also encouraged breach of Purdue’s duties to guard against diversion
16 and to report and halt sales to suspicious prescribers. McKinsey, as described above, received
17 lucrative fees for the perceived value it added to the deceptive marketing and sales effort.
18 McKinsey has also been described as in possession of a “huge amount of inside information” due
19 to its connections and operation of an internal hedge fund, known as McKinsey Investment
20 Office.

21 i. The multiple acts of corrupt activity which the members of the Opioid
22 Marketing Enterprise committed, or aided or abetted in the commission of, were related to each
23 other, posed a threat of continued racketeering activity, and therefore constitute a “pattern of
24 corrupt activity, through which the members of the Opioid Marketing Enterprise defrauded and
25 intended to defraud Ohio consumers, the State, and other intended victims.”
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1 908. Damages

2 a. McKinsey’s contribution to the Opioid Marketing Enterprise, and the
3 advancement of opioids-friendly messaging and efforts to “turbocharge” sales even amidst a
4 growing epidemic fueled the opioid crisis.

5 b. McKinsey’s violations of law and the pattern of corrupt activity directly or
6 indirectly caused the Plaintiffs’ injuries. The Enterprise’s pattern of corrupt activity logically,
7 substantially and foreseeably caused an opioid epidemic. Plaintiffs’ injuries, as described below,
8 were not unexpected, unforeseen or independent. Rather, as the Plaintiffs allege, McKinsey knew
9 that the opioids were unsuited to treatment of long-term chronic, non-acute, and non-cancer pain,
10 or for any other use not approved by the FDA, and knew that opioids were highly addictive and
11 subject to abuse, and also had troubling signs of potential diversion, including among the same
12 prescribers from which it planned increased opioid sales. Nevertheless, McKinsey and the
13 Enterprise engaged in a scheme of deception that utilized the wires as part of their fraud, in order
14 to increase sales of opioid products and the consulting fees McKinsey obtained from its efforts.

15 c. It was foreseeable and expected that a massive marketing campaign that
16 misrepresented the risks and benefits of prescription opioids as well as methods to increase sales
17 to prescribers that raised red flags of (and/or were found to have been engaged in) diversion,
18 would lead to a nationwide opioid epidemic and a devastating public health crisis in Plaintiffs’
19 communities. Plaintiffs’ injuries were logically, foreseeable, and substantially caused by the
20 opioid epidemic that McKinsey, and the Enterprise, created.

21 d. McKinsey’s pattern of corrupt activity directly and proximately caused the
22 Ohio Plaintiffs and Ohio Class Members’ injuries because Ohio Plaintiffs and Ohio Class
23 Members paid for costs associated with the opioid epidemic, as described above in language
24 expressly incorporated herein by reference. But for Defendants’ conduct, Ohio Plaintiffs and
25 Ohio Class Members would not have incurred the costs for health care and addiction treatment,
26 law enforcement, child welfare, and other expenditures required as a result of the opioid
27 epidemic.

28

1 **K. Oklahoma Plaintiffs**

2 **1. Public Nuisance (50 O.S. § 16)**

3 909. This claim is brought by Oklahoma Plaintiffs, and by Named Plaintiffs on behalf
4 of Oklahoma Class Members.

5 910. Plaintiffs re-allege and incorporate the allegations contained in the Common Law
6 Nuisance cause of action.

7 911. Plaintiffs bring this claim against McKinsey under Oklahoma common law as well
8 as an Oklahoma statute which confers upon cities the power to determine what is a public
9 nuisance within its corporate limits and the power to abate all nuisances that are or may be
10 injurious to the health and welfare of its residents. 50 O.S. § 16.

11 912. McKinsey’s misrepresentations and omissions regarding opioids, as set forth
12 above and in the Purdue marketing plan, have fueled an opioid epidemic within the corporate
13 limits of Plaintiffs that constitute a public nuisance. McKinsey and Purdue knowingly
14 exacerbated a condition that affects entire municipalities, towns, and communities.

15 913. McKinsey’s misrepresentations and omissions regarding opioids, generally, and
16 Purdue's opioids, specifically, constitute unlawful acts and/or omissions of duties, that annoy,
17 injure, or endanger the comfort, repose, health, and/or safety of others. The annoyance, injury,
18 and danger to the comfort, repose, health, and safety of residents of Plaintiffs includes, but is not
19 limited to:
20

21 a. Drug overdose deaths in Oklahoma had already increased six-fold from
22 1999 to 2012. In 2010, one year after McKinsey began advising Purdue on sales and marketing
23 strategy, overdose deaths surpassed car crash deaths in Oklahoma. McKinsey crafted a strategy
24 that tripled OxyContin sales during that time;

25 b. From 2004 to 2014, Oklahoma’s unintentional poisoning death rate
26 effectively doubled from 8.2 deaths per 100,000 individuals to 16.3 per 100,000. Prescription
27 opioids contributed to the majority of those deaths. The following year, McKinsey developed
28

1 “Project Turbocharge,” which was adopted as the national sales theme for the following year,
2 under the rubric of “Evolve to Excellence”;

3 c. In 2014, during the year Purdue implemented McKinsey's strategy through
4 "Evolve to Excellence," Oklahoma suffered in excess of 600 deaths attributable to opioid
5 overdoses. By 2018, the number almost doubled, to 1,132.

6 d. Prescription opioid addiction often leads to illicit opioid use and addiction;

7 e. According to the Centers for Disease Control, past misuse of prescription
8 opioids is the strongest risk factor for heroin initiation and use;

9 f. Oklahoma hospitals are reporting increasing numbers of newborns testing
10 positive for prescription medications; and

11 g. McKinsey’s crafted deceptive marketing strategies that were prepared for
12 Purdue, purchased by Purdue, and implemented by Purdue with McKinsey’s ongoing assistance.
13 These strategies enflamed, purposefully, an opioid abuse and addiction epidemic that has caused
14 Oklahoma Plaintiffs and Oklahoma Class Members to bear enormous social and economic costs
15 including increased health care, criminal justice, and lost work productivity expenses, among
16 others.

17 **L. Tennessee Plaintiffs**

18 **1. Public Nuisance (Tenn. Code § 29-3-101(B))**

19 914. This claim is brought by Tennessee Plaintiffs, and by Named Plaintiffs on behalf
20 of Tennessee Class Members.

21 915. Plaintiffs re-allege and incorporate the allegations contained in the Common Law
22 Nuisance cause of action.

23 916. Under Tennessee statutory law, “[a]ny person who uses, occupies, establishes or
24 conducts a nuisance, or aids or abets therein, and the owner, agent or lessee of any interest in any
25 such nuisance, together with the persons employed in or in control of any such nuisance by any
26 such owner, agent or lessee, is guilty of maintaining a nuisance and such nuisance shall be abated
27 as provided hereinafter.” Tenn. Code Ann. § 29-3-101(b).
28

1 917. The term “nuisance” includes “[a]ny place in or upon which. . . [the] unlawful sale
2 of any regulated legend drug, narcotic or other controlled substance . . . are carried on or permitted,
3 and personal property, contents, furniture, fixtures, equipment and stock used in or in connection
4 with the conducting and maintaining any such place for any such purposes.” *Id.* § 29-3-101
5 (a)(2)(A).

6 918. The nuisance statute further provides that, in an “order of abatement, the court may
7 . . . assess costs of public services required to abate or manage the nuisance, including, but not
8 limited to, law enforcement costs, if any, caused by the public nuisance.” *Id.* § 29-3-110.

9 919. Defendants were a direct and proximate cause of the overflow of opioids into the
10 state of Tennessee.

11 920. The opioid epidemic constitutes a statutory nuisance in Tennessee.

12 921. Defendants established, conducted, and aided and abetting the nuisance.

13 **2. Drug Dealer Liability Act (Tenn. Code § 29-38-105, et seq.)**

14 922. This claim is brought by Tennessee Plaintiffs, and by Named Plaintiffs on behalf
15 of Tennessee Class Members.

16 923. McKinsey knowingly participated in the illegal drug market in the State of
17 Tennessee. Tenn. Code § 29-38-105(a). McKinsey committed multiple acts intended to facilitate
18 the marketing and distribution of an illegal drug in Tennessee. Tenn. Code Ann. § 29-38-104(9).

19 924. Tennessee Plaintiffs and Tennessee Class Members are governmental entities that
20 fund drug treatment programs and/or employee assistance programs or have otherwise extended
21 money on behalf of individual drug users, and are entitled to bring suit against drug market
22 participants. Tenn. Code Ann. § 29-38-106(a)(4).

23 **M. Virginia Plaintiffs**

24 **1. Public Nuisance (Va. Code § 15.2-900)**

25 925. This claim is brought by Virginia Plaintiffs, and by Named Plaintiffs on behalf of
26 Virginia Class Members.
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1 926. Plaintiffs re-allege and incorporate the allegations contained in the Common Law
2 Nuisance cause of action.

3 927. This action is brought by Plaintiffs pursuant to Va. Code Ann. § 15.2-900 to abate
4 the public nuisance created by Defendants, and to recover costs that Virginia Plaintiffs and
5 Virginia Class Members have already incurred and future costs Virginia Plaintiffs and Virginia
6 Class Members expect to incur in its provision of emergency services that are reasonably required
7 to abate the public nuisance created by Defendants.

8 928. Defendants helped create a condition of an excessive amount of opioids in
9 circulation that was and continues to be dangerous to the public and has injured those inhabitants
10 in Virginia who have come within its influence.

11 929. Defendants knew or should have known that their work in proliferating the use of
12 opioids would create a public nuisance:

- 13 a. Defendants' actions created and expanded the market for opioids;
- 14 b. Defendants encouraged the misrepresentation of the benefits of opioids for
15 chronic pain and the fraudulent concealment, misrepresentation, and omission of the serious
16 adverse effects of opioids, including the addictive nature of the drugs; and
- 17 c. Defendants knew or should have known that their work would lead to
18 addiction and other adverse consequences and that the larger community would suffer as a result.

19 930. Defendants' actions were a substantial factor in making opioids widely available
20 and widely used and in doctors and patients not accurately assessing and weighing the risks and
21 benefits of opioids for chronic pain. Defendants' actions caused excess opioids to be shipped to
22 Virginia, and these excess opioids were diverted into the black market. Without Defendants'
23 actions, opioid use would not have become so widespread, and the enormous public health hazard
24 of opioid overuse, abuse, and addiction that now exists would have been averted.

25 931. Defendants knowingly and intentionally designed marketing strategies that would
26 maximize the number of opioids in the marketplace.

27 932. The public nuisance created by Defendants endangered, and presently endangers,
28 the life, health and safety of each Virginia Plaintiffs' and Virginia Class Members' residents.

1 933. The public nuisance created by Defendants interferes with the reasonable and
2 comfortable use of each Virginia Plaintiffs' and Virginia Class Members' property and resources.

3 934. The public nuisance created by Defendants' actions has caused and continues to
4 cause significant harm to the Virginia Plaintiffs' and Virginia Class Members' communities that
5 includes but is not limited to:

- 6 a. Opioid-related drug overdose deaths;
- 7 b. The disease of opioid addiction and other diseases related to long-term
8 opioid use;
- 9 c. Infants born addicted to opioids due to prenatal exposure, causing severe
10 withdrawal symptoms and lasting developmental impacts;
- 11 d. Other child abuse and neglect resulting from opioid abuse;
- 12 e. Crime associated with illegal drug use and opioid sales;
- 13 f. Unemployment resulting from an inability to work while addicted to
14 opioids; and
- 15 g. Blight, vagrancy, property damage, and property crime.

16 935. Public resources are being unreasonably consumed in efforts to address the opioid
17 epidemic, thereby eliminating available resources which could be used to benefit the public at
18 large in each Virginia Plaintiffs' and Virginia Class Members' communities.

19 936. The public nuisance created, perpetuated, and maintained by Defendants can be
20 abated and further recurrence of such harm and inconvenience can be abated.

21 937. Each Virginia Plaintiff and Virginia Class Member has incurred significant costs
22 to date in its efforts to provide services that were reasonably necessary to abate the public
23 nuisance created and perpetuated by Defendants. Each Virginia Plaintiff and Virginia Class
24 Member expects to incur significant costs going forward to ameliorate the harm caused by
25 Defendants.

26 938. As a direct and proximate result of the public nuisance, each Virginia Plaintiff and
27 Virginia Class Member has sustained (and continues to sustain) harm by spending a substantial
28 amount of money trying to fix the societal harms caused by the Defendants' nuisance-causing

1 activity, including, but not limited to, the costs of healthcare, emergency medical services, social
2 services, prevention, treatment, intervention, law enforcement, lost tax revenues, direct spending
3 on opioids and opioid antagonists, and lost communal benefits of each Virginia Plaintiffs' and
4 Virginia Class Members' limited and diverted resources.

5 **2. Willful and Wanton Negligence**

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7 939. This claim is brought by Virginia Plaintiffs, and by Named Plaintiffs on behalf of
8 Virginia Class Members.

9 940. Plaintiffs re-allege and incorporate the allegations contained in the Negligence,
10 Gross Negligence, and Wanton and Intentional Conduct causes of action.

11 941. Defendants' scheme to optimize profits regardless of the effect on each Virginia
12 Plaintiff was undertaken and executed intentionally.

13 942. Defendants' role in designing and implementing sales and marketing strategies and
14 tactics that would dramatically increase the amount of OxyContin prescribed and distributed to
15 each Virginia Plaintiff's and Virginia Class Members' communities was willfully and wantonly
16 negligent in that it was done in conscious disregard of the rights of each Plaintiff and its residents
17 and/or with reckless indifference to the consequences of their actions.

18 943. At all relevant times, Defendants were aware, from its knowledge of existing
19 circumstances and conditions, that their conduct would likely cause injury to each Plaintiff and its
20 residents.

21 944. As a proximate result of its willfully and wantonly negligent conduct, the
22 Defendants have caused the Virginia Plaintiffs and Virginia Class Members to incur excessive
23 costs related to responding to the opioid crisis. These costs include but are not limited to, the costs
24 of healthcare, emergency medical services, social services, prevention, treatment, intervention,
25 law enforcement, lost tax revenues, direct spending on opioids and opioid antagonists, and lost
26 communal benefits of each Plaintiff's limited and diverted resources.
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1 945. Furthermore, Defendants should be held liable for punitive damages to each
2 Plaintiff because they had prior knowledge of the specific dangerous conditions its willful and
3 wanton negligence created, it consciously disregarded that knowledge and continued to engage
4 in its exceedingly dangerous course of conduct, and the harm inflicted on each Virginia Plaintiff
5 and Virginia Class Member and their residents by Defendants' conduct was the natural and
6 probable result of that conduct.

7 **N. West Virginia Plaintiffs**

8 **1. Intentional Acts and Omissions**

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10 946. This claim is brought by West Virginia Plaintiffs, and by Named Plaintiffs on
11 behalf of West Virginia Class Members.

12 947. McKinsey intentionally contributed to the prescription drug abuse epidemic in
13 Plaintiffs' communities and throughout the state through repeated intentional violations of
14 various provisions of the West Virginia Uniform Controlled Substances Act and through
15 reckless disregard to the safety and well-being to the citizens of West Virginia Plaintiffs and
16 West Virginia Class Members:

- 17 a. McKinsey conspired with Purdue to intentionally and improperly distribute
18 prescription drugs contrary to W.Va. Code § 60A-3-308;
- 19 b. McKinsey conspired with Purdue to intentionally engage in prohibited acts,
20 contrary to W.Va. Code §§ 60A-4-401 through 403;
- 21 c. McKinsey aided and abetted Purdue in deceiving and attempting to deceive
22 medical practitioners in order to obtain prescriptions in violation of W.Va. Code § 60A4-401;
- 23 d. McKinsey conspired with Purdue to intentionally fail to meet the
24 requirements of W.Va. Code § 60A-8-1 *et seq.*;
- 25 e. McKinsey conspired with Purdue to intentionally violate the WV Uniform
26 Controlled Substances Act;
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1 f. McKinsey intentionally failed to ensure its conduct conformed to industry
2 standards;

3 g. McKinsey intentionally failed to ensure its conduct conformed to West
4 Virginia law and regulations; and

5 h. McKinsey intentionally turned a blind eye toward industry standards by
6 assisting Purdue in distributing large quantities of commonly-abused, highly addictive controlled
7 substances to clients who were serving a customer base comprised of individuals who were
8 abusing prescription medications, many of whom were addicted and whom can reasonably be
9 expected to become addicted or to engage in illicit drug transactions.

10 948. The intentional acts and omissions by McKinsey have led to the dispensing of
11 controlled substances for non-legitimate medical purposes and fueling a prescription drug abuse
12 epidemic in Plaintiffs.

13 949. McKinsey acted solely for the maximization of profit, the expansion of market,
14 and overall opioid sales. McKinsey acted with the intent to barely comply with and manipulate
15 controlling regulations regarding quota and distribution.

16 950. In doing so, McKinsey's intentional acts and omissions ultimately supplied
17 millions of doses of commonly-abused, highly addictive controlled substances to patients of pill
18 mills.

19 951. The intentional acts and omissions by McKinsey fueled countless prescriptions
20 that were primarily filled to divert the medication to illegal purposes.

21 952. The intentional violations of West Virginia law by McKinsey makes it liable for
22 all the damages which are sustained therefrom. W. Va. Code § 55-7-9.

23 953. The intentional acts and omissions of McKinsey have proximately caused and
24 substantially contributed to damage suffered by Plaintiffs and created conditions which contribute
25 to the violation of West Virginia laws by others.

26 954. The intentional acts and omissions by McKinsey have proximately caused and
27 substantially contributed to damages suffered by West Virginia Plaintiffs and West Virginia Class
28

1 Members and were in violation of the customs, standards and practices within the industry of
2 management consulting and pharmaceutical sales and marketing.

3 **X. PRAYER FOR RELIEF**

4 Plaintiffs seek all legal and equitable relief permitted by law, including:

- 5 • Certification of the proposed Class;
- 6 • Appointment of Plaintiffs County of Santa Cruz, California; Pope County, Illinois;
7 and The Village of Eddyville, Illinois as Class Representatives;
- 8 • Compensatory damages;
- 9 • Abatement of the public nuisance that McKinsey created, assisted in creating,
10 contributed to, or exacerbated.
- 11 • Restitution;
- 12 • Disgorgement of profits;
- 13 • Punitive and/or exemplary damages;
- 14 • Injunctive/equitable relief;
- 15 • Treble damages;
- 16 • Pre- and post-judgment interest; and
- 17 • Attorneys' fees and costs.

18 **XI. JURY DEMAND**

19 Plaintiffs demand a trial by jury on all issues so triable.
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Dated: September 26, 2023

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on September 26, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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