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8 PSC Members – Political Subdivisions

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11	SANTA CRUZ COUNTY, CALIFORNIA;)	Case No. 3:21-md-02996-CRB
	POPE COUNTY, ILLINOIS; and THE)	
12	VILLAGE OF EDDYVILLE, ILLINOIS,)	DECLARATION OF AELISH M. BAIG IN
	Individually and on Behalf of a Class of)	SUPPORT OF MOTION FOR FINAL
13	Persons Similarly Situated)	APPROVAL OF CLASS ACTION
)	SETTLEMENT AND AWARD OF
14	In re MCKINSEY & CO., INC. NATIONAL)	ATTORNEYS' FEES AND COSTS
	PRESCRIPTION OPIATE CONSULTANT)	
15	LITIGATION)	DATE: February 2, 2024
)	TIME: 10:00 a.m.
16	_____)	DEPT: Courtroom 6, 17th Floor
	This Document Relates To:)	JUDGE: Honorable Charles R. Breyer
17)	
	ALL SUBDIVISION ACTIONS.)	
18	_____)	

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1 I, Aelish M. Baig, hereby declare and state as follows:

2 1. I am a member of the law firm Robbins Geller Rudman & Dowd LLP. I am duly
3 admitted to practice in the State of California and before this Court. I make this Declaration in
4 support of Subdivision Plaintiffs' Motion for Final Approval of Class Action Settlement and
5 Award of Attorneys' Fees and Costs and the entry of the [Proposed] Order Granting Final
6 Approval of Class Action Settlement and Award of Attorneys' Fees and Costs, and I have personal
7 knowledge of the facts asserted herein. If called as a witness, I could and would competently
8 testify thereto.

9 2. I was appointed to Plaintiffs' Steering Committee ("PSC") Political Subdivision
10 Committee in this multidistrict litigation ("MDL"), along with other Interim Class Counsel.
11 PTO 2, ECF 211.

12 3. Along with other PSC Political Subdivision Committee members, I was appointed
13 as Interim Class Counsel and authorized to take all necessary and appropriate steps to implement
14 the Settlement, including the approved program to notice Class Members. ECF 622.

15 4. Along with the Motion for Preliminary Approval of Class Action Settlement, I filed
16 a Declaration containing additional information about the litigation history and notice program.
17 ECF 598-1.

18 **Litigation and Settlement History**

19 5. On February 14, 2021, a group of Attorneys General announced an opioid-related
20 settlement ("2021 AG Settlement") with McKinsey & Company ("McKinsey") negotiated outside
21 the MDL 2804 proceedings. Unlike the other opioid settlements, subdivisions were not afforded
22 the opportunity to meaningfully negotiate or participate in the McKinsey settlement.

23 6. Numerous political subdivisions, along with other plaintiff groups, subsequently
24 filed their own lawsuits against McKinsey for its alleged role in causing the opioid crisis.

25 7. On June 7, 2021, the JPML centralized the actions against McKinsey in the
26 Northern District of California before this Court (MDL 2996). *In re McKinsey & Co., Inc., Nat'l*
27 *Prescription Opiate Consultant Litig.*, 543 F. Supp. 3d 1377 (J.P.M.L. 2021).

28

1 8. In MDL 2996, plaintiffs allege McKinsey strategized and acted with Purdue and
2 various other MDL 2804 opioid defendants to create and employ aggressive and misleading
3 marketing and sales practices to overcome doctor and patient resistance to opioids – highly
4 addictive controlled substances – in order to maximize opioid revenues. Thereby, plaintiffs allege,
5 McKinsey directly contributed to the opioid epidemic with which cities and counties now have to
6 contend daily.

7 9. After transfer, this Court appointed Elizabeth J. Cabraser of Lieff Cabraser
8 Heimann & Bernstein LLP as Lead Counsel and a PSC comprised of attorneys representing all
9 five plaintiff groups. ECF 211. For Political Sub-Division plaintiffs, the Court appointed Matthew
10 Browne, Jayne Conroy, Joseph Rice, Emily Roark, and me. *Id.*

11 10. On December 6, 2021, plaintiffs filed Master Complaints on behalf of the political
12 subdivisions (the class members here), school districts, Neonatal Abstinence Syndrome (“NAS”)
13 plaintiffs, and tribal plaintiffs (“Tribes”), as well as a Consolidated Class Action Complaint on
14 behalf of third-party payors (“TPPs”). *See* ECF 296-300.

15 11. On December 23, 2021, McKinsey filed two motions under Rule 12 of the Federal
16 Rules of Civil Procedure: one for lack of personal jurisdiction against all plaintiff groups in certain
17 states, and a second on grounds of *res judicata* and release based on the 2021 AG Settlement,
18 against the subdivision and school district master complaints. ECF 310 (McKinsey Defendants’
19 Notice of Motion and Motion to Dismiss the Complaints on the Grounds of *Res Judicata* and
20 Release; Memorandum of Points and Authorities in Support); ECF 313 (McKinsey Defendants’
21 Notice of Motion and Motion to Dismiss for Lack of Personal Jurisdiction; Memorandum of Points
22 and Authorities).

23 12. Plaintiffs opposed both motions. The Court conducted an initial hearing on these
24 motions on March 31, 2022, requested and received additional briefing, and scheduled a
25 subsequent hearing for October 28, 2022. ECF 345 (Subdivision Plaintiffs’ Opposition to
26 McKinsey Defendants’ Motion to Dismiss on the Grounds of *Res Judicata* and Release); ECF 347
27 (Plaintiffs’ Memorandum of Points and Authorities in Opposition to McKinsey Defendants’
28 Motion to Dismiss for Lack of Personal Jurisdiction); ECF 370 (Order for Supplemental Briefing);

1 ECF 378 (McKinsey Defendants’ Supplemental Brief in Further Support of Motion to Dismiss the
2 Complaints on the Grounds of *Res Judicata* and Release); ECF 392 (Subdivision and School
3 District Plaintiffs’ Supplemental Brief in Opposition to McKinsey Defendants’ Motion to Dismiss
4 on the Grounds of *Res Judicata* and Release).

5 13. Defendants have produced or made available hundreds of thousands of documents
6 relevant to their involvement in developing opioid marketing schemes, including those previously
7 produced to the AGs in connection with that settlement. Plaintiffs have reviewed these
8 productions, which informed plaintiffs’ understanding of their claims’ strengths and weaknesses.

9 14. The subdivisions, school districts, and defendants mediated before Jed D. Melnick,
10 Esq. of JAMS, a sophisticated and objective mediator with decades of proven experience in
11 complicated litigation and class actions. The parties participated in a two-day mediation in person
12 at JAMS in New York City, New York on August 8, 2022 and August 9, 2022 with Mr. Melnick
13 and his colleague, Simone Lelchuk. The parties continued the process remotely for several months
14 under Mr. Melnick’s supervision.

15 15. On October 26, 2022, the parties notified the Court that McKinsey and the
16 Subdivision and School District Plaintiffs had reached an agreement in principle to resolve those
17 plaintiffs’ claims, and they requested the Court not adjudicate the *res judicata* motion at that time.
18 ECF 436. On October 27, 2022, the Court denied McKinsey’s motion to dismiss for lack of
19 personal jurisdiction. *In re McKinsey & Co., Inc., Nat’l Opiate Consultant Litig.*, 637 F. Supp. 3d
20 773 (N.D. Cal. 2022). McKinsey’s motion to dismiss the subdivision and school district master
21 complaints on *res judicata* grounds remains under submission.

22 16. On September 26, 2023, the Subdivision Plaintiffs amended the Master Complaint
23 (Subdivision) to add class allegations and also filed a motion for preliminary approval of the class
24 settlement. ECF 597, 598.

25 17. On October 5, 2023, the Court granted preliminary approval of the class settlement
26 and appointed the PSC Political Subdivision Committee members, including me, as Interim Class
27 Counsel. ECF 609. The Court amended this order on November 6, 2023. ECF 622.

1 **Settlement Benefits and Anticipated Recovery**

2 18. Attached to my prior declaration as Exhibit 1 was the Settlement Agreement
3 Among Political Subdivisions and McKinsey Defendants, along with Schedule A thereto.
4 ECF 598-2.

5 **Benefits of Settlement**

6 19. The Settlement benefits are discussed at length in the accompanying memorandum
7 and points of authorities and in the proposed Notice, among other places.

8 20. In short, McKinsey has agreed to pay \$207 million into a Settlement Fund, in
9 addition to the \$641.5 million McKinsey has already paid to the states under the 2021 AG
10 Settlement.

11 21. Class Members will not be required to file a claim form in order to receive a
12 distribution, and there will be no *cy pres* awards or second distributions. Rather, all money – minus
13 fees and costs – will be distributed, via a single payment, on a *pro rata* basis to qualifying
14 subdivisions that do not opt out of the Settlement using allocation formulas Class Members
15 themselves negotiated in the MDL 2804 settlements. Class Members shall be required to use the
16 settlement funds exclusively for approved uses designed to abate the opioid epidemic as set forth
17 in Exhibit E (“List of Opioid Remediation Uses”) of the prior MDL 2804 settlements.

18 22. The purpose of the class settlement is to put subdivisions in the position in which
19 they would have been had they had the full and fair opportunity to negotiate the 2021 AG
20 Settlement.

21 **Progress on Court-Approved Notice Plan**

22 23. Following preliminary approval, the Parties worked, and are working, with
23 respected class notice providers and settlement administrators to roll out the Court-approved
24 Notice Program with great success. As noted in the Declaration of Cameron R. Azari, Esq.
25 Regarding Commencement of Settlement Notice Plan (“Azari Decl.”), Epiq reports the Notice
26 Program is on track to directly reach virtually all Class Members. On October 25, 2023, Epiq
27 established a Settlement Website (www.McKinseySubdivisionClassAction.com) to allow Class
28 Members to obtain additional information about the Settlement; sponsored search listings linking

1 directly to the Settlement Website on Google, Yahoo!, and Bing; and established a toll-free
2 telephone number (1-888-575-4125), which is available to Class Members. Azari Decl., ¶¶20, 22-
3 23. That same day, Epiq sent 36,393 Email Notices to 23,080 unique identified Class Members
4 for whom a valid email address was available (13,313 Class Members had more than one valid
5 email address, all of which were sent an Email Notice) and 21,342 Postcard Notices to all identified
6 Class Members for whom a physical address was available and for whom no valid email address
7 had been identified. *Id.*, ¶¶14-15.

8 24. Epiq also has placed Banner Notices in the *CN Now* and *Leadership Matters*
9 eNewsletters. *Id.*, ¶16. *CN Now* is published by the National Association of Counties (“NACo”),
10 and Banner Notices are being placed in the following issues of the eNewsletters: November 2,
11 2023, November 9, 2023, November 16, 2023, and November 30, 2023. *Id.* *Leadership Matters*
12 is published by the International City/County Management Association (“ICMA”), and Banner
13 Notices are being placed in the following issues of the eNewsletters: October 31, 2023,
14 November 7, 2023, November 14, 2023, and November 28, 2023. *Id.*

15 25. My team and I have begun to receive and respond to emails and phone calls from
16 Class members or their individual counsel requesting further information on the settlement.

17 26. Thus far, I have been contacted by two AG offices where there were a few questions
18 about the settlement and/or its implementation, which we discussed with them. Both were
19 generally supportive of the settlement, and we agreed to work cooperatively regarding any state-
20 specific implementation issues.

21 27. As of this Declaration, no Class Member has filed an objection, nor has any Class
22 Member elected to opt out of the settlement. Azari Decl., ¶25.

23 **Proposed Settlement Class Representatives**

24 28. The Settlement Class Representatives – Santa Cruz County, California; Pope
25 County, Illinois; and The Village of Eddyville, Illinois – are plaintiffs in underlying actions
26 centralized in this MDL and Named Plaintiffs in the Amended Master Class Action Complaint
27 (Subdivision).

1 29. The Settlement Class Representatives are aligned with the Class in their interest in
2 proving McKinsey worked with other opioid industry participants to cause and worsen the opioid
3 crisis. Settlement Class Representatives understand their duties, have agreed to consider the
4 interests of absent Class members, have reviewed and uniformly endorsed the Settlement terms,
5 and have protected and will continue to protect the Class' interests in overseeing the Settlement
6 administration and through any appeals.

7 30. The proposed Settlement Class Representatives are not seeking incentive awards.

8 **Common Benefit and Hours, Lodestar, and Costs Incurred in Furtherance of the Litigation**

9 31. Class Counsel in this case have exceptional experience in public nuisance litigation,
10 including opioid litigation, who have worked diligently to prosecute opioid cases against many
11 defendant groups across both MDL 2804 and MDL 2996.

12 32. For this case, Class Counsel worked entirely on contingency, advancing both their
13 time and the required cash expenses, which were substantial. Class Counsel devoted thousands of
14 hours and advanced whatever expenses were necessary to investigate and see this case through to
15 a successful outcome, all with no guarantee of reimbursement. In so doing, Class Counsel declined
16 opportunities to work on other cases in order to devote time, resources, and energy to handle this
17 case.

18 33. Class Counsel seeks an award of attorneys' fees and costs of \$31,050,000, which
19 constitutes 15% of the Settlement Amount.

20 34. Pursuant to PTO 3, ECF 215, each PSC firm, including Class Counsel, as well as
21 other Participating Counsel authorized by Court-appointed Lead Counsel Elizabeth J. Cabraser to
22 perform common benefit work, submitted monthly time and expense reports to Lead Counsel. It
23 is my understanding, based on communications with Ms. Cabraser, that attorneys and staff
24 working at her direction and under her supervision collected these common benefit submissions
25 and have maintained a database of all submitted time and expenses.

26 35. The information in this Declaration regarding Class Counsel's time and expenses
27 is taken from time and expense reports and supporting documentation prepared and/or maintained
28 by the firms in the ordinary course of business.

1 36. As reported to me by Lead Counsel, the approximate lodestar for Class Counsel
2 (and counsel who performed duly authorized work specifically for the subdivisions in connection
3 with law, briefing, and settlement) as of October 31, 2023, is \$20.7 million, having devoted over
4 31,600 hours to litigating this Action. The blended average billing rate for the work described
5 above is approximately \$640 per hour.

6 37. These hourly rates are consistent with hourly rates submitted by Class Counsel to
7 state and federal courts in other securities class action litigation. The rates are set based on periodic
8 analysis of rates charged by firms performing comparable work both on the plaintiff and defense
9 side.

10 38. The 31,600 hours of work devoted to litigating this Action include work completed
11 for the benefit of all Plaintiffs within the MDL and specifically the Subdivision Plaintiffs. The
12 work includes drafting Master Complaints, propounding discovery requests on Defendants,
13 negotiating the discovery parameters and scope, reviewing hundreds of thousands of documents
14 produced by Defendants, advocating in multiple discovery-related disputes before the Magistrate
15 Judge, and briefing on two separate motions to dismiss, among other tasks.

16 39. These amounts include all time vetted by Lead Counsel from the date of
17 appointment through October 31, 2023, the latest monthly reporting period. I understand that Lead
18 Counsel regularly reduced or eliminated time entries as appropriate. Based on this review, I
19 believe the time reflected in the lodestar calculation and the expenses for which payment is sought
20 herein are reasonable and were necessary for the effective and efficient prosecution and resolution
21 of the Litigation.

22 40. These figures do not include time spent since October 31, 2023; certain pre-
23 appointment time deemed compensable by the Court; or common benefit time attributed to work
24 on other case tracks, such as the TPP, NAS, and Tribes case tracks.

25 41. As reported to me by Lead Counsel, Class Counsel's combined related expenses to
26 date are also under continued review and, as of October 31, 2023, total approximately \$496,000.
27 Such expenses were necessarily incurred in this Action and are routinely charged to clients billed
28 by the hour. The majority of expenses went to document management services required to host

1 the documents produced in discovery, independent experts who were necessary to prosecute the
2 case and effectuate a substantial settlement, and the costs of mediation. All expenses were
3 reasonable and necessary for the prosecution of this Action.

4 42. Class Counsel is not seeking a separate award for expenses, but seek a combined
5 award for both fees and expenses totaling 15% of the Gross Settlement Fund. Half of this award
6 (7.5% of the Fund) will be tendered to the Common Benefit Fund pursuant to PTO No. 9.
7 ECF 567. Class Counsel is seeking an award for attorneys' fees under Rule 23(h) of a percentage
8 equivalent to the Fund. The recommended allocation of this and other deposits into the Common
9 Benefit Fund from other settlements will be made by Lead Counsel at a future time to equitably
10 reimburse and compensate all PSC members and others performing duly authorized common
11 benefit work.

12 43. Based on the above numbers, a contingency fee award equal to 7.5% of the
13 Settlement Fund would represent a 0.75 multiplier on Class Counsel's approximate lodestar. Class
14 Counsel will continue to incur time in seeking settlement approval and on implementation efforts
15 should the Settlement be approved. Class Counsel will continue to review their respective records
16 and submit them to Lead Counsel for review, and will provide additional information regarding
17 time and expenses and rationale for their request in the fee application and in the class notice, so
18 that Class Members will have the opportunity to comment on or object to the requested fees prior
19 to the final approval hearing.

20 44. Class Counsel will direct the payment of the 7.5% common benefit assessment on
21 the "Gross Monetary Recovery" of this Settlement, unless otherwise ordered, into the "Fee Fund,"
22 as those terms are defined in PTO 9, ECF 567. That assessment will be paid out of any fee award
23 approved by the Court under the instant Settlement.

24 I declare under penalty of perjury under the laws of the United States of America that the
25 foregoing is true and correct. Executed this 15th day of November 2023 at San Francisco,
26 California.

27 _____
s/ Aelish M. Baig
AELISH M. BAIG