IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

GREEN COUNTY FISCAL COURT, ON BEHALF OF GREEN COUNTY; BRECKINRIDGE COUNTY FISCAL COURT, ON BEHALF OF BRECKINRIDGE COUNTY; HARDIN COUNTY FISCAL COURT, ON BEHALF OF HARDIN COUNTY; MEADE COUNTY FISCAL COURT, ON BEHALF OF MEADE COUNTY; MENIFEE COUNTY. FISCAL COURT, ON BEHALF OF MENIFEE COUNTY; NELSON COUNTY FISCAL COURT, ON BEHALF OF NELSON COUNTY; OHIO COUNTY FISCAL COURT, ON BEHALF OF OHIO COUNTY; WASHINGTON COUNTY FISCAL COURT, ON BEHALF OF WASHINGTON COUNTY; ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED KENTUCKY COUNTY FISCAL COURTS,

AND,

CITY OF HENDERSON, KENTUCKY, ON BEHALF OF ITSELF AND ALL OTHER SIMILARLY SITUATED KENTUCKY HOME RULE CITIES,

Plaintiffs,

MCKINSEY & COMPANY, INC. UNITED STATES, AND MCKINSEY & COMPANY, INC. WASHINGTON D.C.

Defendants.

Case No. 1:21-cv-35-GNS
(State Court Case No. 21-CI-00012)
(Circuit Court of Green County)

JOINT NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendants McKinsey & Company, Inc. and McKinsey & Company, Inc. Washington D.C. (collectively "McKinsey") remove the above-captioned action pending in the Circuit Court of Green County, Commonwealth of Kentucky, to the United States District Court for the Western District of Kentucky. By filing this Joint Notice of Removal, McKinsey does not waive any defense available to it and reserves all such defenses, including but not limited to lack of personal jurisdiction. If any question arises as to the propriety of the removal to this Court, McKinsey requests the opportunity to present a brief and oral argument in support of its position that this case has been properly removed.

GROUNDS FOR REMOVAL

I. Federal Diversity Jurisdiction

1. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332. Accordingly, this case may be removed pursuant to 28 U.S.C. § 1441 because (i) removal is timely, (ii) there is complete diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332(c)(1), (iii) the amount in controversy requirement set forth in 28 U.S.C. § 1332(a) is satisfied, and (iv) this Court is the proper venue.

A. Removal is timely.

2. Plaintiffs' Complaint has not yet been validly served upon McKinsey; as a result, the 30-day period within which to file a Notice of Removal under 28 U.S.C. § 1446(b) has not begun, and this Joint Notice of Removal is therefore timely filed. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 119 S. Ct. 1322, 1328-29, 143 L. Ed. 2d 448, 459-60 (1999) (30-day removal deadline runs from formal service of summons and complaint); *see also Novak v. Bank of*

N.Y. Mellon Trust Co., 783 F.3d 910, 911 & n.1 (1st Cir. 2015) (non-forum defendant may remove prior to formal service).

B. There is complete diversity of citizenship.

3. Plaintiffs and all putative class members are citizens of the Commonwealth of Kentucky.

4. McKinsey & Company, Inc. United States is a Delaware corporation with its principal place of business in New York, New York. (Complaint at ¶ 29).

5. McKinsey & Company, Inc. Washington D.C. is a Delaware corporation with its principal place of business in Washington D.C. (*Id*. at ¶¶ 217, 29).

C. The amount in controversy requirement is satisfied.

6. In accordance with Kentucky law, Plaintiffs' Complaint does not demand a specific dollar amount in damages. (*Id.*, unnumbered "Prayer for Relief," pp. 65-66). Because Kentucky practice does not permit demands for a specific sum, this Joint Notice of Removal may assert the amount in controversy. 28 U.S.C. § 1446(c)(2)(A)(ii). Additionally, as the United States Supreme Court has clarified, removing defendants need only make a "short and plain statement" demonstrating that the amount in controversy exceeds $75,000. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014); *see also, e.g., Aldrich v. Univ. of Phoenix, Inc.*, 2015 U.S. Dist. LEXIS 137916, at *17 (W.D. Ky. Oct. 9, 2015).

7. Here, the claims of each Plaintiff and member of the putative class exceed $75,000, exclusive of interest and costs. Further, to the extent necessary, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over any claims by putative class members that do not satisfy the amount in controversy requirement because, as set forth herein, the named Plaintiffs'

claims exceed the $75,000. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 558, 125 S. Ct. 2611, 2620, (2005).

8. First, Plaintiffs seek actual damages caused by the opioid epidemic, including but not limited to (1) costs for providing medical care, additional therapeutic and prescription drug purchases, and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths; (2) costs for providing treatment, counseling and rehabilitation services, (3) costs for providing treatment of infants born with opioid-related medical conditions, (4) costs of providing care for children whose parents suffer from opioid-related disability or incapacitation, (5) costs associated with law enforcement and public safety relating to the opioid epidemic, and (6) costs associated with drug court and other resources expended through the judicial system. (Complaint, p. 65, unnumbered "Prayer for Relief").

9. Additionally, Plaintiffs seek compensation for past and future costs to remediate the ongoing public nuisance caused by the opioid epidemic. (*Id.*)

10. Plaintiffs also seek punitive damages.[1] (*Id.*).

11. Finally, Plaintiffs seek attorney fees, costs and expenses, and pre-judgment and post-judgment interest. (*Id*.).

12. Based on the allegations in the Complaint of the supposedly massive effect on Plaintiffs from the opioid crisis, and on public statements by counsel for plaintiffs in this and/or related matters, it is clear that Plaintiffs seek to recover far in excess of $75,000 for each of themselves exclusive of interest and costs.[2] Although McKinsey disputes Plaintiffs' allegations

[1]*See Johnson v. Fifth Third Bank, Inc.*, 2012 U.S. Dist. LEXIS 73172, *6 (W.D. Ky. May 23, 2012) (internal citation omitted)("Claims for punitive damages should be included in the amount-in-controversy calculation, 'unless it is apparent to a legal certainty that such cannot be recovered.'")

[2]*See, e.g.*, Jeff Overley, *McKinsey Deal Renews Friction Among AGs and Opioid Attys*, LAW360 (Feb. 4, 2021, 10:32 PM), https://www.law360.com/articles/1352282/mckinsey-deal-renews-friction-among-ags-and-opioid-attys. (plaintiffs' counsel arguing that McKinsey's $600 million settlement with State Attorneys General was insufficient and that McKinsey's "liability should be closer to $2 billion.")

and denies Plaintiffs are entitled to any damages in this action, the amount in controversy needed for federal jurisdiction is more than satisfied.

D. Venue and other requirements are satisfied.

13. Removal to this Court is proper under 28 U.S.C. § 1441(a) because the Circuit Court of Green County, Commonwealth of Kentucky, is located within this District. 28 U.S.C. § 116(c).

14. In accordance with 28 U.S.C. § 1446(d), concurrently with filing this Joint Notice of Removal, McKinsey is providing written notice of the removal of this action to Plaintiffs and will promptly file a copy of this Joint Notice of Removal with the clerk of the Circuit Court of Green County.

15. For the Court's convenience, a copy of the state court file is attached hereto as Exhibit A.

16. For the foregoing reasons, federal jurisdiction exists under 28 U.S.C. § 1332(a), and removal is appropriate under 28 U.S.C. § 1441(a), (b).

II. Class Action Fairness Act of 2005 ("CAFA")

17. It is widely accepted that both CAFA and traditional diversity jurisdiction are available to class action litigants: "CAFA does not displace conventional diversity class action rules; it augments them. Therefore, federal subject matter jurisdiction over a class action may be premised on either the conventional diversity rules or on CAFA." *Aldrich v. Univ. of Phoenix, Inc.*, 2015 U.S. Dist. LEXIS 137916, *6 (internal citations omitted).

18. This case may be removed under CAFA because: (i) the putative class has more than 100 members, (ii) the parties are minimally diverse, and (iii) the amount in controversy

exceeds the sum or value of $5,000,000. *See Graiser v. Visionworks of Am., Inc.*, 819 F.3d 277, 282 (6th Cir. 2016) (quoting *Std. Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013)).

A. The putative class has more than 100 members.

19. Plaintiffs allege there are approximately 535 putative class members. (Complaint at ¶¶ 217-19).

B. There is minimal diversity of citizenship.

CAFA requires only minimal diversity. Minimal diversity exists when at least one member of the proposed class is a citizen of a different state than at least one defendant. 28 U.S.C. § 1332(d)(2)(A). Here, minimal diversity is satisfied, as neither Defendant is a citizen of Kentucky, while Plaintiffs and all putative class members are citizens of Kentucky. (Complaint at ¶¶ 29, 217-18).

C. The amount in controversy requirement is satisfied.

20. Under CAFA, the claims of each individual class member are aggregated to determine whether the amount in controversy exceeds $5,000,000. Courts measure the "amount in controversy" by determining the "value of the object of litigation." *Northup Props., Inc. v. Chesapeake Appalachia, LLC*, 567 F.3d 767, 770 (6th Cir. 2009). The value "is not necessarily the money judgment sought or recovered but rather the value of the consequences which may result from the litigation." *Freeland v. Liberty Mut. Fire Ins. Co.*, 632 F.3d 250, 253 (6th Cir. 2011). To invoke federal jurisdiction under CAFA, "a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin* 135 S. Ct. at 554. "Evidence establishing the amount is required by [28 U.S.C] § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's allegation." *Id.* When the plaintiff does not specify the amount of damages sought, the defendant may rely on

the allegations in the Complaint to estimate the amount of potential damages and show that the amount controversy is satisfied. *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 573 (6th Cir. 2001).

21. In the Complaint, Plaintiffs do not allege any specific amount of damages, although they seek several categories of relief. Each form of relief must be considered in determining whether the amount in controversy exceeds the jurisdictional threshold under CAFA.

22. As previously discussed, Plaintiffs seek actual damages caused by the opioid epidemic, as well as compensation for past and future costs to remediate the ongoing public nuisance caused by the opioid epidemic, punitive damages,[3] attorney fees, costs and expenses, and pre-judgment and post-judgment interest. (Complaint, p. 65, unnumbered "Prayer for Relief").

23. The allegations in the Complaint, along with public statements by counsel for plaintiffs in this and/or related matters, plainly put the amount in controversy well beyond $5,000,000.

Conclusion

For the foregoing reasons, and based on the allegations in Plaintiffs' Complaint, as fairly construed, and other available information, this Court has removal jurisdiction over this action under traditional diversity jurisdiction and CAFA, and this matter is properly removed to this Court.

[3]*See Smith v. Nationwide Prop. & Cas. Ins. Co.*, 505 F.3d 401, 408 (6th Cir. 2007) ("As a general rule, this jurisdictional analysis [under CAFA] must also take into account the ability of Plaintiffs and the putative class to recover punitive damages, 'unless it is apparent to a legal certainty that such cannot be recovered.'") (quoting *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 572) (6th Cir. 2001).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2021, I electronically filed the foregoing with the United States District Court for the Western District of Kentucky, and a true and correct copy of the foregoing has been served upon the following, by electronic mail, on this the 2nd day of March, 2021:

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/s/ *Kara M. Stewart*
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EXHIBIT A

COMMONWEALTH OF KENTUCKY
11th JUDICIAL CIRCUIT
GREEN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____

GREEN COUNTY FISCAL COURT, ON BEHALF OF GREEN COUNTY; BRECKINRIDGE COUNTY FISCAL COURT, ON BEHALF OF BRECKINRIDGE COUNTY; HARDIN COUNTY FISCAL COURT, ON BEHALF OF HARDIN COUNTY; MEADE COUNTY FISCAL COURT, ON BEHALF OF MEADE COUNTY; MENIFEE COUNTY FISCAL COURT, ON BEHALF OF MENIFEE COUNTY; NELSON COUNTY FISCAL COURT, ON BEHALF OF NELSON COUNTY; OHIO COUNTY FISCAL COURT, ON BEHALF OF OHIO COUNTY; WASHINGTON COUNTY FISCAL COURT, ON BEHALF OF WASHINGTON COUNTY; ON BEHALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED KENTUCKY COUNTY FISCAL COURTS, **AND,** **CITY OF HENDERSON, KENTUCKY, ON BEHALF OF ITSELF AND ALL OTHER SIMILARLY SITUATED KENTUCKY HOME RULE CITIES,** **PLAINTIFFS,** **v.** **MCKINSEY & COMPANY, INC. UNITED STATES, AND MCKINSEY & COMPANY, INC. WASHINGTON D.C.** **DEFENDANTS.**	**CLASS ACTION COMPLAINT** ***Jury Trial Requested***

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DEFENDANT'S APOLOGY

1. On December 5, 2020, Defendant issued an apology for its actions that contributed to and worsened the opioid epidemic.

> **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…**
>
> **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.**

PROCEDURAL STATEMENT

2. The headings contained in this Class Action Complaint are intended only to assist in reviewing the statements and allegations contained herein. To avoid the unnecessary repetition in each section, Plaintiffs affirm and incorporate each paragraph in each section of this Class Action Complaint as though fully set forth therein.

3. The factual allegations contained in this Class Action Complaint are ***not exhaustive*** and are presented throughout this Class Action Complaint solely to provide the Defendant with the requisite notice of the basis for the Plaintiffs' allegations and claims. The Plaintiffs expressly reserve the right to plead additional facts where and as necessary to ensure complete relief.

INTRODUCTION

4. No state has been hit harder by the opioid epidemic than Kentucky. The opioid epidemic poses an ongoing crisis in Kentucky. The rate of overdose deaths involving opioid prescriptions in Kentucky dramatically increased since 1999, increasing 920% from 1.0 deaths per 100,000 persons in 1999 to 10.2 deaths per 100,000 persons in 2017.

5. According to the CDC, in 2015, Kentucky shared the 2nd highest overdose rate in

the country. Data from 2013 onward shows that Kentucky has the 3rd highest drug overdose mortality rate in the country. Between 2012 and 2016, drug overdoses caused a total of 5,822 deaths in Kentucky. In 2017, there were 1,565 fatal drug overdoses in Kentucky, which is an increase to approximately 130 deaths per month. According to the National Institute on Drug Abuse, Kentucky has double the overdose rate of the national average. Drug overdoses have become the leading cause of accidental death in Kentucky.

6. As further example of the uncontrolled and intentional flow of opioids into Kentucky, in 2015 alone there were 102 opioid prescriptions written ***for every*** 100 Kentucky residents—150% times the national average. Moreover, Kentucky's overdose fatalities numbered 1,249 in 2015.

7. In 2015, drug overdoses accounted for 51.17% of Kentucky's statewide accidental deaths, more than motor vehicle accidents, fire, drowning, and gunshot wounds ***combined***. In 2015, opioids accounted for 46.63% of the statewide total of drug related fatal overdose victims. In 2016, the number of deaths statewide due to drug overdoses was nearly five-times that of car accidents.

8. It cannot be reasonably disputed that opioid abuse has reached epidemic levels in Kentucky. In the span of a single year, from February 1, 2016, to January 31, 2017, Kentucky pharmacies filled prescriptions for ***307,234,816 doses*** of prescription opioids—the equivalent of 69 doses for ***every*** man, woman, and child residing in Kentucky.

9. The progression from prescription opioids to the use of illicit drugs, particularly injectable heroin, is well documented, with approximately 75% of heroin users reporting that their initial drug use was through prescription. As Kentucky citizens who become addicted to prescription opioids have predictably migrated to illicit, but less expensive, opioids, namely

heroin and fentanyl, overdoses have dramatically increased. The opioid-overdose reversal drug naloxone was administered in four out of every seven Emergency Medical Services runs; and on average, seven response calls per day were to drug-related incidents.

10. Opioids have endangered public health in Kentucky even beyond addiction and overdose. Addicts who are not killed by drug addiction experience a variety of health consequences (including non-fatal overdoses) and engage in a variety of risky drug-seeking behaviors. This resulting drug addiction imposes significant costs on County Fiscal Courts—e.g., health care, emergency response, substance abuse treatment, law enforcement, etc.—who already face serious budgetary restraints as well as severely limited financial resources. This resulting drug addiction similarly imposes significant costs on Kentucky Home Rule Cities—e.g., health care, emergency response, substance abuse treatment, law enforcement, etc.—who already face serious budgetary restraints as well as severely limited financial resources.

11. As permitted by Kentucky's Constitution, as well as consistent with Kentucky Revised Statutes, the Plaintiff County Fiscal Courts have sought to eliminate or at the very least to minimize—abate—the social and financial hazard to public health and safety caused by the opioid epidemic in their respective counties. Similarly, also as permitted by Kentucky's Constitution, as well as consistent with Kentucky Revised Statutes, the Kentucky Home Rule Cities—have sought to eliminate or at the very least to minimize and to abate the social and financial hazard to public health and safety caused by the opioid epidemic in their respective municipalities.

12. To that end, the County Fiscal Courts and Home Rule Cities have declared that opioid abuse, addiction, morbidity, and mortality have created a serious and significant public health and safety crisis, and are a public nuisance, and that the diversion of legally produced

controlled substances into the illicit market caused or contributed to this public nuisance, both in the past and continuing into the foreseeable future.

13. The distribution and diversion of opioids into and throughout the County Fiscal Courts' and the Home Rule Cities' respective jurisdictions has created this foreseeable opioid crisis and public nuisance. As such, the Plaintiff County Fiscal Courts and Home Rule Cities have sought, and seek, to abate the nuisance caused thereby, and to recoup the funds expended ***from their*** county budgets—***not*** the Commonwealth's budget—because of opioid epidemic.

JURISDICTION & VENUE

14. This Court has subject matter jurisdiction over the claims asserted in this lawsuit pursuant to Kentucky Revised Statutes 23A.010. Plaintiffs' claims do ***not*** fall within Kentucky Revised Statutes 24A.120. The amount in controversy *exceeds* five thousand dollars ($5,000), exclusive of interest and costs.

15. Venue is proper in this Court. Defendant's actions forming the basis for Plaintiffs' claims occurred throughout the Commonwealth of Kentucky, as well as in Franklin County. Defendant's agent is registered with, and located in, Franklin County.

16. This action is ***not*** removable to federal court for many reasons, including *inter alia*: (i) a ***lack of complete diversity*** of citizenship; (ii) the claims asserted herein arise ***solely*** under Kentucky's laws and regulations; (iii) no claims are asserted under any federal law or regulation, and any inference to the contrary is ***expressly disavowed***; and (iv) the claims asserted herein are ***solely*** on behalf of Kentucky County Fiscal Courts and Home Rule Cities.

17. Both general and personal jurisdiction apply to Defendant. Defendant purposely availed itself of the privilege of seeking and doing business in the Commonwealth of Kentucky. Given the foregoing, as well as Defendant's obligations under Kentucky law, Defendant should have anticipated being "haled" into this Court to answer for its illicit and improper activities.

PARTIES

A. County Fiscal Court Plaintiffs.

18. Plaintiff **Breckinridge County Fiscal Court** ("Breckinridge County") is a Kentucky county government authorized, and entrusted with, protecting the public health, safety, and welfare of ***its*** residents. Breckinridge County's mandate includes asserting and pursuing all available relief for ***its*** claims relating to and arising from the opioid epidemic. Breckinridge County has a clear, recognizable, and significant present tangible interest in protecting its rights—including seeking the relief sought herein.

19. Plaintiff **Green County Fiscal Court** ("Green County") is a Kentucky county government authorized, and entrusted with, protecting the public health, safety, and welfare of ***its*** residents. Green County's mandate includes asserting and pursuing all available relief for ***its*** claims relating to and arising from the opioid epidemic. Green County has a clear, recognizable, and significant present tangible interest in protecting its rights—including seeking the relief sought herein.

20. Plaintiff **Hardin County Fiscal Court** ("Hardin County") is a Kentucky county government authorized, and entrusted with, protecting the public health, safety, and welfare of ***its*** residents. Hardin County's mandate includes asserting and pursuing all available relief for ***its*** claims relating to and arising from the opioid epidemic. Hardin County has a clear, recognizable, and significant present tangible interest in protecting its rights—including seeking the relief sought herein.

21. Plaintiff **Meade County Fiscal Court** ("Meade County") is a Kentucky county government authorized, and entrusted with, protecting the public health, safety, and welfare of ***its*** residents. Meade County's mandate includes asserting and pursuing all available relief for ***its*** claims relating to and arising from the opioid epidemic. Meade County has a clear, recognizable,

and significant present tangible interest in protecting its rights—including seeking the relief sought herein.

22. Plaintiff **Menifee County Fiscal Court** ("Menifee County") is a Kentucky county government authorized, and entrusted with, protecting the public health, safety, and welfare of ***its*** residents. Menifee County's mandate includes asserting and pursuing all available relief for ***its*** claims relating to and arising from the opioid epidemic. Menifee County has a clear, recognizable, and significant present tangible interest in protecting its rights—including seeking the relief sought herein.

23. Plaintiff **Nelson County Fiscal Court** ("Nelson County") is a Kentucky county government authorized, and entrusted with, protecting the public health, safety, and welfare of ***its*** residents. Nelson County's mandate includes asserting and pursuing all available relief for ***its*** claims relating to and arising from the opioid epidemic. Nelson County has a clear, recognizable, and significant present tangible interest in protecting its rights—including seeking the relief sought herein.

24. Plaintiff **Ohio County Fiscal Court** ("Ohio County") is a Kentucky county government authorized, and entrusted with, protecting the public health, safety, and welfare of ***its*** residents. Ohio County's mandate includes asserting and pursuing all available relief for ***its*** claims relating to and arising from the opioid epidemic. Ohio County has a clear, recognizable, and significant present tangible interest in protecting its rights—including seeking the relief sought herein.

25. Plaintiff **Washington County Fiscal Court** ("Washington County") is a Kentucky county government authorized, and entrusted with, protecting the public health, safety, and welfare of ***its*** residents. Washington County's mandate includes asserting and pursuing all

available relief for ***its*** claims relating to and arising from the opioid epidemic. Washington County has a clear, recognizable, and significant present tangible interest in protecting its rights—including seeking the relief sought herein.

26. The Plaintiff County Fiscal Courts bring this action on their behalf, and on behalf of all other Kentucky County Fiscal Courts (collectively "**County Fiscal Courts**").

B. Home Rule City Plaintiffs.

27. Plaintiff **City of Henderson, Kentucky** ("City of Henderson") is a Kentucky municipality authorized, and entrusted with, protecting the public health, safety, and welfare of ***its*** residents. City of Henderson's mandate includes asserting and pursuing all available relief for ***its*** claims relating to and arising from the opioid epidemic. City of Henderson has a clear, recognizable, and significant present tangible interest in protecting its rights—including seeking the relief sought herein.

28. Plaintiff City of Henderson brings this action on its behalf, and on behalf of all other Kentucky Home Rule Cities (collectively "**Home Rule Cities**").

C. Defendants.

29. Defendant **McKinsey & Company, Inc. United States** is a foreign corporation with its principal office at 711 Third Avenue, New York, NY 10017. It may be served with process through its registered agent, Corporation Service Company, 80 State Street, Albany, New York 12207. Additionally, McKinsey, though its affiliate **McKinsey & Company, Inc. Washington DC**, is registered to do business in the Commonwealth of Kentucky and may be served with process through its registered agent, Corporation Service Company located at 421 West Main Street, Frankfort, KY 40601 (collectively "Defendant" or "McKinsey").

FACTUAL ALLEGATIONS

A. Background.

30. 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, L.P. ("Purdue"), 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."

31. Along with the guilty plea, Purdue agreed to a Corporate Integrity Agreement with the Office of Inspector General of the United States Department of Health and Human Services. For a period of five years, ending in 2012, Purdue was obligated to retain an Independent Monitor and submit annual compliance reports regarding its marketing and sales practices and training of sales representatives vis-à-vis their interactions with health care providers.

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

33. The problem was complex. As a result of the 2007 guilty plea, the Sacklers made the strategic decision to distance the family from Purdue, which was regarded as an increasingly

dangerous "concentration of risk" for Purdue's owners. Ten days after the guilty plea was announced, David Sackler wrote to his dad, Richard Sackler, and uncle, Jonathan Sackler, describing precisely what that "risk" was: legal liability for selling OxyContin. In response to Jonathan stating that "there is no basis to sue 'the family,'" David replied:

Message

From: David Sackler [redacted]
Sent: 5/17/2007 11:08:08 PM
To: [redacted] Sackler, Dr Richard [redacted]
CC: Ives, Stephen A. [redacted]
Subject: RE: Idea
Attachments: image001.jpg

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 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 how long it will take these lawyers to figure out that we might settle with them if they can freeze our assets and threaten us.

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

35. Another option was to have Purdue borrow money in order to assure Purdue had adequate funds to continue operating while the Sacklers, as owners, began to make substantial 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.

36. 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

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

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

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

39. McKinsey accepted their request,[1] and by June 2009 McKinsey and Purdue were working together to increase sales of Purdue's opioids. McKinsey suggested a specific sales and marketing strategy based on McKinsey's own independent research and unique methodologies, and Purdue adopted that strategy. McKinsey and Purdue then implemented McKinsey's plan. Despite the strictures imposed upon Purdue by the Corporate Integrity Agreement, OxyContin sales began to multiply.

40. In 2012, Purdue's Corporate Integrity Agreement ended. With its demise, McKinsey's ongoing relationship with Purdue flourished.[2] In 2013, McKinsey proposed, and

[1] This complaint assumes that Purdue asked McKinsey to design and implement the strategy for boosting opioid sales, and McKinsey accepted Purdue's offer. What is known is that McKinsey performed the work for Purdue. For the purposes of this complaint, Plaintiffs and the putative Class assume Purdue initiated the relationship with McKinsey. Should it arise that instead McKinsey pitched a proposal to increase OxyContin sales to Purdue, and Purdue accepted that proposal, then Plaintiffs will amend the complaint where and as necessary.

[2] McKinsey espouses the idea of the "transformational relationship." It is not a one-off seller of advice for any given CEO's problem of the day. Rather, McKinsey argues that real value for the client derives from an ongoing "transformational" relationship with the firm. Duff McDonald,

Purdue implemented with McKinsey's ongoing assistance, *Project Turbocharge*, a marketing strategy to increase opioids sales by *hundreds of millions* of dollars annually. Purdue then picked a new name – *Evolve 2 Excellence* – and adopted it as the theme to its 2014 national sales campaign. With McKinsey's assistance, Purdue trained its sales representatives to operate pursuant to McKinsey's strategy for selling OxyContin.

41. In 2013, despite significant headwinds, OxyContin sales finally peaked. The restrictions on Purdue's sales and marketing methods contained in the Corporate Integrity Agreement should have resulted in fewer overall OxyContin sales: the guilty plea identified a specific segment of existing OxyContin sales that were illegitimate and should thus cease. All else being equal, OxyContin sales should have decreased to account for the successful snuffing out of improper sales. In fact, OxyContin sales did decrease in the immediate aftermath of the 2007 guilty plea.

42. Within five years, however, OxyContin sales would triple. McKinsey is responsible for the strategy that accomplished this. It presented specific plans to Purdue, which Purdue adopted and spent hundreds of millions of dollars implementing. The result: a final spasm of OxyContin sales before the inevitable decline of the drug.[3]

43. McKinsey has recently been the subject of scrutiny for its various business practices, including its work facilitating the opioid crisis for Purdue.[4] On March 7, 2019, Kevin

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The Firm, Pg. 136-37 (Simon & Schuster 2013) ("McKinsey no longer pitched itself as a project-to-project firm; from this point forth [the late 1970's], it sold itself to clients as an ongoing prodder of change, the kind a smart CEO would keep around indefinitely."). This complaint tells the story of McKinsey's transformational relationship with Purdue.

[3] On February 10. 2018, Purdue announced that it is no longer marketing opioids, and disbanded its OxyContin sales force.

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

Sneader, McKinsey's global managing partner, addressed all McKinsey employees regarding this scrutiny. Drawing inspiration from Theodore Roosevelt, Sneader stated, "[W]e cannot return to a time when we were in the background and unobserved. Those days have gone. Indeed, I have little doubt that scrutiny – fair and unfair – will continue. It is the price we pay for being 'in the arena' and working on what matters."[5]

44. Weeks later, McKinsey announced that it is no longer working for any opioid manufacturer. "Opioid abuse and addiction are having a tragic and devastating impact on our communities. We are no longer advising clients on any opioid-specific business and are continuing to support key stakeholders working to combat the crisis," McKinsey stated.[6] In addition to its work for Purdue, McKinsey has performed work for "several other companies on opioids."[7]

45. Plaintiffs argue that the price for being in the arena is more than scrutiny,

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[5] *See* "*The Price We Pay for Being 'In the Arena'": McKinsey's Chief Writes to Staff About Media Scrutiny and 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 on April 23, 1910: "It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doers of deeds could have done them better. The credit belongs to the man who is actually in the arena [here, McKinsey; and the arena, opioid sales], whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort 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."

[6] *See* Paul La Monica, *Consulting firm McKinsey no longer working with opioid maker Purdue Pharma*, CNN, May 24, 2019, available at: *https://www.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.

[7] *See* Drew Armstrong, *McKinsey No Longer Consulting for Purdue, Ends Opioid Work*, Bloomberg, May 23, 2019, available at: *https://www.bloomberg.com/news/articles/2019-05-24/mckinsey- no-longer-working-with-purdue-halts-opioid-consulting*. While Plaintiffs are aware of work McKinsey has performed for other opioid manufacturers, this complaint concerns McKinsey's work with Purdue.

however fair. This complaint asserts that, like any other participant in the arena, McKinsey is liable for its deeds. McKinsey is liable for its successful efforts to increase OxyContin sales after Purdue's 2007 guilty plea for misbranding the drug. Indeed, McKinsey's *mandate* was to increase the sales of the drug *in light of the fact* that Purdue had plead guilty to misbranding, and the owners of Purdue now wished to exit the opioid market due to the perceived reputational risks of remaining there.

46. McKinsey's task was to thread the needle: to increase OxyContin sales *given the strictures imposed by the 5-year Corporate Integrity Agreement*. This McKinsey did, turbocharging the sales of a drug it knew fully well was addictive and deadly, while paying at least tacit respect to the Corporate Integrity Agreement.[8]

47. These managerial acrobatics were necessary for Purdue to seem financially attractive enough that a potential buyer would be willing to discount (or even overlook) the otherwise obvious risks associated with purchasing the maker of OxyContin. Purdue was the proverbial hot potato. The Sackler family hired McKinsey to help them hand it to someone else. McKinsey obliged, and devised a successful strategy to purposefully increase the amount of OxyContin sold in the United States. Their efforts *tripled* OxyContin sales.

48. In the end, of course, the Sacklers never sold Purdue, and no one loaned it money. In time, the full scope of the opioid crisis would be clear not only to experts, insiders, and industry participants. Along with the rest of nation, Plaintiffs are now squarely focused on the crisis.

49. This complaint concerns McKinsey's work for Purdue Pharma and its owner, the Sackler family, beginning at least as early as 2004, and in particular McKinsey's work in the years

[8] McKinsey's description of its efforts.

after the 2007 guilty plea relating to Purdue's sales and marketing strategy for its opioids.

50. McKinsey had an ongoing relationship with Purdue beginning at least as early as 2004 and lasting decades. By June 2009 McKinsey was advising Purdue on precisely the same sales and marketing strategy and practices for OxyContin that were the subject of the Corporate Integrity Agreement. McKinsey continued this work after the expiration of the Corporate Integrity Agreement and at least through November of 2017.

B. Purdue pleads guilty to misbranding OxyContin and is bound by a Corporate Integrity Agreement.

51. On May 10, 2007, the Purdue Frederick Company, Purdue's parent, 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.*

52. Purdue admitted that "supervisors and employees, with the intent to defraud or mislead, marketed and promoted OxyContin as less addictive, less subject to abuse and diversion, and less likely to cause tolerance and withdrawal than other pain medications."

53. Concurrent with the guilty plea by the Purdue Frederick Company, Purdue entered into a Corporate Integrity Agreement with the Office of Inspector General of the United States Department of Health and Human Services on May 7, 2007.

54. Purdue's compliance obligations under the Corporate Integrity Agreement ran for a period of five years, expiring on May 10, 2012.

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

a. selling, marketing, promoting, advertising, and disseminating Materials or information about Purdue's products in compliance with all applicable FDA

requirements, including requirements relating to the dissemination of information that is fair and accurate … including, but not limited to information concerning the withdrawal, drug tolerance, drug addiction or drug abuse of Purdue's products;

b. compensation (including salaries and bonuses) for Relevant Covered Persons 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; and

c. the process by which and standards according to which Purdue sales representatives provide Materials or respond to requests from HCP's [health care providers] for information about Purdue's products, including information concerning withdrawal, drug tolerance, drug addiction, or drug abuse of Purdue's products," including "the form and content of Materials disseminated by sales representatives," and "the internal review process for the Materials and information disseminated by sales representatives."

56. Purdue was obligated to engage an Independent Review Organization to ensure its compliance with the strictures of the Corporate Integrity Agreement, and to file compliance reports on an annual basis with the inspector general.

C. Purdue hires McKinsey to boost opioid sales despite the company's guilty plea and Corporate Integrity Agreement.

57. The Sackler family has owned and controlled Purdue and its predecessors since 1952. At all times relevant to this complaint, individual Sackler family members occupied either six or seven of the seats on Purdue's board of directors, and at all times held a majority of Board seats. To advise the board of directors of Purdue Pharma was to advise the Sackler family. The interests of the Sackler family and the Purdue board of directors, and Purdue itself, as a privately

held company, are all aligned. Practically, they are indistinguishable.[9]

1. The Sacklers distance themselves from Purdue.

58. After the 2007 guilty plea, the Sackler family began to reassess its involvement in the opioid business. On April 18, 2008, Richard Sackler, then the co-chairman of the board along with his uncle, communicated to other family members that Purdue's business of selling OxyContin and other opioids was "a dangerous concentration of risk." Richard Sackler recommended a strategy of installing a loyal CEO of Purdue who would safeguard the interests of the Sackler family, while at the same time positioning Purdue for an eventual sale by maximizing OxyContin sales.

59. In the event that a purchaser for Purdue could not be found, Richard stated Purdue should "distribute more free cash flow" to the Sacklers. This would have the effect of maximizing the amount of money an owner could take out of a business, and is a tacit acknowledgement that reinvestment of profits in the business was not a sound financial strategy. It is, in other words, an acknowledgement that Purdue's reputation and franchise was irrevocably damaged, and that Purdue's opioid business was not sustainable in the long term.

60. By 2017, with the hope for any acquisition now gone, the Sacklers' decision to milk opioid profits by "distributing more free cash flow" on the way down had its natural effect on Purdue. Craig Landau, then the CEO, stated, "the planned and purposeful de-emphasis and deconstruction of R&D has left the organization unable to innovate."

61. In fact, in the years after the 2007 guilty plea, Purdue would retain only the

[9] Craig Landau, soon to become CEO of Purdue, acknowledged in May 2017 that Purdue operated with "the Board of 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.

absolute minimum amount of money within Purdue as possible: $300 million. That amount was required to be retained by Purdue pursuant to a partnership agreement with separate company. Otherwise, all the money was distributed to the owners.[10]

62. Concurrently, the Sacklers backed away from day-to-day jobs at Purdue. During the ongoing investigation that resulted in the 2007 guilty pleas, "several family members who worked at Purdue stepped back from their operational roles."[11]

63. In 2003, Richard Sackler himself resigned as the president to assume his role of co-chairman. Dr. Kathe Sackler and Jonathan Sackler chose to exit their roles as senior vice presidents. Mortimer D.A. Sackler quit being a vice president. They remained on the board, however.

64. At the time Richard Sackler communicated these plans to distance the family from Purdue, the Sacklers had already established a second company, Rhodes Pharmaceuticals. The Sacklers established Rhodes ***four months*** after the 2007 guilty plea.[12]

65. Rhodes' purpose was to sell generic versions of opioids. It was, in other words, a way for the Sacklers to continue to make money off of opioids while separating themselves from Purdue.

66. By 2016, Rhodes held a larger share of the opioid market than Purdue. Through Purdue, the Sacklers controlled 1.7% of the overall opioid market. When combined with Rhodes, however, the Sacklers' share of the overall opioid market was approximately 6% of all opioids

[10] *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-1561887120?mod=hp_lead_pos6.*

[11] Barry Meier, *Pain Killer*, Pg. 167 (Random House 2018).

[12] *Billionaire Sackler family owns second opioid maker*, Financial Times, September 9, 2018, available at: *https://www.ft.com/content/2d21cf1a-b2bc-11e8-99ca-68cf89602132.*

sold in the United States.[13]

2. Purdue hires McKinsey to devise and implement an OxyContin sales strategy consistent with the Sacklers' goals.

67. The Sacklers faced a problem: the need to grow OxyContin sales as dramatically as possible so as to make Purdue an attractive acquisition target or borrower, while at the same time appearing to comply with the Corporate Integrity Agreement.[14]

68. Purdue and the Sacklers were well aware of the constraints posed by the Agreement. Indeed, during a May 20, 2009 Executive Committee Meeting, the discussion led to whether Purdue should have a single sales force marketing all Purdue products, including OxyContin, or instead to "create a separate Sales Force for Intermezzo (a sleeping pill) that would be comprised of approximately 300 representatives."

69. John Stewart, the Sacklers' chosen Chief Executive Officer for Purdue at the time, saw an opportunity, and asked if the Corporate Integrity Agreement would apply if Purdue were to launch Intermezzo and another Purdue product, Ryzolt (a branded version of Tramadol, another narcotic painkiller), using the separate sales force. Might the new drug launch fall outside of the Corporate Integrity Agreement, he asked?[15] It would not, he was told by Bert Weinstein, Purdue's Vice President of Compliance.[16]

70. Given the tension between compliance with the Corporate Integrity Agreement

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[13] *Id.*

[14] As one Purdue executive stated of Purdue's attitude toward the Corporate Integrity Agreement: "They did not listen to their critics and insisted they had just a few isolated problems. After the settlement, they didn't change – the way the sales force was managed and incentivized, everything stayed the same." 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.*

[15] Purdue Pharma Executive Committee Meeting Notes and Actions, May 20, 2009, Pg. 2.

[16] *Id.*

and the desire to sell more OxyContin, Purdue needed help.

71. Ethan Rasiel, a former McKinsey consultant, has described the typical way McKinsey begins working with a client: "An organization has a problem that they cannot solve with their internal resources. That's the most classic way that McKinsey is brought in."[17]

72. Such was the case with Purdue. Because it did not have the requisite expertise to address the problems posed by the Corporate Integrity Agreement internally, Purdue hired McKinsey to devise a sales and marketing strategy to increase opioid sales in light of the Corporate Integrity Agreement and growing concern about the "concentration of risk" that Purdue's business of selling opioids posed to its owners.

73. In short, Purdue would pay money to McKinsey in exchange for McKinsey telling the company how to sell as much OxyContin as conceivably possible so that the Sacklers could obtain cash to diversify their investment holdings away from Purdue.

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

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

[17] *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.*

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

77. In addition, Purdue's Vice President of Corporate Compliance, "responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in the [Corporate Integrity Agreement]," reported directly to Stewart.

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

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

80. From as early as June 2009 and continuing at least through July 14, 2014, Purdue routinely relied upon McKinsey to orchestrate their sales and marketing strategy for OxyContin. The relationship was characterized by ongoing interactions between teams from McKinsey and Purdue regarding not only the creation of an OxyContin sales strategy, but also its implementation.

D. McKinsey does more that provide advice: "Consulting is more than giving advice."

81. Management consulting is the business of providing solutions to clients. Solutions take many forms, depending on the client's needs. "Management consulting includes a broad range of activities, and the many firms and their members often define these practices quite differently."[18]

[18] Arthur Turner, *Consulting is More Than Giving Advice*, Harvard Business Review,

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

83. "Implementation" consulting is what comes next. If strategy consulting is providing advice to a client, "implementation" work is what happens once the client has adopted the consultant's plan. After a client has adopted the strategy consultant's recommendations, the implementation consultant remains in place with the client to actually do the necessary work and execute on the plan.

84. In his 1982 *Harvard Business Review* article entitled "Consulting is More Than Giving Advice," Professor Arthur Turner of the Harvard Business School described the then-current state of the consulting industry's attitude toward implementation work: "The consultant's proper role in implementation is a matter of considerable debate in the profession. Some argue that one who helps put recommendations into effect takes on the role of manager and thus exceeds consulting's legitimate bounds. Others believe that those who regard implementation solely as the client's responsibility lack a professional attitude, since recommendations that are not 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."[19]

September 1982, available at: *https://hbr.org/1982/09/consulting-is-more-than-giving-advice.*

[19] *Id.*

85. A core component of the McKinsey relationship is discretion. "The basis of any client relationship with the firm is trust. Companies share their most competitive secrets with McKinsey with the understanding that confidentiality is paramount. McKinsey consultants aren't even supposed to tell their own spouses about their client work."[20]

86. Although McKinsey has historically been regarded as a "strategy" consulting firm, by the time it was working with Purdue, implementation services were a core component of the overall suite of services that McKinsey provided within the "transformational relationship" McKinsey developed with its clients.[21]

87. Describing McKinsey's approach to implementation, one McKinsey consultant stated, "On some of the most successful engagements I've seen, you can't even tell the difference between a McKinsey team member and one of our clients because we work that cohesively together."[22]

88. Another McKinsey Senior Implementation Coach described McKinsey's approach: "We're in there interacting with every element of that organization, from the welders or mechanics on the front line, all the way up to the board of directors."[23]

89. 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 the objective is identified, the client and McKinsey then engage in concerted action as a seamless and cohesive unit in order to implement the

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[20] McDonald, *The Firm*, Pg. 308.

[21] For McKinsey's own description of its implementation services, available at: *https://www.mckinsey.com/business-functions/mckinsey-accelerate/how-we-help-clients/implementation* (last accessed October 19, 2020).

[22] McKinsey on Implementation, April 30, 2017, available at: *https://www.youtube.com/watch?v=rEQOGVpl9CY.*

[23] *Id.*

necessary means to achieve those objectives for the client.

90. Indeed, long after McKinsey's advice to Purdue was accepted and deployed as the theme of Purdue's 2014 national sales strategy, McKinsey remained with Purdue to assure proper implementation of McKinsey's strategies to maximize OxyContin sales.

E. Purdue relies on McKinsey.

91. McKinsey is not hired to give casual advice. They are a corporate mandarin elite, likened to the Marines or the Jesuits.[24]

92. United States Senator Mitt Romney, during his presidential campaign in 2012, told the editorial board of the *Wall Street Journal* that as president he would approach reducing the size of the government by hiring McKinsey. A former consultant himself, Romney stated, "So I would have … at least some structure that McKinsey would guide me to put in place." In response to audience surprise, Romney said, "I'm not kidding. I would probably bring in McKinsey."[25]

93. McKinsey is not cheap, either. A client does not choose to pay McKinsey unless it expects to receive advice it could not have obtained within its own organization. McKinsey offers solutions to clients facing challenges they feel they cannot adequately address on their own. In 2008, McKinsey's revenue was $6 billion.

1. McKinsey's Transformational Relationship.

94. McKinsey has long touted the notion of the "transformational relationship." It is the goal of every client relationship McKinsey develops, and, McKinsey argues, the best way to extract value from a client's use of McKinsey's services.

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[24] Said one former McKinsey partner to *BusinessWeek* in 1986: "There are only three great institutions left in the world: The Marines, the Catholic Church, and McKinsey." McDonald, *The Firm*, pg. 165.

[25] McDonald, *The Firm*, pg. 1.

95. At its core, the "transformational relationship" is *long-term*. It is the antithesis of a one-off contract wherein McKinsey performs one discreet project for a client and then concludes its business. Rather, "once McKinsey is inside a client, its consultants are adept at artfully creating a feedback loop through their work that purports to ease executive anxiety but actually creates more of it."[26] The long-term result can be "dependence" on the McKinsey consultants.

96. This strategy of insinuating itself into all aspects of its clients' business proved enormously successful for McKinsey over the years. It was a strategy McKinsey encouraged its consultants to take with clients to great effect:

> The sell worked: Once ensconced in the boardrooms of the biggest corporate players in the world, McKinsey rarely left, ensuring a steady and growing flow of billings for years if not decades. In 2002, for example, BusinessWeek noted that at that moment, the firm had served four hundred clients for fifteen years or more.[27]

97. Purdue was no different. McKinsey counted Purdue as a client at least as early as 2004. The precise duration of the relationship between McKinsey and Purdue and its owners has not been ascertained, although it is known that McKinsey worked with Purdue for years *before* Purdue's parent and officers first pleaded guilty to misbranding OxyContin in 2007, and that by June 2009 McKinsey was actively working with Purdue to increase OxyContin sales in light of

[26] *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 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 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."* (emphasis added). Indeed, after the REMS work was completed, McKinsey continued to work on "Broader Strategy work" for another decade.

[27] *Id.* at pg. 136.

that guilty plea and its accompanying Corporate Integrity Agreement. The work continued through at least 2018.

98. McKinsey partner Maria Gordian, in her March 26, 2009 "EY 2009 Impact Summary" internal report to McKinsey Director Olivier Hamoir and McKinsey's Personnel Committee, recounted her accomplishments that year on the Purdue account. The document is an annual self-assessment produced by McKinsey partners. In it, Gordian described the state of firm's relationship for Purdue:

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

99. McKinsey staffed at least 36 known consultants to Purdue, from senior partners all the way down through engagement managers to entry-level associates. Throughout the unfolding of the nationwide opioid crisis that only continued to worsen after the 2007 guilty plea, McKinsey remained steadfast alongside the Sacklers and Purdue every step of the way. The mea culpas would come only later.

F. McKinsey Delivers.

100. By 2009, McKinsey was working with its long-time client to craft and implement a sales and marketing plan to increase OxyContin sales in light of the Corporate Integrity Agreement and the diminishing outlook for Purdue.

101. In June 2009, McKinsey advised Purdue senior management, including Craig Landau, then the Chief Medical Officer and future CEO, regarding a variety of strategies to increase Purdue's opioid sales that were developed using McKinsey's expertise and proprietary approaches to problem solving.

1. **Granular Growth.**

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

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

104. In order to identify growth opportunities for a client, McKinsey espouses a "granular" approach to identifying which subsets of the client's existing business are the sources of growth and exploiting them for all they are worth. In August 2008, McKinsey Directors Patrick Viguerie and Sven Smit, together with Mehrdad Baghai, published a treatise on the matter: *The Granularity of Growth: How to Identify the Sources of Growth and Drive Enduring Company Performance* (Wiley, April 2008). "The key is to focus on granularity, to breakdown big-picture strategy into its smallest relevant components."[28]

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

> Our research on revenue growth of large companies suggest that executives should 'de-average' their view of markets and develop a granular perspective on trends, future growth rates, and market structures. Insights into subindustries, segments, categories, and micro markets are the building blocks of portfolio choice. Companies will find this approach to growth indispensable in

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

making the right decisions about where to compete.[29]

106. Additionally, McKinsey encouraged a granular assessment of the geography of corporate growth. "The story gets more precise as we disaggregate the company's performance on the three growth drivers in 12 product categories for five geographic regions."[30]

107. One can imagine this strategy applied to a seller of, say, cartons of milk. If McKinsey were to perform an analysis of the milk seller's sales and marketing and discover that the profit margin on milk cartons sold to university cafeterias in dairy-producing states is much greater than the margin on cartons sold at convenience stores in the southwest, and further that the milk seller has previously devoted equal amounts of time and resources selling to both university cafeterias and convenience stores; then McKinsey would likely advise the client to deploy additional resources towards selling milk to university cafeterias in dairy-producing states.

108. McKinsey's "granular" approach to the milk seller's business channels has identified a way to increase higher margin sales, leading to newfound growth for the client. Rather than milk, McKinsey deployed this strategy on OxyContin, a controlled substance, after its manufacturer pled guilty to misrepresenting the addictive and deadly properties of the drug.

2. "Identifying Granular Growth Opportunities for OxyContin."

109. McKinsey's granular analysis of Purdue's OxyContin sales efforts led to the implementation of a number of strategies to sell more pills.

110. By January 2010, McKinsey informed Purdue that, in accordance with the tenants of its granular growth analysis, Purdue could generate "$200,000,000 to $400,000,000" in

[29] Mehrdad Baghai *et. al.*, *The granularity of growth,* McKinsey Quarterly, May 2007, available at: *https://www.mckinsey.com/featured-insights/employment-and-growth/the-granularity-of-growth.*
[30] *Id.*

additional annual sales of OxyContin by implementing McKinsey's strategies.

111. In June of 2012, John Stewart assigned McKinsey to "understand the significance of each of the major factors affecting OxyContin's sales."

112. This McKinsey did in excruciatingly granular detail, analyzing each sales channel for Purdue's opioids for weaknesses and opportunities. For instance, McKinsey informed the Sacklers that "deep examination of Purdue's available marketing purchasing data shows that Walgreens has reduced its units by 18%." Further, "the Walgreens data also shows significant impact on higher OxyContin doses."

113. In order to counter these perceived problems, McKinsey suggested that Purdue's owners lobby Walgreens specifically to increase sales. It also suggested the establishment of a direct-mail specialty pharmacy so that Purdue could circumvent Walgreens and sell directly to Walgreens' customers. In addition, McKinsey suggested the use of opioid savings cards distributed in neighborhoods with Walgreens locations to encourage the use of Purdue's opioids despite Walgreens actions.

114. The themes of McKinsey's work would be crystallized in a series of presentations and updates made to the Sackler family and Purdue's board of directors in the summer of 2013 entitled "Identifying Granular Growth Opportunities for OxyContin."

a. Marketing – Countering Emotional Messages.

115. From the outset of McKinsey's known work for Purdue, the work was grim. In June of 2009, McKinsey teamed with Purdue's Chief Medical Officer (and current CEO) Craig Landau and his staff to discuss how best to "counter emotional messages from mothers with teenagers that overdosed in [sic] OxyContin."

116. Months later, McKinsey advised Purdue to market OxyContin based on the false and misleading notion that the drug can provide "freedom" and "peace of mind" for its users, and

concomitantly reduce stress and isolation.

117. These marketing claims were tailored to avoid any pitfalls that the Corporate Integrity Agreement might hold. While nonetheless false and misleading, these claims regarding "freedom" and "peace of mind" of OxyContin users were narrowly tailored in order to avoid representations regarding "the withdrawal, drug tolerance, drug addiction or drug abuse of Purdue's products," as specified in Section III.B.2.c of the Corporate Integrity Agreement.

118. Purdue's marketing materials from that period are illustrative of the approach:[31]

119. In addition, McKinsey suggested the tactic of "patient pushback," wherein McKinsey and Purdue would foment *patients* to directly lobby their doctors for OxyContin when those physicians expressed reservations regarding the administration of Purdue's opioids.

b. Targeting – Selling More OxyContin to Existing High Prescribers.

120. Perhaps the key insight McKinsey provided was, using its granular approach, to identify historically large prescribers and target ever more sales and marketing resources on them.

121. On January 20, 2010, Purdue's board was informed of the ongoing work

[31] *State of Tennessee v. Purdue Pharma L.P.*, Case No. 1-173-18 (Compl. May 15, 2018) ¶ 24.

McKinsey was performing concerning a new "physician segmentation" initiative whereby McKinsey would analyze the opioid prescribing patterns of individual physicians to identify those that had historically been the highest prescribers. McKinsey then worked with Purdue's sales and marketing staff to specifically target those prescribers with a marketing blitz to encourage even further prescribing.

122. Purdue trained its sales force in tactics to market to these high prescribers based on McKinsey's insights and designed in conjunction with McKinsey.

123. Many of the historically highest prescribers of OxyContin – those same individuals that McKinsey urged Purdue to target for ever more prescriptions – had prescribed Purdue's OxyContin before the 2007 guilty plea, and had already been subjected to Purdue's misrepresentations regarding OxyContin that were the subject of that guilty plea.

124. McKinsey identified these physicians – those that had already been influenced by Purdue's misrepresentations and were thus already high prescribers – as optimal targets for a massive marketing push to sell more OxyContin.

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

126. At the same time, it requested this "prescriber-level milligram dosing data" from Purdue, McKinsey urged the Sacklers to strictly manage the target lists of each sales representative to assure that the maximum amount of each sales representative's time was spent with the most attractive customers.

127. On July 23, 2013, Purdue's board discussed concerns about "the decline in higher strengths" of Purdue's opioids as well as an observed decline is "tablets per Rx." In order to assure that the threat to OxyContin sales growth be addressed, McKinsey was assigned "to actively monitor the number and size of opioid prescriptions written by individual doctors."

128. In unveiling of *Project Turbocharge* to Purdue and the Sacklers, McKinsey stated that the most prolific OxyContin prescribers wrote "25 times as many OxyContin scripts" as less prolific prescribers, and urged Purdue and the Sacklers to "make a clear go-no go decision to 'Turbocharge the Sales Engine'" by devoting substantial capital toward McKinsey's plan.

129. McKinsey also stated that increased numbers of visits by sales representatives to these prolific prescribers would increase the number of opioid prescriptions that they would write.

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

c. Titration – Selling Higher Doses of OxyContin.

131. McKinsey understood that the higher the dosage strength for any individual OxyContin prescription, the greater the profitability for Purdue. Of course, higher dosage strength, particularly for longer periods of use, also contributes to opioid dependency, addiction, and abuse. Nonetheless, McKinsey advised Purdue to focus on selling higher strength dosages of OxyContin.

132. Consistent with its granular growth analysis, as early as October 26, 2010 McKinsey advised the Sacklers and the Purdue board that Purdue should train its sales representatives to "emphasiz[e] the broad range of doses," which would have the intended effect of increasing the sales of the highest (and most profitable) doses of OxyContin.

133. McKinsey's work on increasing individual prescription dose strength continued throughout the time period McKinsey worked with Purdue. The Sacklers were informed on July 23, 2013 that Purdue had identified weakness in prescribing rates among the higher doses of OxyContin, and reassured the Sacklers that "McKinsey would analyze the data down to the level of individual physicians" in order to study ways to maximize the sales of the highest-dose OxyContin pills.

134. Purdue implemented McKinsey's suggestions through adopting the marketing slogan to "Individualize the Dose," and by 2013 encouraged its sales representatives to "practice verbalizing the titration message" when selling Purdue's opioids to prescribers.

d. Covered Persons – Sales Quotas and Incentive Compensation.

135. McKinsey urged the use of quotas and bonus payments to motivate the sales force to sell as many OxyContin prescriptions as possible.

136. Notably, this behavior was contemplated 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."

137. By 2010, Purdue had implemented a 4-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.

138. On August 8, 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."

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

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

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

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

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

1 Purdue 2012 Actual data was used for this analysis

SOURCE: Purdue; team analysis

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

142. Additionally, McKinsey advised Purdue on how to craft incentive compensation

for the sales representatives, who were Covered Persons pursuant to the Corporate Integrity Agreement. McKinsey knew that, combined with the strictures of sales quotas and less training for the sales force, bonus/incentive compensation to the sales representatives based on the number of OxyContin prescriptions the representative produced could be a powerful driver of incremental OxyContin sales.

e. Increasing the Overall Size of the Opioid Market: the Larger the Pie, the Larger the Slice.

143. Consistent with McKinsey's mandate, Purdue incentivized its sales staff "to increase not just sales of OxyContin but also generic versions of extended release oxycodone." Typically, one would not wish to encourage the sales of generic competitors that offer a similar product to your own. If, however, your goal is to position a company so as to look like an attractive acquisition target, the growth of the overall opioid market is just as important as one's own market share: "Whereas pharma salespeople are usually compensated based on their ability to grow sales of a particular medicine, part of the bonus for Purdue's staff was calculated in relation to the size of the overall market."[32]

144. Notably, this notion that the size of a company's market share is not as important as the size of the ***overall*** market in which it competes is a core insight of McKinsey's granular approach to identifying corporate growth opportunities. Describing their authors' conclusions in *The Granularity of Growth,* McKinsey stated, "One of their most surprising conclusions is that increased market-share is seldom a driver of growth. They contend, instead, that growth is driven by where a company chooses to compete which market segments it participates in … the key is

[32] *See* 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*.

to focus on granularity, to breakdown big-picture strategy into its smallest relevant components."[33]

145. In other words, "Purdue's marketing force was indirectly supporting sales of millions of pills marketed by rival companies."[34] "It's the equivalent of asking a McDonald's store manager to grow sales of Burger King and KFC," stated a government official with the Department of Health and Human Services.[35] McKinsey designed this plan.[36]

G. Transformation: Purdue implements McKinsey's strategies.

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

147. Purdue accepted and, with McKinsey's ongoing assistance, implemented

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

[34] *See* 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.*

[35] *Id.*

[36] Worth noting is that this strategy of increasing overall opioid sales directly benefitted the Sacklers through their ownership of Rhodes Pharma. *See infra*. Especially worth noting is that this strategy also benefitted McKinsey's other opioid clients, such as Johnson and Johnson. *See infra*. "They have a huge amount of inside information, which raises serious conflict issues at multiple levels," stated a former consultant, referring to McKinsey's influential 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, *available at: https://www.institutionalinvestor.com/article/b1g5zjdcr97k2y/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* 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).

McKinsey's strategies for selling and marketing OxyContin.

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

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

150. This collaboration would continue over the course of the relationship between Purdue and McKinsey.

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

152. Ms. Panara stated that the 2007 guilty plea was deliberately minimized by the company in presentations to its sales staff: "They said, 'we were sued, they accused us of mis-marketing, but that wasn't really the case. In order to settle it and get it behind us we paid a fine.' You had the impression they were portraying it as a bit of a witch hunt."[37] (Purdue and its

[37] *See* 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*.

executives paid $634.5 million in fines).

153. Consistent with McKinsey's mandate, McKinsey devised methods for sales staff to sell OxyContin to doctors while at the same time maintaining technical compliance with the Corporate Integrity Agreement: Ms. Panara stated that, though she was told she could not flatly claim that OxyContin was better or safer than other opioids, "she was trained to talk about products in ways that implied that it was safer." She might tout OxyContin's 12-hour formulation to a prescriber. "You could say that with a shorter-acting medication that wears off after six hours, there was a greater chance the patient was going to jump their dosing schedule and take an extra one a little earlier. We couldn't say [it was safer], but I remember we were told that doctors are smart people, they're not stupid, they'll understand, they can read between the lines."[38]

1. **Project Turbocharge**

154. In 2013, the year after the Corporate Integrity Agreement expired, McKinsey urged a number of transformational sales and marketing tactics that would further boost OxyContin sales. McKinsey described these tactics to the Purdue board of directors in a series of updates entitled "Identifying Granular Growth Opportunities for OxyContin" in July and August of 2013.

155. McKinsey dubbed their overall sales and marketing strategy for Purdue "Project Turbocharge," and urged the Sackler family and the board to adopt it. Specifically, McKinsey urged the board to "make a clear go-no go to 'Turbocharge the Sales Engine.'"

156. The Sacklers were impressed with McKinsey's work. On August 15, 2013, Richard Sackler emailed Mortimer D.A. Sackler, "the discoveries of McKinsey are astonishing."

157. Eight days later, on August 23, 2013, McKinsey partners met with the Sackler family – not the Purdue board of directors – in order to pitch Project Turbocharge. Dr. Arnab

[38] *Id.*

Ghatak, one of the McKinsey partners leading the Purdue account, recounted the meeting to fellow partner Martin Elling in an email exchange: "[T]he room was filled only with family, including the elder statesman Dr. Raymond [Sackler] … We went through exhibit by exhibit for about 2 hrs… They were extremely supportive of the findings and our recommendations … and wanted to strongly endorse getting going on our recommendations."

158. Elling, a co-leader of the Purdue account, remarked in the same email correspondence that McKinsey's "findings were crystal clear to" the Sacklers, and that the Sacklers "gave a ringing endorsement of 'moving forward fast.'"

159. As a result of the Sackler family endorsement of McKinsey's proposals, the following month Purdue implemented Project Turbocharge based on McKinsey's recommendations. In adopting "Project Turbocharge," Purdue acknowledged the improper connotations of the name, and re-christened the initiative the decidedly more anodyne "E2E: Evolve to Excellence."[39]

160. Evolve to Excellence ("E2E") was the theme of Purdue's 2014 National Sales Meeting.

161. CEO John Stewart also told sales staff that board member Paolo Costa was a "champion for our moving forward with a comprehensive 'turbocharge' process," referring to McKinsey's plan.

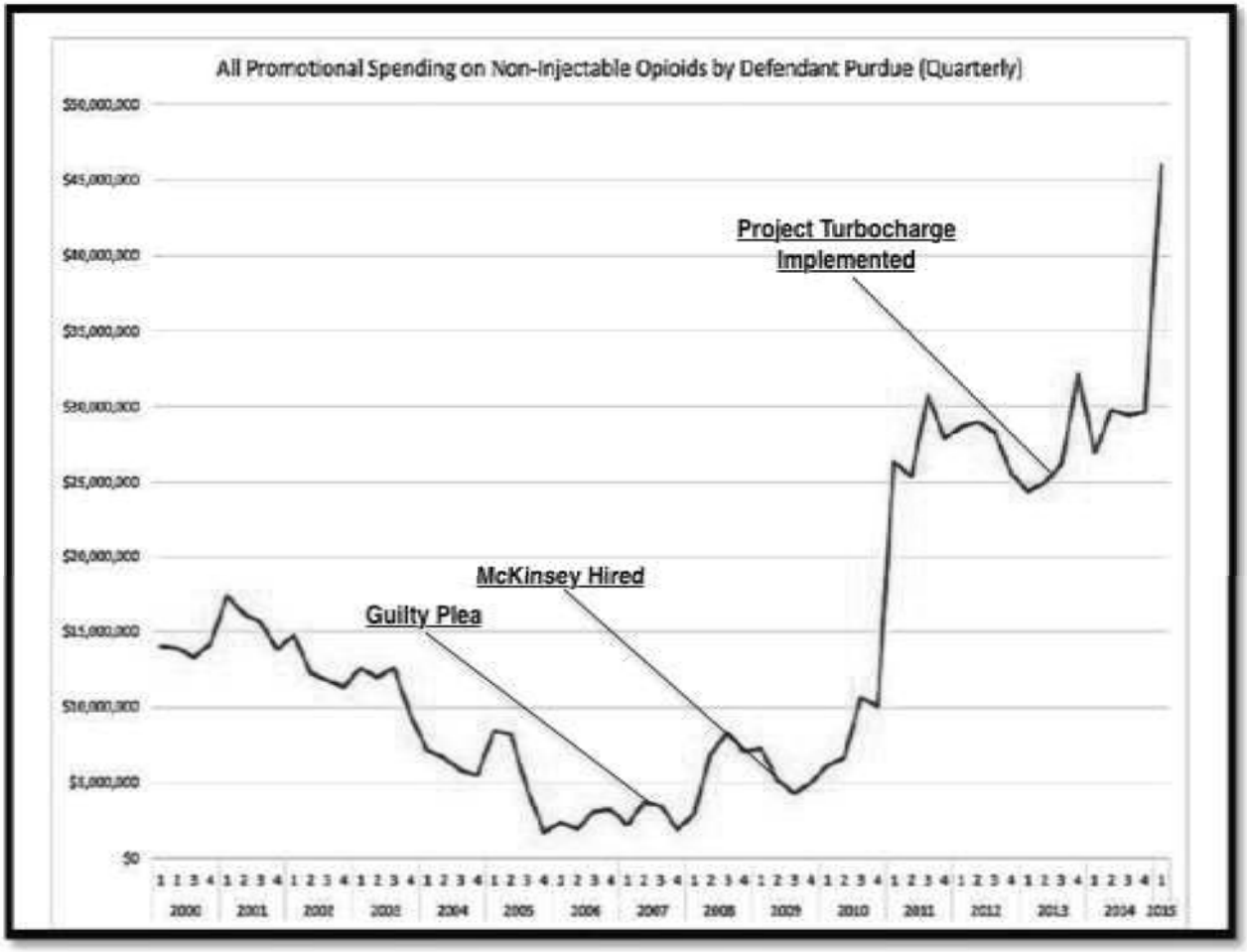
162. After Purdue adopted McKinsey's recommendations, McKinsey continued to work with Purdue sales and marketing staff reporting to Russell Gasdia during Purdue's

[39] 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*." (emphasis added).

implementation of McKinsey's recommendations.

163. In fact, the entire E2E initiative was overseen by McKinsey and some Purdue executives, who together comprised the E2E Executive Oversight Team and Project Management Office. At the same time, the Sacklers were kept informed of the implementation of McKinsey's OxyContin strategy. According to a September 13, 2013 board agenda, the board discussed with the Sacklers the ongoing implementation of McKinsey's sales tactics.

164. McKinsey's Project Turbocharge, now re-named Evolve to Excellence, called for a ***doubling*** of Purdue's sales budget. Under McKinsey's prior tutelage, Purdue's promotional spending had already skyrocketed. McKinsey's influence on Purdue's operations after the 2007 guilty plea is stark:



165. At the time of McKinsey's first known work for Purdue, Purdue spent approximately $5 million per quarter on sales and marketing. By the time McKinsey's Project Turbocharge had been implemented, total quarterly sales and marketing spending at Purdue exceeded $45 million per quarter, ***an increase of 800%***.

166. Project Turbocharge continued despite the arrival of a new CEO at Purdue. On January 17, 2014, new CEO Mark Timney received reports from McKinsey emphasizing that, in order to increase profits, Purdue must again increase the number of sales visits to "high-value" prescribers, i.e., those that prescribe the most OxyContin.[40]

167. McKinsey also urged, consistent with their granular approach, that sales representatives devote two-thirds of their time to selling OxyContin and one-third of their time selling Butrans, another Purdue product. Previously, the split had been fifty-fifty.

168. Purdue implemented McKinsey's suggestion.

H. McKinsey's efforts triple OxyContin sales.

169. Purdue got what it wanted out of McKinsey. Between the years of 2008 through 2016, Purdue distributed in excess of $4 billion to the Sackler family, with $877 million distributed

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

> Q: Are you familiar with McKinsey & Company?
>
> A: I decline to answer on the ground that I may not be compelled to be a witness against myself in any proceeding.
>
> Q: Did individuals at McKinsey *assist you in getting hired as the CEO* of Purdue?
>
> A: I decline to answer on the ground that I may not be compelled to be a witness against myself in any proceeding.

in 2010 alone.

170. These distributions would not have been possible without the McKinsey's work dramatically increasing OxyContin sales.

171. The Sacklers were aware of the value McKinsey provided: on December 2, 2013, CEO John Stewart informed Kathe Sackler and Vice President of Sales and Marketing Russell Gasdia Project Turbocharge "was already increasing prescriptions and revenue." Crucially, these results were already being realized before the strategy was fully deployed as the theme of the 2014 National Sales Meeting.

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

173. In 2007, the year of Purdue's guilty plea, net sales of OxyContin totaled approximately $1 billion.[41]

174. The guilty plea "did little to stem Purdue's blistering growth rate." In fact, by 2010, after McKinsey was advising Purdue on how to maximize sales, OxyContin sales exceeded $3 billion: a tripling of revenue from OxyContin sales.[42]

175. Under McKinsey's guidance, OxyContin would reach their all-time peak in 2013, the year McKinsey proposed, and Purdue adopted, Project Turbocharge.[43] That OxyContin sales

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41 *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.*

42 *Id.*

43 Phil McCausland and Tracy Connor, *OxyContin maker Purdue to stop promoting opioids in*

peaked in 2013 is especially notable, given that *overall* opioid prescriptions had *already peaked* three years earlier, in 2010.[44] McKinsey's efforts added a final boost to OxyContin sales before the eventual unraveling, and Purdue's decision, in the end, to cease marketing the drug.

176. By 2018, with OxyContin sales in their inexorable decline, Purdue announced that it would cease sending sales representatives to healthcare providers to promote OxyContin. The ranks of sales representatives were cut back to two hundred people – the approximate size of Purdue's sales staff prior to the initial launch of OxyContin.

177. In 2014, according to Purdue, there were 5.4 million OxyContin prescriptions written, 80% for twelve-hour dosing. Of those prescriptions, more than half were for doses greater than 60 milligrams per day.

I. McKinsey Was Aware of the Devasting Effects of Opioids and Continued to Provide Marketing Advice.

178. McKinsey has long maintained a Pharmaceuticals and Medical Products ("PMP") industry practice group dedicated to working with pharmaceutical companies. In 2003, when McKinsey's relationship with Purdue began, the PMP group was led by Michael Pearson. Pearson worked for McKinsey for 23 years and was a member of the firm's shareholder council (McKinsey's equivalent of a board of directors) in addition to leading PMP before departing McKinsey in 2008 to helm Valeant Pharmaceuticals.[45]

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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.*

[44] 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, 29017, *available at: https://www.cdc.gov/mmwr/volumes/66/wr/mm6626a4.htm.*

[45] 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.* Notably, Rob Rosiello, a McKinsey partner who was a co-lead of the Purdue account, went on to join Pearson at Valeant in 2015 as Chief Financial Officer.

179. Pearson stated, "At McKinsey pharmaceuticals was one of our biggest industry groups."[46] Pearson was "not the quintessential suave and intellectual McKinsey partner. He was loud and profane and was seen, in the words of one former colleague, as 'sharp-edged and sharp elbowed.'"[47]

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

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

182. By the time McKinsey was working with Purdue on sales and marketing in 2009, it already had extensive experience with opioids in particular. As early as 2002, McKinsey was advising other opioid manufacturers regarding methods to boost sales of their drugs. For example,

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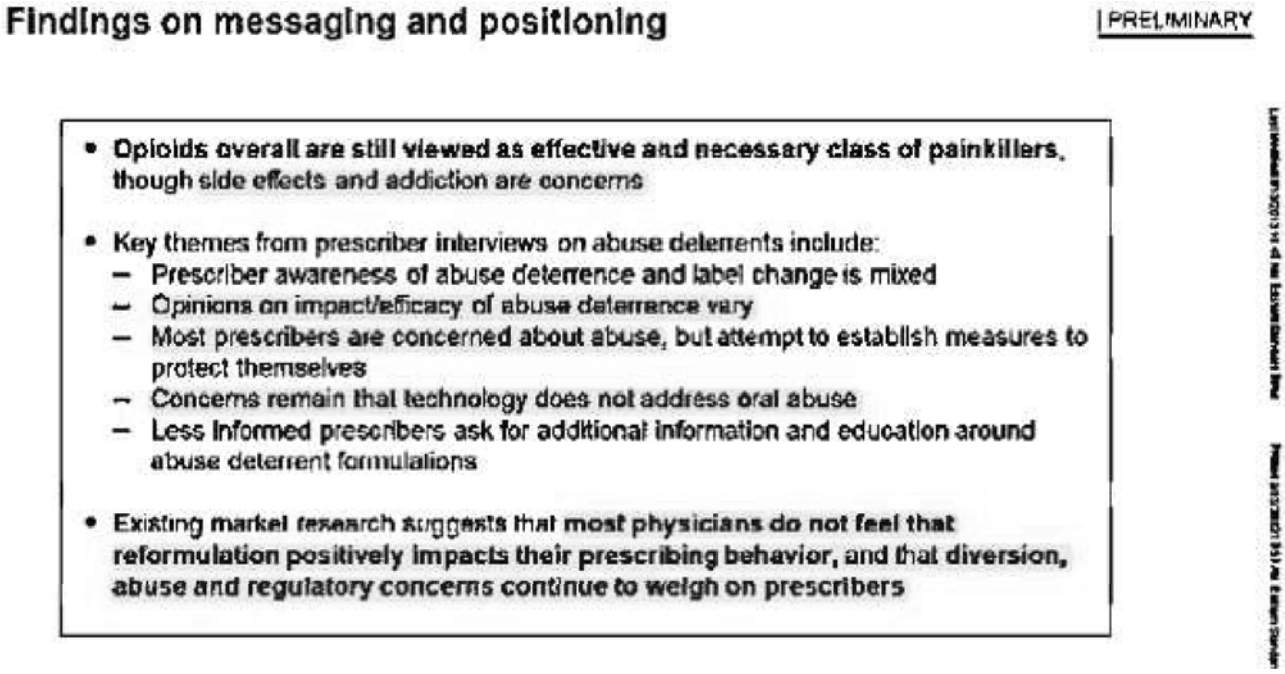
[46] Michael Peltz, *Mike Pearson's New Prescription for the Pharmaceuticals Industry*, Institutional Investor, September 3, 2014, available at: *https://www.institutionalinvestor.com/article/b14zbjfm8nf1c4/mike-pearsons-new-prescription-for-the- pharmaceuticals-industry.*

[47] 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.*

on March 14, 2002 McKinsey prepared a confidential report for Johnson & Johnson regarding how to market their opioid Duragesic. Incredibly, one of the recommendations McKinsey provided to Johnson & Johnson was that they concentrate their sales and marketing efforts on doctors that were *already* prescribing large amounts of Purdue's OxyContin.[48]

183. As early as 2002 McKinsey had such intricate knowledge of the sales and marketing practices of opioid manufacturers, generally, and Purdue's efforts with OxyContin, specifically, that it was able to recommend to ***a competitor of Purdue*** that it boost its own opioid sales by ***following in the footsteps of Purdue***. What is more, on September 13, 2013 McKinsey briefed Purdue on the ongoing concerns regarding OxyContin addiction and diversion among prescribers:



184. In a PowerPoint slide entitled "Findings on messaging and positioning," part of a

[48] 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.*

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."

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

186. In February 2009, only months prior to McKinsey's first known work for Purdue, Dr. Art Van Zee, in his peer-reviewed article in the American Journal of Public Health entitled "The promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy," stated the matter plainly: ***"Compared with noncontrolled drugs, controlled drugs, with their potential for abuse and diversion, pose different public health risks when they are overpromoted and highly prescribed."*** (emphasis added). By 2004, "OxyContin had become the most prevalent prescription opioid in the United States."[49]

187. Further, Dr. Van Zee identified the *precise tactics* that McKinsey deployed for Purdue as a source of OxyContin misuse and abuse, and suggested that regulation may be appropriate to curtail its use: "The use of prescriber profiling data to target high-opioid prescribers – coupled with very lucrative incentives for sales representatives – would seem to fuel increased prescribing by some physicians – perhaps the most liberal prescribers of opioids and, in some cases, the least discriminate."[50]

188. Of course, to argue that McKinsey had contemporaneous knowledge of the fact

[49] Art Van Zee, *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*, American Journal of Public Health, February 2009, available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2622774/pdf/221.pdf.*
[50] *Id.*

that increasing OxyContin sales create ever more addiction and misuse in some ways misses the point. It disregards the context in which McKinsey was operating after 2009: advising a monoline manufacturer of opioids about sales and marketing practices for its addictive products while that manufacturer is bound by a 5-year Corporate Integrity Agreement covering the very same opioid sales and marketing practices. In 2012, OxyContin accounted for 94% of Purdue's revenue.[51] As late as 2018, it remained 84% of Purdue's revenue.[52]

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

190. 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 Purdue. In June 2009, the earliest known work McKinsey performed for Purdue[53] consisted of "countering the emotional messages from mothers with teenagers that overdosed on OxyContin."

191. Another indication that OxyContin sales should not be turbocharged: during

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[51] Gerald Posner, *Pharma,* pg. 524 (Simon & Schuster 2020).

[52] *Id.*

[53] In a 2013 presentation to Purdue's CEO and VP of Sales and Marketing, McKinsey referenced McKinsey's "prior experiences serving Purdue that go back 10 years." Presentation by McKinsey to John Stewart and Russell Gasdia entitled *Identifying granular growth opportunities for OxyContin: First Board Update*, dated July 18, 2013, Pg. 2. While McKinsey's relationship with Purdue dates back to approximately 2003, the earliest known details of its work for Purdue date to June 2009. What McKinsey did for Purdue before 2009 is not presently known.

McKinsey's work for Purdue, Purdue was unable to purchase product liability insurance to cover its practice of selling OxyContin.

192. McKinsey's method of aggressive marketing of opioids to prescribers has demonstrably exacerbated the opioid crisis. A recent Journal of American Medical Association study analyzed the Centers for Medicare and Medicaid Services' Open Payments database regarding pharmaceutical company marketing efforts towards doctors, as well as CDC data on prescription opioid overdose deaths and prescribing rates, in order to assess whether pharmaceutical marketing of opioids to physicians affected the rate of prescription opioid overdose deaths. Notably, the study analyzed these marketing practices beginning August 1, 2013 and ending December 31, 2015.[54]

193. These dates are significant, as the study captures the same timeframe that McKinsey's Project Turbocharge was implemented at Purdue.

194. The study noted "physician prescribers are the most frequent source of prescription opioids for individuals who use opioids nonmedically."[55]

195. The study found that "increased county-level opioid marketing was associated with elevated overdose mortality 1 year later, an association mediated by opioid prescribing rates; per capita, ***the number of marketing interactions with physicians demonstrated a stronger association with mortality*** than the dollar value of marketing."[56]

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[54] 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.*

[55] *Id.*

[56] *Id*. (emphasis added).

J. McKinsey Continued Consulting to Increase the Sale of Opioids Despite the Nationwide Epidemic.

196. Marvin Bower, a founding father of McKinsey and managing director of the firm from 1950 to 1967, instilled an ethos at McKinsey that has been reinforced throughout the decades as a core value of the firm: "Deliver bad news if you must, but deliver it properly."[57]

197. McKinsey's work with Purdue, which began just after his death in 2003, would have been unrecognizable to Bower, one of the founders of modern management consulting. Instead of acknowledging the elephant in the room – that Purdue's business was knowingly maximizing the amount of addictive and deadly opioids sold in the United States – and delivering that bad news properly to the client, McKinsey instead committed to partner with Purdue to maximize opioid sales, the torpedoes be damned.

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

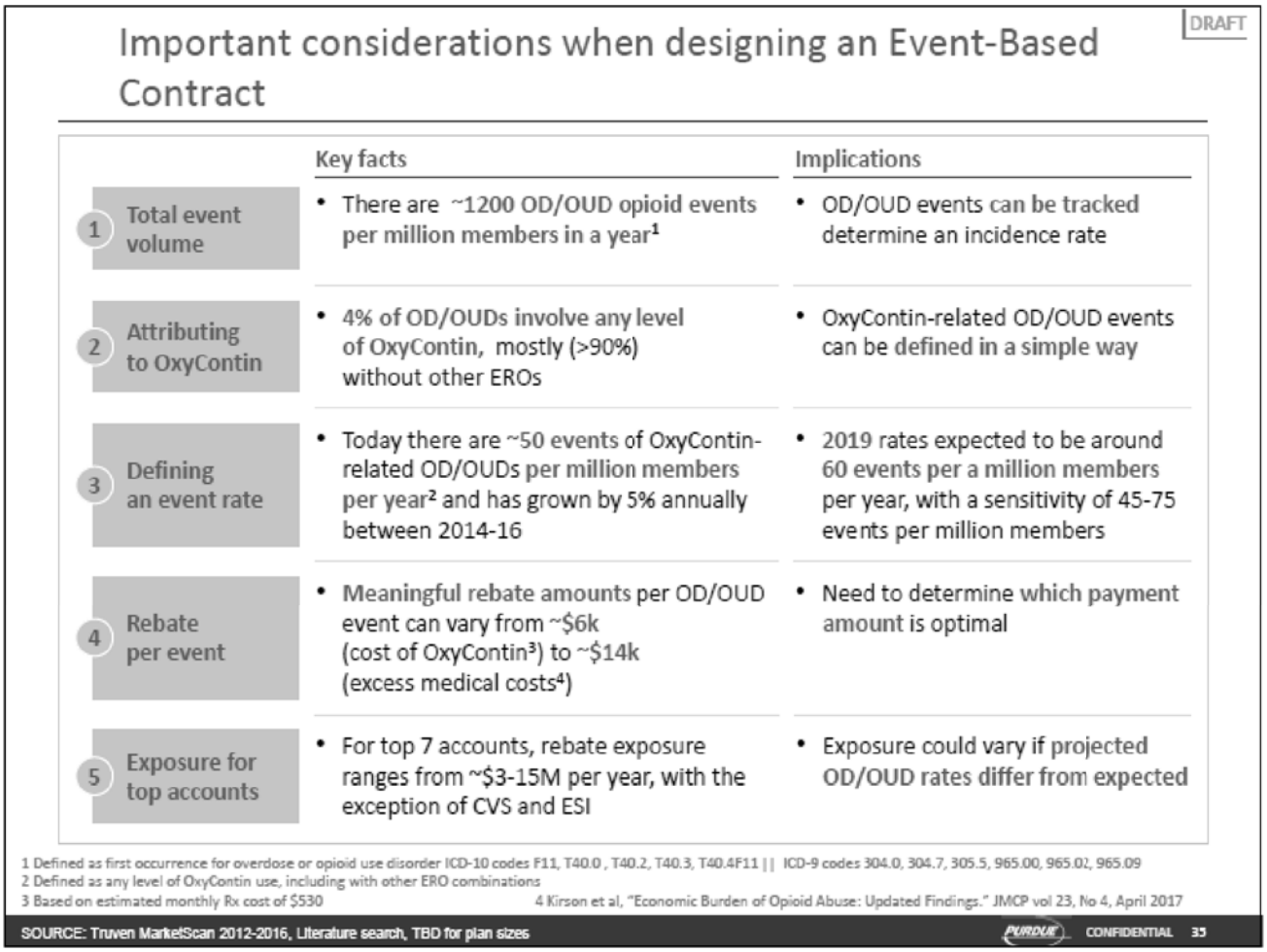
199. Less than two months after the public health emergency declaration, McKinsey proposed these high impact interventions to Purdue and its board. Among them was perhaps McKinsey's most audacious gambit of the entire Purdue relationship: paying money – "rebates" – to health insurers whenever someone overdosed on Purdue's drug.

200. Once again, in perfect McKinsey parlance,[58] these payments for future OxyContin

[57] McDonald, *The Firm*, pg. 35.

[58] "Consultant-ese," when applied to work as grim as maximizing opioid sales in the face of a national disaster, led 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*

overdoses were christened "Event-Based contracts."

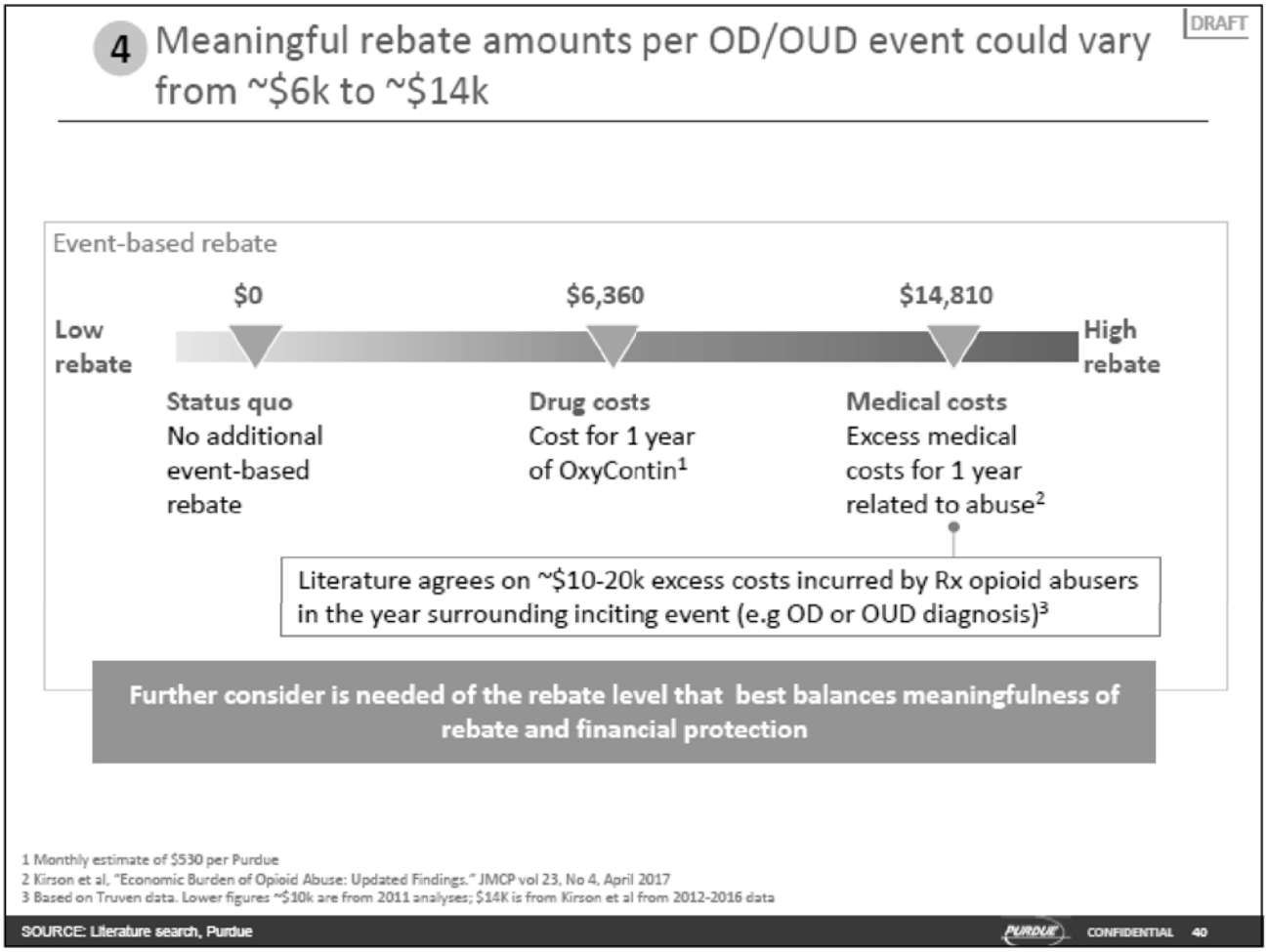


201. Helpfully, McKinsey provided estimates for the future costs of these "events."[59] McKinsey noted that, if Purdue were to start making overdose payments, it would "need to determine which payment amount is optimal."

202. A "meaningful" amount, according to McKinsey, would be somewhere between six and fifteen thousand dollars for each person who overdoses or develops opioid-use disorder as a result of Purdue's drugs.

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.*

[59] McKinsey defined an "event" as "first occurrence for overdose or opioid use disorder."



203. The money would be paid to health insurers for the increased costs of additional medical services that resulted from the fact that Purdue's medications caused opioid-use disorder and overdoses in people whose health care costs were the payors' obligation. The money McKinsey proposed Purdue pay out in these circumstances would not go to the individuals afflicted, nor the estates of the dead.

204. It is little surprise, then, that McKinsey was concerned with its legal liability for this work. Within months of recommending "event-based contracts" to Purdue, Martin Elling raised this concern with Arnab Ghatak and suggested corrective action: destroying evidence.

Message

From: Martin Elling [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6B33C3264F744B04AF05FA59341271BE-MARTIN ELLI]
Sent: 7/4/2018 12:10:13 PM
To: A G [drarnabghatak@gmail.com]
Subject: Re: [EXT]Re: Howdy

Have a great fourth. M

> On Jul 4, 2018, at 2:01 PM, A G <drarnabghatak@gmail.com> wrote:
>
> Thanks for the heads up. Will do.
>
>> On Jul 4, 2018, at 7:57 AM, Martin Elling <martin_elling@mckinsey.com> wrote:
>>
>> 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 that eliminating all our documents and emails. Suspect not but as things get tougher there someone might turn to us. M
>>
>> +==========+
>> 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.
>> +==========+

205. Elling's prediction that things would "get tougher" for Purdue proved prescient.

1. Purdue Pleads Guilty—Once Again.

206. On October 20, 2020, Purdue – McKinsey's co-conspirator – agreed with the United States Department of Justice to plead guilty to improper marketing of OxyContin and other opioids again. This time the plea agreement concerned conduct from 2010 to 2018.

207. Purdue agreed to plead guilty to a dual-object conspiracy to defraud the United States and to violate the Food, Drug, and Cosmetic Act, 21 U.S.C. § 331, 353, among other charges, relating to its opioid sales and marketing practices after the 2007 guilty plea.

208. The new plea agreement does not identify Purdue's co-conspirators, and McKinsey is not identified by name in the agreement. Instead, McKinsey is referred to as the "consulting company."

209. Purdue's new guilty plea concerns Covered Conduct (as defined in the plea

agreement) that directly implicates McKinsey in the conspiracy. It is the same conduct described in this Complaint.

210. Indeed, the plea agreement signed by McKinsey's co-conspirator states bluntly: "Purdue, ***in collaboration with [McKinsey]***, implemented many of [McKinsey's] recommendations." (emphasis added).

211. Further, Purdue admitted that E2E "***was overseen by [McKinsey]*** and some of Purdue's top executives through the creation of the E2E Executive Oversight Team ("EOT") and Project Management Office ("PMO") (emphasis added).

2. McKinsey's public mea culpa.

212. On December 5, 2020, McKinsey issued a rare public statement regarding its work with a specific client on its website. The client was Purdue, and the statement was issued is response to Purdue's second guilty plea and recent media reports regarding McKinsey's work selling OxyContin after 2007:

> **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.[60]

213. 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.

214. In August of 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.

215. He is currently the Sacklers' "Chief Business Officer" at Mundipharma. 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.[61]

216. "It's right out of the playbook of Big Tobacco. As the United States takes steps to limit sales here, the company goes abroad," stated former commissioner of the U.S. Food and Drug Administration, David Kessler.[62]

CLASS ALLEGATIONS

A. Class Definition.

217. Plaintiffs bring this case on behalf of themselves and as a class action under CR 23 on behalf of all members of the following Class: (i) all Kentucky County Fiscal Courts for the period 2004 to the present ("County Class"); and (ii) all Kentucky Home Rule Cities for the

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[60] *https://www.mckinsey.com/about-us/media/mckinsey-statement-on-its-past-work-with-purdue-pharma#.*

[61] Kinetz, Erika, *Fake doctors, pilfered medical records drive OxyChina sales*, Assoc. Press, Nov. 19, 2019, available at: *https://apnews.com/article/4122af46fdba42119ae3db30aa13537c.*

[62] Harriet Ryan, Lisa Girion, and Scott Glover, *OxyContin goes global – "We're only just getting started,"* Los Angeles Times, December 18, 2016, available at: *https://www.latimes.com/projects/la-me- oxycontin-part3/.*

period 2004 to the present ("City Class").

218. Plaintiffs reserve the right to amend or modify the Class definitions with greater specificity where and as necessary, including to conform to the evidence, for purposes of resolution or settlement.

B. Class Requirements.

219. The putative classes are sufficiently numerous—120 County Fiscal Courts and over 415 Home Rule Cities—that joinder of each absent Class member would be both impracticable and inefficient.

220. There are questions of law and fact common to the Class, which predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

a. Defendant's conduct in creating, proposing, and implementing sales and marketing strategies for opioids manufactured by Purdue Pharma before and after Purdue's first guilty plea in 2007 relating to misbranding of OxyContin;

b. Whether Defendant performed reasonable due diligence in ascertaining the risks associated with Defendant's strategies for "turbocharging" OxyContin sales at Purdue in 2013 and thereafter;

c. Whether Defendant's implementation of its own sales and marketing strategies at its Client, Purdue, caused or contributed to an increase in opioid addiction;

d. Whether Defendant's conduct with respect to developing and implementing nationwide opioid sales and marketing practices at Purdue was negligent, grossly negligent, or reckless;

e. Whether Defendant's conduct with respect to developing and implementing nationwide opioid sales and marketing practices at Purdue caused or

contributed to causing a public nuisance;

f. Whether Defendant's conduct with respect to developing and implementing nationwide opioid sales and marketing practices at Purdue constituted fraudulent misrepresentations to healthcare providers regarding the safety of Purdue's opioid products;

g. Whether Defendant conspired with or aided and abetted Purdue with respect to developing and implementing nationwide opioid sales and marketing practices at Purdue; and

h. Whether Defendant's acceptance of funds from Purdue and other opioid manufacturers regarding Defendant's work promulgating and implementing nationwide opioid sales and marketing strategies constitutes unjust enrichment.

221. Plaintiffs' claims are typical to the claims of the Class. Plaintiffs and all Class Members were exposed to undeviating behavior and sustained damages arising out of and caused by Defendant's unlawful conduct.

222. Plaintiffs' interests are directly aligned with the absent Class members and, as such, Plaintiffs will fairly and adequately represent and protect the interests of the absent Class members. Plaintiffs have retained counsel experienced in the prosecution of class action litigation who will adequately represent the interests of the putative class. Further, Plaintiffs are unaware of any conflicts between Plaintiffs and the absent Class members.

223. Plaintiffs have, or can acquire as necessary, sufficient financial and legal resources to assure that the interests of the Class members will be protected. Further, Plaintiffs are knowledgeable concerning the subject matter of this action and have, and will, assist class counsel as necessary in the prosecution of this matter.

224. The prosecution of Plaintiffs' claims on an *ad hoc* basis would create a substantial risk of inconsistent and/or varying legal outcomes that would establish incompatible standards of conduct. Class certification would alleviate these issues and provide for an orderly, timely, and efficient resolution for each Class member as well as the Court.

225. The prosecution of Plaintiffs' class claims on an individual *ad hoc* basis is inappropriate where Defendant has admittedly acted in such a manner that final declaratory and injunctive relief is both necessary and required. Similarly, *ad hoc* litigation is inappropriate where declaratory and injunctive relief is warranted to the Class members as whole.

226. Given the putative class is comprised solely of Kentucky County Fiscal Courts and Home Rule Cities, the class action procedural mechanism is appropriate and provides a superior means of resolution.

CLAIMS FOR RELIEF

A. Negligence.

227. McKinsey, through its work with Purdue, owed a duty of care to the Plaintiffs and the Class, pursuant to which it would not encourage the over-marketing and over-prescribing of a controlled substance known at the time to be addictive and known at the time to be a threat to public health.

228. In violation of this duty, for years McKinsey devised and assisted Purdue with implementing a sales and marketing campaign, including *Project Turbocharge*, that would dramatically increase the amount of OxyContin prescribed and distributed throughout Plaintiffs' and the Class' communities. In the process, McKinsey continually devised misleading claims regarding OxyContin as part of their efforts to get health care providers to write more and more OxyContin prescriptions.

229. As a direct and proximate result of McKinsey's negligent conduct, Plaintiffs and

the Class have suffered and will continue to suffer harm.

B. Negligent Misrepresentation.

230. McKinsey, in the course of its business with Purdue, failed to exercise reasonable care or competence when obtaining and communicating false information regarding Purdue's opioids that McKinsey knew would be used for the guidance of others in their business transactions, including the healthcare providers within Plaintiffs' and the Class Member's communities who were capable of prescribing Purdue's drugs.

231. Plaintiffs' and the Class' communities are among the limited group of entities to whom McKinsey knew Purdue intended to supply the false information regarding opioids.

232. McKinsey knew that the false information was material to healthcare providers' decision to prescribe opioids to patients. McKinsey intended that such statements be relied upon to encourage additional opioid prescriptions.

233. As a proximate result of McKinsey's negligent conduct, Plaintiffs and the Class have incurred excessive costs related to the diagnosis, treatment, and cure of addiction or risk of addiction to opioids. Plaintiffs and the Class have borne the massive costs of these illnesses and conditions by having to provide necessary resources for care, treatment facilities, law enforcement services, and to allocate limited resources to combat the devasting social effects of the opioid epidemic.

C. Public Nuisance.

234. Plaintiffs bring this claim against McKinsey under Kentucky common law which confers upon Plaintiffs the counties the power to suppress all nuisances that are or may be injurious to the health and welfare of their respective communities. Plaintiffs further seek to recover costs associated with the nuisance and its abatement.

235. McKinsey, though its work with Purdue and other opioid industry participants,

have created and continue to perpetuate and maintain a public nuisance throughout the Plaintiffs' and the Class' communities through the massive distribution of millions of doses of highly addictive, commonly abused prescription pain killers known as opioids.

236. McKinsey's conduct, including its misrepresentations and omissions regarding opioids, generally, and Purdue's opioids, specifically, have fueled an opioid epidemic within the Plaintiffs' and the Class' communities that constitutes a public nuisance. McKinsey and Purdue knowingly exacerbated a condition that affects entire municipalities, towns, and communities. McKinsey's annoyance, injury, and danger to the comfort, repose, health, and safety of Plaintiffs' and the Class' communities includes, inter alia:

a. in 2009, the first known year in which McKinsey advised Purdue regarding sales and marketing efforts for OxyContin, there were 769 opioid-related overdose deaths in Plaintiffs' and the Class' communities. McKinsey crafted a strategy that tripled OxyContin sales in subsequent years;

b. in 2014, the year McKinsey's Project Turbocharge was implemented, 1,077 Kentuckians died as a result of an opioid-related overdose;

c. from 2004 to 2014, Kentucky's drug overdose mortality rate effectively doubled, from 12.8 deaths per 100,000 individuals to 24.7. Prescription opioids contributed to the majority of those deaths. The following year, McKinsey developed "Project Turbocharge," which was adopted as the national sales theme for the following year, under the rubric of "Evolve to Excellence";

d. by 2017, the drug overdose mortality rate had climbed significantly once again, to 37.2 deaths per 100,000 individuals.

e. prescription opioid addiction often leads to illicit opioid use and addiction;

f. according to the Centers for Disease Control, past misuse of prescription opioids is the strongest risk factor for heroin initiation and use;

g. Kentucky hospitals are reporting increasing numbers of newborns testing positive for prescription medications; and

h. McKinsey's crafted deceptive marketing strategies that were prepared for Purdue, purchased by Purdue, and implemented by Purdue with McKinsey's ongoing assistance. These strategies enflamed, purposefully, an opioid abuse and addiction epidemic that has caused Plaintiffs' and the Class' communities to bear enormous social and economic costs including increased health care, criminal justice, and lost work productivity expenses, among others.

237. Plaintiffs and the Class seek to abate the public nuisance McKinsey enflamed and all necessary relief to abate such public nuisance.

D. Fraud (Actual and Constructive) and Deceit

238. McKinsey made and caused to be made false representations to healthcare providers working in Plaintiffs' and the Class' communities, and/or omitted material facts, regarding the risks, efficacy, and medical necessity of opioids, generally, and Purdue's opioids, specifically. McKinsey knew these representations were false, made recklessly without knowledge of the truth, and/or had no reasonable ground for believing such assertions. Specifically, McKinsey knowingly and/or recklessly:

a. downplayed the substantial risks of addiction and other side-effects of opioids, generally, and Purdue's opioids, specifically, including crafting Purdue's marketing plan to affirmatively state in sales calls and other marketing channels that Purdue's drugs were not as addictive or prone to abuse as they truly are; stating that classic signs of addiction were actually an indication of "pseudoaddiction" requiring

additional administration of opioids, and omitting the high risks of addiction actually present;

b. overstated the efficacy of opioids, generally, and Purdue's opioids, specifically, including making false statements regarding the effectiveness of the drugs for treating specific subsets of the patient population (i.e., those with osteoarthritis) and their ability to improve patient function; and

c. misrepresented the medical usefulness and necessity of opioids, generally, and Purdue's opioids, specifically, including affirmatively marketing their drugs for off label uses (i.e., osteoarthritis) without solicitation and not in response to questions from healthcare providers.

239. McKinsey and Purdue's misrepresentations and omissions had a tendency to deceive others, to violate public confidence, and/or injure public interests. McKinsey, having chosen to craft the marketing plan used by Purdue to make representations to healthcare providers regarding their opioids, were under a duty to disclose the whole truth, and not disclose partial and misleading truths.

240. McKinsey intended healthcare providers to rely upon McKinsey's false assertions regarding the risks, efficacy, and medical necessity of opioids, generally, and Purdue's opioids, specifically, to increase the number of opioid prescriptions made by healthcare providers.

241. Healthcare providers working in Plaintiffs' and the Class' communities did in fact rely on the false representations made in Purdue's marketing plan created by McKinsey and implemented with McKinsey's assistance.

242. Plaintiffs and the Class seek to recover all damages caused by McKinsey's fraudulent representations and omissions.

243. McKinsey acted with knowledge and willful intent, with reckless disregard for the rights of others, and/or intentionally and with malice towards others. As such, Plaintiffs and the Class seek to recover punitive damages against McKinsey.

E. Civil Conspiracy.

244. McKinsey and Purdue, working together for decades, agreed to commit numerous unlawful acts relating to the sales and marketing of Purdue's opioid products. McKinsey and Purdue also agreed to use unlawful means to commit lawful acts as part of these sales and marketing efforts.

245. McKinsey and Purdue agreed to pursue the unlawful act of knowingly misrepresenting the addictive nature of opioids in marketing OxyContin to health care providers within Plaintiffs' and the Class' communities.

246. McKinsey and Purdue deployed the unlawful means of evading Purdue's reporting and compliance obligations to the Inspector General of the United States Department of Health and Human Services for the five years Purdue was subject to a Corporate Integrity Agreement after it pled guilty in 2007 to criminal misbranding. McKinsey assisted Purdue with evading these compliance obligations to accomplish the lawful act of maximizing OxyContin revenue to Purdue.

247. McKinsey and Purdue conspired to violate Kentucky law, including but not limited to Kentucky's opioid marketing, sales, and distribution requirements as well as Kentucky's consumer protection laws.

248. McKinsey and Purdue engaged in deceptive trade practices including making and causing to be made misrepresentations and omissions in marketing of opioids in general, and Purdue's opioids, specifically, that deceived or could reasonably be expected to deceive or mislead consumers.

249. McKinsey and Purdue engaged in unfair trade practices, including intentionally downplaying of the risks, overstating the benefits, and misrepresenting the medical necessity of opioids, generally, and Purdue's opioids, specifically, including for off-label uses. These practices offend established public policy and are immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

250. McKinsey knowingly made or caused to be made false or misleading representations as to the characteristics, ingredients, uses, and benefits of opioids, generally, and Purdue's opioids, specifically, by downplaying the risks of addiction and abuse, overstating the efficacy, and misrepresenting the medical necessity of opioids, generally, and Purdue's opioids, specifically.

251. McKinsey, a majority of the Purdue board, and Purdue agreed to deploy unlawful sales and marketing tactics to achieve the lawful purpose of maximizing revenue of a closely held company.

252. As a consequence, McKinsey is responsible, liable, and accountable for the improper sales and marketing practices used to promote Purdue's opioid products including OxyContin.

253. As a proximate result of McKinsey's improper conduct, Plaintiffs and the Class were damaged and entitled to seek all available relief.

F. Negligence Per Se.

254. Kentucky's Legislature determined that "the public health, welfare and interest ***require a strong and effective consumer protection program*** to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services."[63]

[63] *See* KRS 367.120(1).

255. To effectuate this strong and effective consumer protection program for Kentucky, the Legislature enacted Kentucky's Consumer Protection Act ("Act").[64]

256. The Act specifically prohibits the unfair, false, misleading acts or practices that affect any trade or commerce including, relevant here, the sale of opioids.[65]

257. As outlined in detail in the factual allegations herein, McKinsey unfairly and unconscionably worked with certain of its opioid manufacturing clients, including *inter alia* Purdue, to aggressively promote and sell more opioids to more Kentucky patients for longer periods of time.

258. McKinsey's actions—its acts and practices—are in direct violation of the Act and has resulted in injury to Plaintiffs and the Class.

259. On February 4, 2021, solely on behalf of the Commonwealth and not the Plaintiffs and the Class—the Counties or the Cities, the Attorney General filed a complaint seeking a permanent injunction against McKinsey. The complaint was filed pursuant to KRS 367.190.

260. That same day, McKinsey consented to judgment being entered against it as to the Commonwealth's claims.

261. On February 5, 2021, judgment was entered against McKinsey. The judgement included injunctive relief specific to McKinsey's unfair and unconscionable conduct and enjoined McKinsey as follows:

> McKinsey shall not accept any future engagements relating to the discovery, development, manufacture, marketing, promotion, advertising, recall, withdrawal, monitoring, sale, prescribing, use or abuse of any Opioid or other opioid-based Schedule II or III

[64] *See* KRS 367, *et. seq.*
[65] *See* KRS 367.170.

controlled substance.

262. The judgment also required McKinsey to pay $10,812,204.58 to the Commonwealth to remediate the damage to the Commonwealth resulting from McKinsey's violation of the Act. The judgment was limited to the Commonwealth's claims and did not address any individual claims let alone the claims of the Plaintiffs or the Class.

263. Based on the judgment, and despite any of McKinsey's stipulation statements to the contrary, McKinsey is subject to a permanent injunction and judgment of a Kentucky court under KRS 367.190. As a direct result of this fact, the judgment serves as *prima facie* evidence that McKinsey "used or employed a method, act, or practice prohibited by the Act."[66]

264. McKinsey's admitted and adjudged breach of its statutory duties under the Act, including *inter alia* KRS 367.220, constitutes negligence per se for which Plaintiffs and the Class are permitted to seek relief pursuant to KRS 446.070. [67]

265. As a proximate result of McKinsey's negligent conduct, Plaintiffs and the Class have incurred excessive costs related to the diagnosis, treatment, and cure of addiction or risk of addiction to opioids. Plaintiffs and the Class have borne the massive costs of these illnesses and conditions by having to provide necessary resources for care, treatment facilities, law enforcement services, and to allocate limited resources to combat the devasting social effects of the opioid epidemic.

266. Plaintiffs and the Class seek to recover all damages caused by McKinsey's violation of the Act.

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[66] *See* KRS 367.220(4).

[67] *AMC v. Addington*, 1984 Ky. App. LEXIS 480, at *15-16 (Ky.App. Apr. 6, 1984) (emph. added).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class respectfully pray that the Court grant the following relief:

267. The Court certify their respective Class claims as a Kentucky class action, name Plaintiffs as Lead Plaintiffs of their respective class, and appoint Plaintiffs' undersigned counsel as Class Counsel.

268. Enter judgment in favor of the certified Class and against Defendant.

269. Award Plaintiffs the Class all available compensatory, equitable, injunctive, declaratory, and punitive damages, against Defendant including *inter alia,* (i) costs for providing medical care, additional therapeutic and prescription drug purchases, and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths, (ii) costs for providing treatment, counseling and rehabilitation services, (iii) costs for providing treatment of infants born with opioid-related medical conditions, (iv) costs for providing care for children whose parents suffer from opioid-related disability or incapacitation, (v) costs associated with law enforcement and public safety relating to the opioid epidemic, and (vi) costs associated with drug court and other resources expended through the judicial system.

270. Order Defendant to compensate Plaintiffs and the Class for past and future costs to abate the ongoing public nuisance caused by the opioid epidemic in their communities.

271. Order Defendant to fully fund an abatement fund for the purpose of abating the public nuisance in Plaintiffs' and the Class' communities, including providing educational and social supporting services.

272. Award Plaintiffs and the Class their attorneys' fees, costs, expenses, pre- and post-judgment interest.

273. Award Plaintiffs and the Class all other relief as provided by law and/or as the

Court deems appropriate and just.

274. A jury on all issues so triable.

* * * * * * * * *

Dated: February 8, 2021

s/ Michael D. Grabhorn

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Counsel for Plaintiffs and the Putative Class

AOC-E-105 Sum Code: CI
Rev. 9-14

Commonwealth of Kentucky
Court of Justice *Courts.ky.gov*

CR 4.02; Cr Official Form 1

Case #: **21-CI-00012**
Court: **CIRCUIT**
County: **GREEN**

CIVIL SUMMONS

Plantiff, **GREEN COUNTY FISCAL COURT ET AL VS. MCKINSEY & COMPANY, INC.**, *Defendant*

TO: **MCKINSEY & COMPANY, INC. WASHINGTON D.C.**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Ann Arnett, Green Circuit
Clerk
Date: **2/8/2021**

Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

☐ Not Served because: _____

Date: _____, 20_____

_____
Served By

_____
Title

Summons ID: @00000026114
CIRCUIT: 21-CI-00012 Return to Filer for Service
GREEN COUNTY FISCAL COURT ET AL VS. MCKINSEY & COMPANY, INC.

AOC-E-105 Sum Code: CI
Rev. 9-14

Commonwealth of Kentucky
Court of Justice *Courts.ky.gov*

CR 4.02; Cr Official Form 1

Case #: **21-CI-00012**
Court: **CIRCUIT**
County: **GREEN**

CIVIL SUMMONS

Plantiff, **GREEN COUNTY FISCAL COURT ET AL VS. MCKINSEY & COMPANY, INC.**, *Defendant*

TO: **MCKINSEY & COMPANY, INC. UNITED STATES**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Ann Arnett, Green Circuit
Clerk
Date: **2/8/2021**

Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

☐ Not Served because: _____

Date: _____, 20_____

_____
Served By

_____
Title

Summons ID: @00000026113
CIRCUIT: 21-CI-00012 Return to Filer for Service
GREEN COUNTY FISCAL COURT ET AL VS. MCKINSEY & COMPANY, INC.

Commonwealth of Kentucky
Ann Arnett, Green Circuit Clerk

Case #: **21-CI-00012** Envelope #: **3168224**

Received From: **MICHAEL GRABHORN** Account Of: **MICHAEL GRABHORN**

Case Title: **GREEN COUNTY FISCAL COURT ET AL VS. MCKINSEY & COMPANY, INC.** Confirmation Number: **120404702**

Filed On: **2/8/2021 4:22:58PM**

#	Item Description	Amount
1	Access To Justice Fee	$20.00
2	Civil Filing Fee	$150.00
3	Money Collected For Others(Court Tech. Fee)	$20.00
4	Library Fee	$1.00
5	Court Facilities Fee	$25.00
6	Money Collected For Others(Attorney Tax Fee)	$5.00
7	Charges For Services(Jury Demand / 12)	$70.00
	TOTAL:	$291.00

CASE NO. 21-CI-00012

GREEN CIRCUIT COURT
DIVISION 1
HON. SAMUEL T. SPALDING

GREEN COUNTY FISCAL COURT, ON BEHALF OF GREEN COUNTY, ET AL., **PLAINTIFFS,** **v.** **MCKINSEY & COMPANY, INC. UNITED STATES, ET AL.,** **DEFENDANTS**	**NOTICE OF APPEARANCE**

Comes now the Plaintiffs, by counsel, and enters the additional appearance of Andrew M. Grabhorn as co-counsel. Mr. Grabhorn's contact and electronic service information is as follows:

Andrew M. Grabhorn
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Grabhorn Law | Insured Rights®
2525 Nelson Miller Parkway, Suite 107
Louisville, KY 40223
p: (502) 244-9331
f: (502) 244-9334

* * * * * * * * *

Dated: February 11, 2021

s/ Andrew M. Grabhorn

Bahe Cook Cantley & Nefzger PLC

William D. Nefzger
will@bccnlaw.com
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Louisville, KY 40217
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2525 Nelson Miller Parkway, Suite 107
Louisville, KY 40223
p (502) 244-9331
f (502) 244-9334

Counsel for the County Fiscal Court and Home Rule City Plaintiffs

Certificate of Service

I certify that on February 11, 2021, a copy of the foregoing was filed electronically with this Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

s/ Andrew M. Grabhorn
Andrew M. Grabhorn

CASE NO. 21-CI-00012

GREEN CIRCUIT COURT
DIVISION 1
HON. SAMUEL T. SPALDING

GREEN COUNTY FISCAL COURT, ON BEHALF OF GREEN COUNTY, ET AL., **PLAINTIFFS,** **v.** **MCKINSEY & COMPANY, INC. UNITED STATES, ET AL.,** **DEFENDANTS**	**NOTICE OF APPEARANCE**

Comes now the Plaintiffs, by counsel, and enters the additional appearance of William D. Nefzger as co-counsel. Mr. Nefzger's contact and electronic service information is as follows:

William D. Nefzger
Bahe Cook Cantley & Nefzger PLC
will@bccnlaw.com
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Louisville, KY 40217
p (502) 587-2002
f (502) 587-2006

* * * * * * * * *

Dated: February 11, 2021

s/ Andrew M. Grabhorn

Bahe Cook Cantley & Nefzger PLC

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f (502) 244-9334

Counsel for the County Fiscal Court and Home Rule City Plaintiffs

Certificate of Service

I certify that on February 11, 2021, a copy of the foregoing was filed electronically with this Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

s/ Andrew M. Grabhorn
Andrew M. Grabhorn

CASE NO. 21-CI-00012

GREEN CIRCUIT COURT
DIVISION 1
HON. SAMUEL T. SPALDING

GREEN COUNTY FISCAL COURT, ON BEHALF OF GREEN COUNTY, ET AL., **PLAINTIFFS,** **v.** **MCKINSEY & COMPANY, INC. UNITED STATES, ET AL.,** **DEFENDANTS**	**NOTICE OF ELECTRONIC SERVICE ELECTION**

Pursuant to CR 5.02(2), Plaintiffs hereby give notice to the Court and all other parties of Plaintiffs' election to send and receive service via electronic means. All parties shall serve Plaintiffs at the following electronic addresses:

m.grabhorn@grabhornlaw.com

a.grabhorn@grabhornlaw.com

will@bcnnlaw.com

Pursuant to CR 5.02(2), all parties must promptly provide an electronic address at which they may be served with documents.

*** * * * * * * * ***

Dated: February 11, 2021

s/ Andrew M. Grabhorn

Bahe Cook Cantley & Nefzger PLC

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p (502) 244-9331
f (502) 244-9334

Counsel for the County Fiscal Court and Home Rule City Plaintiffs

Certificate of Service

I certify that on February 11, 2021, a copy of the foregoing was filed electronically with this Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

s/ Andrew M. Grabhorn
Andrew M. Grabhorn

CASE NO. 21-CI-00012

GREEN CIRCUIT COURT
DIVISION 1
HON. SAMUEL T. SPALDING

GREEN COUNTY FISCAL COURT, ON BEHALF OF GREEN COUNTY, ET AL., **PLAINTIFFS,** **v.** **MCKINSEY & COMPANY, INC. UNITED STATES, ET AL.,** **DEFENDANTS**	**AMENDED NOTICE OF ELECTRONIC SERVICE ELECTION**

Pursuant to CR 5.02(2), Plaintiffs hereby give notice to the Court and all other parties of Plaintiffs' election to send and receive service via electronic means. All parties shall serve Plaintiffs at the following electronic addresses:

m.grabhorn@grabhornlaw.com

a.grabhorn@grabhornlaw.com

will@bccnlaw.com

Pursuant to CR 5.02(2), all parties must promptly provide an electronic address at which they may be served with documents.

*** * * * * * * * ***

Dated: February 11, 2021

s/ Andrew M. Grabhorn

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p (502) 244-9331
f (502) 244-9334

Counsel for the County Fiscal Court and Home Rule City Plaintiffs

Certificate of Service

I certify that on February 11, 2021, a copy of the foregoing was filed electronically with this Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

s/ Andrew M. Grabhorn
Andrew M. Grabhorn

COMMONWEALTH OF KENTUCKY
11th JUDICIAL CIRCUIT
GREEN CIRCUIT COURT
DIVISION ONE
CASE NO. 21-CI-00012

GREEN COUNTY FISCAL COURT, ON BEHALF OF GREEN COUNTY, ET AL., **PLAINTIFFS,** **v.** **MCKINSEY & COMPANY, INC. UNITED STATES, ET AL.,** **DEFENDANTS.**	**MOTION TO APPOINT INTERIM CLASS COUNSEL**

NOTICE

Please take notice that the undersigned will present the following motion and tender the attached proposed order before the Court on **Wednesday, March 3, 2021 at 1:00 p.m**., or as soon as counsel may be heard. In accordance with the Court's directives concerning COVID-19, the motion shall be heard by **Zoom**. Email addresses for the Plaintiffs are as follows:

Michael D. Grabhorn	*m.grabhorn@grabhornlaw.com*
Andrew M. Grabhorn	*a.grabhorn@grabhornlaw.com*
William D. Nefzger	*will@bccnlaw.com*

MOTION

Pursuant to CR 23.07(3), Plaintiffs request the Court ***appoint their counsel as Interim Class Counsel*** to act on behalf of the putative class of Kentucky County Fiscal Courts and Home Rule Cities until such time as the Court resolves the issue of class certification.

> (3) The court may ***designate interim counsel*** to act on behalf of a putative class ***before*** determining whether to certify the action as a class action.

Id. (emph. added).

In support of the motion, Plaintiffs provide the following discussion and proposed order.

DISCUSSION

A. Introduction.

1. Kentucky Fiscal Courts and Home Rules Cities seek relief from McKinsey for its admitted complicity in fueling the opioid epidemic in Kentucky.

This action has been brought on behalf of Kentucky County Fiscal Courts and Home Rule Cities to recover damages resulting from Defendant McKinsey's admitted complicity in the opioid epidemic that has ravaged Kentucky.

> 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…
>
> 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***.[1]

On February 4, 2021, solely on behalf of the Commonwealth—***not including*** the County Fiscal Courts or Home Rule Cities—the Attorney General filed a complaint seeking a permanent injunction against McKinsey. The complaint was filed pursuant to KRS 367.190. That same day, McKinsey consented to judgment being entered against it as to the Commonwealth's claims. [2]

On February 5, 2021, judgment was entered against McKinsey. The judgement included ***injunctive relief*** specific to McKinsey's unfair and unconscionable conduct and enjoined McKinsey as follows:

> McKinsey shall not accept any future engagements relating to the discovery, development, manufacture, marketing, promotion, advertising, recall, withdrawal, monitoring, sale, prescribing, use or abuse of any Opioid or other opioid-based Schedule II or III controlled substance.

The judgment also required McKinsey to pay $10,812,204.58 to the Commonwealth to

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[1] Complaint, ¶¶ 1 and 212. *See also*, *https://www.mckinsey.com/about-us/media/mckinsey-statement-on-its-past-work-with-purdue-pharma#*. (emph. added).
[2] *Id*. at ¶¶ 259-260.

remediate the damage to the Commonwealth resulting from McKinsey's violation of the Act. Again, the judgment was ***limited to*** the Commonwealth's claims. It did ***not*** address, nor could it release, any of the County Fiscal Courts' or the Home Rule Cities' claims.[3]

Based on the judgment, McKinsey is subject to a permanent injunction and judgment of a Kentucky court under KRS 367.190.[4] As a direct result of this fact, the judgment serves as ***prima facie*** evidence that McKinsey "used or employed a method, act, or practice prohibited by the Act."[5] As such, McKinsey's admitted and adjudged breach of its statutory duties under the Act, including *inter alia* KRS 367.220, constitutes ***negligence per se*** for which the County Fiscal Courts and the Home Rule Cities are permitted—and in fact duty bound— to seek relief pursuant to KRS 446.070.[6]

As such, Plaintiffs—a collection of County Fiscal Courts and Home Rule Cities, including Green County as lead—filed this action against McKinsey. The lawsuit seeks to recover all available relief including, *inter alia*, the associated past costs related to the diagnosis, treatment, and cure of addiction or risk of addiction to opioids. Kentucky's County Fiscal Courts and Home Rule Cities have borne the massive costs of these illnesses and conditions by having to provide necessary resources for care, treatment facilities, law enforcement services, and to allocate limited resources to combat the devasting social effects of the opioid epidemic—costs which are directly attributable to McKinsey's admitted illicit actions.

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3 *Id*. at ¶¶ 260-262.
4 *Id*. at ¶¶ 263-264.
5 *See* KRS 367.220(4) ("Any permanent injunction, judgment or order of the court made under KRS 367.190 shall be ***prima facie evidence*** in an action brought under this section that ***the respondent used or employed a method, act or practice declared unlawful by KRS 367.170***.") (emph. added).
6 *AMC v. Addington*, 1984 Ky. App. LEXIS 480, at *15-16 (Ky.App. Apr. 6, 1984) (emph. added).

2. The Kentucky County Fiscal Courts and Home Rule Cities are *not* alone in pursuing relief from McKinsey—raising concerns about their interests being adequately protected by their chosen counsel.

Presently, this the only action filed on behalf of Kentucky County Fiscal Courts and Home Rule Cities involving McKinsey. However, there are multiple similar cases that have been filed in other jurisdictions. As of the filing of this motion, similar class actions have been filed in Florida, New York, Florida, and West Virginia—each seeking relief on behalf of local governments. These other filings, which are expected to increase in other jurisdictions, underscores the need for the Kentucky Plaintiffs to have interim counsel appointed—to ensure their interests are protected and not undermined by other pending actions, regardless of where their claims proceed. Given prior precedent, their concerns are warranted.

The Sixth Circuit's holding in *Gooch* is instructive.[7] *Gooch* involved a dispute over an insurance company's interpretation of "actual charge" in a cancer-insurance policy. Anthony Gooch filed a class action lawsuit against the insurance company in Tennessee. During the same period, a similar class action was proceeding in Arkansas. The day that the *Gooch* class was certified, a settlement was entered in the Arkansas case—both certifying a national class and settlement claims nationwide. The Sixth Circuit subsequently reversed the trial court's certification finding it conflicted with the Arkansas class settlement—for which neither Gooch nor any other Tennessee insured was represented.

The Eleventh Circuit's decision in *Strube* is a similar example of another state class action—this time Florida—undermining a Kentucky resident's and insured's rights to seek relief under Kentucky law. The final result in *Strube* is largely irrelevant to the issue here. Again, a Kentucky resident was left with no voice or direct representation of the interests of Kentuckians.[8]

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7 *Gooch v. Life Inv'rs Ins. Co. of Am.*, 672 F.3d 402 (6th Cir. 2012).
8 *Strube v. Am. Equity Inv. Life Ins. Co.*, 158 F. Appx 198 (11th Cir. 2005).

3. The Kentucky County Fiscal Courts and Home Rule Cities are also *concerned* about potential copy-cat filings by other counsel seeking relief under Kentucky law.

As the Court may be aware, there is presently a large multi-district litigation ("MDL") moving forward in the U.S. District Court for the Northern District of Ohio—encompassing well over 2,400 local governmental entities from across the country. With respect to Kentucky, there are at last count roughly six attorney groups—not including Plaintiffs' counsel here—vying to represent the interests of Kentucky County Fiscal Courts at the MDL.[9] Again, the MDL claims do ***not*** involve McKinsey. Not yet. Given the duplicative claims involving Kentucky local governments that have been filed at the MDL, there is a strong likelihood that one or more of the other attorney groups will file a copy-cat lawsuit against McKinsey—thereby muddying this litigation with competing and unnecessary duplicative filings.

B. Appointment of Interim Class Counsel is warranted.

1. Courts routinely appoint Interim Class Counsel during the pre-certification period—especially where there are or may be competing litigation.

Appointment of Interim Class Counsel during the pre-certification period is ***often necessary*** to protect the interests of the putative class. By way of example, prior to class certification, it is necessary for an attorney to take action to prepare for the certification. This often involves discovery, as well as motion practice—whether advocating for or defending against dispositive motions. Ordinarily, such work is handled by the attorney who filed the action. In some cases, however, there may be ***competing*** cases or uncertainty that makes formal designation of interim counsel appropriate—thereby protecting the interests of the putative class

[9] Notably, Plaintiffs' counsel also actively represent Kentucky County Fiscal Courts and Home Rule cities in Franklin Circuit Court—before the Hon. Judge Shepherd—concerning the Commonwealth's efforts to undermine and to usurp the opioid claims of local governmental entities against the MDL defendants.

pending certification. In that instance, both under Federal as well as Kentucky procedure, appointment of interim counsel is warranted.

2. CR 23.07(3) permits the Court to appoint Interim Class Counsel.

Under federal procedure, Rule 23(g)(3) authorizes the Court to designate interim class counsel to act on behalf of the putative class—County Fiscal Court and Home Rule Cities—***before*** the certification decision is made.

> The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.[10]

As with its federal counterpart, Kentucky's procedural rules also provides that a court "***may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action***." Kentucky courts routinely "rely upon Federal case law when interpreting a Kentucky rule of procedure that is similar to its federal counterpart."[11]

3. Appointment of Interim Class Counsel is warranted where there are competing or duplicative lawsuits—including in other jurisdictions.

"[D]esignation of interim counsel clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement."[12] Notably, appointment of Interim Class Counsel is warranted where there is similar litigation, as in this case and even if in another jurisdiction.[13]

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[10] Fed.R.Civ.P. 23(g)(3).

[11] *Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430, 436 n. 4 (Ky. 2018) (quoting *Curtis Green & Clay Green, Inc. v. Clark*, 318 S.W.3d 98, 105 (Ky. App. 2010); *see also* Kurt A. Philipps, Jr., 6 Ky. Prac. R. Civ. Proc. Ann. Rule 1, Comment 2 (Aug. 2017 update) ("The general pattern of the [Kentucky] Rules follows quite closely the mechanical and logical arrangement of the Federal Rules of Civil Procedure.").

[12] *In re: Am. Honda Motor Co.*, 2015 U.S. Dist. LEXIS 182559, at *6-7 (S.D. Ohio Dec. 18, 2015).

[13] *Troy Stacy Enters. v. Cincinnati Ins. Co.*, 2021 U.S. Dist. LEXIS 8527, at *17 (S.D. Ohio

> The insurer is mistaken. ***Similar litigation*** and appointment of interim counsel in other courts do not moot appointment of interim counsel in this Court—***they warrant it***. Indeed, that is one of the purposes of interim counsel. When there are a number of overlapping, duplicative, or competing suits pending in other courts, and some or all of those suits may be consolidated, a number of lawyers may compete for class counsel appointment.
>
> … In such cases, "designation of interim counsel clarifies responsibility for ***protecting the interests of the class during precertification activities***, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement.[14]

This class action presents the appropriate situation as envisioned by the Rules for appointing Interim Class Counsel to pursue and to protect the interests of the Kentucky County Fiscal Courts and Home Rule Cities putative class. There is already competing litigation in multiple jurisdictions, with more expected to follow—including within Kentucky.

Again, as addressed above, this growing and sprawling litigation raises a singular problem here. None of these cases is ***seeking to solely vindicate and/or to solely protect*** the interests of the County Fiscal Courts or the Home Rule Cities. To say that the interests of the out of state jurisdictions or the MDL counsel—also from multiple jurisdictions—are divided and potentially fractious is ***not*** an understatement.

Here, the County Fiscal Courts and Home Rule Cities are ***not*** seeking relief under any other state or federal law. They seek relief ***solely under Kentucky's laws and regulations*** as they are entrusted to do. Their Kentucky claims should be addressed and heard in the Kentucky courts—as they should. To that end, and to avoid any further diminution of their rights, Plaintiffs seek to employ this common procedural device—***appointment of Interim Class***

Jan. 15, 2021) (noting competing actions involving insurance coverage for COVID related business claims in Ohio, as well as other jurisdictions).

[14] *Id.*, citing to Manual for Complex Litigation (Fourth) § 21.11 (emph. added).

Counsel—to ensure that their claims are ***not*** negatively impacted by the actions of any other jurisdiction or by any copy-cat filings by competing attorney groups.

C. The CR 23.07(3) factors necessary for appointment of Interim Class Counsel are clearly satisfied.

In appointing interim class counsel under CR 23.07(3), the Court should apply factors outlined in CR 23.07(1)(a) and (b). The inquiry is ***not*** detailed nor lengthy. It is simply done to ensure the appointed class counsel are qualified and will fairly represent the interests of the putative class prior to certification.[15] With respect to their proposed interim class counsel, Plaintiffs respectfully submit the CR 27.07(3) factors are satisfied.

First, the initial factor involving the amount of work done to investigate the claims involving McKinsey is readily satisfied—having vetted and investigated the Kentucky claims in detail. The detailed and lengthy complaint is the product of that investigation.[16] While it certainly presents several common facts presented in multiple other actions pending in state and federal court, the proposed class counsel has spent significant time in researching and preparing this action ***based on Kentucky statutes, regulations, and laws***—tailored to Kentucky for the County Fiscal Courts and Home Rule Cities.

Second, the two law firms have significant experience in both complex civil litigation as well as in class actions and mass torts. Counsel Michael D. Grabhorn and Andrew M. Grabhorn with Grabhorn Law | Insured Rights®, have served as lead counsel in two of Kentucky's ***largest class actions*** involving Kentucky citizens—both at the state and the federal level.[17] Counsel

---

[15] *See e.g., Carter v. Paschall Truck Lines, Inc*., 2019 U.S. Dist. LEXIS 62586, at *13-14 (W.D. Ky. Apr. 10, 2019) (Sr. District Judge Russell) (appointing interim class counsel).

[16] Complaint (containing 274 paragraphs and 67 footnotes).

[17] *See e.g., UPS Supply Chain Sols., Inc. v. Hughes*, 2018 Ky. App. Unpub. LEXIS 525 (Ky.App. July 27, 2018) (affirming class certification involving 11,000+ Kentucky hourly employees); *Clemons v. Norton Health Care, Inc.*, 271 F.R.D. 562 (W.D. Ky. 2011) (certifying

William D. Nefzger, with Bahe Cook Cantley & Nefzger PLC, has served as lead counsel in ***multiple mass torts cases***—again on behalf of Kentucky residents. Their wealth of experience will certainly serve to advance the Plaintiffs' and the Class' interests and claims.

Third, Plaintiffs' proposed interim class counsel have willingly committed the specific and significant resources necessary to preparing, pursuing, and presenting the Class' claims for resolution—whether at trial or by compromise.[18]

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court appoint Michael D. Grabhorn and Andrew M. Grabhorn of Grabhorn Law | Insured Rights® and William D. Nefzger of Bahe Cook Cantley & Nefzger, PLC as ***Interim Class Counsel*** for the putative class of Kentucky County Fiscal Courts and Home Rule Cities.

* * * * * * * * *

Dated: February 22, 2021

s/ Michael D. Grabhorn

Bahe Cook Cantley & Nefzger PLC

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will@bccnlaw.com
1041 Goss Avenue
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f (502) 244-9334

Counsel for the Putative Class
County Fiscal Court and Home Rule City Plaintiffs

class on behalf 6,000+ Kentucky employees and retirees).

[18] *Carter*, 2019 U.S. Dist. LEXIS 62586 at *14 ("Rule 23(g)(4) simply requires that class counsel ***fairly adequate and adequately represent*** the interests of the class. Upon reviewing Plaintiffs' motion … the Court is satisfied that these firms satisfy the requirements.") (emph. added).

CERTIFICATE OF SERVICE

I certify that on February 22, 2021, a copy of the foregoing was filed electronically with this Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. A complete copy of this motion was also served by USPS first class mail to:

McKinsey & Company, Inc. United States
c/o Corporation Service Company
80 State Street
Albany, New York 12207

McKinsey & Company, Inc. Washington DC
c/o Corporation Service Company
421 West Main Street
Frankfort, KY 40601

s/ Michael D. Grabhorn

COMMONWEALTH OF KENTUCKY
11th JUDICIAL CIRCUIT
GREEN CIRCUIT COURT
DIVISION ONE
CASE NO. 21-CI-00012

GREEN COUNTY FISCAL COURT, ON BEHALF OF GREEN COUNTY, ET AL., **PLAINTIFFS,** **v.** **MCKINSEY & COMPANY, INC. UNITED STATES, ET AL.,** **DEFENDANTS.**	**ORDER** ***GRANTING* MOTION TO APPOINT INTERIM CLASS COUNSEL**

Pursuant to CR 23.07(3), Plaintiffs request the Court appoint their counsel as Interim Class Counsel to act on behalf of the putative class of Kentucky County Fiscal Courts and Home Rule Cities until such time as the Court resolves the issue of class certification. The Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED Plaintiffs' motion is **GRANTED**. The Court finds Plaintiffs' counsel have satisfied the requirements of CR 23.07 sufficiently to be designated as interim class counsel. Therefore, the Court hereby designates Michael D. Grabhorn and Andrew M. Grabhorn of Grabhorn Law | Insured Rights® and William D. Nefzger of Bahe Cook Cantley & Nefzger, PLC as Interim Class Counsel for the putative class of Kentucky County Fiscal Courts and Home Rule Cities.

DATED: _____

_____
HON. SAMUEL T. SPALDING
CIRCUIT COURT JUDGE

Distribution to:

Hon. Michael D. Grabhorn
Hon. Andrew M. Grabhorn
2525 Nelson Miller Parkway, Suite 107
Louisville, KY 40223

Hon. William D. Nefzger
1041 Goss Avenue
Louisville, KY 40217

McKinsey & Company, Inc. United States
c/o Corporation Service Company
80 State Street
Albany, New York 12207

McKinsey & Company, Inc. Washington DC
c/o Corporation Service Company
421 West Main Street
Frankfort, KY 40601

_____ _____
Circuit Clerk Date

COMMONWEALTH OF KENTUCKY
11TH JUDICIAL CIRCUIT
GREEN CIRCUIT COURT
DIVISION ONE
CASE NO. 21-CI-00012
ELECTRONICALLY FILED

GREEN COUNTY FISCAL COURT
o/b/o GREEN COUNTY, ET AL., PLAINTIFFS

v.

NOTICE OF ENTRY OF APPEARANCE AND ELECTRONIC SERVICE

MCKINSEY & COMPANY, INC.
UNITED STATES, ET AL., DEFENDANTS

* * * * *

Comes now William D. Nefzger, and hereby enters his appearance of record in this matter as co-counsel for the Plaintiffs.

Please take further notice that pursuant to CR 5.02(2), the undersigned elects to effectuate and receive service via electronic means to and from all other attorneys and parties in this action. The undersigned is registered to receive service of all filed documents via the AOC's electronic filing system, agrees to accept service through that system and will effectuate service through that system. The undersigned does not require hardcopies sent regular mail.

For any party's attorney not registered with the AOC's electronic filing system, the undersigned will effectuate service electronically at the email address known to him or one subsequently provided to him. For any party's attorney not registered with the AOC's electronic filing system, the undersigned agrees to accept service at the following email addresses and dropbox:

1. will@bccnlaw.com (concurrently with staff member address andria@bccnlaw.com); and

2. https://www.hightail.com/u/willnefzgerdropbox.

The undersigned does not require hardcopies sent via regular mail.

Respectfully submitted,

BAHE COOK CANTLEY & NEFZGER PLC

/s/ William D. Nefzger
William D. Nefzger
The BCCN Building
1041 Goss Avenue
Louisville, Kentucky 40217
will@bccnlaw.com
(502) 587-2002 – Telephone
(502) 587-2006 – Facsimile
Co-*Counsel for Plaintiffs*

CERTIFICATE OF SERVICE

I certify that on February 24, 2021, a copy of the foregoing was filed electronically with this Court. Notice of this filing will be sent by operation of the AOC's electronic filing system to all parties indicated on the electronic filing receipt. The undersigned hereby further certifies that a true and correct copy of the foregoing has been served via U.S. mail, facsimile, hand-delivery and/or electronically to the following:

McKinsey & Company, Inc. United States
c/o Corporation Service Company
80 State Street
Albany, New York 12207

McKinsey & Company, Inc. Washington DC
c/o Corporation Service Company
421 West Main Street
Frankfort, KY 40601

/s/ William D. Nefzger
Co-Counsel for Plaintiffs