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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 IN RE: MCKINSEY & CO., INC.
12 NATIONAL PRESCRIPTION OPIATE
13 CONSULTANT LITIGATION

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

**DECLARATION OF PAUL J. GELLER IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

14 This Document Relates to:

15 ALL THIRD PARTY PAYOR ACTIONS

Date: TBD
Time: TBD
Courtroom: 6, 17th Floor

Judge: The Honorable Charles R. Breyer

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18 I, Paul J. Geller, declare and state as follows:

19 1. I am an attorney admitted to practice in the state of Florida, and I have been
20 admitted *pro hac vice* in this action. I am the managing partner of Robbins Geller Rudman &
21 Dowds LLP’s Boca Raton, Florida office, a founding partner of the firm, a member of its
22 Executive and Management Committees, and head of the firm’s Consumer Practice Group.

23 2. This declaration is based upon my personal knowledge unless otherwise indicated.
24 If called upon to testify as to the matters stated herein, I could and would competently do so.

25 3. I submit this Declaration in support of Third Party Payor (“TPP”) Plaintiffs’
26 Unopposed Motion for Preliminary Approval of Class Settlement.
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1 4. I am Settlement Class Counsel in this action. My firm represents TPP Plaintiff
2 BCTGM Atlantic Health & Welfare Fund, a proposed Settlement Class Representative.

3 5. My firm, through my partner Aelish Baig who is resident in Robbins Geller's San
4 Francisco office, is also on the Plaintiffs' Steering Committee for Political Subdivisions and
5 represents Political Subdivision Plaintiff City of Pembroke Pines, Florida.

6 **I. Litigation and Settlement History**

7 6. By the end of 2017, dozens of TPPs filed lawsuits against opioid manufacturers,
8 distributors, and pharmacies for their alleged roles in causing the opioid epidemic. On December
9 5, 2017, the Judicial Panel on Multidistrict Litigation ("JPML") centralized the federal court cases
10 in the Northern District of Ohio before Judge Dan Aaron Polster, which became MDL 2804.

11 7. Plaintiffs in MDL 2804, *In re National Prescription Opiate Litigation*, allege
12 defendants across the pharmaceutical supply chain acted in concert to aggressively market
13 prescription opioids in order to vastly increase their sales and revenues, misleading medical
14 professionals into prescribing, and millions of Americans into taking and too often developing
15 addictions to, opioids. As a result, MDL 2804 plaintiffs allege, approximately 350,000
16 individuals in the United States died from an opioid overdose between 1999 and 2016.

17 8. The cases consolidated under MDL 2804 have been, and continue to be, zealously
18 litigated by all parties. The first bellwether trial, *County of Cuyahoga v. Purdue Pharma L.P.*,
19 was scheduled to begin on October 21, 2019. *See* No. 17-op-45005 (N.D. Ohio), ECF No. 98.
20 Settlement agreements between the Ohio bellwether plaintiffs and defendants were announced the
21 morning the trial was to begin.

22 9. On February 10, 2020, the JPML selected and remanded several additional
23 bellwether cases, including *City & County of San Francisco v. Purdue Pharma L.P.*, which was
24 tried before this Court in 2022. *See* No. 17-md-02804-DAP (N.D. Ohio), ECF No. 3160; No. 18-
25 cv-07591-CRB (N.D. Cal.). My firm, along with Lead Counsel (the firm Lief Cabraser Heimann
26 & Bernstein, LLP) and others, represented the City and County of San Francisco in the bellwether
27 trial.

1 10. MDL 2804 continues, including with respect to TPP plaintiffs. The TPP
2 bellwether plaintiffs have been selected, and the parties have proposed Case Management Orders
3 for the TPP bellwethers to proceed.

4 11. On February 14, 2021, a group of State Attorneys General announced an opioid-
5 related settlement with McKinsey & Company, negotiated outside of the MDL 2804 proceedings.

6 12. Numerous TPPs and other plaintiff groups subsequently filed their own lawsuits
7 against McKinsey & Company and related entities (“McKinsey”) for their alleged role in causing
8 the opioid crisis.

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

12 14. In MDL 2996, plaintiffs allege that McKinsey strategized and acted with Purdue
13 and various other MDL 2804 defendants to create and employ aggressive marketing and sales
14 practices to overcome doctor and patient resistance to opioids—which are highly addictive
15 controlled substances—in order to maximize opioid revenues.

16 15. TPP plaintiffs are private benefit plans, funds, and commercial insurers that
17 provide health and welfare benefits, including reimbursement for some or all of the costs of
18 prescription opioids that were on their approved formularies. The TPP Plaintiffs allege that the
19 opioid industry’s practices harmed TPPs by causing them to pay for prescription opioids rather
20 than safer, non-addictive, and lower-cost prescription drugs (including over-the-counter pain
21 relievers) that would have been used otherwise, and further paid for the requisite opioid
22 addiction-related treatment that followed.

23 16. After transfer, this Court appointed my firm to the PSC, comprised of attorneys
24 representing all five plaintiff groups, for Political Sub-Divisions. *See* ECF No. 211 at 3. For TPP
25 Plaintiffs, the Court appointed James Dugan of The Dugan Law Firm to the PSC. *Id.*

26 17. On December 6, 2021, plaintiffs filed Master Complaints on behalf of the TPPs,
27 Subdivisions, School Districts, Neonatal Abstinence Syndrome (“NAS”) plaintiffs, and tribal
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1 plaintiffs (“Tribes”). *See* ECF Nos. 296 (Subdivisions), 297 (School Districts), 298 (NAS), 299
2 (TPPs), and 300 (Tribes).

3 18. On December 23, 2021, McKinsey filed two motions under Rule 12 of the Federal
4 Rules of Civil Procedure: one for lack of personal jurisdiction against all plaintiff groups in
5 certain states, and another, only against the Subdivision and School District master complaints, on
6 grounds of *res judicata* and release based on the 2021 Attorneys General Settlement. *See* ECF
7 No. 310 (*Res Judicata & Release*); ECF No. 313 (Lack of Personal Jurisdiction). Plaintiffs
8 opposed both motions. The Court conducted an initial hearing on the motions on March 31,
9 2022, requested and received additional briefing, and scheduled a subsequent hearing for October
10 28, 2022.

11 19. On October 26, 2022, the parties notified the Court that McKinsey and the
12 Subdivision and School District Plaintiffs had reached an agreement in principle to resolve those
13 plaintiffs’ claims, and they requested the Court not adjudicate the *res judicata* motion at that time.
14 *See* ECF No. 436. On October 27, 2022, the Court denied McKinsey’s motion to dismiss for lack
15 of personal jurisdiction. *In re McKinsey & Co, Inc., Nat’l Opiate Consultant Litig.*, 637 F. Supp.
16 3d 773 (N.D. Cal. 2022).

17 20. On January 9, 2023, McKinsey moved to dismiss the NAS and Tribal Plaintiffs’
18 Master Complaints, and TPP Plaintiffs’ Consolidated Class Action Complaint, under Federal
19 Rule of Civil Procedure 12(b)(6). *See* ECF No. 462. Plaintiffs filed their opposition on March 3,
20 2023, and McKinsey filed its reply on April 7, 2023.

21 21. In the meantime, on October 27, 2022, the Court adopted a joint discovery
22 schedule, and discovery is ongoing. McKinsey responded to Plaintiffs’ Requests for Production
23 and began document production. Two joint discovery dispute letters were submitted to
24 Magistrate Judge Kim, which were resolved by order on March 17, 2023. ECF No. 489. Judge
25 Kim resolved objections regarding the production of documents stored in a repository for MDL
26 No. 2804 on May 9, 2023. ECF No. 543.

27 22. McKinsey has produced or made available hundreds of thousands of documents
28 relevant to its involvement in developing opioid marketing schemes, including as part of its

1 production to the state Attorneys General. Plaintiffs have reviewed these productions, which
2 informed Plaintiffs' understanding of their claims' strengths and weaknesses.

3 23. The TPPs agreed to mediate before Professor Eric Green and his colleague Fouad
4 Kurdi of Resolutions, Inc. The parties participated in a mediation in person in Boston,
5 Massachusetts, with Professor Green and Mr. Kurdi. This Settlement is the result of those
6 extensive, arm's-length negotiations. Resolutions, Inc. is a sophisticated and nationally
7 recognized mediation organization whose mediators have decades of proven experience with
8 complicated litigation and class actions, including experience with the mediation and resolution
9 of TPP claims through class settlements.

10 24. On June 23, 2023, the parties notified the Court that McKinsey and the TPP and
11 Tribal Plaintiffs had reached an agreement in principle to resolve those plaintiffs' claims. *See*
12 ECF No. 562. The parties agreed that the Court should not adjudicate McKinsey's pending
13 motion to dismiss the claims alleged by the TPP and Tribal Plaintiffs and further agreed that all
14 pending discovery, pleading, and pretrial deadlines should be vacated as to the TPP and Tribal
15 Plaintiffs.

16 25. Since then, the parties have been drafting the Settlement Agreement and
17 continuing to negotiate the finer points of settlement.

18 **II. Settlement Benefits and Anticipated Recovery**

19 26. Attached hereto as **Exhibit A** is a true and correct copy of the Settlement
20 Agreement Among Third Party Payors and McKinsey.

21 27. The Settlement benefits are discussed at length in the accompanying memorandum
22 and points of authorities, and in the Proposed Notice, among other places.

23 28. In short, McKinsey has agreed to pay \$78 million into a Settlement Fund.

24 29. TPP Plaintiffs' proposed Plan of Allocation among members of the proposed
25 Settlement Class is set out in **Exhibit F**, the Declaration of Dr. Meredith Rosenthal. Dr.
26 Rosenthal is a Professor of Health Economics and Policy at the Harvard T.H. Chan School of
27 Public Health.
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1 **III. Selection of Notice Provider and Settlement Claims Administrator**

2 30. Attached hereto as **Exhibit B** is a Proposed Long-Form Notice, which
3 substantially reflects the notice to be disseminated.

4 31. Attached hereto as **Exhibit C** is a Proposed Postcard Notice, which substantially
5 reflects the notice to be disseminated.

6 32. Attached hereto as **Exhibit D** is a Proposed Claim Form, which substantially
7 reflects the claim form to be disseminated.

8 33. A.B. Data is a nationally recognized notice and settlement claims administrator
9 with extensive experience noticing and administering TPP class settlements. A.B. Data has on
10 numerous occasions provided direct email or mail notice to TPPs. In this matter, A.B. Data is
11 required to ensure that adequate notice is provided to the most comprehensive set of Class
12 members possible and to implement payment of claims. Notice will be emailed to Class members
13 for whom we can ascertain viable email addresses. Notice will be mailed via U.S. mail to TPPs
14 for whom only U.S. mail addresses have been ascertained. Notice will be effected through a
15 limited media campaign to additional Class members for whom no address has been identified.
16 The total cost for A.B. Data to effectuate notice and payments is estimated to be approximately
17 \$200,000 to \$300,000.

18 34. Attached as **Exhibit E** is the Declaration of Eric J. Miller, Senior Vice President of
19 Case Management at A.B. Data.

20 **IV. Proposed Settlement Class Representatives**

21 35. The proposed Settlement Class Representatives—Teamsters Local 404 Health
22 Services and Insurance Plan; District Council 37 Benefits Fund Trust; Cleveland Bakers and
23 Teamsters Health & Welfare Fund; International Union of Operating Engineers Stationary
24 Engineers Local 39 Health and Welfare Fund Trust; and BCTGM Atlantic Health & Welfare
25 Fund—are plaintiffs in underlying actions centralized in this MDL and include Named Plaintiffs
26 in the Consolidated Class Action Complaint (Third Party Payors). *See* ECF No. 299.

27 36. The proposed Settlement Class Representatives are actively engaged and seek to
28 abate a serious public health crisis.

1 37. Each Settlement Class Representative reviewed and approved the Consolidated
2 Class Action Complaint (Third Party Payors), has worked with Class Counsel to evaluate the
3 terms of the proposed Settlement Agreement, and has endorsed the terms of the proposed
4 Settlement subject to board approval.

5 38. The proposed Settlement Class Representatives have each expressed continued
6 willingness to protect the Class until the Settlement is approved and its administration completed.

7 39. The proposed Settlement Class Representatives will not seek incentive awards.

8 **V. Proposed Settlement Class Counsel**

9 40. The proposed Settlement Class Representatives and Lead Counsel have selected
10 me as proposed Settlement Class Counsel given my experience in TPP litigation, including opioid
11 litigation, and diligent work to prosecute opioid cases against many defendant groups across both
12 MDL 2804 and this MDL. My firm and Lead Counsel have undertaken an enormous amount of
13 work, effort, and expense in this MDL on behalf of the TPP Settlement Class.

14 41. Information regarding my credentials can be found at
15 <https://www.rgrdlaw.com/attorneys-Paul-J-Geller.html>.

16 42. Any attorneys' fees and expenses granted by the Court will be paid from the
17 Settlement Fund.

18 **VI. Common Benefit and Hours, Lodestar, and Costs Incurred**

19 43. Class Counsel intends to seek attorneys' fees and costs not to exceed 25% of the
20 Settlement Amount. TPP Plaintiffs' forthcoming fee motion, to be filed with the motion for final
21 approval and heard in conjunction with the Final Approval Hearing, will include the rationale and
22 necessary detail to support their request. *See* Factor No. 6, Northern District of California
23 Procedural Guidance for Class Action Settlements (Preliminary Approval).

24 44. Pursuant to PTO 3 (ECF No. 215), each PSC firm, including Class Counsel, as
25 well as other Participating Counsel whom Lead Counsel has authorized to perform common
26 benefit work, submitted monthly time and expense reports to Lead Counsel. Attorneys and staff
27 working at Lead Counsel's direction and under their supervision collected common benefit
28 submissions and have maintained a database of all submitted time and expenses.

1 45. The approximate lodestar for Class Counsel (and counsel who performed duly
2 authorized work specifically for TPPs in connection with law, briefing, and settlement) is \$24
3 million, having devoted approximately 39,300 total common benefit hours to litigating this
4 Action. This amount includes all time that Lead Counsel has vetted from the date of their
5 appointment through October 31, 2023.

6 46. These figures do not include time spent on this action since November 1, 2023;
7 certain pre-appointment time deemed compensable by the Court; or common benefit time
8 attributed to work on other case tracks, such as the NAS plaintiffs, Subdivisions, and Tribes
9 cases.

10 47. Class Counsel's combined related expenses to date are also under continued
11 review and, as of October 31, 2023, total approximately \$471,100. Such expenses were
12 necessarily incurred in this Action and are routinely charged to clients billed by the hour. Such
13 expenses include, among other things, court fees, service of process, consultant fees, mediation
14 costs, online legal and factual research, travel costs, reproduction costs, database costs, and
15 messenger, courier, and overnight mail expenses.

16 48. Based on the above numbers, a fee and expense award equal to 25% of the
17 Settlement Fund, after subtracting expenses, would represent a negative multiplier of 0.8 on Class
18 Counsel's approximate common benefit lodestar. Class Counsel will continue to incur time in
19 seeking settlement approval and on implementation efforts should the Settlement be approved.
20 Class Counsel will continue to review their respective records and submit them to Lead Counsel
21 for review, and Class Counsel will provide additional information regarding time, expenses, and
22 rationale for their request in the fee application and in the Class Notice so that Class members
23 have the opportunity to comment on or object to the requested fees prior to the Final Approval
24 Hearing.

25 49. Unless the Court orders otherwise, Class Counsel will direct the payment of the
26 7.5% common benefit assessment on the Gross Monetary Recovery of this Settlement into the
27 Fee Fund, as those terms are defined in the Common Benefit Order, PTO 9. *See* ECF No. 567
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1 ¶¶ 10, 29. That assessment will be paid out of any fee award approved by the Court under the
2 instant Settlement.

3 I declare under penalty of perjury that the foregoing is true and correct. Executed on
4 December 29, 2023, in Boca Raton, Florida.

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Paul J. Geller

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