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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)

**SUPPLEMENTAL 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

16
17 I, Paul J. Geller, declare and state as follows:

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

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

24 3. I am one of the proposed Settlement Class Counsel in this action, along with
25 Elizabeth J. Cabraser of Lief Cabraser Heimann & Bernstein LLP and James R. Dugan, II of the
26 Dugan Law Firm APLC. My firm represents third party payor (“TPP”) Plaintiff BCTGM
27 Atlantic Health & Welfare Fund, a proposed Settlement Class Representative.

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1 4. I submit this Supplemental Declaration in further support of Third Party Payor
2 (“TPP”) Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement (the
3 “Motion”) (ECF No. 645).

4 **II. Recent Procedural Background**

5 5. On December 29, 2023, TPP Plaintiffs filed their Third Party Payor Plaintiffs’
6 Unopposed Notice of Motion and Motion for Preliminary Approval of Class Settlement;
7 Memorandum of Points and Authorities in Support Thereof (ECF No. 645).

8 6. On January 31, 2024, counsel for certain TPP Plaintiffs filed an opposition to the
9 Motion for Preliminary Approval (ECF No. 656). TPP Plaintiffs filed a reply on February 1,
10 2024 (ECF No. 659). The Court heard argument on February 2, 2024 (ECF No. 667), and
11 thereafter approved the settlement as to the amount of the recovery, but directed counsel to work
12 together to resolve any outstanding disagreements as to the TPP Plaintiffs’ settlement with the
13 McKinsey Defendants (ECF No. 668).

14 7. Counsel for TPP Plaintiffs and the objectors’ counsel worked diligently over the
15 ensuing weeks to come to agreement. Working with TPP Plaintiffs’ retained expert, Dr. Meredith
16 Rosenthal, an agreement was reached which modifies slightly the TPP-McKinsey Settlement
17 Agreement, the Plan of Allocation, and the Claim Form. I summarize these slight modifications
18 below, and the revised documents are attached hereto as exhibits.

19 **III. Modifications to TPP-McKinsey Settlement**

20 8. All prior terms of the Settlement Agreement remain the same, with certain
21 Amendments noted in the attached **Exhibit A**. The Settling Parties have agreed to the payment
22 process described below as well as a request for service awards for the proposed class
23 representatives:

24 a. As to allocation, the parties have agreed that, upon McKinsey’s funding of
25 the settlement pursuant to Final Approval, or as otherwise agreed by the Settling Parties, payouts
26 will be made to those class members which have elected an Upfront Payment Option by
27 providing written notice to the Administrator/Settlement Class Counsel. This right can be
28 exercised by any class member (and on an aggregate basis for ASOs) by notifying the Claims

1 Administrator in writing on or before the date that is five (5) days after the expiration of the opt-
2 out deadline.

3 b. The Upfront Payment Option operates as follows: If at least 90% of the
4 claimants (on the basis of the submitted and approved claims in connection with the Mallinckrodt
5 bankruptcy) so elect, then: (1) 70% of the \$78,000,000 settlement (\$54,600,000, or the Upfront
6 Funds) shall be distributed to those class members; (2) 7.5% of the Upfront Funds (\$4,095,000,
7 the Common Benefit Fee Funds) shall be placed into a separate escrow account pending class
8 counsel's application to the Court for a common benefit fee in accordance with PTO No. 9; (3)
9 the balance of the Upfront Funds shall be distributed to those class members that exercised their
10 upfront payment option, on a pro rata basis (ensuring that the 7.5% Common Benefit Fee Funds
11 be deducted from any attorneys' fee due to the class member's attorney). The distribution of any
12 Upfront Funds shall occur as soon as reasonably practicable after the Effective Date and shall be
13 in line with the relative percentages from Mallinckrodt pursuant to entry of a Final Approval
14 Order. If the settlement achieves Final Approval, any class member that elected the Upfront
15 Payment Option and submitted a completed Class Claim Form by the claims deadline will be
16 entitled to participate in the distribution of the balance of the settlement, provided that the gross
17 amount awarded under the Upfront Funds option (i.e., before the 7.5% escrow) is deducted from
18 any additional class recovery.

19 c. The proposed Settlement Class Representatives will seek service awards of
20 up to \$10,000 each.

21 9. The proposed Settlement Class Representatives are: District Council 37 Benefits
22 Fund Trust; Cleveland Bakers and Teamsters Health & Welfare Fund; BCTGM Atlantic Health &
23 Welfare Fund; International Union of Operating Engineers Stationary Engineers Local 39 Health
24 & Welfare Trust Fund; and Teamsters Local 404 Health Services and Insurance Plan.

25 10. Proposed Settlement Class Counsel will apply for the reimbursement of costs from
26 the Settlement Fund, and for attorneys' fees of up to 20% of the Settlement Fund (net of Upfront
27 Funds), pursuant to Federal Rule of Civil Procedure 23(h) and the prior Orders of this Court.
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1 11. Proposed Settlement Class Counsel have also conferred and agreed on a revised
2 proposed Plan of Allocation, described in the Second Expert Report of Professor Meredith
3 Rosenthal (**Exhibit D**). The revised Plan still calculates the differential impact on TPPs of
4 McKinsey's alleged involvement in the false marketing of opioids, ensuring that TPPs impacted
5 more by the alleged misconduct receive a larger proportional share of the Settlement Funds.
6 However, where the prior Plan allocated funds using TPPs' enrollment data only, the revised
7 proposed Plan creates a crosswalk between claims and enrollment data so that class members may
8 submit claims using the methodology that is most reasonably accessible to them. *See Exhibit C*
9 (revised Proposed Claim Form) sections C and D. The intention of the proposed revisions is to
10 make the claims process as efficient as possible, while continuing to prioritize equitable
11 allocation.

12 12. These modifications are reflected in the revised documents and supersede and
13 replace the versions submitted with my prior Declaration (ECF No. 645-1). These modifications
14 specifically address the objections filed by certain counsel to TPP Plaintiffs' Motion for
15 Preliminary Approval.

16 13. Attached hereto as **Exhibit A** is a true and correct copy of the Amendment to
17 Settlement Agreement Among Third Party Payors and McKinsey Defendants.

18 14. Attached hereto as **Exhibit B** is a true and correct copy of the revised Proposed
19 Long Form Notice, which substantially reflects the notice to be disseminated.

20 15. Attached hereto as **Exhibit C** is a true and correct copy of the revised Proposed
21 Claim Form, which substantially reflects the claim form to be disseminated.

22 16. Attached hereto as **Exhibit D** is a true and correct copy of the Second Expert
23 Report of Professor Meredith Rosenthal.

24
25 I declare under penalty of perjury that the foregoing is true and correct. Executed on April
26 5, 2024, in Boca Raton, Florida.

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Paul J. Geller