

1 Paul J. Geller (*pro hac vice*)
2 ROBBINS GELLER RUDMAN & DOWD LLP
3 225 NE Mizner Boulevard
4 Suite 720
5 Boca Raton, FL 33432
6 Tel: (561) 750-3000
7 pgeller@rgrdlaw.com

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

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

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

**SUPPLEMENTAL DECLARATION OF
PAUL J. GELLER IN SUPPORT OF THIRD
PARTY PAYOR PLAINTIFFS' REPLY
MEMORANDUM IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEYS'
FEES AND EXPENSES, AND CLASS
REPRESENTATIVE SERVICE AWARDS**

14 This Document Relates to:
15 ALL THIRD PARTY PAYOR ACTIONS

Date: July 26, 2024
Time: 10:00 A.M
Courtroom: 6, 17th Floor

Judge: The Honorable Charles R. Breyer

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

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23 1. I am an attorney admitted to practice in the state of Florida, and I have been
24 admitted *pro hac vice* in this action. I am the managing partner of Robbins Geller Rudman &
25 Dowds LLP's Boca Raton, Florida office and Interim Settlement Class Counsel in this action,
26 along with Lead Counsel Elizabeth J. Cabraser, of Lief Cabraser Heimann & Bernstein LLP, and
27 James R. Dugan, II of the Dugan Law Firm APLC. My firm also represents Third Party Payor
28 ("TPP") Plaintiff BCTGM Atlantic Health & Welfare Fund, a Settlement Class Representative.

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

3 3. I submit this Declaration in support of TPP Plaintiffs’ Reply Memorandum in
4 Support of Motion for Final Approval of Class Action Settlement, Attorneys’ Fees and Expenses,
5 and Class Representative Service Awards (the “Reply”). I assume the Court’s familiarity with
6 my prior filed declarations in support of TPP Plaintiffs’ motions for preliminary approval and
7 final approval. *See* ECF Nos. 645-1, 699, 706-1.

8 **I. Class Notice Results**

9 4. As stated in the attached declaration from A.B. Data Vice President Eric J. Miller
10 (**Exhibit 1**, “Miller Declaration”), A.B. Data timely completed the Court-approved notice
11 program by the notice date of April 15, 2024. Since that date, notice has continued through the
12 McKinsey-TPP Settlement website (<https://www.mckinseytppsettlement.com>), which has
13 recorded 3,238 unique visitor sessions from its launch through June 20, 2024. A.B. Data is also
14 operating a toll-free telephone number available to Class Members, seven days a week and 24
15 hours a day. As of June 20, 2024, this toll-free number received 39 calls. A.B. Data also
16 maintains a case email address, which received 46 email inquiries from Class members.

17 5. Also as stated in the attached Miller Declaration, from the approximately 42,000
18 Class members who received notice, no objections have been received, and only seven TPPs (less
19 than 0.017%) chose to opt out of the settlement.

20 **II. The Upfront Payment Option**

21 6. As part of the settlement administration, all TPP Class Members were given the
22 right to receive an Upfront Payment. TPP Class Members could exercise this right by providing
23 written notice to A.B. Data within five days of the expiration of the June 1, 2024 objection/opt-
24 out deadline. If at least 90% of TPP claimants on a claims-approved basis (of the TPP claimants
25 that submitted approved claims in the Mallinckrodt bankruptcy) elected the Upfront Payment
26 Option by June 6, 2024, 70% of the Settlement Fund net of Court-approved expenses (the
27 “Upfront Funds”), would be set aside for Upfront Payments.

28 7. A.B. Data has reported that, following the June 6, 2024 deadline, it received 105

1 requests from TPPs to exercise the Upfront Payment Option.

2 8. To receive an Upfront Payment, a TPP Class Member agreed (a) to participate in
3 the TPP Class and to be bound by the Settlement, and (b) that 7.5% of its recovery will be set
4 aside into an escrow account pursuant to the Court's Common Benefit Order, PTO-9 (ECF No.
5 567). Upfront Funds will, within five business days of the settlement's Effective Date, be
6 distributed on a *pro rata* and preliminary basis consistent with the allocation of the funds in the
7 Mallinckrodt proceeding and the terms of this Court's Final Approval Order. Any TPP Class
8 Member that elected the Upfront Payment Option must also complete and submit a Class Claim
9 Form by the December 15, 2024 claim-filing deadline. The ultimate recovery for a TPP Class
10 Member that elects the Upfront Payment Option will be "trued-up" in accordance with the TPP
11 Claims Methodology set forth in Sections C and D of the Court-approved Claim Form (ECF No.
12 699-3) and will account for the amount of any Upfront Payment.

13 9. The Upfront Payment Option does not alter the allocation of the settlement
14 proceeds among TPP Class members, which ultimate allocation is being made in accordance with
15 the methodology developed by Professor Meredith Rosenthal and is designed to address the
16 particular impacts of opioids marketing. *See* ECF No. 699-4 (Second Expert Report of Professor
17 Meredith Rosenthal). Rather, the Upfront Payment Option affords all TPP Class members the
18 opportunity to expedite a portion of their allocation if they provide the requisite expedited claims
19 information.

20 **III. Class Representative Service Awards**

21 10. Settlement Class Counsel requested that each of the Settlement Class
22 Representatives be granted an award of \$10,000 in recognition of their service and their activities
23 as named plaintiffs on behalf of TPPs in this MDL. There has been no objection to such awards.

24 **IV. Common Benefit and Hours, Lodestar, and Expenses**

25 11. Interim Settlement Class Counsel requested that the Court award notice and
26 administration costs, expert costs, service awards, and 20% of the Settlement Fund for attorneys'
27 fees and expenses, subject to and in accordance with the Upfront Fund provisions posted on the
28 TPP Settlement website, and subject to the Common Benefit Order, PTO No. 9.

1 12. Attorneys' fees as to the Upfront Funds will be handled as follows: (a) 7.5% of all
2 Upfront Funds shall be set aside into an escrow account pursuant to the Court's Common Benefit
3 Order (ECF No. 567); (b) if a TPP Class Member is represented by private counsel pursuant to a
4 pre-existing fee contract, and if that private counsel is authorized to, and does on behalf of its
5 client, properly exercise its right to the Upfront Payment Option, and receives settlement monies
6 on behalf of the TPP Class Member, then the terms of that fee contract shall govern any payments
7 due to that private counsel; the contractual fee payment and the 7.5% common benefit assessment
8 represent the TPP Class Member's share of Court-approved fees and costs; and, (c) if a TPP Class
9 Member that is not represented by a pre-existing fee agreement properly exercises its right to the
10 Upfront Payment Option, then the Settlement Administrator shall deduct from the Upfront claim
11 amount, prior to payment, that TPP Class Member's 12.5% share of Court-approved Interim
12 Settlement Class Counsel's fees and expenses, in addition to the 7.5% common benefit set-aside.

13 13. Pursuant to PTO 3 (ECF No. 215), each PSC firm, as well as other Participating
14 Counsel authorized by Court-appointed Lead Counsel to perform common benefit work, were
15 required to submit monthly time and expense reports to Lead Counsel Elizabeth J. Cabraser. Ms.
16 Cabraser has informed me that authorized counsel did submit monthly time reports and that
17 attorneys and staff working at her direction and under her supervision collected these submissions
18 and have maintained a database of all submitted time and expenses.

19 14. The information in this Declaration regarding counsel's time and expenses was
20 provided to me by Lead Counsel and is taken from time and expense reports and supporting
21 documentation prepared and/or maintained by Lead Counsel, the PSC firms, and Participating
22 Counsel in the ordinary course of business.

23 15. When Interim Settlement Class Counsel last reported attorneys' fees and costs
24 through March 31, 2024, counsel had dedicated approximately 35,775 hours to this MDL (not just
25 to the TPP case), resulting in an aggregate lodestar of \$22.46 million as of March 31, 2024. *See*
26 ECF No. 706-1.

27 16. As of May 30, 2024, Interim Settlement Class Counsel have spent over 287
28 additional hours on duties such as: (i) responding to and, when necessary, investigating inquiries

1 from Class members; (ii) discussing various Settlement logistics with other TPP counsel; (iii)
2 overseeing the work of the Notice Administrator; and (iv) preparing papers for the July 26, 2024
3 Final Approval Hearing. This additional work increases the lodestar by \$290,255, to
4 approximately \$22.75 million, with the negative lodestar multiplier not exceeding 0.67.

5 17. The more than 36,000 hours of work devoted to litigating this Action include work
6 completed for the common benefit of all Plaintiffs within the MDL as well as specifically the TPP
7 Plaintiffs. This number includes all time vetted by Lead Counsel from the date of appointment
8 through May 30, 2024, the latest monthly reporting period. I believe the time reflected in the
9 lodestar calculation and the expenses for which payment is sought herein are reasonable and were
10 necessary for the effective and efficient prosecution and resolution of this Action.

11 18. These figures do not include time spent since May 30, 2024; certain pre-
12 appointment time deemed compensable by the Court; or time attributed solely to work on other
13 case tracks, such as the NAS, School Districts, Subdivisions, and Tribes case tracks.

14 19. Interim Settlement Class Counsel's combined related expenses to date are also
15 under continued review and, as of May 30, 2024, total approximately \$414,000. Such expenses
16 were necessarily incurred in this Action and are routinely charged to clients billed by the hour.
17 The majority of expenses went to document management services required to host the documents
18 produced in discovery, independent experts who were necessary to prosecute the case and
19 effectuate a substantial settlement, and the costs of mediation. All expenses were reasonable and
20 necessary for the prosecution of this Action.

21 20. The recommended allocation of expenses and other deposits into the Common
22 Benefit Fund from other settlements will be made by Lead Counsel at a future time to equitably
23 reimburse and compensate all PSC members and others performing duly authorized common
24 benefit work.

25 21. The above numbers result in a negative multiplier not exceeding 0.67 on Class
26 Counsel's approximate lodestar. Interim Settlement Class Counsel will continue to incur time in
27 seeking Settlement approval and on implementation efforts should the Settlement be approved,
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1 for which additional compensation will not be sought. Those hours will further reduce the
2 lodestar multiplier.

3 22. Interim Settlement Class Counsel will direct the payment of the 7.5% common
4 benefit assessment on the “Gross Monetary Recovery” of this Settlement, unless otherwise
5 ordered, into the “Fee Fund,” as those terms are defined in PTO 9. That assessment will be paid
6 out of any fee award approved by the Court under the instant settlement.

7 I declare under penalty of perjury that the foregoing is true and correct. Executed on June
8 26, 2024, in Boca Raton, Florida.

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Paul J. Geller

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