

United States District Court  
Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & COMPANY,  
INC. NATIONAL OPIATE  
CONSULTANT LITIGATION

Case No. 21-md-02996-CRB

**ORDER DENYING MOTION TO  
DISMISS FOR LACK OF  
PERSONAL JURISDICTION**

This multi-district litigation arises from consulting work that McKinsey & Company performed for several opioid companies. Plaintiffs consist of school districts, Indian tribes, political subdivisions, children with neonatal abstinence syndrome, and third-party payors from 31 states. Plaintiffs generally allege that McKinsey helped the opioid companies develop aggressive sales and marketing tactics to boost opioid sales, despite knowing that rapidly increasing supplies of opioids were causing serious harms in communities across the country. McKinsey moves to dismiss the claims of all Plaintiffs from 19 states for lack of personal jurisdiction. For the reasons discussed below, the Court denies McKinsey’s motion.

**I. BACKGROUND**

**A. Parties**

McKinsey is a global management consulting firm with offices in over 130 cities across 65 countries. Political Subdivision Master Complaint (“Compl.”) (dkt. 295–2) ¶ 29.<sup>1</sup> Four McKinsey entities are named as defendants in this action: “McKinsey &

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<sup>1</sup> Factual allegations in all Master Complaints are the same. See Opp. (dkt. 347) at 3 n.6. For

1 Company, Inc.” is incorporated and has its principal place of business in New York, while  
 2 “McKinsey Holdings, Inc.,” “McKinsey US,” and “McKinsey & Company, Inc.  
 3 Washington D.C.” are Delaware corporations with their principal places of business in  
 4 New York (collectively, “McKinsey”). Compl. ¶¶ 24–27; Jain Decl. (dkt. 313–1) at 2.

5 For purposes of this motion, Plaintiffs are persons and entities from Alaska,  
 6 Arizona, Colorado, Hawai’i, Indiana, Kentucky, Louisiana, Maryland, Mississippi,  
 7 Montana, New Mexico, Oklahoma, Oregon, Tennessee, Utah, Virginia, Washington, West  
 8 Virginia, and Wisconsin (“subject states”). See Mot. (dkt. 313) at 4.

### 9 **B. The Complaint**

10 The complaint alleges that McKinsey “played a central role” in the opioid crisis by  
 11 advising opioid companies on how “to sell as many opioids as conceivably possible.”  
 12 Compl. ¶ 2. McKinsey allegedly “did more than just give advice”; it “worked  
 13 collaboratively alongside its clients to implement McKinsey’s recommendations.” Id. ¶ 7.  
 14 The work involved “strategy work—‘providing big picture advice to clients’—and  
 15 implementation of the strategies” McKinsey devised. Id. ¶¶ 59–60, 62. In managing the  
 16 implementation of the strategies it provided, McKinsey worked hand-in-hand with its  
 17 clients. See id. In the words of one of the company’s employees, “you can’t even tell the  
 18 difference between a McKinsey team member and one of our clients[.]” Id. ¶ 62, 64.  
 19 Specific examples of McKinsey’s work are discussed in more detail below.

#### 20 **1. McKinsey’s Contacts with the Subject States**

21 Plaintiffs’ allegations regarding McKinsey’s contacts with the subject states center  
 22 on McKinsey’s work for Purdue Pharma, the pharmaceutical company that created and  
 23 manufactured the blockbuster opioid OxyContin. See Compl. ¶¶ 10–11. McKinsey  
 24 provided consulting services for Purdue for 15 years, including during the core of the  
 25 national opioid epidemic. Id. ¶¶ 10–11, 101; Scheidler Decl. (dkt. 313-2) at 4. Between  
 26 2009 and 2014, Purdue “relied extensively on McKinsey to develop and implement its  
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 ease of reference, the Court primarily refers to Plaintiffs’ Political Subdivision Master Complaint.

1 sales and marketing strategy for OxyContin.” Id. ¶ 106. During that time, McKinsey  
2 employed a “granular” approach in its work for Purdue, identifying specific geographic  
3 regions where the company could significantly increase sales of OxyContin. Id. ¶¶ 194,  
4 199, 478; Humphreville Decl. (dkt. 347-1) Ex. A at 50, Ex. D 1–3.

5 McKinsey’s “micro market analysis” helped identify “important pockets of growth  
6 that Purdue should focus on.” Humphreville Decl. Ex. D at 2. As specific examples,  
7 McKinsey prepared an analysis titled “Micro Markets by Territory” that detailed the  
8 market attractiveness for OxyContin in “hundreds of cities, including locations in each of  
9 the subject states.” Opp. at 4 n.10; Humphreville Decl. Ex. B. The analysis ranked cities  
10 on an “Overall Favorability Index” that determined the likelihood that targeting the city  
11 would yield increased OxyContin sales. See Humphreville Decl. Ex. B. McKinsey also  
12 used prescriber-level data to create a map of the United States that ranked the market  
13 attractiveness of regions for OxyContin growth. See Opp. at 5; Compl. ¶ 249;  
14 Humphreville Decl. Ex. A at 0, 50. McKinsey’s analysis discusses the market  
15 attractiveness of cities located in several of the subject states, including Colorado,  
16 Kentucky, Maryland, Oklahoma, Utah, Virginia, Washington, and Wisconsin. Opp. at 4;  
17 Humphreville Decl. Ex. A at 51. These efforts were part of a broader strategy focused on  
18 boosting opioid sales nationwide.

19 McKinsey also sought to target “existing high prescribers” of OxyContin, including  
20 in the several of the subject states. Compl. ¶ 255. McKinsey prepared an analysis for  
21 Purdue of another map of the United States that detailed at the zip-code level total  
22 prescription growth for OxyContin across all 50 states. Opp. at 4; Compl. ¶¶ 51, 194–207,  
23 478. The map includes a chart with example zip codes that identify where a growth or  
24 decline in OxyContin prescriptions occurred. Compl. ¶ 478. Similar to McKinsey’s other  
25 analysis, the chart includes market analysis for multiple subject states. Id.

26 Additionally, McKinsey helped Purdue target specific doctors through a project  
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1 titled “Evolve to Excellence” (“E2E”).<sup>2</sup> Id. ¶¶ 244, 255–69. McKinsey and Purdue  
 2 executives headed the E2E Executive Oversight Team. Humphreville Decl. Ex. E at 5.  
 3 The primary goal of E2E was “to significantly bolster OxyContin . . . sales.” Id. Ex. E at  
 4 4. McKinsey designed E2E and oversaw “the creation of target lists, internal dashboards  
 5 to track progress, and changes to Purdue’s incentive compensation plan.” Compl. ¶¶ 238–  
 6 39, 242, 244, 254. As part of the E2E initiative, McKinsey prepared an analysis  
 7 identifying 30,704 prescribers in almost all of the subject states. Humphreville Decl. Ex.  
 8 F. The analysis included details such as the specialty of the prescriber (e.g., Family  
 9 Medicine or Anesthesiology), the prescriber’s location, and the prescriber’s “OxyContin  
 10 Valuation.” Id. McKinsey used this data to create prescriber profiles and worked with  
 11 Purdue’s sales staff to develop sales messages likely to persuade specific prescribers. See  
 12 Compl. ¶¶ 205–07.

13 McKinsey also worked with Purdue sales representatives in the field. McKinsey  
 14 consultants accompanied Purdue representatives on sales visits in several subject states.  
 15 Opp. at 7; Humphreville Decl. Ex. H at MCK-MDL2996-0310910-11, Ex. I. The “ride-a-  
 16 longs” with Purdue sales representatives helped McKinsey consultants “gain as much  
 17 insight as possible into prescriber’s responses to [Purdue’s] promotion of OxyContin.”  
 18 Humphreville Decl. Ex. J. They were part of the hand-in-hand process that McKinsey  
 19 employed to help Purdue refine its nationwide and state-specific sales and marketing  
 20 campaigns. See id.

### 21 C. Procedural Posture

22 Plaintiffs filed their Master Complaints on December 6, 2021. McKinsey moves to  
 23 dismiss all of Plaintiffs’ claims in the subject states for lack of personal jurisdiction. See  
 24 Mot. at 1. Plaintiffs opposed the motion, and McKinsey replied. See Opp. at 1–2; Reply  
 25 (dkt. 363) at 1.

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 28 <sup>2</sup> “Evolve to Excellence” is also known as “Project Turbocharge.” Compl. ¶ 244.

## II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(2), a defendant may move to dismiss for lack of personal jurisdiction. In assessing whether personal jurisdiction exists, the court may consider evidence presented in affidavits or order discovery on jurisdictional issues. Data Disc, Inc. v. Sys. Tech. Assoc., Inc., 557 F.2d 1280, 1285 (9th Cir. 1977). “When a district court acts on a defendant’s motion to dismiss under Rule 12(b)(2) without holding an evidentiary hearing, the plaintiff need make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss.” Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995).

A prima facie showing is established if the plaintiff produces admissible evidence which, if believed, would be sufficient to establish personal jurisdiction. See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1129 (9th Cir. 2003). “[U]ncontroverted allegations in [the plaintiff’s] complaint must be taken as true, and conflicts between the facts contained in the parties’ affidavits must be resolved in [the plaintiff’s] favor.” Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1127 (9th Cir. 2010). However, “bare bones assertions of minimum contacts with the forum or legal conclusions unsupported by specific factual allegations will not satisfy a plaintiff’s pleading burden.” Swartz v. KPMG LLP, 476 F.3d 756, 766 (9th Cir. 2007).

A federal district court’s jurisdiction over a defendant is the same as “the jurisdiction of a court of general jurisdiction in the state where the district court is located.” Fed. R. Civ. P. 4(k)(1)(A). To determine whether it can exercise jurisdiction, a district court employs a two-step inquiry. First, “the plaintiff must show . . . the forum state’s long arm statute confers personal jurisdiction over the out-of-state defendants.” Gray & Co. v. Firstenberg Mach. Co., 913 F.2d 758, 760 (9th Cir. 1990). Second, “the exercise of jurisdiction [must] not violate federal constitutional principles of due process.” Id. When a state’s long-arm statute permits the exercise of jurisdiction to the limits of due process, the two-step inquiry collapses into one: “whether the exercise of jurisdiction . . . comports with due process.” Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284

1 F.3d 1114, 1123 (9th Cir. 2002). All of the Subject states—except Mississippi<sup>3</sup>—permit  
2 the exercise of jurisdiction to the limits of due process.<sup>4</sup>

3 Under the Fourteenth Amendment’s due process clause, “a tribunal’s authority  
4 depends on the defendant having such ‘contacts’ with the forum State that ‘the  
5 maintenance of the suit’ is ‘reasonable, in the context of our federal system of  
6 government,’ and ‘does not offend traditional notions of fair play and substantial justice.’”  
7 Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1024 (2021) (quoting  
8 International Shoe Co. v. Washington, 326 U.S. 310, 316–17 (1945)). This inquiry “has  
9 long focused on the nature and extent of ‘the defendant’s relationship with the forum  
10 state.” Id. (quoting Bristol-Myers Squibb Co. v. Super. Ct. of Cal., San Francisco Cnty.,  
11 137 S. Ct. 1773, 1779 (2017)). And that “focus” has resulted in “two kinds of personal  
12 jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes  
13 called case-linked) jurisdiction.” Id.

14 A federal court may exercise general jurisdiction over a defendant only if the  
15 defendant is “essentially at home” in the forum state. Goodyear Dunlop Tires Operations,  
16 S.A. v. Brown, 564 U.S. 915, 919 (2011). General jurisdiction depends on the defendant’s  
17 relationship with the forum state—for companies, the question is whether the defendant is  
18 incorporated, headquartered, or otherwise “at home” there. Ford Motor Co., 141 S. Ct. at  
19 1024.

20 Specific jurisdiction is “different” in that it “covers defendants less intimately  
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22 <sup>3</sup> Plaintiffs’ allegations meet the requirements of Mississippi’s long-arm statute. See Seiferth v.  
23 Helicopteros Atuneros, Inc., 472 F.3d 266, 270 (5th Cir. 2006).

24 <sup>4</sup> McKinsey asserts that Oklahoma’s long-arm statute is “narrower than the limits of constitutional  
25 due process.” See Mot. at 11 n.7. That is incorrect. The Oklahoma Supreme Court has stated that  
26 Oklahoma’s long-arm statute extends to “the outer limits permitted by . . . the due process clause  
27 of the United States Constitution.” Hough v. Leonard, 867 P.2d 438, 442 (Okla. 1993). Similarly,  
28 although Wisconsin’s long-arm-statute “has been interpreted to confer jurisdiction to the fullest  
extent allowed under the due process clause” (see Felland v. Clifton, 682 F.3d 665, 678 (7th Cir.  
2012) (quotations omitted)), Wisconsin law also requires that courts determine whether a  
defendant is “subject to jurisdiction under Wisconsin’s long-arm statute.” Thomas v. Ford Motor  
Co., 289 F. Supp. 3d 941, 943 (E.D. Wis. 2017). However, the long-arm statute inquiry “is easily  
resolved . . . [o]nce the requirements of due process are satisfied” because Wisconsin’s long-arm  
statute “has been interpreted to go the lengths of due process.” Felland, 682 F.3d at 678.

1 connected with a State” and “only as to a narrower class of claims.” Id. While general  
 2 jurisdiction depends on the relationship between the defendant and the forum, specific  
 3 jurisdiction depends on the relationship between “the defendant, the forum, and the  
 4 litigation.” Walden v. Fiore, 571 U.S. 277, 284 (2014) (quoting Keeton v. Hustler Mag.,  
 5 Inc., 465 U.S. 770, 775 (1984)). “Although a nonresident defendant’s physical presence  
 6 within the territorial jurisdiction of the court is not required,” such a defendant must still  
 7 have “minimum contacts” with the forum state “such that the suit does not offend  
 8 traditional notions of fair play and substantial justice.” Id. at 283 (citation omitted).

9 As a framework for applying these principles, the Ninth Circuit has “established a  
 10 three-prong test for analyzing a claim of specific personal jurisdiction.” Schwarzenegger  
 11 v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). In particular:

- 12 (1) The non-resident defendant must purposefully direct his activities or  
 13 consummate some transaction with the forum or resident thereof; or perform  
 14 some act by which he purposefully avails himself of the privilege of  
 conducting activities in the forum, thereby invoking the benefits and  
 15 protections of its laws;
- 16 (2) the claim must be one which arises out of or relates to the defendant’s forum-  
 17 related activities; and
- 18 (3) the exercise of jurisdiction must comport with fair play and substantial  
 19 justice, i.e., it must be reasonable.

20 Id. (citation omitted).<sup>5</sup>

### 21 **III. DISCUSSION**

22 Plaintiffs do not contend that McKinsey is subject to general jurisdiction in any of  
 23 the subject states. See Reply at 3. Thus, the question is whether McKinsey is subject to  
 24 specific jurisdiction in the subject states. See id. To establish specific jurisdiction,  
 25 Plaintiffs must demonstrate that McKinsey purposefully directed activities at the subject

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26 <sup>5</sup> Under the first prong, the Ninth Circuit treats “purposeful direction” and “purposeful availment”  
 27 as “two distinct concepts.” Schwarzenegger, 374 F.3d at 802. “A purposeful availment analysis  
 28 is most often used in suits sounding in contract,” while a “purposeful direction analysis . . . is most  
 often used in suits sounding in tort.” Id. Because Plaintiffs’ claims sound in tort (and not  
 contract), the purposeful direction test applies here. See id.; Mot. at 15; Opp. at 8.

1 states, and that Plaintiffs’ claims arise out of or relate to McKinsey’s forum-related  
 2 activities. See Schwarzenegger, 374 F.3d at 802. If Plaintiffs meet their burden for the  
 3 first two prongs, then McKinsey must show that exercising jurisdiction would be  
 4 unreasonable. See id. For the reasons discussed below, Plaintiffs have established that  
 5 McKinsey purposefully directed its activities at the subject states and that their claims arise  
 6 from those activities. And McKinsey has not established that exercising jurisdiction over  
 7 it would be unreasonable. McKinsey’s motion is therefore denied.

### 8 **A. Purposeful Direction**

9 To establish purposeful direction, a plaintiff must show that the defendant “(1)  
 10 committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that  
 11 the defendant knows is likely to be suffered in the forum state.” Id. at 803 (citing Calder v.  
 12 Jones, 465 U.S. 783 (1984); Dole Foods Co., Inc. v. Watts, 303 F.3d 1104, 1111 (9th Cir.  
 13 2002)).

#### 14 **1. Intentional Act**

15 Plaintiffs have established that McKinsey committed intentional acts directed  
 16 toward the subject states. To satisfy the intentional act prong, “the defendant must act with  
 17 the ‘intent to perform an actual, physical act in the real world.’” Picot v. Weston, 780 F.3d  
 18 1206, 1214 (9th Cir. 2015) (quoting Schwarzenegger, 374 F.3d at 806). McKinsey  
 19 performed numerous acts directed at the subject states. These acts included creating  
 20 granular analyses of market attractiveness of the subject states, creating target lists of  
 21 prescribers in the subject states, working alongside Purdue sales representatives in the  
 22 subject states, and working with Purdue to implement sales strategies in the subject states.  
 23 See id.; Compl. ¶¶ 51, 194–207, 238–39; 242, 244, 249, 254, 478; Humphreville Decl. Ex.  
 24 A at 50–51, Ex. B, Ex. F, Ex. H–J.

#### 25 **2. Expressly Aimed**

26 Plaintiffs argue that McKinsey’s actions were expressly aimed at the subject states  
 27 for two reasons. See Opp. at 9. First, McKinsey designed a nationwide sales campaign for  
 28 Purdue that caused harm in the subject states. See id. Second, to increase opioid sales in



1 the subject states, McKinsey employed a granular approach that involved “specifically  
2 tailored strategies aimed at each subject state.” See id. at 10.

3 McKinsey, on the other hand, argues that its actions were only aimed at its clients.  
4 See Mot. at 16; Reply at 7. Because McKinsey’s clients are not located in the subject  
5 states, McKinsey argues that it did not expressly aim its conduct at the subject states. See  
6 Mot. at 16–17; Reply at 10–11; see also Mot. at 24 (Plaintiffs “do not connect the services  
7 McKinsey allegedly provided for those manufacturers to the Subject states.”).

8 Under the express aiming prong, courts assess a defendant’s connection to the  
9 forum state. See Picot, 780 F.3d at 1214. The inquiry centers on whether the defendant  
10 specifically targeted the forum state. See Morrill v. Scott Fin. Corp., 873 F.3d 1136, 1143  
11 (9th Cir. 2017) (citing Walden, 571 U.S. at 284). A defendant does not expressly aim its  
12 activities at the forum state when the unilateral activity of a plaintiff or third party is the  
13 defendant’s only connection to the forum state. See Walden, 571 U.S. at 284–85 (citing  
14 World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291–92 (1980)). Rather, the  
15 focus is on the defendant’s “own contacts,” i.e., “contacts that the defendant himself  
16 creates with the forum state.”<sup>6</sup> See id. (emphasis in original); Axiom Foods, Inc. v.  
17 Acerchem Int’l, Inc., 874 F.3d 1064, 1070 (9th Cir. 2017).

18 The express aiming prong is met when a defendant specifically tailors its activities  
19 to target the forum state. In Ayla, LLC v. Alya Skin Pty. Ltd., the Ninth Circuit held that a  
20 defendant who sold products internationally expressly aimed its activities at the United  
21 States because it tailored its promotions to U.S. residents. See 11 F.4th 972, 980 (9th Cir.  
22 2021). There, the plaintiff sued the foreign defendant, alleging that the defendant’s  
23 product infringed on the plaintiff’s trademark. Id. at 977. The defendant moved to dismiss  
24 for lack of personal jurisdiction, and the district court granted the defendant’s motion,

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<sup>6</sup> Walden changed how the Ninth Circuit applied the express aiming prong. See Axiom, 874 F.3d  
at 1069–70. Before Walden, the Ninth Circuit had held that “wrongful conduct targeted at a  
plaintiff whom the defendant knows to be a resident of the forum state” satisfied the express  
aiming test. Id. at 1069. After Walden, the court held that individualized targeting of a plaintiff  
who resides in the forum state, without more, is not enough for express aiming. Id. at 1070.

1 finding that the defendant’s “marketing targeted sales internationally rather than  
2 specifically at Americans.” Id. at 977, 980.

3 The Ninth Circuit reversed. Id. at 980. It reasoned that the defendant had  
4 purposefully directed its activities at the United States by promoting “its allegedly  
5 infringing product by means of references explicitly aimed at Americans.” Id. at 980. For  
6 example, the defendant advertised on Instagram: “ATTENTION USA BABES WE NOW  
7 ACCEPT afterpay.” Id. The defendant also advertised “Black Friday” sales on its  
8 Facebook page, which it knew was “America’s biggest shopping day,” and promoted on its  
9 website that American magazines featured its products. Id. The Ninth Circuit held that the  
10 defendant “satisfied the purposeful direction requirement by directing ‘an insistent  
11 marketing campaign toward the forum.’” Id. at 981 (quoting Rio Props., v. Rio Int’l  
12 Interlink, 284 F.3d 1007, 1020 (9th Cir. 2002)).

13 Furthermore, express aiming does not require that the out-of-state defendant itself  
14 disseminate or sell a product that causes harm in the forum. For example, in Calder v.  
15 Jones, the U.S. Supreme Court held that intentional acts outside of the forum that  
16 contribute to an effect felt in the forum can satisfy the express aiming requirement. 465  
17 U.S. 783, 789–90 (1984). In that case, the Supreme Court held that a Florida-based  
18 reporter and editor for the National Enquirer were subject to jurisdiction in California for  
19 an allegedly libelous article that they wrote about a California resident. Id. at 784–86,  
20 788–89. The defendants argued that they did not purposefully direct their conduct at  
21 California because the National Enquirer made the decision to disseminate the article in  
22 California, not them. Id. at 789. The defendants argued that as employees they “could not  
23 control their employer’s marketing activity,” and the “mere fact that they [could] foresee”  
24 the National Enquirer circulating their article in California was not sufficient to establish  
25 jurisdiction. Id. The Court rejected the defendants’ argument, reasoning that the  
26 defendants’ “intentional, and allegedly tortious, actions were expressly aimed at  
27 California” because they wrote the article knowing it “would have a potentially devastating  
28 impact” in California, where the National Enquirer had its “largest circulation.” Id. at

1 789–90. The Supreme Court thus held that jurisdiction over the defendants in California  
 2 was proper. Id.; see also Lions Gate Ent. Inc. v. TD Ameritrade Servs. Co., Inc., 170 F.  
 3 Supp. 3d 1249, 1254, 1261–62 (C.D. Cal. 2016).

4 Here, Plaintiffs allege that McKinsey not only knew that the effects of its sales and  
 5 marketing work for Purdue would be felt in the subject states, they allege that McKinsey  
 6 advised Purdue where and how it should implement its marketing and sales strategies in  
 7 the subject states. See Compl. ¶¶ 2, 194–207, 238–39, 249, 254–69, 456, 478;  
 8 Humphreville Decl. Ex. A at 50–51, Ex. B, Ex. D at 2–3, Ex. F. Plaintiffs allege that  
 9 McKinsey helped create the marketing and sales strategies that Purdue implemented in the  
 10 subject states, and that McKinsey exercised “control [over Purdue’s] marketing activity” in  
 11 the subject states. See Calder, 465 U.S. at 489; Compl. ¶¶ 106, 194–207, 238–39, 249,  
 12 254–69, 478; Humphreville Decl. Ex. A at 50–51, Ex. B, Ex. D at 2–3, Ex. F.

13 Like the defendant in Ayla, McKinsey specifically tailored its sales and marketing  
 14 advice to target the subject states. See 11 F. 4th at 980; Humphreville Decl. Ex. A at 50–  
 15 51, Ex. B, Ex. F. McKinsey took a granular and data-driven approach to identify “pockets  
 16 of growth” where Purdue could increase its OxyContin sales. See Humphreville Decl. Ex.  
 17 D at 2–3. This analysis resulted in McKinsey advising Purdue to increasingly target high  
 18 prescribers of opioids in the subject states. See id. Ex. B; Compl. ¶ 255. McKinsey also  
 19 analyzed data on hundreds of cities in the subject states and ranked their overall  
 20 favorability. See Humphreville Decl. Ex. B. It oversaw “the creation of target lists and  
 21 internal dashboards to track progress,” collecting details on thousands of prescribers in the  
 22 subject states and developing sales messages based on the prescribers’ unique profiles.  
 23 See id. Ex. F; Compl. ¶¶ 204–07, 254. Not only did McKinsey advise Purdue on how to  
 24 initiate and focus its contacts with the Subject states, it also had boots on the ground in the  
 25 subject states, sending its consultants on “ride-a-longs” with Purdue sales associates to  
 26 improve and refine sales strategies. See id. Ex. J; Opp. at 7; see also Walden, 571 U.S. at  
 27 285 (Physical presence in a state “is certainly a relevant contact.”). McKinsey’s multi-year  
 28 engagement with Purdue to develop and implement sales and marketing strategies directed

1 toward the subject states suffices to meet the express aiming requirement.

2 In arguing that there is no basis for personal jurisdiction in the subject states,  
 3 McKinsey effectively contends that it can help Purdue develop and manage strategies to  
 4 increase opioid sales in the subject states, but that it cannot be subject to jurisdiction when  
 5 those strategies result in increased opioid sales that cause harm in the subject states. See,  
 6 e.g., Mot. at 16–17. The argument is not persuasive. McKinsey is “not charged with mere  
 7 untargeted negligence,” Calder, 465 U.S. at 789, and it is not being subjected to specific  
 8 jurisdiction based on “‘random, fortuitous, or attenuated’ contacts” that resulted from its  
 9 interactions with other people affiliated with the subject states, Walden, 571 U.S. at 286  
 10 (quoting Burger King, 471 U.S. at 475). To the contrary, Plaintiffs plausibly allege that  
 11 McKinsey’s actions significantly contributed to the wide-ranging harms that have affected  
 12 the Subject states. See Calder, 465 U.S. at 789–90; see also Walden, 571 U.S. at 288 n.7.  
 13 Plaintiffs plausibly allege that for several years, McKinsey played an instrumental role in  
 14 developing and overseeing aggressive marketing strategies designed to boost opioid sales  
 15 in the subject states, despite being aware of the severe harm that increasing supplies of  
 16 opioids were inflicting on communities in the subject states.<sup>7</sup> See, e.g., Compl. ¶¶ 106,  
 17 238–39, 242, 244, 456; Humphreville Decl. Ex. E at 5. As a result, McKinsey is not like  
 18 “a welder employed in Florida who works on a boiler which subsequently explodes in  
 19 California.” See Calder, 465 U.S. at 789. McKinsey is more akin to an advertising agency  
 20 that advised a manufacturer on how to sell boilers to residents of specific states, despite  
 21 knowing that the boilers carried a significant risk of exploding. See id. at 789–90; Lions  
 22 Gate, 170 F. Supp. 3d at 1254, 1261–62.<sup>8</sup>

23 \_\_\_\_\_  
 24 <sup>7</sup> McKinsey’s argument that it is simply a “service provider” is not persuasive, and the cases that  
 25 it relies on for this argument are inapposite. See, e.g., Opp. at 21; Reply at 7–8; Trierweiler v.  
 26 Croxton & Trench Holding Corp., 90 F.3d 1523, 1534 (10th Cir. 1996) (holding that a Colorado  
 27 law firm was not subject to jurisdiction in Michigan based on a single opinion letter it wrote for a  
 28 Colorado client that later forwarded the letter to Michigan); Fletcher Fixed Income Alpha Fund,  
Ltd. v. Grant Thornton LLP, 89 Mass. App. Ct. 718, 723 (2016) (holding that an out-of-state  
 auditor was not subject to jurisdiction in Massachusetts based on an audit report that it sent to its  
 New York client who later forwarded the report to Massachusetts).

<sup>8</sup> McKinsey attempts to distinguish itself from the defendants in Calder and Lions Gate by stating

1           There is no random or attenuated chain of contacts here. Plaintiffs have plausibly  
2 alleged that McKinsey intentionally and purposefully directed contacts at the subject states  
3 for several years. Plaintiffs have thus made a prima facie showing that the express aiming  
4 requirement is met.<sup>9</sup>

### 5                           3.       Foreseeable Harm

6           Under the third prong, courts ask whether the defendant knew its intentional act  
7 would cause harm in the forum state. See Schwarzenegger, 374 F.3d at 803. The focus of  
8 the inquiry “is not the magnitude of the harm, but rather its foreseeability.” Lindora, LLC  
9 v. Isagenix Int’l, LLC, 198 F. Supp. 3d 1127, 1141 (S.D. Cal. 2016).

10           Plaintiffs adequately allege that McKinsey knew that developing aggressive  
11 strategies to “turbocharge” opioid sales during the midst of a nationwide opioid epidemic  
12 would cause harm in the subject states. For example, Plaintiffs allege that McKinsey  
13 briefed Purdue regarding OxyContin abuse and that it was generally aware of the harm  
14 caused by increasing sales of opioids. See Compl. ¶ 456. A McKinsey presentation states  
15 that “[m]ost prescribers are concerned about [opioid] abuse” and that “side effects and  
16 addiction are concerns.” See id. McKinsey worked with Purdue to “counter emotional  
17 messages from mothers with teenagers that overdosed in [sic] OxyContin.” See id. ¶ 182.

18  
19  
20           that “McKinsey did not create content aimed at an audience that another party published;  
21 McKinsey provided advice to clients, who then chose to act on the advice or not.” See Reply at 7.  
22 But Plaintiffs allege that McKinsey did “create content”—sales and marketing strategies—aimed  
23 at the Subject states that it later helped Purdue implement. See, e.g., Compl. ¶¶ 204–09, 214, 254;  
24 Humphreville Decl. Ex. D at 2–3, Ex. A at 50–51. Furthermore, McKinsey states that Lions Gate  
25 was appropriately distinguished by New Venture Holdings, L.L.C. v. DeVito Verdi, Inc., 376 F.  
26 Supp. 3d 683 (E.D. Va. 2019). See Reply at 7. But New Venture is markedly differently from  
27 this case, and it cited Lions Gate with approval. See New Venture, 376 F. Supp. 3d at 697.

28           <sup>9</sup> McKinsey also argues that “merely foreseeing consequences in a forum state is not enough to  
confer jurisdiction over a defendant.” See Mot. at 19. It cites to Ninth Circuit cases that hold that  
a defendant does not purposefully direct its activities at the forum when it places a product into the  
stream of commerce and is aware that product will eventually end up in the forum. See, e.g.,  
Holland Am. Line Inc. v. Wartsila N. Am., Inc., 485 F.3d 450, 459 (9th Cir. 2007). It argues that  
it is even further removed from such a defendant because it is not a manufacturer or seller of  
products. See Mot. at 20; Reply at 7–8. But unlike a manufacturer or distributor that places its  
product into the stream of commerce, McKinsey, for all of the reasons discussed previously,  
helped direct where and how Purdue would market and sell OxyContin. See, e.g., Compl. ¶¶ 238–  
39, 242, 244; Humphreville Decl. Ex. A at 50.

1 And McKinsey “developed a method to identify geographic hot spots of OxyContin abuse  
2 and diversion.” See id. ¶ 462. These allegations plausibly establish that McKinsey knew  
3 that increasing opioid sales would cause harm in the subject states.

4 **B. Nexus Between McKinsey’s Contacts and the Litigation**

5 Under the second prong of specific jurisdiction, a plaintiff’s claims must “arise out  
6 of or relate to the defendant’s contacts” with the forum state. Ford Motor Co., 141 S. Ct.  
7 at 1025 (quoting Bristol-Myers, 137 S. Ct. at 1780). Claims “arise out of” the defendant’s  
8 contacts with the forum state when there is a causal connection between the contacts and  
9 the claims. See id. at 1026. Claims that do not “arise out of” the defendant’s contacts may  
10 nonetheless “relate to” those contacts. See id. at 1026–28. While there is no precise test  
11 for determining whether a plaintiff’s claims “relate to” a defendants’ contacts, the U.S.  
12 Supreme Court has held that “some relationships will support jurisdiction without a causal  
13 showing.” See id. at 1027 (explaining that when a company serves the market of a forum  
14 state, and the company’s product causes an injury in the forum state, the forum state’s  
15 courts have jurisdiction over the company even if the specific product that caused the  
16 injury was not designed, made, or sold by the company in the forum state). At bottom,  
17 “there must be an affiliation between the forum and the underlying controversy,  
18 principally, an activity or an occurrence that took place in the forum State.” Id. at 1025  
19 (quoting Bristol Meyers, 137 S. Ct. at 1780) (cleaned up).

20 Plaintiffs’ claims “arise out of or relate to” McKinsey’s contacts in the Subject  
21 states. See Ford Motor Co., 141 S. Ct. at 1025. Plaintiffs allege that McKinsey’s  
22 actions—for example, the creation of prescriber target lists, analysis of geographic regions,  
23 and influence on Purdue’s sales strategies—contributed to the influx of opioids in the  
24 subject states and the myriad harms that resulted therefrom. See Compl. ¶¶ 533–43. Thus,  
25 Plaintiffs’ claims “arise out of or relate to” McKinsey’s contacts in the subject states. See  
26 Ford Motor Co., 141 S. Ct. at 1025.

27 **C. Reasonableness**

28 The exercise of jurisdiction over the defendant must also be “reasonable.”

1 Schwarzenegger, 374 F.3d at 802. McKinsey bears the burden of showing that an exercise  
 2 of jurisdiction would be unreasonable. See Ayla, 11 F.4th at 983. To carry its burden,  
 3 McKinsey must “present a ‘compelling case’ that the exercise of jurisdiction would be  
 4 unreasonable and therefore violate due process.” Id. (quoting Boschetto v. Hansing, 539  
 5 F.3d 1011, 1016 (9th Cir. 2008)). Courts use seven factors to evaluate whether jurisdiction  
 6 would be reasonable:

7 “(1) the extent of the defendant’s purposeful interjection into the forum state’s  
 8 affairs; (2) the burden on the defendant of defending in the forum; (3) the  
 9 extent of conflict with the sovereignty of the defendant’s state; (4) the forum  
 10 state’s interest in adjudicating the dispute; (5) the most efficient judicial  
 resolution of the controversy; (6) the importance of the forum to the plaintiff’s  
 interest in convenient and effective relief; and (7) the existence of an  
 alternative forum.”

11 See id. at 984 (quoting Freestream Aircraft (Berm.) Ltd. v. Aero L. Grp., 905 F.3d 597,  
 12 607 (9th Cir. 2018)).

### 13 1. Extent of Purposeful Interjection

14 Under the “purposeful interjection” factor, courts examine how extensive the  
 15 defendant’s contacts are in the forum state. See Harris Rutsky & Co. Ins. Servs., Inc. v.  
 16 Bell & Clements Ltd., 328 F.3d 1122, 1132 (9th Cir. 2003). This factor weighs in favor of  
 17 defendants when the defendant’s contacts with the forum state are attenuated. See id.

18 Here, McKinsey argues there is no purposeful interjection because it did not  
 19 purposefully direct its conduct at the Subject states, and even if it did, such contacts are  
 20 “attenuated.” See Mot. at 26; Reply at 16. Plaintiffs argue this factor weighs in their favor  
 21 because McKinsey purposefully directed its actions at the Subject states. See Opp. at 19.

22 McKinsey performed extensive data analysis on forum-state cities, regions, and  
 23 prescribers. Indeed, it analyzed data on over 30,000 prescribers across the subject states  
 24 and hundreds of cities. See Humphreville Decl. Ex. A at 50, Ex. B, Ex. F. This analysis  
 25 directly influenced how and where Purdue marketed OxyContin. See id. Ex. D at 2–3;  
 26 Compl. ¶¶ 204–07. McKinsey consultant also physically entered several of the subject  
 27 states. See id. Ex. J; Opp. at 7. In light of the extent to which McKinsey targeted  
 28 individuals, cities, and regions in the subject states, Plaintiffs met their burden in proving

1 purposeful direction, and this factor cuts in favor of Plaintiffs. See Cont’l Appliances, Inc.  
 2 v. Thomas, No. C-12-1310-EMC, 2012 WL 3646887, at \*8 (N.D. Cal. Aug. 23, 2012)  
 3 (quotations and citations omitted).

## 4 **2. Burden of the Defendant**

5 McKinsey contends “it would be unreasonably burdensome” for it to try cases in  
 6 several different jurisdictions. See Mot. at 26; Reply at 16–17. But three factors lessen  
 7 McKinsey’s burden. First, pre-trial proceedings are centralized in the Northern District.  
 8 Second, McKinsey is a global company with offices across the United States. Compl. ¶  
 9 29. Third, courts increasingly recognize that “modern advances in communications and  
 10 transportation have significantly reduced the burden of litigating in another forum.” See,  
 11 e.g., Freestream, 905 F.3d at 608 (quoting Sinatra v. Nat’l Enquirer, Inc., 854 F.2d 1191,  
 12 1199 (9th Cir. 1988)). In light of these considerations, McKinsey fails to demonstrate that  
 13 the burden of defending cases in multiple jurisdictions would be unreasonable.

## 14 **3. Conflict with Sovereignty of the Defendant’s State**

15 Both parties agree that this factor is neutral. See Mot. at 26; Opp. at 20; Reply at  
 16 17.

## 17 **4. Forum State’s Interest**

18 “The forum state has a substantial interest in adjudicating the dispute of one of its  
 19 residents who alleged injury due to the tortious conduct of another.” CE Distrib., LLC v.  
 20 New Sensor Corp., 380 F.3d 1107, 1112 (9th Cir. 2004). Here, Plaintiffs have alleged that  
 21 McKinsey has tortiously injured Subject states residents and entities. See, e.g., Compl. ¶¶  
 22 533–41. Thus, the Subject states have “a substantial interest in adjudicating the dispute.”  
 23 See CE Distrib., 380 F.3d at 1112. Accordingly, this factor heavily favors Plaintiffs.

## 24 **5. Most Efficient Judicial Resolution**

25 This factor determines the most efficient judicial resolution based on the location of  
 26 evidence and witnesses. See Freestream, 905 F.3d at 609. But this factor “is no longer  
 27 weighed heavily given the modern advances in communication and transportation.” Harris  
 28



1 Rutsky, 328 F.3d at 1133 (quoting Panavision Int'l v. Toeppen, 141 F.3d 1316, 1323 (9th  
2 Cir. 1998)). McKinsey argues that the only evidence located in the subject states belongs  
3 to Plaintiffs. See Mot. at 27. Plaintiffs counter that evidence related to Plaintiffs' injuries  
4 is in the Subject states. See Opp. at 27. Taking these competing considerations into  
5 account, this factor does not weigh strongly in favor of either party.

#### 6 **6. Plaintiff's Interest**

7 The Ninth Circuit gives little weight to a plaintiff's interest in the forum. See, e.g.,  
8 Freestream, 905 F.3d at 609. Walden further reinforces that the focus in asserting specific  
9 jurisdiction is on "the defendant, the forum, and the litigation." See 571 U.S. at 284  
10 (quoting Keeton, 465 U.S. at 775). Thus, this factor does not favor either party.

#### 11 **7. Existence of an Alternative Forum**

12 Alternative forums exist because McKinsey is subject to general jurisdiction in New  
13 York and Delaware. See Mot. at 28. But "whether another reasonable forum exists  
14 becomes an issue only when the forum state is shown to be unreasonable." Ayla, 11 F.4th  
15 at 984 (quoting CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066 (9th Cir. 2011))  
16 (cleaned up). McKinsey has not made that showing here.

17 \*\*\*

18 On balance, McKinsey has fallen far short of making a "compelling case" that  
19 exercise of jurisdiction in the Subject states would be unreasonable. See Ayla, 11 F.4th at  
20 983 (quoting Boschetto, 539 F.3d at 1016).

#### 21 **IV. CONCLUSION**

22 For the foregoing reasons, the Court denies McKinsey's motion to dismiss based on  
23 lack of personal jurisdiction.<sup>10</sup>

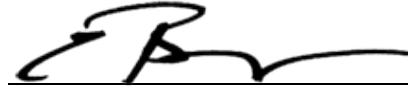
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28 <sup>10</sup> Because the Court finds that there is specific jurisdiction over McKinsey, it does not address Plaintiffs' arguments regarding a conspiracy-based theory of personal jurisdiction, jurisdictional discovery, and deferring ruling on McKinsey's motion until trial. See Opp. at 21–26.

United States District Court  
Northern District of California

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**IT IS SO ORDERED.**

Dated: October 27, 2022



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CHARLES R. BREYER  
United States District Judge