[*Submitting Counsel on Signature Page*]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC. NATIONAL PRESCRIPTION OPIATE CONSULTANT LITIGATION This Document Relates to: ALL THIRD PARTY PAYOR ACTIONS	Case No. 21-md-02996-CRB (SK) **<u>CLASS ACTION</u>** **THIRD PARTY PAYOR PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES AND EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: July 26, 2024 Time: 10:00 a.m. Courtroom: 6, 17th Floor Judge: The Honorable Charles R. Breyer

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that, on July 26, 2024, at 10:00 a.m., in Courtroom 6 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, the undersigned Interim Settlement Class Counsel for Third-Party Payors will move for an order and judgment granting final approval of the Class Action Settlement under Federal Rule of Civil Procedure 23(e), appointing Settlement Class Counsel under Federal Rule of Civil Procedure 23(g)(1), and granting their motion for attorneys' fees, costs, and service awards under Federal Rule of Civil Procedure 23(h).

This Motion is supported by the following memorandum of points and authorities; the Declaration of Paul J. Geller, Interim Settlement Class Counsel; and the Declaration of Eric J. Miller, Senior Vice President of A.B. Data, Ltd.'s Class Action Administration Company.

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Third-Party Payor (TPP) Plaintiffs allege that, as a result of McKinsey's conduct, TPPs paid for prescription opioids rather than safer, non-addictive, and lower-cost prescription drugs (including over-the-counter pain relievers) that would have been used otherwise, and further paid for opioid addiction-related treatment that followed. This Settlement provides a non-reversionary fund of $78 million, inclusive of class counsel's attorneys' fees, expenses, and service awards to the Settlement Class Representatives, to resolve TPP Plaintiffs' claims. The Settlement will help to mitigate the harm that TPPs have suffered as a result of McKinsey's alleged role in the nationwide opioid epidemic. TPP Class members that choose to accept the Settlement terms will receive their portion of the Settlement Amount pursuant to the Plan of Allocation described in the Second Expert Report of Professor Meredith Rosenthal (ECF No. 699-4).

This Settlement is an excellent result for the TPP Class and marks the first settlement to TPPs in opioid-related multidistrict litigation. The Court should approve the Settlement, appoint Settlement Class Counsel, certify the Class for settlement purposes, and award the requested fees, expenses, and service awards.

II. SETTLEMENT NOTICE AND ADMINISTRATION TO DATE

On April 8, 2024, the Court granted TPP Plaintiffs' motion for preliminary approval of the Settlement and authorized A.B. Data, Ltd. to commence notice to Class members (ECF No. 702). In the following week, approximately 42,000 TPP Class members were notified of the terms of the Settlement by several means: (1) directly, through a hard copy Postcard Notice mailed to approximately 42,000 TPPs and through emails sent to approximately 1,500 TPPs for whom email addresses were available; (2) through supplemental paid media in the form of customized digital banner ads on select industry-related websites; (3) through an earned-media news release; and (4) and through the Long-Form Notice, published on the national McKinsey-TPP Settlement website along with other case documents: www.McKinseyTPPSettlement.com. *See* Geller Decl. ¶ 9; Miller Decl. ¶¶ 4-9. This notice plan was rolled out on schedule, and mailed notice was completed on April 15, 2024. *Id.* Initial responses from TPPs have been positive and encouraging. *See* Miller Decl. ¶ 10.

III. ARGUMENT

A. The Court Should Certify the TPP Settlement Class.

In granting preliminary approval and directing notice to the Class, the Court concluded that the TPP Class and its Representatives likely meet all relevant requirements of Rules 23(a) and 23(b)(3). ECF No. 702 ¶ 7.[1] TPP Plaintiffs analyzed these requirements in their Motion for Preliminary Approval (ECF No. 645) and briefly summarize them again below.

1. The Settlement Class meets the requirements of Rule 23(a).

Rule 23(a) sets out four "class-qualifying criteria" for a class action: numerosity, commonality, typicality, and adequacy. *Amchem Prods. v. Windsor*, 521 U.S. 591, 597 (1997). The TPP Settlement Class satisfies each.

Numerosity: The numerosity requirement is satisfied where: "the class is so numerous that joinder of all numbers is impracticable." Fed. R. Civ. P. 23(a)(1). In practice, numerosity generally is met when a class comprises 40 or more members. *See, e.g., Akaosugi v. Benihana Nat'l Corp.*, 282 F.R.D. 241, 253 (N.D. Cal. 2012). Here, the Class includes over 40,000 TPPs across the country, for which joinder is "clearly impractical." *Palmer v. Stassinos*, 233 F.R.D. 546, 549 (N.D. Cal. 2006). Numerosity is satisfied.

Commonality: Commonality requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). TPP Class members' claims are founded in a core set of common questions related to McKinsey's alleged collaboration with its opioid manufacturer clients and whether/how such conduct caused or contributed to the harm alleged by TPP Plaintiffs. Because McKinsey's knowledge, duties, and actions were the same toward all TPP Class members, the answers to these questions would be the same across Class members, and commonality is met.

Typicality: Typicality requires that class representatives' claims or defenses be "typical of the claims or defenses of the class." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th

[1] Based on context, the reference to (b)(2) is a scrivener's error meant to refer to (b)(3).

Cir. 1992). The four named TPP Plaintiffs (which are four of the five Settlement Class Representatives) assert the same claims, which arise from McKinsey's conduct, and rely on the same legal theories to allege the same types of injuries as suffered by other TPP Class members—primarily, that McKinsey's conduct led to TPPs' increased payments for prescription opioids and treatment for opioid-related addiction. The fifth Class Representative is also a TPP Class member relying on the same legal theories and alleging the same types of injuries arising from McKinsey's conduct. Thus, typicality is met.

<u>Adequacy</u>: "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) (discussing Rule 23(a)(4)). First, the five Settlement Class Representatives—District Council 37 Benefits Fund Trust; Cleveland Bakers and Teamsters Health & Welfare Fund; BCTGM Atlantic Health & Welfare Fund; International Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Trust Fund; and Teamsters Local 404 Health Services and Insurance Plan—have no interests antagonistic to the Class and will continue to protect TPP Class Members' interests in overseeing administration of the Settlement and through any appeals. *See Clemens v. Hair Club for Men, LLC*, No. 15-cv-01431-WHA, 2016 WL 1461944, at *2-3 (N.D. Cal. Apr. 14, 2016). In addition, Interim Settlement Class Counsel, who collectively represent four of the five Settlement Class Representatives, have undertaken the effort and expense of this MDL, and thereby demonstrated their willingness to devote the necessary resources to reach a successful outcome. They have and will continue to vigorously prosecute this action. *See* Geller Decl. ¶¶ 12-13.

2. <u>The Settlement Class meets the requirements of Rule 23(b)(3).</u>

<u>Predominance</u>: Rule 23(b)(3)'s "predominance" inquiry required by Rule 23(b)(3) "asks whether the common, aggregation-enabling issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (internal quotation marks and citation omitted). Predominance is satisfied here. McKinsey's liability turns on whether and how TPP Class

members were financially harmed when they spent more money on prescription opioids and opioid-related addiction treatment than they would have absent McKinsey's conduct. The finding as to McKinsey's liability for one TPP Class member will be the answer as to all TPP Class members. Accordingly, common issues of law and fact predominate.

Superiority: Rule 23(b)(3) also requires that a class action be "superior" to other available methods for "fairly and efficiently" adjudicating a controversy. Fed. R. Civ. P. 23(b)(3). The "matters pertinent to" this finding include: (A) class members' possible "interests in individually controlling the prosecution" of their claims through "separate actions"; (B) "the extent and nature" of any rival or overlapping litigation they have filed; (C) the "desirability or undesirability" of "concentrating" litigation in this forum; and (D) any "likely difficulties" in "managing" a class action. *Id.* at 23(b)(3)(A)-(D). These factors are satisfied here. First, "from either a judicial or litigant viewpoint, there is no advantage in individual members controlling the prosecution of separate actions. There would be less litigation or settlement leverage, significantly reduced resources and no greater prospect for recovery." *Hanlon*, 150 F.3d at 1023. The aggregation of TPP Class members' claims saves time, effort, and expense, and promotes uniformity without sacrificing fairness. Second, TPP Class members' responses so far suggest strong support for the Settlement, and there is no rival or overlapping litigation at issue. Third, the Judicial Panel on Multidistrict Litigation has already consolidated actions in this forum. And, lastly, the fourth of these factors is not relevant here because, at settlement, "the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. All four factors of the superiority analysis thus favor TPPs' Class-wide adjudication.

B. The Settlement Meets the Requirements of Rule 23(e)(2).

1. Plaintiffs and Class Counsel have adequately represented the Class.

The Settlement between McKinsey and TPPs was reached in the context of years of litigation with numerous other defendants in the opioid industry, defendants against which Interim Settlement Class Counsel have now litigated (and will continue to litigate) for years. Interim Settlement Class Counsel have provided more than adequate representation in that time. *See* Fed. R. Civ. P. 23(e)(2)(A). By the time of this case, Interim Settlement Class Counsel had received millions of pages of documents, terabytes of data, hundreds of depositions, expert reports, and testimony presented at several trials in the *National Opiate Prescription Litigation*, MDL No. 2804. McKinsey also produced or made available additional hundreds of thousands of documents, including those previously produced to the State Attorneys General in connection with that settlement. As a result, Interim Settlement Class Counsel were able to make informed evaluations of their claims as well as the adequacy of McKinsey's settlement offers. *See also Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239-40 (9th Cir. 1998) (noting that "the district court and plaintiffs may rely on discovery developed in prior or related proceedings" for settlement approval (citations omitted)).

The adequacy of Interim Settlement Class Counsel's representation is further evident from the precedent set by this result: the first opioid-related settlement for TPP plaintiffs in the country. And the five Settlement Class Representatives have also demonstrated their adequacy throughout their participation in this case, from initiating the discovery process to helping to develop the TPP Class notice program. *See* Geller Decl. ¶ 28.

2. <u>The Settlement negotiations satisfy Rule 23(e)(2)(B).</u>

Settlement negotiations were conducted at arm's length with assistance from experienced, neutral, and nationally recognized mediators. Specifically, the TPP settlement was negotiated in live and remote sessions with the ongoing participation and assistance of preeminent mediators Eric Green and Fouad Kurdi, who have unparalleled experience and expertise in the resolution of Opioids-related litigation in both this MDL 2996 and the related Opioids MDL 2804, including the post-liability trial phase settlement of the City and County of San Francisco's claims, and national settlements with the major pharmacy chain defendants and several manufacturer defendants. *See* Geller Decl. ¶ 6.

These mediators' involvement provides additional functional and structural assurances that negotiations were serious and non-collusive, in accordance with Rule 23(e)(2)(B).[2] In

---

[2] *See also* Fed. R. Civ. P. 23(e)(2)(B) advisory committee's note to 2009 amendment ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests.");

addition, the Settlement Amount is non-reversionary, and the Settlement Agreement does not propose to give TPP Class Counsel a disproportionate share of the Settlement Fund.

3. <u>The relief is adequate pursuant to the Rule 23(e)(2)(C) factors.</u>

The $78 million Settlement Amount is substantial in light of "the costs, risks, and delay of trial and appeal." Fed. R. Civ. P. 23(e)(2)(C)(i). Those risks were serious and included potentially adverse rulings (by this Court or on appeal) concerning the scope of McKinsey's duties to third parties and causation, and the delays attendant to continuing to litigate. Moreover, the Plan of Allocation developed by Professor Meredith Rosenthal (ECF No. 699-4) is central to the Settlement and will distribute relief effectively and equitably. *See id.* at 23(e)(2)(C)(ii). This plan was informed by Dr. Rosenthal's experience in TPP litigation and in opioids litigation specifically, and by input from TPPs themselves.

4. <u>Counsel's request for attorneys' fees is reasonable.</u>

Interim Settlement Class Counsel are requesting an attorney's fee award of 20% of the Settlement Amount, including expenses, and net of notice costs, expert costs, and Settlement Class Representative service awards. This amount is below the range regularly approved in common fund settlements in this Circuit. *See, e.g.*, *Hernandez v. Dutton Ranch Corp.*, No. 19-cv-00817-EMC, 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) ("District courts within this circuit . . . routinely award attorneys' fees that are one-third of the total settlement fund. Such awards are routinely upheld by the Ninth Circuit" (collecting cases) (citations omitted)). An attorneys' fees award of 20% is not disproportionate and should not bar approval of this Settlement. Counsel's fee request satisfies Rule 23(e)(2)(C)(iii).

C. <u>The Ninth Circuit's Prescribed Factors Support Approval of the Settlement.</u>

The Ninth Circuit advises that courts "generally must weigh" eight factors when considering a settlement: "(1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status

---

G.F. v. Contra Costa County, No. 13-cv-03667-MEJ, 2015 WL 4606078, at *13 (N.D. Cal. July 30, 2015) ("[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." (internal quotation marks and citation omitted)).

throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement." *In re Bluetooth Headset Prods. Liab. Litig*., 654 F.3d 935, 946 (9th Cir. 2011). Five of these factors overlap with the revised Rule 23(e) and have already been discussed, and the seventh factor is inapplicable, as this Settlement does not involve governmental participants. With respect to the eighth factor, TPP Class members' initial reactions have been positive. While the opt-out and objection deadline is June 1, 2024, which has not yet passed, the reaction of TPP Class members so far suggests their support for the Settlement. *See* Miller Decl. ¶ 10. This is particularly so in light of the revisions to the Plan of Allocation and objecting counsels' subsequent withdrawal of their prior objections (ECF No. 700). After June 1, 2024, and before the July 26, 2024 Final Approval Hearing, Interim Settlement Class Counsel will provide further information to the Court on opt-outs and objections.[3]

D. <u>The Court Should Appoint Settlement Class Counsel Under Rule 23(g)(1).</u>

The Court should confirm the three Interim Settlement Class Counsel as Settlement Class Counsel under Rule 23(g)(1). Paul Geller represents BCTGM Atlantic Health & Welfare Fund (a Settlement Class Representative), and his firm is also on the Plaintiffs' Steering Committee. Ms. Cabraser is Lead Counsel in this litigation, and her firm represents Settlement Class Representative District Council 37 Benefits Fund Trust. Mr. Dugan has served on the Plaintiffs' Steering Committee for TPPs, and his firm represents Settlement Class Representatives International Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Trust Fund, and Teamsters Local 404 Health Services and Insurance Plan. *See* Geller Decl. ¶ 12.

E. <u>The Court Should Award the Requested Attorneys' Fees and Expenses.</u>

Courts in this Circuit "typically consider" the following factors in awarding attorneys' fees and expenses at the conclusion of a class action: "(1) the results achieved for the class; (2) the

[3] TPP Class members will have until December 15, 2024 to submit Claim forms. This date was amended from a prior date of September 18, 2024, in order to provide more time for TPPs to gather the necessary claims data. TPP Counsel will submit to the Court a further Joint Status Report with an update on Claims after this date.

risks of the litigation; (3) whether there are benefits to the class beyond the immediate generation of a cash fund; (4) whether the percentage rate is above or below the market rate; (5) the contingent nature of the representation and the opportunity cost of bringing the suit; (6) reactions from the class; and (7) a lodestar cross-check." *In re Volkswagen Clean Diesel Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 15-md-02672-CRB, 2022 WL 17730381, at *9 (N.D. Cal. Nov. 9, 2022) (citation omitted), *appeal dismissed*, *In re Volkswagen Clean Diesel Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 22-16898, 2024 WL 1635593 (9th Cir. Apr. 12, 2024). Application of these factors supports granting TPP Class Counsel's request for attorneys' fees and costs, together, of 20% of the Settlement Fund.

First, the results achieved for the class here are precedent-setting, as this is the first TPP settlement in the nationwide civil opioids litigation. Second, this litigation involved a number of considerable risks—particularly given the uncertain scope of McKinsey's duty owed to TPPs. Third, counsel's requested fee percentage is below the Night Circuit benchmark of 25% of a common fund. *See Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000). TPP counsel request a total amount of approximately $15.5 million, which includes $15.1 million in attorneys' fees and $400,000 as reimbursement for Class Counsel's combined related expenses, inclusive of the common benefit assessment. Geller Decl. ¶¶ 15, 23. This amount constitutes 20% of the Settlement Amount net of an estimated $350,000 for costs of A.B. Data's settlement administration, estimated expert costs for Professor Meredith Rosenthal of $125,000,[4] and Settlement Class Representatives' combined service awards of $50,000. *Id.* These fees and expenses account for TPP Class members' common benefit obligations under PTO No. 9 (ECF No. 567), including payment under pre-existing contingent fee contracts of counsel specifically authorized to represent individual class members in the claims process, net of the PTO 9 common benefit assessment. *Id.* Thus, the requested Rule 23(h) fees and expenses are all that TPP Class members will be responsible for paying.

---

[4] These are conservative estimates. TPP Class Counsel will submit final figures to the Court in connection with further briefing related to Final Approval.

Fourth, a lodestar cross-check confirms the reasonableness of counsel's fee request. TPP counsel's lodestar fees are approximately $22.46 million. Geller Decl. ¶ 18. Counsel's requested attorneys' fee of $15.1 million thus currently reflects a negative multiplier of 0.67. *Id.* ¶ 25. This multiplier is below the 1.0-4.0 range that is "presumptively acceptable" in this Circuit. *See Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014). Moreover, as Interim Settlement Class Counsel continue to facilitate the notice program and claims process, their lodestar will increase, and the multiplier will further decrease. *See* Geller Decl. ¶ 25.

F. The Court Should Award the Requested Service Awards.

The requested service awards of $10,000 for each of the five TPP Settlement Class Representatives are warranted for these TPPs' time, efforts, and leadership in this litigation. From the $78 million Settlement Amount, a $10,000 service award for each of the five TPPs is a modest recognition for their commitment to the success of this litigation.

IV. CONCLUSION

For all the reasons stated above, TPP Plaintiffs ask the Court to grant final approval to the TPP Class Settlement, including their requested attorneys' fees, expenses, and service awards.

Dated: April 22, 2024

Respectfully submitted,

By: */s/ Paul J. Geller*
Paul J. Geller
Mark J. Dearman
ROBBINS GELLER RUDMAN & DOWD LLP
225 NE Mizner Boulevard, Suite 720
Boca Raton, FL 33432
Telephone: (561) 750 3000
pgeller@rgrdlaw.com
mdearman@rgrdlaw.com

Interim Settlement Class Counsel, Counsel for BCTGM Atlantic Health & Welfare Fund, and Plaintiffs' Steering Committee Member

By: */s/ Elizabeth J. Cabraser*
Elizabeth J. Cabraser

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
ecabraser@lchb.com

Interim Settlement Class Counsel, Counsel for District Council 37 Benefits Fund Trust, and Plaintiffs' Lead Counsel

By: */s/ James R. Dugan*
James R. Dugan, II
DUGAN LAW FIRM, APLC
One Canal Place, Suite 1000
365 Canal Street
New Orleans, LA 70130
Telephone: (504) 648 0180
jdugan@dugan-lawfirm.com

Interim Settlement Class Counsel, Counsel for International Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Trust Fund, Counsel for Teamsters Local 404 Health Services and Insurance Plan, and Plaintiffs' Steering Committee Member

ROBBINS GELLER RUDMAN & DOWD LLP
Paul J. Geller (*pro hac vice*)
225 NE Mizner Boulevard
Suite 720
Boca Raton, FL 33432
(561) 750-3000
pgeller@rgrdlaw.com

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC. NATIONAL PRESCRIPTION OPIATE CONSULTANT LITIGATION This Document Relates to: ALL THIRD PARTY PAYOR ACTIONS	Case No. 21-md-02996-CRB (SK) **DECLARATION OF PAUL J. GELLER IN SUPPORT OF THIRD PARTY PAYOR PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES AND EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS**

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

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

2. I am Interim Settlement Class Counsel in this action, along with Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein LLP and James R. Dugan, II of the Dugan Law Firm APLC. My firm represents Third Party Payor (TPP) Plaintiff BCTGM Atlantic Health & Welfare Fund, a Settlement Class Representative.

3. I submit this Declaration in support of TPP Plaintiffs' Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Expenses, and Class Representative Service Awards (the "Motion").

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

II. Settlement History and Notice Plan

5. Along with TPP Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (ECF No. 645), I previously filed a declaration containing information about the litigation history and notice program (ECF No. 645-1), as well as a supplemental declaration containing additional information about the Settlement Plan of Allocation and notice program (ECF No. 699). Familiarity with those declarations is presumed herein.

6. The TPP Settlement was the product of extensive arm's-length negotiations. The Settlement was negotiated in live and remote sessions with the ongoing participation and assistance of preeminent mediators Eric Green and Fouad Kurdi, who have unparalleled experience and expertise in the resolution of opioid litigation in both this MDL 2996 and the related Opioids MDL 2804, including the post-liability trial phase settlement of the City and County of San Francisco's claims, and national settlements with the major pharmacy chain defendants and several manufacturer defendants.

7. On April 8, 2024, the Court granted preliminary approval to TPP Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order," ECF No. 702). The Court appointed myself, Elizabeth Cabraser, and James Dugan as Interim Settlement Class Counsel. The Court also approved A.B. Data, Ltd. as Notice and Claims Administrator for this Settlement.

III. Progress on Court-Approved Notice Program

8. As stated in the attached declaration from A.B. Data representative Eric J. Miller (**Exhibit A**), A.B. Data timely completed the Court-approved notice program by the notice date of April 15, 2024:

9. Specifically, A.B. Data reports that it implemented the notice program as follows:

a. A.B. Data mailed the Postcard Notice via USPS First-Class Mail to 42,539 entities in A.B. Data's TPP Database, which entities include insurance companies, self-insured entities, third-party administrators, and other entities that represent potential TPP Class Members. In addition, A.B. Data sent 1,553 emails to TPPs and their representatives where email addresses were available.

b. A.B. Data caused digital banner ads to appear on certain industry websites and caused the notice, formatted as a news release, to be disseminated via PR Newswire.

c. A.B. Data established the Settlement website (www.McKinseyTPPSettlement.com) to assist potential TPP Class Members. The website contains general information regarding this Action and the proposed Settlement and includes links to key Court-filed documents. A.B. Data also established a case-specific, toll-free telephone number with an interactive voice response system and live operators to accommodate potential TPP Class Members with questions about this Action.

10. In my opinion, the Court-approved notice program, as implemented by A.B. Data, satisfies due process and gives ample opportunity for TPPs to decide whether to opt out or object to the Settlement by the June 1, 2024 deadline.

11. Interim Settlement Class Counsel will oversee the completion of the notice program, keep the Settlement website current, and report to the Court on completion of the notice program prior to the Final Approval hearing.

IV. <u>Interim Settlement Class Counsel</u>

12. Throughout this litigation, the vast majority of the work to represent TPP plaintiffs in this case has been performed by three firms: my firm, Lieff Cabraser Heimann & Bernstein LLP, and the Dugan Law Firm APLC. Elizabeth Cabraser was appointed Plaintiffs' Lead Counsel, and James Dugan and my partner Aelish Baig were appointed to the Plaintiffs' Steering Committee (PSC) at the outset of this MDL (ECF No. 211). Ms. Cabraser, Mr. Dugan, and I were appointed to serve as Interim Settlement Class Counsel for TPPs (Class Counsel) on April 8, 2024 (ECF No. 702).

13. All three Class Counsel have significant experience in TPP litigation, including in

opioid litigation, and we have undertaken substantial work to prosecute opioid cases against many defendant groups across both MDL 2804 and this MDL. We have collectively undertaken an enormous amount of work, effort, and expense in this MDL on behalf of the TPP Settlement Class, and we will continue to do so through administration of the Settlement and any appeals.

V. Common Benefit and Hours, Lodestar, and Expenses

14. For this case, Class Counsel worked entirely on contingency and advanced both their time and the required expenses. Class Counsel devoted thousands of hours and advanced whatever expenses were necessary to investigate and successfully resolve this case, all with no guarantee of reimbursement. In so doing, Class Counsel declined opportunities to work on other cases in order to devote the necessary time, resources, and energy to this case.

15. Class Counsel seek an award of $15.5 million of attorneys' fees and expenses under Federal Rule of Procedure 23(h), inclusive of the common benefit assessment under PTO 9. This amount constitutes 20% of the $78 million Settlement Amount net of costs for notice, administration, and implementation of the Settlement, estimated at approximately $350,000; expert costs, estimated at approximately $125,000; and combined Settlement Class Representative service awards of $50,000. The fees and expenses amount accounts for TPP class members' common benefit obligations under PTO 9, including payment under pre-existing contingent fee contracts of counsel specifically authorized to represent individual class members in the claims process, net of the PTO 9 common benefit assessment.

16. Pursuant to PTO 3 (ECF No. 215), each PSC firm, as well as other Participating Counsel authorized by Court-appointed Lead Counsel Elizabeth J. Cabraser to perform common benefit work, submitted monthly time and expense reports to Lead Counsel. Attorneys and staff working at her direction and under her supervision collected these common benefit submissions and have maintained a database of all submitted time and expenses.

17. The information in this Declaration regarding Class Counsel's time and expenses is taken from time and expense reports and supporting documentation prepared and/or maintained by the firms in the ordinary course of business.

18. As of March 31, 2024, the approximate lodestar for Class Counsel (and counsel who performed duly authorized work specifically for the TPPs in connection with law, briefing, and settlement) is $22.46 million, having devoted over 35,775 hours to litigating this Action. The blended average billing rate for the work described above is approximately $630 per hour.

19. These hourly rates are consistent with hourly rates submitted by Class Counsel to state and federal courts in other opioid litigation. The rates are set based on periodic analysis of rates charged by firms performing comparable work both on the plaintiff and defense sides.

20. The 35,775 hours of work devoted to litigating this Action include work completed for the common benefit of all Plaintiffs within the MDL as well as specifically the TPP Plaintiffs. The work includes drafting Master Complaints, propounding discovery requests on Defendants, negotiating the scope and parameters of discovery, reviewing hundreds of thousands of documents produced by Defendants, advocating in multiple discovery-related disputes before the Magistrate Judge, and briefing two separate motions to dismiss, among other tasks.

21. These amounts include all time vetted by Lead Counsel from the date of appointment through March 31, 2024, the latest monthly reporting period. I believe the time reflected in the lodestar calculation and the expenses for which payment is sought herein are reasonable and were necessary for the effective and efficient prosecution and resolution of this Action.

22. These figures do not include time spent since March 31, 2024; certain pre-appointment time deemed compensable by the Court; or time attributed solely to work on other case tracks, such as the NAS, School Districts, Subdivisions, and Tribes case tracks.

23. Class Counsel's combined related expenses to date are also under continued review and, as of March 31, 2024, total approximately $400,000. Such expenses were necessarily incurred in this Action and are routinely charged to clients billed by the hour. The majority of expenses went to document management services required to host the documents produced in discovery, independent experts who were necessary to prosecute the case and effectuate a substantial settlement, and the costs of mediation. All expenses were reasonable and necessary for the prosecution of this Action.

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

25. Based on the above numbers, a percentage fee award equal to 20% of the Settlement Amount would represent a negative multiplier of 0.67 on Class Counsel's approximate lodestar. Class Counsel will continue to incur time in seeking Settlement approval and on implementation efforts should the Settlement be approved. Class Counsel will continue to review their respective records and submit them to Lead Counsel for review, and will provide additional information regarding time and expenses and rationale for their request in their Reply in support the Motion.

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

VI. <u>Settlement Class Representative Service Awards</u>

27. The five Settlement Class Representatives—District Council 37 Benefits Fund Trust; Cleveland Bakers and Teamsters Health & Welfare Fund; BCTGM Atlantic Health & Welfare Fund; International Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Trust Fund; and Teamsters Local 404 Health Services and Insurance Plan—are plaintiffs in underlying actions centralized in this MDL, and four of them (all but BCTGM) are Named Plaintiffs in the Consolidated Class Action Complaint (TPPs) (ECF No. 299).

28. The Settlement Class Representatives are aligned with the Class in their interest in proving that McKinsey's collaboration with other opioid industry participants harmed TPPs. The Settlement Class Representatives have demonstrated their adequacy as representatives throughout their participation in this case, from initiating the discovery process to helping to develop the TPP Class notice program. The Settlement Class Representatives understand their duties, have agreed to consider the interests of absent Class members, have reviewed and uniformly endorsed the

terms of the Settlement, and have protected and will continue to protect the Class's interests in overseeing the Settlement, both during its administration and through any appeals.

29. Each Settlement Class Representative accordingly seeks a $10,000 service award.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 22, 2024, in Boca Raton, Florida.

Paul J. Geller

EXHIBIT A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC. NATIONAL PRESCRIPTION OPIATE CONSULTANT LITIGATION This Document Relates to: ALL THIRD PARTY PAYOR ACTIONS	Case No. 3:21-md-02996-CRB (SK) **DECLARATION OF ERIC J. MILLER REGARDING DISSEMINATION OF NOTICE** Judge: The Honorable Charles R. Breyer

I, Eric J. Miller, declare as follows:

1. I am the Senior Vice President of A.B. Data, Ltd.'s Class Action Administration Company ("A.B. Data"), whose corporate office is located in Milwaukee, Wisconsin. My business address is 5080 PGA Boulevard, Suite 209, Palm Beach Gardens, FL 33418, and my telephone number is 561-336-1801.

2. I submit this Declaration in connection with the above-referenced action (the "Action"). This Declaration is based upon my personal knowledge and upon information provided by my associates and staff members. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

3. Pursuant to the Court's Order Granting Preliminary Approval of Third Party Payor Class Action Settlement and Direction of Notice Under Federal Rule of Civil Procedure 23(e) (the "Preliminary Approval Order"), A.B. Data implemented the notice program approved by the Court. This Declaration details the steps taken by A.B. Data, which consisted of the following: a) direct mail to potential third-party payor ("TPP") Class Members using A.B. Data's proprietary database (the "TPP Database"); b) a digital advertising campaign; c) a news release disseminated over PR Newswire; and d) a toll-free telephone number and Settlement Website to address potential TPP Class Member inquiries.

DIRECT MAIL NOTICE TO TPPS

4. On April 15, 2024, A.B. Data mailed the postcard notice (the "Postcard Notice") via USPS First-Class Mail to 42,539 entities in A.B. Data's TPP Database. These entities include insurance companies, health maintenance organizations, self-insured entities, pharmacy benefits managers ("PBMs"), third-party administrators ("TPAs"), and other entities that represent potential TPP Class Members. A copy of the Postcard Notice is attached hereto as **Exhibit A.**

5. In addition, A.B. Data sent 1,553 emails to TPPs and their representatives where email addresses were available.

MEDIA NOTICE

6. Beginning on April 15, 2024, A.B. Data caused digital banner ads to appear on ThinkAdvisor.com/life-health, BenefitNews.com, and SHRM.org, which are websites that reach

insurance agents/brokers and related TPP professionals. A sampling of the digital banner ads is attached hereto as **Exhibit B**.

7. On April 15, 2024, A.B. Data caused the notice formatted as a news release to be disseminated via *PR Newswire*. This news release was distributed via *PR Newswire* to the news desks of approximately 10,000 newsrooms across the United States, including those in general-market print, broadcast, and digital media. A true and correct copy of the press release is attached hereto as **Exhibit C**.

SETTLEMENT WEBSITE

8. A.B. Data established the settlement website, McKinseyTPPSettlement.com, to assist potential TPP Class Members. It includes general information regarding this Action, and the proposed Settlement, including the exclusion, objection and claim filing deadlines, and the date, time, and location of the Court's Final Approval Hearing. A copy of the Notice of Class Action (attached as **Exhibit D**), the Third-Party Payor Claim Form (attached as **Exhibit E**), the Complaint, Settlement Agreement, Preliminary Approval Order, and other relevant documents are posted on the website and are available for downloading. In addition, the website provides TPP Class Members with the ability to submit their Claim Form through the website. The website is accessible 24 hours a day, 7 days a week.

9. A.B. Data established a case-specific toll-free number, 1-877-933-3322, with an interactive voice response system and live operators, to accommodate potential TPP Class Members with questions about the Action. The automated attendant answers the calls and presents callers with a series of choices to respond to basic questions. If callers need further help, they have the option of being transferred to a live operator during business hours. A.B. Data continues to maintain the telephone helpline and will update the interactive voice response system as necessary through the administration of the Settlement.

REPORT ON OBJECTIONS AND REQUESTS FOR EXCLUSION

10. The Notice informed TPP Class Members that any objections to the Settlement or requests for exclusion are to be submitted on or before June 1, 2024. As of the date of this Declaration, A.B. Data has not received or been made aware of any objections or requests for

exclusion. A.B. Data will provide an updated report following the objection and request for exclusion deadlines to notify the Court of receipt of any objections or requests for exclusion.

CLAIM FILING DEADLINE EXTENSION

11. At Class Counsel's instruction, A.B. Data extended the claim filing deadline from September 18, 2024 to December 15, 2024. On April 19, 2024, A.B. Data updated the Settlement Website and all documents to reflect the extension to the claim filing deadline. The as-mailed Postcard Notice attached to this Declaration contains the original claim filing date The news release, Long-Form Notice, and Claim Form attached to this Declaration reflect the updated claim filing date of December 15, 2024.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of April 2024.

Eric J. Miller

EXHIBIT A

LEGAL NOTICE

Third-Party Payors: If you paid or reimbursed costs for prescription opioids, or paid or incurred costs for treatment related to opioid misuse, addiction, and/or overdose,

You Could Get Money from a Settlement.

Your rights may be affected by the proposed Settlement in a class action lawsuit with McKinsey & Company, Inc. ("McKinsey"). The lawsuit claims McKinsey played a central role in the opioid crisis by advising multiple opioid manufacturers and other industry participants on how to sell as many prescription opioids as possible. McKinsey denies any wrongdoing.

McKinsey National Prescription Opiate Consultant Settlement
c/o A.B. Data, Ltd.
P.O. Box 173122
Milwaukee, WI 53217

Postmaster: Please DO NOT Cover Up Barcode

Am I included? Generally, you may be included if you are an entity that paid and/or reimbursed for (a) opioid prescription drugs manufactured, marketed, sold, or distributed by the Opioid Marketing Enterprise Members (Purdue, Johnson & Johnson, Janssen, Cephalon, Endo, and Mallinckrodt), for purposes other than resale, and/or (b) paid or incurred costs for treatment related to the misuse, addiction, and/or overdose of opioid drugs, on behalf of individual beneficiaries, insureds, and/or members, during the period June 1, 2009 to October 31, 2023. For clarity, included are: (a) private contractors of Federal Health Employee Benefits plans, (b) plans for self-insured local governmental entities that have not settled claims in MDL 2804, (c) managed Medicaid plans, (d) plans operating under Medicare Part C and/or D, and (e) Taft Hartley plans. A more detailed notice, including the full class definition and who is not included, is available at **www.McKinseyTPPSettlement.com**.

What does the Settlement provide? A $78 million Settlement Fund will pay money to eligible Class Members, notice and administration costs up to $1 million, and attorneys' fees, costs, and expenses.

How can I get a payment? Submit a claim form online or by mail postmarked by **September 18, 2024**. If your claim is valid, you will get money from the Settlement. The amount of your payment will be calculated based on the Proposed Plan of Allocation available at **www.McKinseyTPPSettlement.com**. Detailed instructions about how to submit a claim are also available at **www.McKinseyTPPSettlement.com**.

What are my rights? Even if you do nothing, you will be bound by the Court's decisions. If you want to keep your right to sue McKinsey yourself, you must exclude yourself from the Settlement by **June 1, 2024**. If you do not exclude yourself, you may object to the Settlement by **June 1, 2024**. The Court will hold a hearing on **July 26, 2024** at 10:00 a.m. to consider whether to approve the Settlement and a request for attorneys' fees not to exceed 20% of the Settlement Fund, plus litigation expenses and service awards to Class Representatives. You or your own lawyer may appear and speak at the hearing at your own expense. The Court may change these deadlines or the hearing date (and time). Check the website below for updates.

For more information: **1-877-933-3322 or visit www.McKinseyTPPSettlement.com**

EXHIBIT B


If You Paid or Provided
Reimbursement for Prescription
OPIOIDS
Or Paid or Reimbursed for
Opioid-Caused Addiction Treatment
for Members, Employees, Insureds,
Participants, or Beneficiaries
from June 1, 2009 - October 31, 2023
A CLASS ACTION LAWSUIT
MAY AFFECT YOUR RIGHTS
LEARN MORE
McKinseyTPPSettlement.com


If You Paid or Provided Reimbursement for Prescription OPIOIDS
Or Paid or Reimbursed for Opioid-Caused Addiction Treatment
for Members, Employees, Insureds, Participants, or Beneficiaries
from June 1, 2009 - October 31, 2023
A CLASS ACTION LAWSUIT MAY AFFECT YOUR RIGHTS
LEARN MORE
McKinseyTPPSettlement.com

EXHIBIT C

Robbins Geller Rudman & Dowd LLP, Lieff Cabraser Heimann & Bernstein LLP, and Dugan Law Firm, APLC Announce a $78 Million Class Action Settlement for Third Party Payors That Paid or Reimbursed Costs for Prescription Opioids or Treatment Related to Opioid Misuse, Addiction, and/or Overdose

NEWS PROVIDED BY
Robbins Geller Rudman & Dowd LLP, Lieff Cabraser Heimann & Bernstein LLP, and Dugan Law Firm, APLC →
Apr 15, 2024, 16:00 ET

SAN FRANCISCO, April 15, 2024 /PRNewswire/ --

LEGAL NOTICE

Third-Party Payors: If you paid or reimbursed costs for prescription opioids, or paid or incurred costs for treatment related to opioid misuse, addiction, and/or overdose,

You Could Get Money from a Settlement.

Your rights may be affected by the proposed Settlement in a class action lawsuit with McKinsey & Company, Inc. ("McKinsey"). The lawsuit claims McKinsey played a central role in the opioid crisis by advising multiple opioid manufacturers and other industry participants on how to sell as many prescription opioids as possible. McKinsey denies any wrongdoing.

Am I included? You may be included if you are an entity that paid and/or reimbursed for (a) opioid prescription drugs manufactured, marketed, sold, or distributed by the Opioid Marketing Enterprise Members (Purdue, Johnson & Johnson, Janssen, Cephalon, Endo, and Mallinckrodt), for purposes other than resale, and/or (b) paid or incurred costs for treatment related to the misuse, addiction, and/or overdose of opioid drugs, on behalf of individual beneficiaries, insureds, and/or members, during the period June 1, 2009 to October 31, 2023. For clarity, included are: (a) private contractors of Federal Health Employee Benefits plans, (b) plans for self-insured local governmental entities that have not settled claims in MDL 2804, (c) managed Medicaid plans, (d) plans operating under Medicare Part C and/or D, and (e) Taft Hartley plans. A more detailed notice, including the full class definition and who is not included, is available at **www.McKinseyTPPSettlement.com**.

What does the Settlement provide? A $78 million Settlement Fund will pay money to eligible Class Members, notice and administration costs up to $1 million, and attorneys' fees, costs, and expenses.

How can I get a payment? Submit a claim form online or by mail postmarked by **December 15, 2024**. If your claim is valid, you will get money from the Settlement. The amount of your payment will be calculated based on the Proposed Plan of Allocation available at **www.McKinseyTPPSettlement.com**. Detailed instructions about how to submit a claim are also available at **www.McKinseyTPPSettlement.com**.

What are my rights? Even if you do nothing, you will be bound by the Court's decisions. If you want to keep your right to sue McKinsey yourself, you must exclude yourself from the Settlement by **June 1, 2024**. If you do not exclude yourself, you may object to the Settlement by **June 1, 2024**. The Court will hold a hearing on **July 26, 2024** at 10:00 a.m. to consider whether to approve the Settlement and a request for attorneys' fees not to exceed 20% of the Settlement Fund, plus litigation expenses and service awards to Class Representatives. You or your own lawyer may appear and speak at the hearing at your own expense. The Court may change these deadlines or the hearing date (and time). Check the website below for updates.

For more information: **1-877-933-3322 or visit www.McKinseyTPPSettlement.com**

Source:

Lieff Cabraser Heimann & Bernstein LLP

SOURCE Robbins Geller Rudman & Dowd LLP, Lieff Cabraser Heimann & Bernstein LLP, and Dugan Law Firm, APLC

EXHIBIT D

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF CLASS ACTION SETTLEMENT

If you are a Third-Party Payor that paid or reimbursed costs for prescription opioids, or paid or incurred costs for treatment related to opioid misuse, addiction, and/or overdose, a class action lawsuit may affect your rights.

This Notice is being provided by Order of the U.S. District Court.
It is not a solicitation from a lawyer. You are not being sued.

A lawsuit is pending in the United States District Court for the Northern District of California ("the Court") against McKinsey & Company, Inc. Third-Party Payor Plaintiffs claim that McKinsey played a central role in the opioid crisis by advising multiple opioid manufacturers and other industry participants how to sell as many prescription opioids as possible. McKinsey denies any wrongdoing.

A settlement has been reached with McKinsey. The settlement for Third-Party Payors ("TPPs") provides for a cash payment of $78,000,000 (the "Settlement"). It is subject to Court approval.

Your legal rights and options are explained below.

Plaintiffs will ask the Court to certify for settlement the following TPP Class:

> All entities that paid and/or reimbursed for (a) opioid prescription drugs manufactured, marketed, sold, or distributed by the Opioid Marketing Enterprise Members (Purdue, Johnson & Johnson, Janssen, Cephalon, Endo, and Mallinckrodt), for purposes other than resale, and/or (b) paid or incurred costs for treatment related to the misuse, addiction, and/or overdose of opioid drugs, on behalf of individual beneficiaries, insureds, and/or members, during the period June 1, 2009 to October 31, 2023 ("Class Period"). For clarity, included in the class are: (a) private contractors of Federal Health Employee Benefits plans, (b) plans for self-insured local governmental entities that have not settled claims in MDL 2804, (c) managed Medicaid plans, (d) plans operating under Medicare Part C and/or D, and (e) Taft Hartley plans.
>
> Excluded from the class are (a) all federal and state governmental entities, (b) all tribal entities, (c) local governmental entities and school districts, (d) Pharmacy Benefit Managers (PBMs), (e) consumers, and (f) fully-insured plans. For the avoidance of doubt, entities that are otherwise members of the class are not excluded on the basis that they own an interest, including a controlling interest, in a PBM.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
CLAIM YOUR SHARE OF THE SETTLEMENT	If you are a member of the Class, and want to participate in the distribution of the Settlement Fund, you will need to complete and return a Claim Form. The Claim Form, and information on how to submit it, are available on the Settlement website. Claim Forms must be postmarked (if mailed) or received (if submitted online) on or before **December 15, 2024**.
EXCLUDE YOURSELF FROM THE TPP CLASS	This option allows you to exclude yourself from the TPP Class and instead file your own lawsuit against McKinsey that asserts claims related to the allegations or claims in this case. The exclusion deadline is **June 1, 2024**.
OBJECT TO THE SETTLEMENT OR SPEAK AT THE FINAL APPROVAL HEARING	If you object to all or any part of the Settlement, request for attorneys' fees, reimbursement of expenses, or service awards to the class representatives, or desire to speak in person at the Final Approval Hearing, you must file a written letter of objection and/or a notice of intention to speak, along with a summary statement, with the Court and the Notice and Claims Administrator by **June 1, 2024**. See Question 12.
DO NOTHING	Do not claim any part of the Settlement Fund, but release your claims against McKinsey and give up rights to be part of any other lawsuit that asserts claims related to the allegations or claims against McKinsey in this case.

THESE RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM ARE EXPLAINED IN THIS NOTICE.

PLEASE VISIT THE TPP CLASS SETTLEMENT WEBSITE ON AN ONGOING BASIS FOR IMPORTANT SETTLEMENT AND CLAIMS-RELATED UPDATES, INFORMATION, AND FILINGS: www.McKinseyTPPSettlement.com.

TABLE OF CONTENTS

BASIC INFORMATION ABOUT THE LAWSUIT

1. Why did I get this Notice?

You received this Notice because you requested it or records indicate that you may be a member of the TPP Class. On April 8, 2024, the Court granted preliminary approval to the Settlement and will decide at the final approval hearing whether to certify for settlement the TPP Class. McKinsey denies any wrongdoing. You are not being sued. This Notice describes the lawsuit and the rights and options you have.

2. What is the lawsuit about?

Plaintiffs claim that McKinsey played a central role in the opioid crisis by advising multiple opioid manufacturers and other industry participants how to sell as many prescription opioids as possible.

Plaintiffs claim that McKinsey's conduct caused substantial, direct, and proximate harms to Third-Party Payors. Because of the opioid crisis, TPPs claim they have wrongfully had to pay large costs for opioid prescriptions and opioid use disorder treatment.

McKinsey denies these claims and denies that it did anything wrong. The litigation is proceeding, and, at this point, no court has found that McKinsey engaged in any wrongdoing.

3. What is the current status of the lawsuit?

The lawsuit is currently pending in the United States District Court for the Northern District of California before United States District Judge Charles R. Breyer. The case name and number are *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*, No. 21-md-02996-CRB (N.D. Cal.). Third-Party Payor Plaintiffs have reached a Settlement Agreement with McKinsey, where it will pay $78,000,000 to class members.

DETERMINING IF YOU ARE A MEMBER OF THE TPP CLASS

4. I am a Third-Party Payor that has purchased or reimbursed costs of prescription opioids, or paid or reimbursed for opioid-caused addiction treatment; how do I know if I am a member of the TPP Class?

As a **Third-Party Payor**, you may be a member of the TPP Class if you are included in the definitions below:

Third-Party Payors generally include health insurance companies, third-party administrators, health maintenance organizations, health and welfare plans that make payments from their own funds, and other health benefit providers and entities with self-funded plans that contract with a health insurer or administrator to administer their prescription drug benefits.

Third-Party Payors also generally include private entities that may provide prescription drug benefits for current or former public employees and/or public benefits programs, but only to the extent that such a private entity purchased or reimbursed costs of prescription opioids or paid or reimbursed for opioid-caused addiction treatment for consumption by its members, employees, insureds, participants, or beneficiaries.

If you are not sure whether you are included in the TPP Class, you may call, email, or write to the Notice and Claims Administrator or lawyers in this case at the telephone numbers, email addresses, or addresses listed in Questions 12-13 below. The full TPP Class definition can also be found in the Settlement Agreement posted on the website at www.McKinseyTPPSettlement.com.

5. How do I make a claim for my share of the Settlement Fund?
To make a claim for your share of the Settlement Fund, you must complete and submit a valid Claim Form to request your share of the Net Settlement Fund. You can obtain a Claim Form at **www.McKinseyTPPSettlement.com or by calling 1-877-933-3322**. Claim Forms must be received (if submitted online) or postmarked (if mailed) by **December 15, 2024.**

6. When will I receive payment?
In the event that Preliminary Approval is granted, all TPP Class Members will have the right to receive an Upfront Payment. The Upfront Payment Option Right can be exercised by providing written notice to the Notice and Claims Administrator within five (5) days of the expiration of the objection/opt-out deadline set by the Court. If at least 90% of TPP claimants (on the basis of the claims submitted and approved in the Mallinckrodt bankruptcy) elect this option, 70% of the Settlement ($54,600,000 or the "Upfront Funds") shall be set aside for the Upfront Payment. To receive this Upfront Payment, the TPP Class Member must agree (a) to participate in the TPP Class and provide the release called for in the Settlement, and (b) that 7.5% of their recovery will be set aside into an escrow account which will be used to satisfy any common benefit fee awarded to Settlement Class Counsel. These Upfront Funds will be distributed on a *pro rata* basis (in line with the Mallinckrodt claims) pursuant to the terms of the Final Approval Order and Allocation Methodology. Any TPP Class Member who elects the Upfront Payment Option Right may also complete and submit a Class Claim Form by the deadline set by the Court. The ultimate recovery for a TPP Class Member that elects the Upfront Payment Option Right will be "trued-up" in accordance with the TPP Claims Methodology set forth in Sections C and D of the Class Claim Form and will account for the amount of any Upfront Payment.

The Court must approve the Settlement, and any appeals of that decision must be resolved, before any money is distributed to TPP Class Members. The Notice and Claims Administrator must also complete processing of all Claim Forms and determine distribution amounts. This process can take several months.

EXCLUSION PROCESS

7. What does it mean to request to be excluded from the TPP Class?
If you do not want to be part of the TPP Class, do not want to file a claim for Settlement funds, and want to keep your right to sue McKinsey relating to the allegations in *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*, MDL No.

2996 (N.D. Cal.), concerning its opioid marketing advice, then you must take steps to remove yourself from the TPP Class. This is called excluding yourself, or "opting out" of the TPP Class. If you exclude yourself, you may not make a claim for payment from the Settlement described in this Notice and may pursue your own lawsuit.

8. What is the Exclusion Process?

Your decision to stay in, or exclude yourself from, the class is an individual one that must be made, signed, and submitted by you or your representative who is expressly authorized to do so.

Third-Party Payors that want to be excluded from the TPP Class must submit a written request for exclusion to the Notice and Claims Administrator. Your request for exclusion must include: (i) the entity name, address, and IRS EIN; (ii) the name and title of the entity's representative; (iii) the name of this case, *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*, MDL No. 2996; and (iv) a statement, signed by an authorized representative, that you are a member of the TPP Class and wish to be excluded from the TPP Class. Exclusion requests must be mailed to the Notice and Claims Administrator at the address below and postmarked no later than **June 1, 2024**:

In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation
EXCLUSIONS
P.O. Box 173001
Milwaukee, WI 53217

A separate, signed exclusion request must be submitted by each Third-Party Payor choosing to be excluded from the Class. Any Third-Party Payor included in the Class that does not submit a valid request for exclusion providing all necessary information will be bound by the outcome of the case.

If you are a Third-Party Payor and want to opt out the claims of others for whom you provide services (*e.g.*, welfare funds or employers for whom you act as an Administrative Services Organization), you must include for each entity on whose behalf you want to opt out all of the information noted in items (i)–(iv) above: (i) the entity name, address, and IRS EIN; (ii) the name and title of the entity's representative; (iii) the name of this case, *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*, MDL No. 2996; and (iv) a statement, signed by an authorized representative, for each entity on whose behalf you want to opt out. **In addition**, for each such entity, you must provide a Declaration from an authorized representative of the entity, substantially in the form below and executed specifically in connection with this litigation, attesting to your authority to opt out the entity's claims from the Class on the entity's behalf. You must mail this information to the Notice and Claims Administrator at the address above and postmarked no later than **June 1, 2024**.

Date:

Declarant:

Title:

Entity:

Address:

Telephone Number:

Entity EIN:

Dear Notice and Claims Administrator:

I am [Name and Title of Officer or Employee of Entity Requesting Exclusion]. [Entity] has authorized [name of Entity] to request exclusion from the proposed McKinsey-TPP Settlement Class on [Entity's] behalf in the case of *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*, MDL No. 2996.

[Entity] hereby acknowledges that, as a result of this authorization and opting out, [Entity] will not receive any proceeds resulting from this litigation, should any exist.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and executed in ______________________, __________________________________.
[city] [state]

______________________________ ________
Name of Declarant Officer or Employee Date Signed

____
Title of Declarant Officer or Employee

9. What is the legal significance of excluding myself?
If you exclude yourself, you will not be able to claim any of the Settlement Funds and will not be legally bound by the outcome of the case. You may be able to sue McKinsey in the future for the same conduct alleged in the lawsuit.

10. If I don't exclude myself, can I sue later?
No. If you do not exclude yourself (that is, if you remain in the Class and are eligible to receive Settlement Funds), you give up the right to sue McKinsey for the claims in this case. You must exclude yourself from the TPP Class to be able to bring your own, separate lawsuit(s) against McKinsey. Remember, the exclusion deadline is **June 1, 2024**.

IF YOU DO NOTHING

11. What happens if I do nothing at all?
If you are a TPP Class Member and you do nothing, you will remain in the TPP Class and be bound by the decision in the action and on the Settlement; however, if the Settlement is approved, you may not participate in the Settlement as described in this Notice. To participate in the Settlement and be eligible to receive a payment, you must complete, sign, and return the Claim Form before the claims filing deadline provided on the Claim Form and Settlement website.

OBJECTIONS OR COMMENTS

12. How do I object to or comment on the Settlement?
If you are a member of the TPP Class as defined above, and if you did not request to be excluded, you may object to any aspect of the Settlement, including the fairness of the Settlement, the Plan of Allocation, and/or Settlement Class Counsel's requests for attorneys' fees and costs.

To object to the Settlement, you (or your lawyer if you have one) must submit a written objection to the Court and send the objection to the Notice and Claims Administrator at the addresses listed below. You must submit your objection on or before **June 1, 2024**. Your objection can include any supporting materials, papers, or briefs that you want the Court to consider.

Your objection must include:

- Your full name, address, telephone number, and email address;
- The case name and number: *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*, No. 21-md-02996-CRB (N.D. Cal.);
- Documentation demonstrating that you are a member of the Class and/or this statement, followed by your signature: "I declare under penalty of perjury under the laws of the United States of America that [insert your name] is a member of the Class.";
- A clear statement that you are objecting to the Settlement;
- A written statement of all grounds for your objection, including any legal support for the objection, making sure to say whether your objection relates only to you, to part of the class, or to the entire class;
- Copies of any papers, briefs, or other documents on which your objection is based;
- The name, address, email address, and telephone number of every attorney representing you, if you are represented by an attorney; and
- A statement saying whether you and/or your attorney intend to appear at the Final Approval Hearing and, if so, a list of all persons, if any, who will be called to testify in support of the objection.

You must submit your objection to the Court and to the Notice and Claims Administrator by **June 1, 2024**.

Clerk of Court	Notice and Claims Administrator
Office of the Clerk of Court U.S. District Court for the Northern District of California 450 Golden Gate Ave. San Francisco, CA 94102	In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation P.O. Box 173122 Milwaukee, WI 53217 info@McKinseyTPPSettlement.com

A Final Approval Hearing will be held on **July 26, 2024, at 10:00 a.m.**, subject to change by the Court. If you would like to attend the Final Approval Hearing, please monitor the Settlement website for information on how to attend and for information regarding any changes in time or date.

THE LAWYERS REPRESENTING YOU

13. As a member of the TPP Class, do I have a lawyer representing my interests in this Class Action?

Yes. The Court has appointed lawyers to represent you and other TPP Class Members. These lawyers are called Settlement Class Counsel. You will not be charged individually for these lawyers. They will ask the Court to approve an award for attorneys' fees and expenses. The following lawyers represents the Class:

Paul J. Geller
ROBBINS GELLER RUDMAN & DOWD LLP
225 NE Mizner Boulevard, Suite 720
Boca Raton, FL 33432
(561) 750-3000

Elizabeth J. Cabraser
LIEFF CABRASER HEIMANN & BERNSTEIN LLP
275 Battery Street, Suite 2900
San Francisco, CA 94111
(415) 956-1000

James R. Dugan, II
DUGAN LAW FIRM, APLC
One Canal Place, Suite 1000
365 Canal Street
New Orleans, LA 70130
(504) 648-0180

14. How will the lawyers be compensated? Will the Settlement Class Representative Plaintiffs receive a service award?

Settlement Class Counsel may seek up to 20% of the Settlement Fund for reimbursement of their fees, in addition to reimbursement of costs and service awards to Class Representatives. Any fees awarded to Settlement Class Counsel must be approved by the Court. Settlement Class Counsel will ask the Court to award each Settlement Class Representative Plaintiff a service award not to exceed $10,000. The application for attorneys' fees will be posted on the Settlement website.

15. May I appear through my own lawyer?

You may appear through your own lawyer, pursuant to Federal Rule of Civil Procedure 23(c)(2). Every lawyer appearing in this case is subject to the Orders of the Court, and you may be responsible for paying your lawyer's fees. If you hire a lawyer to speak for you or appear in Court, your lawyer must file a Notice of Appearance.

GETTING MORE INFORMATION

16. Where do I get more information?

The Settlement documents, including the Settlement Agreement and Plan of Allocation; claims forms and related information; the Third-Party Payor Complaint; the Court's Orders; and other important dates and deadlines are posted for your review on the Settlement website: **www.McKinseyTPPSettlement.com**. **Please refer to the Settlement website for ongoing and updated information, or you can call the Notice and Claims Administrator toll-free at 1-877-933-3322.**

Complete copies of public pleadings, Court rulings, and other filings are also available for review and copying at the Clerk's office. The address is Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102. Judge Charles R. Breyer of the United States District Court for the Northern District of California is overseeing the Class Action. *Please do not contact the Court or Judge Breyer*.

For more information, call the Notice and Claims Administrator at 1-877-933-3322 or go to www.McKinseyTPPSettlement.com.

DATED: APRIL 15, 2024

BY ORDER OF THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

EXHIBIT E

United States District Court
Northern District of California

IN RE: MCKINSEY & CO., INC. NATIONAL PRESCRIPTION OPIATE CONSULTANT LITIGATION	Case No. 21-md-02996-CRB (SK)

INSTRUCTIONS FOR SUBMITTING YOUR CLAIM FORM

A Third-Party Payor (TPP) Class Member or an authorized agent for a TPP Class Member may complete this Claim Form. If both a TPP Class Member and its authorized agent submit a Claim Form, the Notice and Claims Administrator will review both and determine which is controlling, as well as the amount of the Claim, giving consideration to the extent to which the claims overlap or supplement one another. The Notice and Claims Administrator may request supporting documentation in addition to the documentation and information requested below. The Notice and Claims Administrator may reject a claim if the TPP Class Member or its authorized agent does not provide all requested documentation and information in a timely manner.

If you are a TPP Class Member submitting a Claim Form on your own behalf, you must provide the information requested in "**Section A – COMPANY OR HEALTH PLAN TPP CLASS MEMBER ONLY**," in addition to the other information requested by this Claim Form.

If you are an **authorized agent** of one or more TPP Class Members, you must provide the information requested in "**Section B – AUTHORIZED AGENT ONLY**," in addition to the other information requested by this Claim Form.

If you are submitting a Claim Form only as an authorized agent of two or more TPP Class Members, you may submit a separate Claim Form for each TPP Class Member OR you may submit a "Consolidated Claim" via one single Claim Form for all such TPP Class Members.

For those Consolidated Claims that are being submitted for multiple TPP Class Members, the filer shall provide **aggregate** information as directed in Sections C or D of this Claim Form, and submit along with this Claim Form a chart identifying the TPP Class Members included in the Consolidated Claim, as directed in Section B. For each TPP Class Member included in the Consolidated Claim, the chart shall provide: (i) the name of the TPP Class Member claimant and (ii) the TPP Class Member's Federal Tax Identification Number (FEIN).

The "TPP Methodology NDCs" and "TPP Methodology ICD Codes" necessary to complete Section C are available at **www.McKinseyTPPSettlement.com.**

To qualify to receive a payment from the Settlement, you must complete and submit this Claim Form either on paper or electronically on the Settlement website, **www.McKinseyTPPSettlement.com**, and you may need to provide certain requested documentation to substantiate your Claim.

Your failure to complete and submit the Claim Form postmarked (if mailed) or received (if submitted online) on or before **December 15, 2024,** will prevent you from receiving any payment from the Settlement. Submission of this Claim Form does not ensure that you will share in the payments related to the Settlement. If the Notice and Claims Administrator rejects or reduces your Claim, you may invoke the dispute resolution process described on page 6.

In re: McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation

Case No. 21-md-02996-CRB (SK) (N.D. Cal.)

MUST BE POSTMARKED ON OR BEFORE, OR SUBMITTED ONLINE BY, DECEMBER 15, 2024.

THIRD-PARTY PAYOR CLAIM FORM

Use Blue or Black Ink Only

ATTENTION: THIS FORM IS ONLY TO BE FILLED OUT ON BEHALF OF A THIRD-PARTY PAYOR (OR AN AUTHORIZED AGENT) AND NOT INDIVIDUAL CONSUMERS.

- Complete Section A only if you are filing as an individual TPP Class Member.
- Complete Section B only if you are an authorized agent filing on behalf of one or more TPP Class Members.

Section A: Company or Health Plan TPP Class Member Only

TPP Class Member Name

Contact Name

Care of (if applicable)

Street Address

Floor/Suite

City

State

Zip Code

Area Code - Telephone Number

Tax Identification Number

Email Address

List other names by which your company or health plan has been known or other Federal Employer Identification Numbers ("FEINs") it has used since June 1, 2009.

☐ Health Insurance Company/HMO

☐ Self-Insured Employee Health or Pharmacy Benefit Plan

☐ Self-Insured Health & Welfare Fund

☐ Other (Explain)

Section B: Authorized Agent Only

As an authorized agent, please check how your relationship with the TPP Class Member(s) is best described (you may be required to provide documentation demonstrating this relationship):

☐ Third-Party Administrator or Administrative Services Only Provider

☐ Pharmacy Benefit Manager

☐ Other (Explain):

Authorized Agent's Company Name

Contact Name

Street Address

Floor/Suite

City

State

Zip Code

Area Code - Telephone Number

Authorized Agent's Tax Identification Number

Email Address

Please list the name and FEIN of every TPP Class Member (*i.e.,* Company or Health Plan) for whom you are submitting this Claim Form (attach additional sheets to this Claim Form as necessary). Alternatively, you may submit the requested list of TPP Class Member names and FEINs in an electronic format, such as Excel or a tab-delimited text file. Contact the Notice and Claims Administrator to determine what formats are acceptable. Claim Forms submitted on behalf of two or more TPP Class Members are referred to as Consolidated Claims. In either case, the list shall be maintained as confidential by the Notice and Claims Administrator.

TPP CLASS MEMBER'S NAME	TPP CLASS MEMBER'S FEIN

Section C: TPP Claims Methodology 1 - Transactional Claims Data Available

TPP Class Members that are able to access pharmacy and medical transactional claims data from 2009 - 2023 must utilize the methodology outlined in this Section C for purposes of completing this Claim Form.

For the TPP Class Member(s) on whose behalf you are submitting this Claim Form, please provide the following information or utilize the forms for both individual and Consolidated Claims provided by the Notice and Claims Administrator at **www.McKinseyTPPSettlement.com**.

i. By state, *on an aggregated basis for entities filing Consolidated Claims*, identify: the total dollar amount paid or reimbursed by the TPP Class Member(s) for the TPP Methodology NDCs from June 1, 2009, through October 31, 2023.

ii. By state, *on an aggregated basis for entities filing Consolidated Claims*, identify the number of member-years with an opioid use disorder (OUD) diagnosis based on the TPP Methodology ICD Codes from June 1, 2009, through October 31, 2023. Member-years with OUD diagnosis is the sum of the number of unique individuals with an OUD diagnosis within each year, totaled for the fifteen years of the damage period. (For example, if you had 10 people per year with OUD in each year for 5 years, that would equal 50 member-years with OUD diagnosis.)

iii. By state, *on an aggregated basis for entities filing Consolidated Claims*, identify the number of Covered Lives* as of January 1, 2023.

iv. The TPP Claim amounts for TPP Class Members that provide the information identified above in this Section C will be calculated as follows:

   a. The estimated medical cost of OUD ($19,118) will be multiplied by the number of member-years with OUD identified in Section C.ii.; and

   b. The dollar value provided in Section C.i. will be combined with the dollar value derived in Section C.iv.a.

*“Covered Lives” means the number of enrollees or beneficiaries covered by the TPP.

What should I do if I have transactional data available for some years but not others?

You **<u>must</u>** follow Methodology 1 outlined in Section C to complete the Claim Form for **all** the years for which you have transactional data available. You may use Methodology 2 outlined in Section D to complete the Claim Form for any remaining years for which you do not have transactional data available.

Please note, if you use Methodology 2 to submit a Claim Form for years that you have or could obtain data for, your entire claim may be rejected.

State	Total Dollar Amount Paid	Member-Years with OUD Diagnosis	Covered Lives as of January 1, 2023

Section D: TPP Claims Methodology 2 - Transactional Claims Data Unavailable

A TPP Class Member that is unable to access pharmacy and medical transactional claims data from 2009 – 2023, as necessary to complete Section C above, should utilize the methodology outlined in this Section D for purposes of completing this Claim Form. TPP Class Members electing to utilize TPP Methodology 2 must attest below that they do not have access to the necessary transactional claims data for completing TPP Methodology 1.

For each TPP Class Member on whose behalf you are submitting this Claim Form, and on an *aggregated basis for entities filing Consolidated Claims*, list the number of Covered Lives* for each year in the applicable group of states. Spreadsheet templates of this chart are also available on the Settlement website for both individual and Consolidated Claims, **www.McKinseyTPPSettlement.com**.

The Notice and Claims Administrator may request documents or other information from you to support your response below regarding your membership.
*"Covered Lives" means the number of enrollees or beneficiaries covered by the TPP.

	Covered Lives														
States	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**
Group 1: AK, AZ, CA, CO, GA, HI, ID, IL, MN, NV, NM, NY, SC, TX, UT, VT, VA, WA, WY															
Group 2: CT, IN, KS, LA, MD, MI, MS, MT, NE, NH, NC, ND, OR, SD, WI															
Group 3: AL, AR, DE, DC, FL, IA, KY, ME, MA, MO, NJ, OH, OK, PA, RI, TN, WV															

If you are unable to break down the number of covered lives by state, please complete the chart below with the number of covered lives by year. You may receive less than you may have otherwise been eligible for in accordance with the Settlement Agreement.

	Covered Lives														
States	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**
All states															

For TPP Class Members electing to utilize TPP Methodology 2: After all Claims have been filed, the Notice and Claims Administrator will calculate an average dollar value per covered life, based on all TPP information accumulated from submissions pursuant to Section C. The Notice and Claims Administrator will apply this average dollar value to the information provided above in this Section D.

Section E: Proof of Payment and Disputes Regarding Claim Amounts

Please provide as much of the information requested above as possible. Pharmacy transaction data supporting claims submitted pursuant to Section C above is mandatory for Section C.i. amounts of $300,000 or more, although the Notice and Claims Administrator may also require pharmacy transaction data for claims of less than $300,000, so keep related transaction data and any other claim documentation supporting your Claim (*e.g.*, invoices) in case the Notice and Claims Administrator requests it later. If the Section C.i. amount is less than $300,000, you should still provide the pharmacy transaction data with your Claim submission if you can.

While not required to be submitted along with your initial Claim Form, please also retain all medical transaction data supporting your Section C.ii. amounts in case the Notice and Claims Administrator requests it later.

If, after an audit of your Claim, the Notice and Claims Administrator still has questions about your Claim and you have not provided sufficient substantiation of your Claim, the Notice and Claims Administrator may reject your Claim.

If the Notice and Claims Administrator rejects or reduces your Claim and you believe the rejection or reduction is in error, you may contact the Notice and Claims Administrator to request further review. If the dispute concerning your Claim cannot be resolved by the Notice and Claims Administrator and Settlement Class Counsel, you may request that the Court review your Claim.

Section F: Certification

I/We have read and am/are familiar with the contents of the Instructions accompanying this Claim Form. I/We certify that the information I/we have set forth in the above Claim Form and in any documents attached by me/us are true, correct, and complete to the best of my/our knowledge. I/We certify that I/we, or the TPP Class Member(s) I/we represent:

a. During the period June 1, 2009, to October 31, 2023, (i) paid and/or reimbursed for any or all of the opioid prescription drugs identified in the TPP Methodology NDCs (which were manufactured, marketed, sold, or distributed by the Opioid Marketing Enterprise Members (Purdue, Johnson & Johnson, Janssen, Cephalon, Endo, and Mallinckrodt)), for purposes other than resale, **and/or** (ii) paid or incurred costs for treatment related to the misuse, addiction, and/or overdose of opioid drugs, identified in the TPP Methodology ICD Codes, on behalf of individual beneficiaries, insureds, and/or members; and

b. is not one of the following excluded parties: (1) all federal and state governmental entities, except for (a) private contractors of Federal Health Employee Benefits plans, (b) managed Medicaid plans, (c) plans operating under Medicare Part C and/or D, and (d) Taft Hartley plans; (2) all tribal entities; (3) local governmental entities and school districts, except for plans for self-insured local governmental entities that have not settled claims in MDL No. 2804; (4) Pharmacy Benefit Managers (PBMs); (5) consumers; and (6) fully-insured plans.

I/We further certify I/we have provided all of the information requested above to the extent I/we have it.

I/We further certify that to the extent I/we are submitting this Claim Form pursuant to Section D, TPP Claims Methodology 2, above, I/we do not reasonably have access to the transactional claims data necessary to complete and submit this Claim Form pursuant to Section C, TPP Methodology 1.

To the extent I/we have been given authority to submit this Claim Form by one or more TPP Class Members on their behalf, and accordingly am/are submitting this Claim Form in the capacity of an authorized agent with authority to submit it, and to the extent I/we have been authorized to receive on behalf of the TPP Class Member(s) any and all amounts that may be allocated to them from the Settlement Fund, I/we certify that such authority has been properly vested in me/us and that I/we will fulfill all duties I/we may owe the TPP Class Member(s). If amounts from the Net Settlement Fund are distributed to me/us and a TPP Class Member later claims that I/we did not have the authority to claim and/or receive such amounts on its behalf, I/we and/or my/our employer will hold the Class, Settlement Class Counsel, and the Notice and Claims Administrator harmless with respect to any claims made by the TPP Class Member.

I/We hereby submit to the jurisdiction of the United States District Court for the Northern District of California for all purposes connected with this Claim Form, including resolution of disputes relating to this Claim Form. I/We acknowledge that any false information or representations contained herein may subject me/us to sanctions, including the possibility of criminal prosecution. I/We agree to supplement this Claim Form by furnishing documentary backup for the information provided herein, upon request of the Notice and Claims Administrator.

I certify that the above information supplied by the undersigned is true and correct to the best of my knowledge and that this Claim Form was executed this ________ day of ____________________, 2024.

Signature	Position/Title

Print Name	Date

Mail the completed Claim Form to the address below, postmarked on or before **December 15, 2024**, or submit the information online at the website below by that date:

McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation
c/o A.B. Data, Ltd.
P.O. Box 173122
Milwaukee, WI 53217
Toll-Free Telephone: 1-877-933-3322
Website: www.McKinseyTPPSettlement.com

REMINDER CHECKLIST:

1. Please complete and sign the above Claim Form. Attach or upload any documentation supporting your claim.
2. Keep a copy of your Claim Form and supporting documentation for your records.
3. If you would also like acknowledgement of receipt of your Claim Form, please complete the form online or mail this form via Certified Mail, Return Receipt Requested.
4. If you move and/or your name changes, please send your new address and/or your new name or contact information to the Notice and Claims Administrator at info@McKinseyTPPSettlement.com or via U.S. Mail at the address listed above.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC. NATIONAL PRESCRIPTION OPIATE CONSULTANT LITIGATION This Document Relates to: ALL THIRD PARTY PAYOR ACTIONS	Case No. 3:21-md-02996-CRB (SK) **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AWARD OF ATTORNEYS' FEES AND EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS** Judge: The Honorable Charles R. Breyer

Before the Court is Third Party Payor Plaintiffs' Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Expenses, and Class Representative Service Awards (the "Motion"). The background, procedural history, and Settlement terms were summarized in the Court's Order Granting Preliminary Approval of Third Party Payor Class Action Settlement and Direction of Notice Under Federal Rule of Civil Procedure 23(e), familiarity with which is presumed. *See* ECF No. 702 ("Preliminary Approval Order"). In brief, the Settlement between McKinsey and Third Party Payors provides $78 million to compensate a national Class of Third Party Payors.

Following the Court's Preliminary Approval Order, Settlement Class Counsel sent notice to the Third Party Payor (TPP) Class via the Court-approved notice program. The TPP Class has had an opportunity to respond. The Court has now considered the Parties' briefs and accompanying submissions, the reactions of TPP Class members, and presentations at the Final Approval Hearing on these matters, and the Court hereby GRANTS the Motion.

I. CLASS CERTIFICATION AND SETTLEMENT APPROVAL

When presented with a motion for final approval of a class action settlement, a court first evaluates whether certification of a settlement class is appropriate under Rule 23(a)-(b) of the Federal Rules of Civil Procedure. Rule 23(a) provides that a class action is proper only if four requirements are met: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See* Fed. R. Civ. P. 23(a)(1)-(4). As relevant here, certification of a Rule 23(b)(3) settlement class action requires that: (1) "the questions of law or fact common to class members predominate over any questions affecting only individual members"; and (2) "a class action [be] superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

The Court has already concluded that the TPP Settlement Class and its five Settlement Class Representatives were likely to satisfy these requirements in its Preliminary Approval Order and finds no reason to disturb its earlier conclusions. *See* ECF No. 702 ¶ 7. The requirements of Rule 23(a) and 23(b)(3) were satisfied then, and they remain so now. As such, the Court concludes that certification of the TPP Settlement Class is appropriate.

After finding that the Settlement Class satisfies Rules 23(a) and 23(b)(3), the Court must determine whether the Settlement is fundamentally "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Court is familiar with the standards applicable to certification of a settlement class; indeed, in the Preliminary Approval Order, the Court applied these standards and concluded that the Settlement appeared to be "fair, reasonable, and adequate." ECF No. 702 ¶ 1. Now, in making its determination to grant final approval of the Settlement, the Court has considered each of the Rule 23(e) factors and finds that the Settlement Class Representatives and Settlement Class Counsel have adequately represented the TPP Class; the Settlement Agreement was negotiated at arm's length; the relief provided for the TPP Class is adequate; and the Plan of Allocation treats TPP Class members equitably relative to one another. *See* Fed. R. Civ. P. 23(e)(2).

These conclusions are bolstered by TPP Class members' favorable reaction to the Settlement, which factor supports final approval. *See In re MacBook Keyboard Litig.*, 2023 WL 3688452, at *9 (N.D. Cal. May 25, 2023) (finding the "low number . . . of opt-outs relative to the size of the class weighs in favor of approving the Settlement" where 1,733 exclusion requests were received out of 718,651 eligible class members); *Quiruz v. Specialty Commodities, Inc.*, 2020 WL 6562334, at *7 (N.D. Cal. Nov. 9, 2020) (approving settlement with 0.09% opt-out rate and noting: "[o]pt-out percentages of nearly 5% have been deemed so 'overwhelmingly positive' as to support approval").

In addition, the Court finds that the Court-approved notice provided to the TPP Settlement Class pursuant to the Settlement Agreement and the Preliminary Approval Order fully complied with the requirements of Federal Rule of Civil Procedure 23 and due process, and the notice was reasonably calculated under the circumstances to apprise the Settlement Class members of the pendency of this Action, their right to object to or exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.

II. <u>REQUESTED ATTORNEYS' FEES AND EXPENSES, AND SERVICE AWARDS</u>

Settlement Class Counsel request an award of $15.5 million for attorneys' fees and expenses, inclusive of the common benefit assessment under PTO 9 (ECF No. 567), and which amount constitutes 20% of the Settlement Amount net of the costs of notice, administration, and implementation of the Settlement, expert costs, and combined service awards of $50,000 (that is, $10,000 for each of the five Class Representatives).

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "Attorneys' fees provisions included in proposed class action settlement agreements are, like every other aspect of such agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (citation omitted). Thus, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

Where a settlement establishes a calculable monetary benefit for a class, a court has discretion to award attorneys' fees based on a percentage of the monetary benefit obtained. *See In re Volkswagen*, 2017 WL 1047834, at *1 (N.D. Cal. Mar. 17, 2017); *see also Staton*, 327 F.3d at 967. The $78 million available to the Class is non-reversionary, eliminating the incentive to discourage Class members' participation in the Settlement and ensuring that the full value is put towards the interests of the Class in this litigation. Settlement Class Counsel's requested fee and expense amount represents 20% of the total Settlement Amount net of notice costs, expert costs, and service awards. This is below the Ninth Circuit's benchmark fee award of 25%. *See In re Google LLC St. View Elec. Commc'ns Litig.*, 611 F. Supp. 3d 872, 887 (N.D. Cal. 2020), *aff'd sub nom. In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102 (9th Cir. 2021). Moreover, as noted above, no Class member has objected to the requested fees and expenses award. Settlement Class Counsel's request for $15.5 million in attorneys' fees and expenses is hereby granted.

A lodestar cross-check further confirms the reasonableness of the attorneys' fee award sought. Both the hours worked and the rates billed are customary, and the total lodestar yields a multiplier of 0.67 for work done through March 31, 2024. Additional hours worked since then have further reduced the multiplier. This multiplier is within the range of reason.

The Court has discretion to award reasonable service awards for Settlement Class Representatives. The request of $10,000 per Settlement Class Representative, for a total of $50,000, amounts to approximately six hundredths of one percent of the total Settlement Fund. The five Settlement Class Representatives undertook an important role in a complex case, and their awards are justified.

III. CONCLUSION

Accordingly, the Court hereby orders, adjudges, finds, and decrees as follows:

1. The Court **DISMISSES** the Action and all claims contained therein, as well as all of the Released Claims, with prejudice as to the Parties, including the Class. The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

2. Only those entities that timely submitted valid requests to opt out of the Settlement Class are not bound by this Order. Those entities are not entitled to any recovery from the Settlement.

3. The Court **GRANTS** class certification for settlement purposes only.

4. The Court **CONFIRMS** the appointment of Interim Class Counsel Paul J. Geller, Elizabeth J. Cabraser, and James R. Dugan, II, as Settlement Class Counsel.

5. The Court **CONFIRMS** the appointment of Settlement Class Representatives District Council 37 Benefits Fund Trust; Cleveland Bakers and Teamsters Health & Welfare Fund; BCTGM Atlantic Health & Welfare Fund; International Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Trust Fund; and Teamsters Local 404 Health Services and Insurance Plan.

6. The Court **GRANTS** Class Counsel's request for attorneys' fees and expenses, subject to PTO No. 9, and AWARDS Class Counsel $15.5 million to be allocated by Class Counsel to TPP counsel involved in this matter. Further, the Court GRANTS Class Counsel's request for service awards of $10,000 to each of the five Settlement Class Representatives.

7. The Court hereby discharges and releases the Released Claims as to the Released Parties, as those terms are used and defined in the Settlement Agreement.

8. The Court hereby permanently bars and enjoins the institution and prosecution by Class Plaintiffs and any Class Member of any other action against the Released Parties in any court or other forum asserting any of the Released Claims, as those terms are used and defined in the Settlement Agreement.

9. The Court further reserves and retains exclusive and continuing jurisdiction over the Settlement concerning the administration and enforcement of the Settlement Agreement and to effectuate its terms.

IT IS SO ORDERED.

DATED: ____________________________

____
THE HONORABLE CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE