

IN RE: MCKINSEY & CO., INC. NATIONAL)	Case No. 3:21-md-02996-CRB
PRESCRIPTION OPIATE CONSULTANT)	
LITIGATION)	[Assigned to the Hon. Charles R. Breyer]
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)	PRETRIAL ORDER NO. __: INITIAL
)	CASE MANAGEMENT ORDER
This Document Relates to: ALL ACTIONS)	
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1. This Initial Case Management Order (“CMO”) is intended to conserve judicial resources, reduce duplicative service, avoid duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. See Federal Rule of Civil Procedure (“FRCP”) 1. This CMO shall govern the practice and procedure in those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation (“the Panel”) pursuant to its Transfer Order of June 7, 2021 (Dkt. No. 1), any “tag-along” actions transferred to this Court by the Panel pursuant to the Panel’s Rules of Procedure, and all related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned thereto. These cases will be referred to as the “MDL Proceedings.”

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subsequent case management order issued in the MDL proceedings, shall supersede any inconsistent provisions of the Local Rules for the United States District Court, Northern District of California. The coordination of MDL Proceedings, including certain of these cases that have been or may be directly filed into this MDL, does not constitute a waiver of any party's rights under *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). This CMO shall not be construed to affect the governing law or choice-of-law rules in any case subject to the CMO.

3. This Order may be amended by the Court on its own motion, and any party may apply at any time to this Court for a modification or exception to this Order. The Court expects it will issue subsequent case management orders addressing the cases mentioned in this CMO and other MDL proceedings.

II. Cases Before this Court

4. The inclusion of any action in *In re McKinsey & Co., Inc. National Prescription Opiate Consultant Litigation*, MDL No. 2996, whether such action was or will be filed originally or directly in the United States District Court for the Northern District of California or was or will be transferred or removed from some other court, shall not constitute a determination by this Court that jurisdiction or venue is proper in this District. No reference in this Order to actions filed originally or directly in the United States District Court for the Northern District of California shall constitute a waiver of any party's contention that jurisdiction or venue is proper or improper.

III. Master Complaints

5. The Plaintiffs' Steering Committee ("PSC") shall file and serve Master Complaints for each category of Plaintiffs (Political Subdivisions, American Indian Tribes, Third Party Payors, NAS Children, School Districts) no later than December 6, 2021. Unless the Court orders otherwise, Defendants will not be required to respond to or move against each individual complaint filed in these MDL proceedings other than the Master Complaints. Defendants reserve the right to move under any applicable federal rule for dismissal of one or more Master Complaints, including but not limited to filing the Initial Motions (defined below) outlined in Section IV. Insofar as any ruling with regard to any Master Complaint addresses issues that are also raised by any individual action in these MDL Proceedings, such ruling shall also apply to that action.

IV. Initial Motions

6. McKinsey will file its motion seeking dismissal of the claims brought by political subdivisions and other similarly situated plaintiffs on the grounds that the claims are barred by the Attorney General settlement (the “AG Settlement Motion”) no later than December 23, 2021. The PSC will file its Opposition to the AG Settlement Motion no later than February 14, 2022. McKinsey will file its Reply on the AG Settlement Motion no later than March 21, 2022. The motion shall be noticed for a hearing on March 31, 2022.

7. McKinsey will file its motion seeking dismissal of the claims of certain Plaintiffs for lack of personal jurisdiction pursuant to FRCP 12(b)(2) (the “Initial Personal Jurisdiction Motion,” and, together with the “AG Settlement Motion,” the “Initial Motions”) on the same schedule set forth above for the AG Settlement Motion, and the motion shall be heard with the AG Settlement Motion on March 31, 2022. Plaintiffs reserve the right to oppose such a motion on the merits, including the argument that personal jurisdiction should be resolved after discovery.

8. McKinsey does not waive and shall be deemed to have preserved any defenses not addressed in the Initial Motions filed pursuant to the foregoing provisions, including but not limited to insufficient service and lack of personal jurisdiction, and nothing herein shall preclude the filing of additional Rule 12 or other dispositive motions following the Court’s ruling on the Initial Motions or at any other time permitted by the Court. For the avoidance of doubt, McKinsey reserves the right to move to dismiss, based upon lack of personal jurisdiction, the claims of those Plaintiffs against whom McKinsey does not file an Initial Personal Jurisdiction Motion.

9. Within 10 days of the Court’s ruling on the Initial Motions, the parties shall meet and confer about a process and timetable for briefing any additional motions to dismiss pursuant to FRCP 12(b) that McKinsey intends to file, as well as next steps in the litigation, and shall submit joint or opposing proposals to the Court.

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V. PLEADINGS

a. Direct Filing.

10. In order to eliminate delays associated with transfer to this Court of cases filed in or removed to other federal district courts, any Plaintiff whose case would be subject to transfer to these MDL proceedings may file its case directly in this District rather than in the original transferor forum, provided that the Plaintiff whose case would be subject to transfer indicates in its Complaint the original forum in which the case would have been filed but for this direct filing provision. Direct filing shall not constitute a waiver of any party's contention that jurisdiction or venue is improper or that the action should be dismissed or transferred. Direct filing shall not impact the choice of law or jurisdictional analysis to be applied in the case; any such direct filed cases shall be treated as if they were transferred from the judicial district(s) sitting in the state(s) where the case(s) originated and would have been filed but for this direct filing provision.

11. At the conclusion of pretrial proceedings, if any claims remain in any direct filed case(s), and if the Court deems it appropriate, the Court will file a suggestion of remand with the JPML to the judicial district(s) sitting in the state(s) where the case(s) originated and would have been filed but for this direct filing provision.

12. Waiving service of a summons does not waive any objection to personal jurisdiction or to venue. Fed. R. Civ. P. 4(d)(5).

b. Response Extension.

13. With the exception of the Initial Motions set forth in Section IV, McKinsey is granted an extension of time for responding by motion or answer to the MCCs and to any complaint filed in a case that is either transferred to these MDL proceedings or filed directly in these proceedings until a date set by this Court.

VI. Motion Practice

14. The following procedures apply to any motions not outlined in Section IV, Initial Motions. The following procedures do not apply to joint discovery dispute letters, which will be governed by the procedures set out by Magistrate Judge Kim.

1 15. To obtain a hearing date for all motions, including all non-dispositive motions,
 2 Plaintiffs' Lead Counsel and McKinsey's Counsel shall meet and confer on dates available to
 3 counsel. Once they have agreed to several dates, counsel for the moving party shall call or email
 4 the Court's Deputy Clerk, Lashanda Scott, to obtain a hearing date.

5 16. The Court will specially set the briefing schedule for all dispositive motions after
 6 the parties have met and conferred and submitted joint or opposing proposals to the Court. All non-
 7 dispositive motions shall be filed not less than thirty-five (35) calendar days before the hearing
 8 date, absent either a specific briefing schedule as agreed to by Plaintiffs' Lead Counsel and
 9 McKinsey's counsel or as ordered by the Court for a specific motion. Responses to all contested
 10 non-dispositive motions shall be filed not less than twenty-one (21) calendar days before the
 11 hearing date. A reply to a response to any motion shall be filed not less than fourteen (14) calendar
 12 days before the hearing date. These times may be extended by stipulation and/or by order of the
 13 Court, on a reasonable basis.

14 17. All parties shall have an ongoing obligation to meet and confer with Plaintiffs' Lead
 15 Counsel, McKinsey's Counsel, and any other party to whom a motion may be directed on any
 16 application or motion in an effort to resolve outstanding issues before bringing them to the Court.
 17 The moving party shall have an obligation to certify in the moving papers that such meet and
 18 confer took place and identify which party or parties oppose the application or motion. No party
 19 may bring an application or motion except in accordance with the provisions of this section, unless
 20 otherwise ordered by the Court or agreed to by Plaintiffs' Lead Counsel and McKinsey's Counsel.

21 **VII. Status Conferences and Agendas**

22 18. This Court will convene periodic Status Conferences at the request of Plaintiffs'
 23 Lead Counsel or McKinsey's Counsel, or on its own motion. To aid the Court and the parties in
 24 preparing for such conferences, Plaintiffs' Lead Counsel and McKinsey's Counsel shall confer at
 25 least ten (10) calendar days prior to each future status conference to attempt to agree upon a
 26 proposed agenda for the conference. The parties shall submit a joint agenda to the extent they agree
 27 and separate agendas for items on which they do not agree, not less than three (3) court days prior
 28 to the conference. The agendas are intended to aid and apprise the Court of the items or issues

1 which the parties desire to raise at the Status Conference. The Court may amend or augment the
2 agendas as it deems appropriate.

3 IT IS SO ORDERED.

4 Dated: November ___, 2021

5 CHARLES R. BREYER
6 United States District Judge
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