

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)

~~[CORRECTED]~~ ~~[PROPOSED]~~ PRETRIAL
ORDER NO. 9: ESTABLISHING A
COMMON BENEFIT FEE AND EXPENSE
FUND

This Order Relates to:

ALL ACTIONS

THIS ORDER is entered to supplement Pretrial Order No. 3 (Protocol for Common Benefit Work and Expenses) entered August 18, 2021 in this litigation (“PTO-3”).¹ PTO-3 remains in full force and effect and is hereby supplemented as follows:

1. On August 16, 2021, this Court appointed a Plaintiffs’ leadership structure.²
2. On August 18, 2021, this Court entered PTO-3, which sets forth detailed instructions for the performance of common benefit work, and for the type of work and expenses that could qualify for potential compensation and reimbursement. Under this authority and with this guidance, Plaintiffs’ Lead Counsel, the members of the Plaintiffs’ Steering Committee (“PSC”), and other authorized counsel (collectively, “Participating Counsel”), have done and

¹ ECF No. 215.

² ECF No. 211 (Pretrial Order No. 2: Order Appointing Plaintiffs’ Lead Counsel and Plaintiffs’ Steering Committee).

1 will continue to do common benefit work on a contingent basis. The PSC has invested and will
 2 continue to invest substantial time and financial resources related to motion practice, discovery,
 3 and bellwether trials. This work has and will benefit all Plaintiffs with claims against Defendants
 4 related to the subject matter of this MDL.

5 3. It is just and appropriate to provide a system of assessment on any settlements
 6 and recoveries, to which this substantial effort has contributed, commensurate with common
 7 benefit assessments ordered in recent and contemporary MDLs.

8 4. The Court enters this Order: (1) to avoid unnecessary conflicts and expense,
 9 conserve judicial resources, and expedite the disposition of all the cases in this complex
 10 litigation; (2) to provide for the equitable sharing among Plaintiffs and their counsel of the
 11 burden of services performed and expenses incurred by attorneys acting for the common benefit
 12 of all Plaintiffs in this complex litigation (collectively, “Common Benefit Work”); and (3) to
 13 enable Plaintiffs’ attorneys who wish to obtain the work-product of the PSC and the work-
 14 product of others who perform authorized common benefit work (collectively, the “Common
 15 Benefit Work Product”), an opportunity to obtain such work product.

16 5. For purposes of this and other common benefit-related Orders, the phrase
 17 “common benefit” refers to Lead Counsel-authorized and timely reported work performed and
 18 costs incurred on behalf of one or more of the definable groups or categories of plaintiffs with
 19 cases in these proceedings, such as Subdivisions, School Districts, Tribes, Third Party Payors, or
 20 NAS plaintiffs, or all plaintiffs generally.

21 **I. GOVERNING PRINCIPLES—THE COMMON BENEFIT DOCTRINE**

22 6. This Order is entered to provide for the fair and equitable sharing, among all
 23 beneficiaries, of the value of the services performed and expenses incurred by attorneys acting
 24 for the common benefit of all plaintiffs in this complex litigation. This is accomplished by
 25 directing Defendants who have appeared in these proceedings, and over whom this Court has
 26 exercised jurisdiction, in the event of settlement, verdicts, and/or other recoveries, to either hold
 27 back or self-fund a designated percentage of their related settlements. The Court’s authority
 28 derives from the Supreme Court’s common benefit doctrine, as established in *Trustees v.*

1 *Greenough*, 105 U.S. 527 (1881); *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116
 2 (1884); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*,
 3 396 U.S. 375 (1970); and *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980).

4 7. This and many other courts have properly exercised their inherent case
 5 management authority to apply the common benefit doctrine in MDL proceedings. *See In re*
 6 *Nat'l Prescription Opiate Litig.* (MDL No. 2804) (N.D. Ohio 2022), ECF Nos. 4804, 5503; *In re*
 7 *Bard IVC Filters Prods. Liab. Litig.* (MDL No. 2641), 603 F. Supp. 822 (D. Ariz. 2022); *In re*
 8 *Social Media Adolescent Addiction/Personal Injury Products. Liab. Litig.* (MDL No. 3047)
 9 (N.D. Cal. 2022); *In re Cook Med., Inc., Pelvic Repair Sys.* (MDL No. 2440), 365 F. Supp. 3d
 10 685, 695 (S.D.W. Va. 2019) (collecting cases); *In re Zyprexa Prods. Liab. Litig.* (MDL No.
 11 1596), 467 F. Supp. 2d 256, 265–67 (E.D.N.Y. 2009); *In re Bextra/Celebrex Prods. Liab. Litig.*
 12 (MDL No. 1699), Pretrial Order No. 8A (N.D. Cal. 2008) (8% assessment); *In re Sulzer Hip*
 13 *Prosthesis & Knee Prosthesis Prods. Liab. Litig.*, 268 F. Supp. 2d 907 (N.D. Ohio 2003), *aff'd*,
 14 398 F.3d 778 (6th Cir. 2005); *In re MGM Grand Hotel Fire Litig.*, 660 F. Supp. 522, 525–29 (D.
 15 Nev. 1987); *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d
 16 1006, 1019–21 (5th Cir. 1977). The Third Circuit most recently endorsed this important case
 17 management tool in *Home Depot USA, Inc. v. LaFarge North America, Inc.*, 59 F.4th 55 (3d Cir.
 18 2023).

19 8. Use of the common benefit doctrine to compensate attorneys who work for the
 20 common good of all plaintiffs is necessary for MDLs to be an effective means for the timely and
 21 economic resolution of cases. Management of complex MDLs would be impossible without
 22 court-appointed counsel. *See Bard IVC Filters*, 603 F. Supp. 3d at 831. If court-appointed
 23 counsel “are to be an effective tool, the court must have the means at its disposal to order
 24 appropriate compensation for them. The court’s power is illusory if it is dependent upon [court-
 25 appointed] counsel’s performing the duties desired of them for no additional compensation.”
 26 *Everglades*, 549 F.2d at 1012. Thus, in consolidated MDL proceedings, it is standard practice to
 27 order that a percentage of all recoveries be contributed to a fund to compensate attorneys who
 28 provide work for the common benefit of all plaintiffs. *Manual for Complex Litigation (Fourth)*

§ 20.312 (2004) (“MDL judges generally issue orders directing that defendants who settle MDL-related cases contribute a fixed percentage of the settlement to a general fund to pay national counsel.”).

II. APPLICATION AND SCOPE

9. This Order applies to:

- a) All cases or claims now or later subject to the jurisdiction of this Court in this MDL, regardless of whether the case is resolved while the case is pending before this Court, after a remand from this Court to the transferor court, or in bankruptcy;³
- b) All cases or claims, filed or unfilled, in which any counsel associated with any one case filed in or transferred to this MDL has a fee interest; and,
- c) All cases or claims settled pursuant to an MDL-negotiated or supervised settlement agreement.

III. PLAINTIFFS’ FEE AND EXPENSE ACCOUNTS

10. Plaintiffs’ Lead Counsel is directed to establish two bank accounts (the “Accounts”) to receive and disperse funds consistent with this Order (the “Funds”). These Funds will be held subject to the direction of this Court. The first fund shall be designated as the “Fee Fund,” and the second should be designated as the “Expense Fund.”

A. Establishing the Fee and Expense Accounts

11. The accounting department of Plaintiffs’ Lead Counsel’s firm is directed to serve as “Administrator” to oversee the Accounts and to receive and disburse funds in the event of settlements or verdicts as provided in this Order and any subsequent Orders. The Accounts will be held subject to the direction of this Court.

³ If a case is determined to be improperly removed to this Court after the Court’s consideration of a remand motion and is remanded to the transferor court, the case will not automatically be subject to assessment just by virtue of it having been temporarily venued in this Court. However, if the case received and benefited from the work product of the MDL, it could be assessed, after due consideration by the Court following briefing by the parties.

1 **B. Administration of the Fee and Expense Accounts**

2 12. The Accounts shall be established at a commercial bank that Plaintiffs' Lead
3 Counsel shall select in consultation with the PSC. The commercial bank shall be the "Escrow
4 Agent."

5 13. No disbursement shall be made from the Accounts other than by Order of this
6 Court pursuant to a petition requesting an award of fees and reimbursement of expenses (a
7 "Petition"). No Petition shall be filed without leave of Court. No person or entity has any right to
8 make any claim against any of the amounts held in the Accounts except to the extent this Court
9 issues an Order directing the disbursement of any amounts to such a person or entity. The rights
10 of any such person or entity are limited to the amount ordered by the Court to be so disbursed to
11 that particular person or entity. Plaintiffs' Lead Counsel may, in consultation with the PSC,
12 convene a common benefit fees and costs committee, or utilize another appropriate mechanism,
13 to make recommendations to the Court for the award of common benefit fees and costs. Any and
14 all such awards require Court approval on noticed motions.

15 14. The amounts held in the Accounts shall not constitute the separate property of any
16 person or entity or be subject to garnishment or attachment for the debts of any person or entity.
17 However, any specific amounts ordered by the Court to be disbursed to a person or entity, upon
18 the entry of such an Order, can then be subject to garnishment or attachment, limited to the
19 amount of the disbursement so ordered. These limitations do not preclude a person or entity from
20 transferring, assigning, or creating a security interest in potential disbursements from the
21 Accounts to which such person or entity may be entitled as determined by the Court, if permitted
22 by applicable state laws and if subject to the conditions and contingencies of this Order.
23 However, no notice of lien or security interest in potential disbursements or of a transfer or
24 assignment of a right of potential disbursements shall be effective unless and until it is filed in
25 this Court and served upon the Administrator.

26 15. In connection with the administrative services, the Administrator shall:

- 27 a) Have all such power and authority over the Accounts as necessary or
28 convenient to exercise the authority granted in this Order;

- b) Keep and report periodically to the Court, to the extent requested by the Court, an accounting of the funds received, maintained, and disbursed relating to the Accounts;
- c) Have the authority to instruct the Escrow Agent with respect to permitted investments of the Accounts;
- d) Make decisions and take action with respect to treatment of the Accounts for purposes of compliance with the Internal Revenue Code and any applicable local or state tax codes, including creating reports, maintaining and reporting relating to the Accounts and their income, if any, derived therefrom, and as in a Qualified Settlement Fund or such other entity as the Administrator deems appropriate;
- e) Out of the assets of the Accounts, purchase and maintain reasonable amounts and types of insurance for errors and omissions or fidelity bonds;
- f) Have the authority to procure, upon consultation with the PSC, professional accounting, legal, and other services for the purposes of carrying out the tasks described in this Order, and to be reimbursed for the expenses of such services; and,
- g) Have the authority to adopt and implement reasonable procedures consistent with this Order and in consultation with the PSC.

16. Unless required by law (as with a settlement containing a class action component in which certain class members settle parallel to, but outside of, the settlement class), or as otherwise agreed to by Defendants and the PSC, details of any individual settlement agreement, individual settlement amount, and individual amounts deposited into the Accounts shall be treated as confidential by the Administrator and shall not be disclosed by the Administrator to the public, the Court, or the Court's designee, unless the Court requests that it receive that information *in camera*. The Administrator shall, however, provide statements to the Court upon its request, showing only the aggregate of the monthly deposits, disbursements, interest earned, financial institution charges, if any, and current balance.

C. Requirements of the Escrow Agent

17. The Escrow Agent shall be a commercial bank that: (1) has deposits insured by the Federal Deposit Insurance Corporation; (2) is organized under the laws of the United States or any state thereof; and (3) has a total risk-based capital in excess of \$5 billion and meets the

1 minimum risk-based ratios established under the Federal Deposit Insurance Corporation
 2 Improvement Act of 1991. The Escrow Agent may act as paying agent, depository, custodian, or
 3 trustee with respect to funds it holds.

4 18. The Administrator shall consider, in designating the Escrow Agent and in
 5 procuring professional services, the charges that the Escrow Agent or provider of professional
 6 services will impose for its actions and the ability of the Escrow Agent or provider of
 7 professional services to undertake the tasks called for with efficiency and responsiveness.

8 19. The Escrow Agent shall not acquire or hold for longer than 90 days, any debt
 9 securities, certificates, or investments unless such instruments are a U.S. Treasury Bill, U.S.
 10 Treasury Money Market, U.S. Government Money Market, or similar type of account
 11 guaranteed by the United States or an agency thereof, including an FDIC-Insured Account. The
 12 U.S. Treasury Money Market or U.S. Government Money Market must be registered under the
 13 Investment Company Act of 1940, as amended. In determining investments to be held by the
 14 Escrow Agent, primary regard shall be given by the Escrow Agent to safety of principal.

15 20. The reasonable fees and reasonable expenses of the Administrator and Escrow
 16 Agent shall be paid by the PSC. The Administrator and Escrow Agent shall each provide to the
 17 PSC their statements for their reasonable fees and reasonable expenses charged on a monthly
 18 basis. When this Court authorizes the filing of a Petition, the reasonable fees and expenses of the
 19 Administrator and Escrow Agent that were paid by the PSC may be included as items for
 20 reimbursement from the Accounts. The Petition shall include copies of the statements of the
 21 Administrator and Escrow Agent that had been submitted on a monthly basis to the PSC to
 22 support the request for reimbursement of such payments made by the PSC for which
 23 reimbursement is requested.

24 **IV. PARTICIPATION AGREEMENT AND ELIGIBLE PARTICIPATING** 25 **COUNSEL**

26 21. Pursuant to PTO-3, the recovery of common benefit attorneys' fees and cost
 27 reimbursements will be limited to "Participating Counsel," defined as Plaintiffs' Lead Counsel
 28 and members of the Plaintiffs' Steering Committee (along with members and staff of their

1 respective firms), any other counsel authorized by Plaintiffs' Lead Counsel to perform work that
2 may be considered for common benefit compensation, and/or counsel who have been
3 specifically approved by this Court as Participating Counsel prior to incurring any such cost or
4 expense.

5 22. An agreement attached hereto as **Exhibit 1** (the "Participation Agreement") is
6 approved by this Court for signature by attorneys for the purposes set forth below.

7 23. The Participation Agreement can be entered into by plaintiffs' attorneys on a
8 voluntary basis. The Participation Agreement is a private and cooperative agreement between the
9 PSC and plaintiffs' attorneys only. It is not an agreement with any Defendant.

10 24. There is no need for an attorney who already has a case filed in or transferred to
11 this Court or who represents a plaintiff or claimant in any MDL proceeding to sign the
12 Participation Agreement, because they are automatically subject to PTO-3, and any amendments,
13 with regard to all cases in which they have a fee interest, regardless of whether any of their other
14 cases are filed in other jurisdictions, or not yet filed.

15 25. Plaintiffs' attorneys who do not execute the Participation Agreement and who are
16 not deemed signatories to the Participation Agreement, or are otherwise not bound to common
17 benefit assessments pursuant to PTO-3, and any amendments, are hereinafter referred to as
18 "Non-Participating Counsel."

19 26. Participating Counsel who execute the Participation Agreement shall be entitled
20 to access to the Common Benefit Work Product for use in all of the cases or claims of their
21 clients, whether the case or claim has been filed or not, and if filed, for use in any court in which
22 it was filed even if not filed in this MDL, and for use for the benefit of non-filed claims,
23 including any for which a tolling agreement exists. All claims or cases of a counsel who has
24 executed the Participation Agreement shall be assessed whether the claim or case has or had not
25 been filed, and all claims or cases in which a counsel who has executed the Participation
26 Agreement has a fee interest shall be assessed.

27 27. Non-Participating Counsel, who do not execute the Participation Agreement and
28 who are not deemed to have executed the Participation Agreement, shall have no right of access

1 to the Common Benefit Work Product. However, in the event it is determined that such counsel
 2 in any fashion benefited from the Common Benefit Work Product or the administrative functions
 3 of the PSC, then all cases and claims of clients of such counsel, whether filed or not, shall be
 4 subject to the assessment described in this Order. It is deemed that the fair liquidated damages
 5 for such unauthorized use of the Common Benefit Work Product is equal to the assessment
 6 percentage(s) set by this Order. The Court will also consider an application by the PSC for
 7 payment of its fees and costs to enforce this Order with respect to any unauthorized procurement
 8 or use of the Common Benefit Work Product.

9 28. The PSC may periodically request that attorneys who are subject to the
 10 assessment provide a list of all cases filed, regardless of jurisdiction, and a list of all claims of
 11 clients represented or in which they have a fee interest whether the case is filed or not or on a
 12 tolling agreement or not, to facilitate the PSC's ability to keep track of all cases and claims that
 13 are subject to the assessment. Further, all counsel with cases filed in or transferred to this Court,
 14 and those who sign the Participation Agreement, must comply with such a request within 30
 15 days of the request.

16 **V. ASSESSMENTS AND PAYMENTS INTO THE ACCOUNTS**

17 **A. Assessment Allocation**

18 29. For Participating Counsel, the assessment shall be 7.5%. This 7.5% assessment is
 19 payable from the attorneys' fee portions of the "Gross Monetary Recovery," defined below, and
 20 applies, unless otherwise ordered, to all settlements reached and judgments entered in this
 21 litigation, whether before or after the date of this Order.

22 30. If the 7.5% amount exceeds one-half (1/2) of Participating Counsel's total
 23 contingency fee for a given client, then the contingent assessment will instead be limited to one-
 24 half (1/2) of the contingency fee of Participating Counsel on each settlement or judgment. This
 25 assessment and limit is equivalent to that ordered in a related contemporary MDL, *In re National*
 26 *Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio), and within the range of modern
 27 MDL assessments. The MDL assessments represent a hold back pursuant to *In re Zyprexa*
 28 *Products Liability Litigation*, 467 F. Supp. 2d 256, 266 (2d Cir. 2006).

B. Calculating the Assessment

31. For any attorney subject to an assessment under the terms of this Order, the assessment is owed on the “Gross Monetary Recovery” on all of that attorney’s cases or claims.

32. A Gross Monetary Recovery occurs when a plaintiff agrees or has agreed—for monetary consideration—to settle, compromise, dismiss, or reduce the amount of a claim (a “Settlement”) or, with or without trial, recover a judgment for monetary damages or other monetary relief, including compensatory, and/or abatement costs and/or punitive damages (a “Judgment”), with respect to any opioids-related claims against McKinsey, including any or all claims alleged against McKinsey in the Master Complaints and case-specific complaints (and amendments thereto) in these MDL proceedings (individual or class), including but not limited to the private, public, or government-entity plaintiffs (including cities, counties, school districts, Indian tribes, state attorneys general, and participating States).

33. The Gross Monetary Recovery:

- a. Excludes court costs that are to be paid by Defendant(s); and,
- b. Includes the present value of any fixed and certain payments to be made in the future, such as those that come about as a result of a structured settlement of a claim or payments for future abatement costs.

C. Defendants’ Obligations

34. Defendants and their counsel shall not distribute any Settlement or Judgment proceeds to any counsel or plaintiff until after (1) Defendants’ counsel notifies Plaintiffs’ Lead Counsel in writing of the existence of a settlement and the name of the individual plaintiff’s attorney (without disclosing the amount of the settlement); (2) Plaintiffs’ Lead Counsel consults with the designee, if necessary, to ascertain if the attorney or his/her/their firm is a firm subject to an assessment; and (3) the PSC has advised Defendants’ counsel in writing whether or not the individual plaintiff’s attorney’s cases are subject to an assessment and the amount (stated as a percentage of the recovery) of the assessment pursuant to this Order. Any of the Defendants’ counsel shall be permitted to share this information with the PSC, who shall otherwise keep this information confidential.

35. For cases subject to an assessment, Defendants are directed to withhold an assessment from any and all amounts paid to plaintiffs and their counsel and to pay the assessment directly into the Accounts as a credit against the Settlement or Judgment. No orders of dismissal of any Plaintiff's claim, subject to this Order, shall be entered unless accompanied by a certificate of Plaintiff's and Defendants' counsel that the assessment, where applicable, will be withheld and will be deposited into the Accounts at the same time the settlement proceeds are paid to settling counsel. If for any reason the assessment is not or has not been so withheld, the Plaintiff and his/her/their counsel are jointly responsible for paying the assessment into the Accounts promptly.

36. Upon payment of the assessment into the Accounts, Defendants, the PSC, and its individual members shall be released from any and all liability to any person, attorney, or claimant with respect to the assessment placed into the Accounts. Any person, attorney, or claimant allegedly aggrieved by an assessment pursuant to this Order shall seek recourse as against the Accounts only, provided, however, that notice and an opportunity to be heard shall be given to both the Defendants and the PSC.

37. This Order shall in no way be read to affect or otherwise encumber any Defendants' obligation to pay attorneys' fees and costs pursuant to fee-shifting statutes, if any, that may apply in this case.

D. Other Rights

38. Nothing in this Order is intended to impair the attorney/client relationship or any contingency fee contract deemed lawful by the attorneys' respective bar rules and/or state court nor otherwise interfere with public entities' rights to, and exercise of, control in their respective cases.

VI. COMMON BENEFIT WORK

A. Qualified Common Benefit Work Eligible for Reimbursement

39. Pursuant to PTO-3, only Participating Counsel are eligible for reimbursement for time and efforts expended for the Common Benefit. Participating Counsel shall be eligible to

1 seek reimbursement for time and efforts expended for Common Benefit Work if said time and
2 efforts are:

- 3 a. for the common benefit of Plaintiffs as defined in Paragraph 5 of this
Order;
- 4 b. timely submitted; and
- 5 c. reasonable.

6 40. All submissions and applications for common benefit fees and/or costs must
7 comply with the procedures, requirements, and guidelines of PTO-3. This Court retains the
8 discretion to amend or supplement PTO-3, and this Order, as necessary and appropriate to reflect
9 ongoing developments in the litigation.

10 41. Time spent on unauthorized work will not be compensable.

11 42. Duplicative work may not be approved for compensation.

12 43. The provisions of PTO-3, Section I(A) are incorporated herein as if set forth in
13 their entirety.

14 **B. Common Benefit Timekeeping Protocols**

15 44. The provisions of PTO-3, Section I(B) are incorporated herein as if set forth in
16 their entirety.

17 **VII. COMMON BENEFIT EXPENSES**

18 **A. Qualified Common Benefit Expenses Eligible for Reimbursement**

19 45. In order to be eligible for reimbursement, expenses (“Common Benefit
20 Expenses”) must meet the requirements set forth in PTO-3, Section I(D), which are incorporated
21 herein as if set forth in their entirety. Said expenses must be for the common benefit of Plaintiffs
22 in this MDL as a whole and must be approved by Lead Counsel prior to payment.

23 **B. Shared Costs Defined**

24 46. The provisions of PTO-3 Section I(D)(1) are incorporated herein as if set forth in
25 their entirety.

26 **C. Held Costs Defined**

27 47. The provisions of PTO-3 Section I(D)(2) are incorporated herein as if set forth in
28 their entirety.

1 **D. Common Benefit Submission of Time and Expense Protocols**

2 48. The provisions of PTO-3 Section I(E) are incorporated herein as if set forth in
3 their entirety.

4 **VIII. FURTHER PROCEEDINGS AND CONTINUING JURISDICTION**

5 49. The payment of attorneys' fees and expenses for any class action settlement or
6 recovery is governed by Federal Rule of Civil Procedure 23(h) or any analogous state court
7 procedural rules. This Order is without prejudice to such other assessments or awards of fees and
8 costs as may be ordered by this Court under Federal Rule of Civil Procedure 23(h) or any
9 analogous state court procedural rules, the common benefit doctrine, or that may be provided by
10 contract between the parties to a group or global settlement, provided that any order or
11 agreement that would alter the common benefit obligations set forth herein is also subject to the
12 approval of this Court.

13 50. The intent of this Order is to establish, secure, and supervise a fund to promote
14 the purposes and policies of the common benefit doctrine and provide a source for equitable
15 payment of services rendered and costs incurred for the benefit of plaintiffs.

16 51. If all parties to a future settlement agree that exceptional circumstances warrant a
17 departure from the holdback obligations, or other provisions of this Order, they shall submit
18 affidavits thereon and request appropriate relief from the Court.

19 52. Any disputes or requests for relief from or modification of this Order will be
20 decided by the Court in the exercise of its continuing jurisdiction over the parties, and authority
21 and discretion under the common benefit doctrine.

22 For Good Cause Shown,

23 **IT IS SO ORDERED.**

24 

25 THE HONORABLE CHARLES R. BREYER