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PSC Members – Political Subdivisions

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

In re MCKINSEY & CO., INC. NATIONAL  
PRESCRIPTION OPIATE CONSULTANT  
LITIGATION

Case No. 3:21-md-02996-CRB

STIPULATION AND ~~PROPOSED~~ ORDER  
FOR LEAVE TO AMEND MASTER  
COMPLAINT (SUBDIVISION)

This Document Relates To:

ALL SUBDIVISION ACTIONS.

1 WHEREAS, on June 7, 2021 the Judicial Panel on Multidistrict Litigation (“JPML”)
 2 centralized numerous actions against McKinsey<sup>1</sup> in the United States District Court for the
 3 Northern District of California before this Court. *In re McKinsey & Co., Inc., Nat’l Prescription*
 4 *Opiate Consultant Litig.*, 543 F. Supp. 3d 1377 (JPML 2021). After transfer, this Court appointed
 5 Lead Counsel and a Plaintiff Steering Committee, comprised of attorneys representing all five
 6 plaintiff groups, including the Government Subdivision Group. ECF 211;

7 WHEREAS, on December 6, 2021, Political Subdivision Plaintiffs filed a Master
 8 Complaint (Subdivision) on behalf of all Political Subdivision Plaintiffs (“Master Complaint”).
 9 *See* ECF 296;

10 WHEREAS, on December 23, 2021, McKinsey filed two motions under Rule 12 of the
 11 Federal Rules of Civil Procedure: one for lack of personal jurisdiction against all plaintiff groups
 12 in certain states, ECF 313, and a second on grounds of *res judicata* and release, against the
 13 subdivision and school district master complaints. ECF 310. Government Subdivision Plaintiffs
 14 opposed both motions, and the Court scheduled a hearing for October 28, 2022. On October 26,
 15 2022, the parties notified the Court that the McKinsey Defendants and the Government
 16 Subdivision and School District Plaintiffs had reached an agreement in principle to resolve their
 17 claims, and they requested that the Court not adjudicate the *res judicata* motion at that time and
 18 that all deadlines should be vacated with respect to the Government Subdivision Plaintiffs.
 19 ECF 436;

20 WHEREAS, Proposed Named Plaintiffs Santa Cruz County, California; Pope County,
 21 Illinois; and The Village of Eddyville, Illinois (collectively, “Named Plaintiffs”) desire to amend
 22 the Master Complaint to add class allegations and establish themselves as Class Representatives,
 23 including for purposes of settlement;

24 WHEREAS, Defendants have consented under Rule 15(a) to the filing of Named Plaintiffs’
 25 proposed Amended Master Class Action Complaint (Subdivision) (“Amended Complaint.”);

26 \_\_\_\_\_  
 27 <sup>1</sup> McKinsey refers here to Defendants McKinsey & Company, Inc., McKinsey Holdings, Inc.,  
 28 McKinsey & Company, Inc. United States, and McKinsey & Company, Inc. Washington D.C.  
 (collectively, “Defendants”).

WHEREAS, Named Plaintiffs' claims arise from the same course of conduct as the class claims and are based on the identical legal theories already alleged in the Master Complaint. Named Plaintiffs' amendment merely seeks to add class allegations and identify themselves as Class Representatives. Named Plaintiffs' intent is to ensure adequate representation for all class members and to facilitate the fair, judicious, and efficient administration of this controversy, not to cure any purported pleading deficiencies. Named Plaintiffs are not attempting to abuse the amendment process. *See, e.g., Ashker v. Newsom*, No. 4:09-CV-05796, ECF 135, at \*1 (N.D. Cal. Sept. 10, 2012) (granting leave for plaintiffs to amend complaint with class allegations); *McDonald v. Bonded Collectors, L.L.C.*, 233 F.R.D. 576, 576 (S.D. Cal. 2005) (granting leave to file an amended complaint to bring class action allegations);

WHEREAS, the liberal standard of Rule 15(a) directs that leave to amend be "freely" granted. Fed. R. Civ. P. 15(a)(2). In the Ninth Circuit, this rule is "to be applied with extreme liberality." *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).<sup>2</sup> Accordingly, leave should be granted absent a showing of "undue delay," coupled with either "prejudice to the opposing party, bad faith by the moving party, or futility of the amendment." *Bowles v. Reade*, 198 F.3d 752, 757-58 (9th Cir. 1999); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962). Here, none of these conditions is present and, accordingly, leave to file the Amended Complaint should be granted;

WHEREAS, this stipulation is unquestionably timely. Named Plaintiffs seek to amend before Defendants have responded to the Master Complaint, during a stay of discovery, ECF 436, well before Defendants have completed document production, and before any depositions have occurred;

WHEREAS, Named Plaintiffs' filing of the Amended Complaint will not unduly prejudice Defendants, who agreed to this stipulation. In the Ninth Circuit: "it is the consideration of prejudice to the opposing party that carries the greatest weight." *Eminence Cap.*, 316 F.3d at 1052; *Tabas v. MoviePass, Inc.*, 401 F. Supp. 3d 928, 941-42 (N.D. Cal. 2019). Here, there is no

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<sup>2</sup> Unless otherwise stated, all emphasis is added and internal citations are omitted.

1 prejudice to Defendants by the addition of class allegations and establishment of Named Plaintiffs  
 2 as Class Representatives. Discovery is presently stayed, ECF 436; if it were to be reopened,  
 3 Defendants have not yet completed their document production, and depositions have not yet begun.  
 4 Moving forward as a class action will facilitate the efficiency of the administration of this case and  
 5 allow the parties to focus on the issues that are common and typical of the Class generally;

6 WHEREAS, Plaintiffs' amendment is not futile. "[S]o long as the plaintiff alleges facts to  
 7 support a theory that is not facially implausible, the court's skepticism is best reserved for later  
 8 stages of the proceedings when the plaintiff's case can be rejected on evidentiary grounds." *In re*  
 9 *Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1057 (9th Cir. 2008). Thus, at the pleading stage, a plaintiff  
 10 "need only allege 'enough facts to state a claim to relief that is plausible on its face.'" *Matrixx*  
 11 *Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 45 n.12 (2011). Only if it is "clear **beyond doubt** that  
 12 amendment of [a] complaint would be futile" should a court disallow a party to amend its  
 13 complaint. *Ctr. for Biological Diversity v. Veneman*, 394 F.3d 1108, 1114 (9th Cir. 2005). It is  
 14 therefore not surprising that denial of leave to amend on futile grounds is "rare." *LiveCareer Ltd.*  
 15 *v. Su Jia Techs. Ltd.*, 2015 WL 4089800, at \*2 (N.D. Cal. July 2, 2015). Named Plaintiffs' addition  
 16 of class allegations and identifying themselves as Class Representatives is not futile because  
 17 Named Plaintiffs will be able to establish common questions of fact and law, including, but not  
 18 limited to, whether Defendants' implementation of McKinsey's own sales and marketing strategies  
 19 for its client, Purdue, caused or contributed to an increase in opioid addiction; whether Defendants'  
 20 conduct with respect to developing and implementing nationwide opioid sales and marketing  
 21 practices at Purdue caused or contributed to causing a public nuisance; and whether Defendants'  
 22 acceptance of funds from Purdue and other opioid manufacturers regarding Defendants' work  
 23 promulgating and implementing nationwide opioid sales and marketing strategies constitutes  
 24 unjust enrichment;

25 WHEREAS, the addition of Named Plaintiffs is proper to ensure the vigorous and adequate  
 26 representation of the class and to protect the interests of absent class members. Named Plaintiffs  
 27 have counsel who have been appointed to the Plaintiffs' Steering Committee, ECF 211, and have  
 28 significant experience in large, complex litigation such as this multidistrict litigation; and

STIPULATION AND [PROPOSED] ORDER FOR LEAVE TO AMEND MASTER COMPLAINT

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4865-0849-3183.v1

1 WHEREAS, the Amended Complaint and a redlined document comparing the Master  
2 Complaint to the Amended Complaint are attached as Exhibits A and B;

3 NOW, THEREFORE, IT IS HEREBY STIPULATED, by and between the undersigned  
4 counsel for the Parties, subject to the Court's approval, as follows:

5 Plaintiffs may file the proposed Amended Master Class Action Complaint (Subdivision).

6 DATED: September 26, 2023

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*PSC Members – Political Subdivisions*

**Filing Authorized Pursuant to PTO 2:**

DATED: September 26, 2023

LIEFF CABRASER HEIMANN  
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ELIZABETH J. CABRASER

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s/ Elizabeth J. Cabraser  
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*Plaintiffs' Lead Counsel*

DATED: September 26, 2023

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Attorneys for McKinsey Defendants

**ATTESTATION PURSUANT TO LOCAL RULE 5-1**

I, Aelish M. Baig, am the ECF user whose identification and password are being used to file the STIPULATION AND [PROPOSED] ORDER FOR LEAVE TO AMEND MASTER COMPLAINT (SUBDIVISION). Pursuant to Local Rule 5-1(h)(3) and in compliance with General Order No. 45X.B., I hereby attest that Elizabeth J. Cabraser and James L. Bernard have concurred in this filing.

DATED: September 26, 2023

\_\_\_\_\_  
s/ Aelish M. Baig  
AELISH M. BAIG

\* \* \*

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: October 5, 2023

\_\_\_\_\_  
  
THE HONORABLE CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE