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16 *McKinsey & Company, Inc. Washington, D.C.*

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 IN RE: MCKINSEY & CO., INC. NATIONAL ) Case No. 3:21-md-02996-CRB  
20 PRESCRIPTION OPIATE CONSULTANT )  
21 LITIGATION ) [Assigned to the Hon. Charles R. Breyer]  
22 ) **INITIAL CONFERENCE SUBMISSION**  
23 )  
24 This Document Relates to: ALL ACTIONS )  
25 ) Conference Date: July 29, 2021  
26 )  
27 )  
28 )

1 McKinsey & Company, Inc., McKinsey & Company, Inc. United States and McKinsey &  
2 Company, Inc. Washington D.C. (collectively, “McKinsey”) sets forth this submission to advise  
3 the Court on the six items outlined in Paragraph 3 of Pretrial Order No. 1, issued on June 25, 2021,  
4 in the above-referenced matter. Each item is addressed in turn.

5 **A. The status of all of the lawsuits pending in this MDL, and any potential tag-along**  
6 **lawsuits, including which plaintiffs have moved for remand**

7 The document appended as Exhibit A to this submission contains a chart reflecting the  
8 status of the 48 lawsuits currently pending in this MDL, as well as potential tag-along lawsuits.  
9 The chart also reflects the status of all pending motions for remand.

10 **B. The steps Defendants have taken to preserve relevant evidence, including**  
11 **electronically stored information**

12 As of the time the lawsuits in this matter were filed, all McKinsey custodians who worked  
13 on opioid-related engagements had already been placed on hold and notified of their preservation  
14 obligations. McKinsey began receiving subpoenas related to its work for opioid manufacturers in  
15 January 2019, including a subpoena issued by the Plaintiffs’ Executive Committee in the MDL  
16 pending in the Northern District of Ohio. Thereafter, McKinsey issued hold notices to relevant  
17 custodians informing them of their preservation obligations and placed relevant electronic records,  
18 including email accounts, on hold. McKinsey has also periodically issued notices to remind  
19 custodians of their preservation obligations.  
20

21 **C. How and when Defendants propose that the Court address the impact, if any, of**  
22 **the February 2021 settlement agreement between Defendants and the Attorneys**  
23 **General (“the February 2021 Settlement”) on the various plaintiffs here**

24 The February 2021 Settlement is binding on the settling states’ political subdivisions that  
25 filed suit in this MDL and as a result those lawsuits should be dismissed. Because this is a  
26 potentially dispositive issue in the majority of lawsuits filed in this MDL, McKinsey respectfully  
27 submits that the Court should address this issue as a threshold matter. As the question whether the  
28

1 settlement agreement is binding on a state's subdivisions is largely a matter of state law, McKinsey  
2 proposes initially briefing the issue with respect to a subset of the states where it believes the law  
3 clearly supports dismissal of the political subdivisions' lawsuits.<sup>1</sup> The Court's ruling on the laws of  
4 those states will then simplify and drive the analysis in the remaining states. McKinsey submits  
5 that briefing should take place on a timetable to be discussed with the Court and the Plaintiffs in  
6 those jurisdictions.

7  
8 **D. When the Court can expect to receive a copy of the February 2021 Settlement  
9 agreement, as well as a compilation of the related final judgments filed in each state**

10 The February 2021 Settlement is a consent judgment (with two exceptions where a  
11 settlement agreement was reached) so ordered by a court in each jurisdiction where McKinsey  
12 reached a settlement. McKinsey reached settlements in all 50 states, five territories and the District  
13 of Columbia. In the exhibits appended to this submission, McKinsey provides samples of three  
14 different types of the settlement documentation, as follows: (1) a copy of the consent judgment  
15 entered in the overwhelming majority of jurisdictions without any material differences (Exhibit B);  
16 (2) a copy of one of two similar variations on this consent judgment with adjustments to the terms  
17 of the release clause for claims that might be filed by political subdivisions in these two states  
18 (Exhibit C); and (3) a copy of the settlement agreement reached in one of the two jurisdictions  
19 where the matter was resolved by agreement rather than entry of a consent judgment (Exhibit D).  
20 If the Court wishes to have copies of all 56 forms of agreement, McKinsey is happy to provide  
21 those.  
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28 <sup>1</sup> To date, McKinsey has been sued by a political subdivision in sixteen different states.

1           **E. The status of the trove of McKinsey Documents that the February 2021 Settlement**  
2           **anticipates McKinsey producing to the Attorney General**

3           As required by the February 2021 Settlement, McKinsey will provide documents to the  
4 state attorneys general by November 4, 2021 for publication in an online repository.

5           **F. Defendants’ position on liability in these lawsuits, broadly speaking.**

6           McKinsey denies any and all liability in these lawsuits. As an initial matter, McKinsey  
7 resolved the political subdivisions’ claims when it settled with the states encompassing those  
8 political subdivisions. While the theories of liability asserted by the attorneys general were  
9 vigorously disputed by McKinsey, without admitting any fault or liability, McKinsey chose to be  
10 part of the solution to a complex problem in those jurisdictions and efficiently resolve both the  
11 states’ claims and the “follow-on” claims it anticipated would be filed by political subdivisions  
12 after the settlement.

13  
14           More broadly, McKinsey is differently situated than every other defendant involved in the  
15 opioid litigation. It did not manufacture, market, promote, distribute, sell or prescribe opioid  
16 products. Rather, McKinsey, a management consultant, provides business analysis and options to  
17 clients, which clients can, and do, adjust and reject. This unique position gives rise to a host of  
18 general defenses to plaintiffs’ claims including, for example, lack of duty and causation. As a  
19 further example, the public nuisance claims filed against McKinsey should be dismissed because,  
20 inter alia, public nuisance laws cannot be extended to apply to private consulting services. In  
21 addition, McKinsey provided the services at issue here in a very limited number of states. Yet  
22 McKinsey has been sued in numerous jurisdictions in which it is not incorporated and does not  
23 maintain its primary place of business; where it has performed no work related to this matter; and  
24 to which it has no connection relevant to the claims asserted against it. McKinsey thus has  
25 additional defenses related to, for example, lack of personal jurisdiction and the inappropriate  
26 extraterritorial application of state law.  
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McKinsey looks forward to discussing the above items with the Court at the conference on July 29<sup>th</sup> and to working collaboratively with both the Court and the Plaintiffs to move these lawsuits forward in a fair and efficient manner.

Dated: July 22, 2021

STROOCK & STROOCK & LAVAN LLP  
JAMES L. BERNARD

By: \_\_\_\_\_  
      /s/ James L. Bernard  
      James L. Bernard

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      /s/ Josh A. Cohen  
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*and McKinsey & Company, Inc. Washington,*  
*D.C.*

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 22, 2021, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court’s electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court’s EM/ECF System.

*/s/ Josh A. Cohen*  
\_\_\_\_\_  
Josh A. Cohen