JOSEPH W. COTCHETT (SBN 36324)
jcotchett@cpmlegal.com
ANNE MARIE MURPHY (SBN 202540)
amurphy@cpmlegal.com
JULIA Q. PENG (SBN 318396)
jpeng@cpmlegal.com
COTCHETT, PITRE & McCARTHY, LLP
840 Malcolm Road
Burlingame, California 94010
Telephone: (650) 697-6000
Facsimile: (650) 692-3606

Attorneys for Plaintiff

JOHN C. BEIERS (SBN 144282)
jbeiers@smcgov.org
JOHN D. NIBBELIN (SBN 184603)
jnibbelin@smcgov.org
DAVID SILBERMAN (SBN 211708)
dsilberman@smcgov.org
KAREN ROSENTHAL (SBN 209419)
krosenthal@smcgov.org
COUNTY OF SAN MATEO
Office of the County Counsel
400 County Center, Sixth Floor
Redwood City, CA 94063-1662
Telephone: (650) 363-4250
Facsimile: (650) 363-4034

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COUNTY OF SAN MATEO, CALIFORNIA,

Plaintiff,

v.

MCKINSEY & COMPANY, INC., a New York corporation;
MCKINSEY & COMPANY, INC. UNITED STATES, a Delaware corporation; and
MCKINSEY & COMPANY, INC. WASHINGTON D.C., a Delaware corporation

Defendants.

UNITED STATES DISTRICT COURT CASE NO:

COMPLAINT

(1) NEGLIGENCE;
(2) FRAUD AND MISREPRESENTATION;
(3) PUBLIC NUISANCE;
(4) CIVIL CONSPIRACY;
(5) VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW;
(6) VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW;
(7) NEGLIGENCE PER SE

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

Page(s)

I. PRELIMINARY STATEMENT 1

II. PROCEDURAL STATEMENT 4

III. PARTIES 5

a. Plaintiff 5

b. Defendants 6

IV. JURISDICTION AND VENUE 7

V. TOLLING AND FRAUDULENT CONCEALMENT 8

a. Equitable Estoppel and Fraudulent Concealment 8

b. McKinsey and Purdue Persisted in the Fraudulent Scheme Despite a Guilty Plea and Large Fine 9

VI. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS 10

a. The Opioid Epidemic 10

b. McKinsey's Involvement with Purdue Pre-2007 Guilty Plea 14

c. Purdue's Corporate Integrity Agreement 14

d. McKinsey's Role Following Purdue's Corporate Integrity Agreement 15

i. The Sacklers Seek to Divert Money to Themselves 15

ii. McKinsey Supplied Purdue with Granular Sales and Marketing Strategies and Remained Intimately Involved in Implementation 16

e. Project Turbocharge 19

f. McKinsey Knew About the Dangers of Opioids Through Their Work with Opioid Manufacturers and Purdue's Misconduct, Yet Acted to Maximize OxyContin Prescriptions Anyways 21

g. Purdue's 2020 Guilty Plea and McKinsey's Recent Statement 22

h. Impact of Opioid Abuse, Addiction and Diversion on Plaintiff 23

VII. CAUSES OF ACTION 25

FIRST CASE OF ACTION NEGLIGENCE 25

SECOND CASE OF ACTION
FRAUD AND MISREPRESENTATION 26

THIRD CASE OF ACTION
PUBLIC NUISANCE 28

FOURTH CASE OF ACTION
CIVIL CONSPIRACY 29

FIFTH CASE OF ACTION
VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW 31

SIXTH CASE OF ACTION
VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW 33

SEVENTH CASE OF ACTION
NEGLIGENCE PER SE 34

VIII. JURY TRIAL DEMAND 34

IX. RELIEF REQUESTED 35

I. PRELIMINARY STATEMENT

1. San Mateo County has seen an incredible increase in deaths from opioids in the past few years. Like other counties across the United States, San Mateo County now spends millions of dollars each year dealing with the fallout of the opioid epidemic. San Mateo's ongoing costs include extra expenditures related to drug treatment, emergency room visits, law enforcement, and social services (including for children born opioid-dependent and/or who have parents unable to care for them because of their own respective addictions).

2. Between 2010 and 2014, opioids accounted for almost half of all filled scheduled drug prescriptions. In 2015, there were hundreds of thousands of opioid prescriptions filled in San Mateo County. County health officials estimate that thousands of residents are opioid dependent.

3. McKinsey is a global consulting firm with significant expertise in the pharmaceutical industry. McKinsey has served for years as a marketing advisor for Purdue Pharma, L.P. ("Purdue"). In this role, McKinsey has created and implemented marketing strategies and tactics to bolster the sales of Oxycontin, which is a Schedule II drug that is widely recognized as among the most frequently diverted and abused opioid. When Purdue faced scrutiny for its role in the opioid crisis, McKinsey helped the company protect its public image and helped Purdue to continue to profit from the market for illicit opioids that predictably developed, and for which McKinsey's tactics helped to promote and maintain.

4. McKinsey's relationship with Purdue dates back to at least 2004, but the company kept this partnership successfully under wraps for well over a decade.

5. Part of McKinsey's work involved assessing the "underlying drivers" of OxyContin's (financial) performance. As described in this Complaint, these drivers boil down to two things: (1) a widespread deceptive marketing campaign; and (2) fueling an illicit market for non-medical use. Purdue entered into guilty pleas arising out of both types of conduct in 2007 and 2020, respectively.

6. McKinsey also delved into the "granular" aspects of Purdue's sales and promotion. Through the two companies' long-term relationship, McKinsey understood Purdue's business "both in terms of content and culture," as its own renewed consulting agreement in 2013. Following guilty pleas by Purdue's parent company and three Purdue officers for illegally marketing and promoting Oxycontin to prescribers and consumers in May of 2007, McKinsey assisted Purdue in its sales campaign and efforts to portray itself as a good corporate citizen desiring to do the right thing.

7. In this campaign following the convictions, McKinsey and Purdue devised ways to counter "emotional messages from mothers with teenagers that overdosed [o]n OxyContin," including devising strategies for misinformation.

8. McKinsey also urged Purdue to capitalize on OxyContin's extended-release characteristics by marketing OxyContin's 12-hour dosing as requiring fewer pills because users only needed to take OxyContin twice a day. In reality, OxyContin was known to wear off after 8 to 10 hours in many patients. This marketing tactic perpetuated a vicious cycle that became, in the words of one neuropharmacologist, "the perfect recipe for addiction."[1] What McKinsey called "convenient," would later be called "a [d]escription of Hell." This aspect of Purdue's business efforts played a key role in the opioid epidemic and was assisted by McKinsey.

9. For years, McKinsey advised Purdue on, and indeed helped to implement, various strategies increasing sales of Oxycontin through high dose sales and deceptive messaging to physicians that OxyContin would improve function and quality of life. McKinsey urged Purdue to maximize its OxyContin sales by dictating, to a greater degree, which prescribers the sales

[1] Harriet Ryan et al., *'You Want a Description of Hell?' OxyContin's 12-Hour Problem*, L.A. Times, (May 5, 2016), http://www.latimes.com/projects/oxycontin-part1/.

representatives would target, exploring ways to increase the amount of time those sales representatives spent in the field pushing opioid sales, and prioritizing OxyContin in Purdue's incentive compensation targets.

10. In 2013, amidst concerns of declining sales due to Purdue's expired patent exclusivity for the original formulation of OxyContin, McKinsey developed for Purdue an entire marketing initiative, "Evolve to Excellence" or "E2E." This was ultimately implemented as **a plan to "turbocharge" opioid sales and was also known as "Project Turbocharge."** McKinsey advised that Purdue would see a greater return on its sales investment by focusing its attention on specific targets, including aggressive marketing of OxyContin to doctors whose alarming prescribing patterns raised red flags that their prescriptions were going towards non-medical use. McKinsey's plan to boost sales of OxyContin by targeting the highest volume opioid prescribers willfully ignored the fact that the expanded sales would be for an illicit market.

11. Purdue had a legal obligation not to target these prescribers; Purdue was, in fact, required to report their conduct to law enforcement. Purdue later entered into a second criminal plea agreement for, among other things, failing to report and provide complete information to the U.S. Drug Enforcement Administration ("DEA") regarding prescribers that Purdue's internal anti-diversion programs indicated should not have been targeted and which, in some cases, Purdue visited to encourage them to prescribe opioids.

12. Only after Purdue faced mounting legal pressure and reduced its sales force, and McKinsey's own reputation became tarnished, did McKinsey finally step away from its work for Purdue and later cease "opioid-specific" work on behalf of other clients altogether. Belatedly, McKinsey acknowledged what it described as the "implications of its work" on "the epidemic unfolding in our communities or the terrible impact of opioid misuse and addiction on millions of families across the country."[2]

13. As a direct and foreseeable result of McKinsey's conduct, the nation and Plaintiff's communities are now swept up in what the CDC has called a "public health epidemic" and what the

[2] *McKinsey Statement on Its Past Work with Purdue Pharma*, MCKINSEY & CO. (Dec, 5, 2020), https://www.mckinsey.com/about-us/media/mckinsey-statement-on-its-past-work-with-purdue-pharma.

U.S. Surgeon General has deemed an "urgent health crisis."[3] In 2015, an estimated 2 million Americans were addicted to prescription opioids and 591,000 to heroin. From 1999 to 2019, close to 247,000 people died in the U.S. from overdoses related to opioids.[4]

14. Plaintiff provides essential services for its citizens and residents, including law enforcement, emergency medical assistance, services for families and children, public assistance, public welfare, and other care and services for the health, safety and welfare of their citizens and residents. The rising numbers of people addicted to opioids have led to significantly increased costs, as well as a dramatic increase of social problems, including, but not limited to, drug abuse and the commission of criminal acts to obtain opioids.

15. Plaintiff brings this action to recover damages from McKinsey and to eliminate the hazard to public health and safety caused by the opioid epidemic, to abate the nuisance caused thereby, and to recoup monies that has been spent, or will be spent, because of McKinsey's conduct in fueling the epidemic. McKinsey knew of the dangers of opioids, and of Purdue's misconduct, but nonetheless advised and encouraged Purdue to improperly market and sell OxyContin.

II. PROCEDURAL STATEMENT

16. The headings contained in this Complaint are intended only to assist in reviewing the statements and allegations contained herein. To avoid the unnecessary repetition in each section, Plaintiff affirms and incorporates each paragraph in each section of this Complaint as though fully set forth therein.

17. The factual allegations contained in this Complaint are not exhaustive and are presented throughout this Complaint solely to provide McKinsey with the requisite notice of the basis for the Plaintiff's allegations and claims. Plaintiff expressly reserves the right to plead additional facts where and as necessary to ensure complete relief.

---

[3] *Examining the Growing Problems of Prescription Drug and Heroin Abuse*, CDC (Apr. 29, 2014), http://www.cdc.gov/washington/testimony/2014/t20140429.htm; Letter from Vivek H. Murthy, United States Surgeon General, to Doctors (Aug. 2016), http://i2.cdn.turner.com/cnn/2016/images/08/25/sg.opioid.letter.pdf.

[4] *Prescription Opioids, Overview*, CDC, https://www.cdc.gov/drugoverdose/deaths/prescription/overview.html (last reviewed Mar. 17, 2021).

III. PARTIES

a. Plaintiff

18. Plaintiff County of San Mateo ("the County") is a county and a political subdivision of the State of California. San Mateo is the 14th most populous county in California, with a population of more than 760,000 residents. San Mateo is home to several significant venues in Northern California, including the San Mateo County Expo Center, the South San Francisco Expo Center, the Cow Palace, and numerous Silicon Valley companies.

19. Plaintiff, acting by and through John C. Beiers, County Counsel for the County of San Mateo, is authorized to bring the causes of action brought herein. The County is a body corporate and politic of the State of California Cal. Gov't Code § 23003 and is authorized to bring this action. Cal. Gov't Code § 23004(a).

20. The County of San Mateo has responsibility for the public health, safety and welfare of its citizens.

21. Opioid abuse, addiction, morbidity and mortality have created a serious public health and safety crisis, which is a public nuisance, in San Mateo County. Further, the diversion of legally produced controlled substances into the illicit market contributes to this public nuisance.

22. The distribution and diversion of opioids into California, and into San Mateo County and surrounding areas, created the foreseeable opioid epidemic and opioid public nuisance for which Plaintiff seeks relief.

23. Defendants' actions created the foreseeable opioid crisis and public nuisance for which Plaintiff seeks relief.

24. Plaintiff directly and foreseeably sustained all economic damages alleged herein. Categories of past and continuing sustained damages include, *inter alia*:

a. costs for providing medical care, additional therapeutic, and prescription drug purchases, and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths;

b. costs for providing treatment, counseling, and rehabilitation services;

c. costs for providing treatment of infants born with opioid-related medical conditions;

d. costs associated with law enforcement and public safety relating to the opioid epidemic;

e. costs associated with providing care for children whose parents suffer from opioid-related disability or incapacitation; and,

f. costs associated with the County having to repair and remake its infrastructure, property and systems that have been damaged by Defendants' actions, including, inter alia, its property and systems to treat addiction and abuse, to respond to and manage an elevated level of crime, to treat injuries, and to investigate and process deaths in San Mateo County.

These damages have been suffered and continue to be suffered directly by Plaintiff.

25. Plaintiff has standing to bring an action for the opioid epidemic nuisance created by Defendants. Cal. Civ. Proc. Code § 731 ("A civil action may be brought in the name of the people of the State of California to abate a public nuisance, as defined in Section 3480 of the Civil Code, by the . . . county counsel of any county in which the nuisance exists.").

26. The County has standing to bring an action for damages incurred to its property by the public nuisance created by Defendants. Cal. Civ. Proc. Code § 731 ("An action may be brought by any person whose property is injuriously affected, . . . and by the judgment in that action the nuisance may be enjoined or abated as well as damages recovered therefor.").

The County has standing to recover damages incurred as a result of Defendants' actions and omissions. Cal. Gov't Code § 23004(a).

b. Defendants

27. Defendant McKinsey & Company, Inc. is a corporation organized under the laws of the State of New York, whose principal place of business is located at 711 Third Avenue, New York, NY 10017, and at all times relevant hereto was authorized to do business and was doing business in California.

28. Defendant McKinsey & Company, Inc. United States is a corporation organized under the laws of the State of Delaware, whose principal place of business is located at 55 E 52nd

Street, New York, NY 10022, and at all times relevant hereto was authorized to do business and was doing business in California.

29. Defendant McKinsey & Company, Inc. Washington D.C. is a corporation organized under the laws of the State of Delaware, whose principal place of business is located at 1200 19th Street, NW, Suite 1100, Washington DC 20036, and at all times relevant hereto was authorized to do business and was doing business in California.

30. McKinsey & Company, Inc., McKinsey & Company, Inc. United States and McKinsey & Company, Inc. Washington D.C. are referred to collectively as "McKinsey."

31. McKinsey is a worldwide management consultant company. From approximately 2004-2019, McKinsey provided consulting services to Purdue Pharma L.P., working to maximize sales of OxyContin and knowingly perpetuating the opioid crisis. McKinsey has also provided related consulting services to other manufacturers of opioids.

IV. JURISDICTION AND VENUE

32. Jurisdiction and venue are proper in the Northern District of California ("NDCA").

33. Jurisdiction of this Court arises under the laws of the United States 28 U.S.C. § 1332. The parties are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

34. This Court has personal jurisdiction over Defendants because, at all relevant times, Defendants have purposely availed themselves to the privilege of doing business in California, including by engaging in the business of researching, designing, and implementing marketing and promoting strategies for various opioid manufacturers, including Purdue, in support of their sales and marketing of opioids in California. Further, Defendants do business by agent in California, directly and through the purposeful direction of their actions towards California and have the requisite minimum contacts with California necessary to constitutionally permit the exercise of jurisdiction.

35. Venue is proper in the NDCA because a substantial part of the events or omissions giving rise to the claims occurred in the NDCA, and all other related claims are also proper in the

NDCA as additional claims against the named Defendants. Further, Defendants have caused harm to Plaintiff residing in the NDCA.

36. The Court also has supplemental jurisdiction over the Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 because the state law claims are part of the same case or controversy.

V. TOLLING AND FRAUDULENT CONCEALMENT

a. Equitable Estoppel and Fraudulent Concealment

37. Plaintiff continues to suffer harm from the unlawful actions by the Defendants.

38. The continued tortious and unlawful conduct by the Defendants causes a repeated or continuous injury. The damages have not occurred all at once but have continued to occur and have increased as time progresses. The harm is not completed nor have all the damages been incurred until the wrongdoing ceases. The wrongdoing and unlawful activity by Defendants have not ceased. The public nuisance remains unabated.

39. Defendants are equitably estopped from relying upon a statute of limitations defense because, alongside Purdue, Defendants undertook active efforts to deceive Plaintiff and to purposefully conceal their unlawful conduct. Defendants were aware that the opioid manufacturers, such as Purdue, and the distributors were fraudulently assuring the public and Plaintiff that they were undertaking efforts to comply with their obligations under the state and federal controlled substances laws, all with the goal of protecting their registered manufacturer or distributor status in the State and to continue generating profits. Notwithstanding the allegations set forth above, McKinsey and Purdue affirmatively assured the public and Plaintiff that they were working to curb the opioid epidemic.

40. McKinsey and Purdue were deliberate in taking steps to conceal their conspiratorial behavior and active role in the deceptive marketing and the oversupply of opioids through overprescribing and suspicious sales, all of which fueled the opioid epidemic.

41. McKinsey's consulting services were given confidentially, and both McKinsey and Purdue concealed the content of those services from the public.

42. McKinsey and Purdue also concealed the existence of Plaintiff's claims by hiding their lack of cooperation with law enforcement and affirmatively seeking to convince the public

that Purdue's legal duties to report suspicious sales had been satisfied through public assurances that they were working to curb the opioid epidemic. They publicly portrayed themselves as committed to working diligently with law enforcement and others to prevent diversion of these dangerous drugs and curb the opioid epidemic, and they made broad promises to change their ways insisting they were good corporate citizens. These repeated misrepresentations misled regulators, prescribers, and the public, including Plaintiff, and deprived Plaintiff of actual or implied knowledge of facts sufficient to put Plaintiff on notice of potential claims.

43. Plaintiff did not discover the nature, scope and magnitude of McKinsey's misconduct, and its full impact on Plaintiff, and could not have acquired such knowledge earlier through the exercise of reasonable diligence.

44. Purdue and McKinsey's campaign to misrepresent and conceal the truth about the opioid drugs that they were aggressively pushing on Plaintiff deceived the medical community, consumers, and Plaintiff.

45. McKinsey intended that their actions and omissions made with Purdue would be relied upon, including by Plaintiff. Plaintiff did not know and did not have the means to know the truth, due to McKinsey and Purdue's actions and omissions.

46. Plaintiff reasonably relied on McKinsey and Purdue's affirmative statements regarding their purported compliance with their obligations under the law and consent orders.

47. The purpose of the statutes of limitations period is satisfied because Defendants cannot claim prejudice due to late filing where the Plaintiff filed suit promptly upon discovering the facts essential to its claims, described herein, which Defendants knowingly concealed.

b. McKinsey Persisted in Its Scheme to Collaborate with Purdue Despite Purdue's Guilty Plea and Large Fine

48. In May 2007, Purdue and three of its executives pled guilty to federal charges of misbranding OxyContin in what the company acknowledged was an attempt to mislead doctors about the risk of addiction. Purdue was ordered to pay $600 million in fines and fees. In its plea, Purdue admitted that its promotion of OxyContin was misleading and inaccurate, misrepresented the risk of addiction and was unsupported by science. Additionally, Michael Friedman, the

company's president, pled guilty to a misbranding charge and agreed to pay $19 million in fines; Howard R. Udell, Purdue's top lawyer, also pled guilty and agreed to pay $8 million in fines; and Paul D. Goldenheim, its former medical director, pled guilty as well and agreed to pay $7.5 million in fines.

49. Despite a guilty plea by Purdue, McKinsey continued to work with and assist Purdue in its continuing to pay doctors on speakers' bureaus to promote the liberal prescribing of OxyContin for chronic pain and fund seemingly neutral organizations to disseminate the message that opioids were non-addictive as well as other misrepresentations. At least until early 2018, McKinsey and Purdue continued to deceptively market the benefits of opioids for chronic pain while diminishing the associated dangers of addiction. After Purdue made its guilty plea in 2007, it assembled an army of lobbyists to fight any legislative actions that might encroach on its business. Between 2006 and 2015, Purdue and other painkiller producers, along with their associated nonprofits, spent nearly $900 million dollars on lobbying and political contributions -- eight times what the gun lobby spent during that period. McKinsey participated extensively in these actions and provided Purdue with strategies and assistance to maximize sales as described in this complaint.

50. As all of the government actions against the Purdue and McKinsey demonstrate, McKinsey knew that the actions it took with Purdue were unlawful, and yet deliberately proceeded in order to increase Purdue's sales and profits, and in turn to serve McKinsey's financial interests.

VI. <u>FACTUAL ALLEGATIONS COMMON TO ALL COUNTS</u>

a. The Opioid Epidemic

51. The past two decades in the United States have been characterized by increasing abuse and diversion of prescription drugs, particularly opioid medications.

52. Before the 1990s, generally accepted standards of medical practice dictated that opioids should only be used short-term for acute pain, pain relating to recovery from surgery, or for cancer or palliative (end-of-life) care. Due to the lack of evidence that opioids improved patients' ability to overcome pain and function, coupled with evidence of greater pain complaints as patients developed tolerance to opioids over time and the serious risk of addiction and other side effects, the

use of opioids for chronic pain was discouraged or prohibited. As a result, doctors generally did not prescribe opioids for chronic pain.

53. Opioid manufacturers such as Purdue, identified and took advantage of the much larger and more lucrative market of chronic pain patients. Manufacturers developed a well-funded marketing scheme to target susceptible prescribers and vulnerable patient populations. Manufacturers funded seemingly independent third-parties (and used their own sales forces) to spread false and misleading statements about the risks and benefits of long-term opioid use. These statements were not only unsupported by or contrary to the scientific evidence, they were also contrary to pronouncements by and guidance from the U.S. Food and Drug Administration ("FDA") and CDC based on that same evidence. California doctors, including doctors in San Mateo County, confirm that Purdue Pharma L.P. and McKinsey began their marketing schemes decades ago and they persist today.

54. Since Purdue and McKinsey's targeted promotion of Purdue's product to chronic pain patients, prescription opioids have become widely prescribed. By 2010, enough prescription opioids were sold to medicate every adult in the United States with a dose of 5 milligrams of hydrocodone every 4 hours for 1 month.[5]

55. In 2012, the total number of prescriptions dispensed peaked at more than 255 million.[6] As a result of the public's increasing awareness on opioid addiction, the focus on opioid use education, and numerous lawsuits filed for opioid-related matters, the number of prescriptions has come down in 2019 to 153 million.[7]

56. Swathes of Americans are addicted to prescription opioids, and the number of deaths due to prescription opioid overdose is staggering. From 1999 to 2019, nearly 247,000 people died in

---

[5] Katherine M. Keyes et al., *Understanding the Rural-Urban Differences in Nonmedical Prescription Opioids Use and Abuse in the United States*, 104 AM. J. PUB. HEALTH e52, e53 (2014).

[6] *U.S. Opioid Dispensing Rate Maps*, CDC, https://www.cdc.gov/drugoverdose/rxrate-maps/index.html (last reviewed Dec. 7, 2020).

[7] *Id.*

the United States from overdoses involving prescription opioids.[8] Overdose deaths involving prescription opioids more than quadrupled from 1999 to 2019.[9]

57. Because of the similar effects experienced by people using prescription opioids and heroin, the CDC has identified addiction to prescription opioid painkillers as the strongest risk factor contributing to heroin addiction. People who are addicted to prescription opioid painkillers are forty times more likely to be addicted to heroin.[10]

58. Across the nation, local governments like Plaintiff are struggling with the pernicious, ever-expanding epidemic of opioid addiction and abuse. In 2019, 14,139 overdose deaths were attributed to prescription opioids and 49,860 overdose deaths were attributed to any opioid.[11]

59. The National Institute on Drug Abuse identifies misuse and addiction to opioids as "a serious national crisis that affects public health as well as social and economic welfare."[12] The economic burden of prescription opioid misuse alone is $78.5 billion a year, including the costs of healthcare, lost productivity, addiction treatment, and criminal justice expenditures.[13]

60. The U.S. opioid epidemic is continuing. The rate of death from opioid overdose has quadrupled during the past 15 years in the United States.[14] Nonfatal opioid overdoses that require

[8] *Prescription Opioids, Overview*, CDC, https://www.cdc.gov/drugoverdose/deaths/prescription/overview.html (last reviewed Mar. 17, 2021).
[9] *Id.*
[10] *See Today's Heroin Epidemic*, CDC, https://www.cdc.gov/vitalsigns/heroin/index.html (last reviewed July 7, 2015).
[11] *Overdose Death Rates*, NAT'L INST. ON DRUG ABUSE (Jan. 29, 2021), https://www.drugabuse.gov/drug-topics/trends-statistics/overdose-death-rates.
[12] *Opioid Overdose Crisis*, NAT'L INST. ON DRUG ABUSE (Mar. 11, 2021), https://www.drugabuse.gov/drug-topics/opioids/opioid-overdose-crisis#:~:text=In%202019%2C%20nearly%2050%2C000%20people,died%20from%20opioid%2Dinvolved%20overdoses.&text=The%20misuse%20of%20and%20addiction,as%20social%20and%20economic%20welfare.
[13] *Id.*
[14] Nora D. Volkow & A. Thomas McLellan, Opioid Abuse in Chronic Pain – Misconceptions and Mitigation Strategies, The New England J. of Med. (Mar. 16, 2016), https://www.nejm.org/doi/full/10.1056/NEJMra1507771?query=paincmecollection#article_citing_articles.

medical care in a hospital or emergency department have increased by a factor of six in the past 15 years.[15]

61. The reach of prescription opioids are ubiquitous, indiscriminate, and deadly. Every day brings a new revelation that unveils the depth of the opioid plague. The opioid epidemic, taking at least 60,000 lives a year, now includes babies and toddlers amongst its victims.[16] "Increasingly, parents and the police are encountering toddlers and young children unconscious or dead after consuming an adult's opioids."

62. While the epidemic of prescription pain medication and heroin deaths is ravaging families and communities across the country, Defendants' contributions helped the manufacturers and distributors of prescription opioids extract billions of dollars of revenue from the addicted American public while public entities experience tens of millions of dollars of injury caused by the reasonably foreseeable consequences of the prescription opioid addiction epidemic.

63. Defendants have continued their wrongful, intentional, and unlawful conduct, despite their knowledge that such conduct is causing and/or continuing to contribute to the national, state, and local opioid epidemic.

---

[15] *Id.*

[16] Julie Turkewitz, *'The Pills are Everywhere': How the Opioid Crisis Claims Its Youngest*, N.Y. TIMES, (Sep. 20, 2017), https://www.nytimes.com/2017/09/20/us/opioid-deaths-children.html.

64. The role of the opioid manufacturers, distributors and pharmacies in creating the opioid epidemic has been widely publicized and is widely known. However, McKinsey's role in fueling the opioid epidemic has only recently been discovered.

b. McKinsey's Involvement with Purdue Pre-2007 Guilty Plea

65. McKinsey was first hired by Purdue after OxyContin patents were held unenforceable due to Purdue misleading the United States Patent Office. McKinsey's role was to help Purdue "protect [its] sales and to grow our business."

66. On March 1, 2004, McKinsey entered into a "Master Consulting Agreement" with Purdue for "services that would be defined from time to time."

67. During this time, McKinsey advised Purdue on R&D, business development and product licensing related to Purdue's opioid products.

68. Purdue has recognized McKinsey for its "fine reputation and excellent experience and relationships in our industry," which Purdue relied upon to revitalize its opioid business.

c. Purdue's Corporate Integrity Agreement

69. In May of 2007, Purdue Frederick Company, the parent company of Purdue Pharma L.P. ("Purdue") pleaded guilty to charges for misleading regulators, doctors, and the public regarding Purdue's opioid OxyContin. In pleading guilty, Purdue admitted to falsely marketing OxyContin as a less addictive, safer alternative to other pain medications.

70. In the global settlement resolution, Purdue and its parent company paid over $600 million and entered into a Corporate Integrity Agreement with the U.S. Department of Health and Human Services, Office of Inspector General.[17]

71. Under the Corporate Integrity Agreement, for five years, Purdue was required to refrain from making any deceptive or misleading claims about OxyContin and was obligated to submit regular compliance reports regarding its sales and marketing practices. Purdue was also required to monitor, report, and attempt to prevent inappropriate prescribing practices.

/./ /

[17] Letter from United States Department of Justice to Purdue Pharma, LP (Oct. 20, 2020), https://www.justice.gov/opa/press-release/file/1329576/download.

d. McKinsey's Role Following Purdue's Corporate Integrity Agreement

i. The Sacklers Seek to Divert Money to Themselves

72. Following the guilty plea, the Sackler family, who controlled Purdue at all relevant times and is one of the richest families in the United States, sought to insulate themselves from the risk they perceived in Purdue.

73. Email threads between the Sacklers in early 2008 indicate that the Sacklers had become concerned about personal liability regarding opioid-related misconduct.

74. The Sacklers considered selling Purdue or merging with another pharmaceutical company as an option for limiting their risk. Mortimer Sackler Jr. advocated for a sale or merger in a February 21, 2008 email to Dr. Richard Sackler (a former president and co-chairman of Purdue) and several others, writing "[t]he pharmaceutical industry has become far too volatile and risky for a family to hold 95% of its wealth in. It simply is not prudent for us to stay in the business given the future risks we are sure to face and the impact they will have on the shareholder value of the business and hence the family's wealth."[18] The risk he referred to was, at least in significant part, further liability related to misconduct in the marketing and sale of OxyContin.

75. Alternatively, the Sacklers considered extracting as much wealth as possible from Purdue through distributions to themselves as shareholders. Such distributions would allow the Sacklers to diversify their assets and make their wealth less vulnerable to judgments regarding Purdue's sales and marketing of opioids, including OxyContin.

76. Either option -- a sale or significant distributions to shareholders -- would require Purdue to increase profitability in the short term. Purdue turned to McKinsey, having already developed a strong business relationship, for help maximizing sales of OxyContin given the requirements of the Corporate Integrity Agreement and the scrutiny that came along with it.

/././

[18] Jared S. Hopkins, *Sacklers Discussed Selling Purdue in 2000*, N.Y. TIMES, https://www.wsj.com/articles/sacklers-discussed-selling-purdue-in-2000-11557259128#:~:text=%E2%80%9CIt%20simply%20is%20not%20prudent,wealth%2C%E2%80%9D%20Mortimer%20Sackler%20wrote (last updated May 7, 2019 6:21 PM)

ii. McKinsey Supplied Purdue with Granular Sales and Marketing Strategies and Remained Intimately Involved in Implementation

77. McKinsey touts its model of engaging in transformational partnerships with its clients. Rather than giving one-off advice, McKinsey learns each client's business intimately and provides tailored, granular strategies.

78. Though McKinsey had begun collaborating with Purdue as early as 2004, Purdue began relying on McKinsey extensively by June 2009 after Purdue's Corporate Integrity Agreement. McKinsey was tasked with increasing OxyContin sales despite the Corporate Integrity Agreement, which required, among other things, that Purdue comport with FDA requirements and also included increased review and reporting obligations.

79. McKinsey advised Purdue how to approach the FDA in light of Purdue's conviction.

80. In 2008, the FDA requested Purdue submit a proposed "Risk Evaluation and Mitigation Strategy" for OxyContin. McKinsey provided Purdue with drafts of this submission. With McKinsey's analysis, Purdue's strategy on REMS was effective and the REMS program avoided verification and the enrollment provisions that would have harmed Purdue's profits.

81. Given McKinsey's work on Extended Release Opioid REMS, McKinsey was fully aware of warnings and adverse events included within the OxyContin medication guide and communications plans, including risks of overdose and adverse events, including dizziness and lethargy.

82. In 2008, Purdue submitted a New Drug Application for a reformulation of OxyContin, purportedly to mitigate the risk of abuse by extracting the active form of it or defeating the time-release mechanism in OxyContin tables.

83. In September 2009, McKinsey prepared for Purdue an "FDA Advisory Committee on Reformulated OxyContin: Question and Answer Book" which included the question "Why should we trust you?" to which McKinsey recommended Purdue acknowledge mistakes and take responsibility for the opioid-related deaths. McKinsey also recommended that Purdue say "We have x, y and z measures in place that did not exist before[;]" and "[a]t all levels, Purdue's focus is on maintaining the highest ethical standards and meeting the needs of all patients[.]"

84. In 2009, while permitting abuse-deterrent opioid formulations ("ADF") labeling, the FDA noted that "the tamper-resistant properties will have no effect on abuse by the oral route (the most common mode of abuse)."

85. In approving the reformulated OxyContin, the FDA noted that the reformulation was still not completely tamper resistant and those who intend on abusing the drug will likely find a means to do so. In addition, the product can still be abused by simply ingesting larger than recommended doses.

86. In April 2010, the FDA approved the reformulated ADF OxyContin. In August 2010, Purdue discontinued its original formulation of OxyContin and began selling reformulated OxyContin. The FDA did not permit Purdue to reference the abuse-deterrent properties in its label until 2013. Purdue purposefully introduced the reformulated OxyContin as generic versions of the OxyContin were becoming available, which threatened to erode Purdue's market share and the price it could charge. Purdue promoted its introduction of reformulated OxyContin and another ADF opioid as evidence of its good corporate citizenship and commitment to public health and safety. With McKinsey's help in navigating the approval process, Purdue marketed the ADF version of OxyContin as a means for doctors to continue safely prescribing their opioids while mitigating the risk of opioid abuse.

87. McKinsey provided sales and marketing strategies designed to sell as much OxyContin as possible, at one point in 2010 telling Purdue that the new strategies McKinsey had developed could generate as much as $400,000,000 in additional annual sales. McKinsey worked with Purdue to implement the strategies, with McKinsey's ongoing and extensive involvement.

88. Following McKinsey's input, OxyContin sales grew dramatically, and the Sacklers diverted the resulting profits into other holdings.

89. In a 2009 report, among other sales strategies, McKinsey advised Purdue sales representatives to push the highest dosages of OxyContin, which were the most profitable for Purdue. In order to maximize dosages and improve targeting of the coordinated marketing strategy, McKinsey investigated the prescribing habits of individual physicians. McKinsey recommended an approach that encouraged higher dose prescriptions by a smaller number of loyalist prescribers,

despite it being well-known that higher doses of opioids carry greater risk. Patients receiving high doses of opioids (i.e., doses greater than 100 mg of morphine equivalent dose per day) as part of long-term opioid therapy are three to nine times more likely to suffer from an overdose due to opioid-related causes than those receiving low doses. The CDC also recognizes that higher doses of opioids tend to increase overdose risks relative to any potential patient benefit.[19]

90. McKinsey's promotional efforts included claims that opioids could be taken in ever-increasing strengths to obtain pain relief, which are misleading because such claims do not disclose the increased risk of addiction and overdose associated with higher doses. Higher doses are inclined to lead to addiction because patients on opioids for more than a brief period develop tolerance to the opioid, requiring increasingly higher doses to achieve pain relief.

91. McKinsey also recommended a strategy to target those prescribers who did not regularly prescribe OxyContin, referred to as physicians with "low comfort with extended release opioids." McKinsey's strategy recommended that these prescribers use OxyContin earlier in a patient's treatment for a longer period of time. McKinsey stated that by tailoring the dose to treat a broad range of patients, "physicians can help their patients function better and lead a fuller and more active life," even though this conclusion was not to be explicitly addressed. Claims that OxyContin improved function and quality of life were not supported by substantial evidence, and federal agencies, including the FDA, have made clear the lack of evidence to support claims that the use of opioids for chronic pain improves patients' function and quality of life. McKinsey's carefully crafted message indicates the culpability of its conduct, rather than innocent mistake.

92. McKinsey recommended promoting messages regarding the "convenience of q12h dosing," even though it was well-known that OxyContin's analgesic effect wore off after eight to ten hours in many patients. Additionally, in 2008, the FDA found that a substantial proportion of chronic pain patients taking OxyContin experienced "end of dose failure," i.e., little or no pain relief at the end of the dosing period. End of dose failure makes OxyContin even more dangerous because patients will experience withdrawal symptoms, followed by a euphoric rush with their next dose,

[19] Deborah Dowell et al., *CDC Guideline for Prescribing Opioids for Chronic Pain – United States, 2016*, CDC, https://www.cdc.gov/mmwr/volumes/65/rr/rr6501e1.htm (last reviewed Mar. 18, 2016).

that fuels a need for OxyContin and thereby increasing the risk of addiction. Promoting twelve-hour dosing without disclosing its limitations is deceptive and misleading because it implies that pain relief supplied by each dose lasts twelve hours, rather than only eight to ten hours.

93. McKinsey helped shape Purdue's OxyContin marketing, which misleadingly centered on freedom and peace of mind for users. The marketing was tailored to avoid running directly afoul of the Corporate Integrity Agreement, but it remained misleading given what Purdue and McKinsey knew about opioids. One advertisement said, “we sell hope in a bottle,” despite the fact that both McKinsey and Purdue already understood the addiction problems associated with opioid use and abuse. McKinsey encouraged Purdue to tell doctors that OxyContin would give their patients “the best possible chance to live a full and active life.” McKinsey urged Purdue to train and incentivize its sales representatives to increase sales across the market for opioids, even if sales went to Purdue's competitors. This had the effect of worsening the opioid crisis even beyond the portion of the crisis directly attributable to sales and use of OxyContin.

e. Project Turbocharge

94. Purdue’s Corporate Integrity Agreement expired in 2012. With this restriction lifted, McKinsey devised additional marketing and sales strategies for Purdue to further increase OxyContin sales.

95. In the second half of 2013, McKinsey made recommendations to Purdue to increase OxyContin revenue, including “Turbocharging Purdue's Sales Engine.”

96. McKinsey's “Project Turbocharge” recommendations included revising the existing process for targeting high-prescribing physicians, with a shift from targeting solely on the basis of prescription deciles to considering additional factors. Based on its analysis, McKinsey told Purdue that “[t]here is significant opportunity to slow the decline of OxyContin by calling on more high-value physicians” and that “[t]he revenue upside from sales re-targeting and adherence could be up to $250 million.”

97. Also, as part of the “Project Turbocharge” recommendations, McKinsey determined and advised Purdue that the top half of prescribing physicians “write on average 25 times more scripts per prescriber” than the lower half.

98. Despite knowing the recently expired Corporate Integrity Agreement required Purdue to refrain from improperly incentivizing OxyContin sales, McKinsey also recommended increasing incentive compensation for incremental OxyContin prescriptions, advising Purdue that "[r]evision to incentive comp could better align reps to Purdue's economics."

99. At the same time, McKinsey recommended decreasing training by six days a year in order to allow employees more time to make sales calls. Meanwhile, McKinsey advised Purdue to exercise closer control over its sales staff in order to generate more efficient physician targeting.

100. The physician targeting proved effective. McKinsey advised Purdue that visiting high-prescribing doctors many times per year increased sales.

101. McKinsey recommended that Purdue circumvent pharmacies entirely with a mail order program because enforcement by federal regulators was decreasing the dispensing of OxyContin through Walgreens.

102. At the board level, McKinsey urged the Sacklers to impose a "revenue growth goal" on management.

103. With McKinsey's ongoing involvement and advice, Purdue implemented McKinsey's recommendations discussed above, but rebranded the program from "Project Turbocharge" to "Evolve to Excellence."

104. McKinsey successfully accomplished what the Sacklers had asked it to achieve, without any consideration for the societal implications of their actions.

105. Sales of OxyContin tripled in the years following the 2007 guilty plea, despite the restrictions imposed by the Corporate Integrity Agreement. According to the U.S. Department of Justice, "[f]rom 2010 to 2018, Purdue's profits were almost entirely driven by its success in selling OxyContin."

106. The Sacklers did not sell Purdue or enter into a merger, but their goal of extracting wealth from the business was realized. The Sackler family has profited over $10 billion from Purdue since 2008, including $1.7 billion in 2009 alone. These distributions were made possible by McKinsey's services and came at the expense of a deepening national opioid crisis.

f. McKinsey Knew About the Dangers of Opioids Through Their Work with Opioid Manufacturers and Purdue's Misconduct, Yet Acted to Maximize OxyContin Prescriptions Anyways

107. McKinsey has a long history of consulting in the pharmaceutical industry. In addition to its work with Purdue, McKinsey has performed "opioid-related work" for Johnson & Johnson, Endo International, and Mallinckrodt Pharmaceuticals. For instance, a McKinsey PowerPoint presentation prepared for Johnson & Johnson recommended that Johnson & Johnson aggressively target and influence doctors treating back pain in order to increase opioid sales.

108. Purdue's 2007 guilty plea put McKinsey on notice of Purdue's misconduct. By that time, McKinsey had access to public information indicating that OxyContin and other opioids pose significant risk of addiction and misuse.

109. McKinsey's presentations to Purdue in 2013 included extensive discussion of doctors' concerns about opioid misuse and side effects, demonstrating McKinsey's awareness of the dangers of opioids. Rather than working to limit these harmful effects, McKinsey treated doctors' misgivings as obstacles to confront with new and targeted messaging.

110. McKinsey continued working with Purdue long after the severity of the opioid crisis came to light. In 2017, McKinsey proposed that Purdue pay CVS and other distributors of OxyContin rebates "for every OxyContin overdose attributable to pills they sold."[20] In McKinsey's presentation, McKinsey projected that in 2019, for example, 2,484 CVS customers would either have an overdose or develop an opioid use disorder. A rebate of $14,810 per event meant that Purdue would pay CVS $36.8 million that year.

111. A former McKinsey consultant described McKinsey's work with Purdue as "the banality of evil, M.B.A. edition...They knew what was going on. And they found a way to look past

[20] Walt Bogdanich & Michael Forsythe, *McKinsey Proposed Paying Pharmacy Companies Rebates for OxyContin Overdoses*, N.Y. TIMES, https://www.nytimes.com/2020/11/27/business/mckinsey-purdue-oxycontin-opioids.html?auth=link-dismiss-google1tap&fbclid=IwAR3xuNNLcWaG6T4sgsHo-GgsAABPIFJfKgZIweJoipSr9T99tAfU-niiBrc (last updated Dec. 17, 2020).

it, through it, around it, so as to answer the only questions they cared about: how to make the client money, and when the walls closed in, how to protect themselves." [21]

112. In a 2018 email thread, apparently fearing consequences for McKinsey's work with Purdue, two McKinsey senior partners who had participated in McKinsey's work advising Purdue discussed deleting documents related to opioids.

g. Purdue's 2020 Guilty Plea and McKinsey's Recent Statement

113. In October of 2020, Purdue once again reached an agreement (the "2020 Settlement Agreement") with the U.S. Department of Justice to enter a guilty plea related to its marketing of OxyContin. The agreement includes $8.3 billion in penalties from Purdue and $225 million from the Sackler family.

114. In the 2020 Settlement Agreement, Purdue pleaded guilty to defrauding health agencies, violating anti-kickback laws, paying illegal kickbacks to doctors, and "using aggressive marketing tactics to convince doctors to unnecessarily prescribe opioids--frivolous prescriptions that experts say helped fuel a drug addiction crisis that has ravaged America for decades."

115. The 2020 Settlement Agreement was entered by Purdue and the United States government. It explicitly states that it does not release Purdue of "[a]ny liability for claims of the states or Indian tribes."

116. The 2020 Settlement Agreement includes a provision specifically reserving claims regarding "[a]ny liability of entities other than the [Purdue Bankruptcy] Debtors, including consultants."

117. On December 5, 2020, McKinsey issued the following statement regarding its work with Purdue:

> December 5, 2020—As we look back at our client service during the opioid crisis, we recognize that we did not adequately acknowledge the epidemic unfolding in our communities or the terrible impact of opioid misuse and addiction on millions of families across the country. That is why last year we stopped doing any work on opioid-specific business, anywhere in the world.
>
> Our work with Purdue was designed to support the legal prescription and use of opioids for patients with legitimate medical needs, and any suggestion that our work

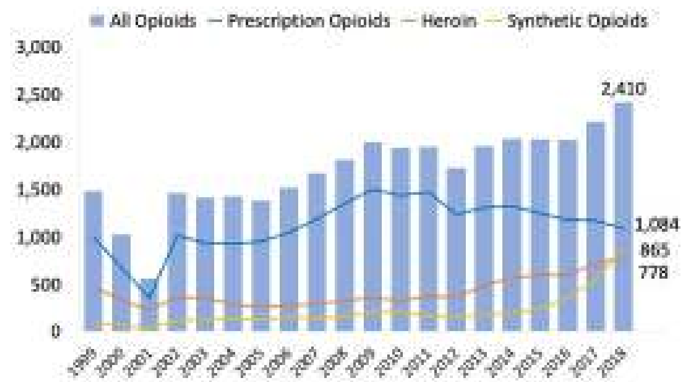
[21] *Id.*

> sought to increase overdoses or misuse and worsen a public health crisis is wrong. That said, we recognize that we have a responsibility to take into account the broader context and implications of the work that we do. Our work for Purdue fell short of that standard.
>
> We have been undertaking a full review of the work in question, including into the 2018 email exchange which referenced potential deletion of documents. We continue to cooperate fully with the authorities investigating these matters.

118. On February 4, 2021, McKinsey settled opioid-related claims with 47 states, the District of Columbia, and five U.S. territories for approximately $600 Million Dollars.

h. Impact of Opioid Abuse, Addiction and Diversion on Plaintiff

119. The State of California has been impacted severely by the national opioid crisis.



120. There is little doubt that each Defendants' actions have precipitated this public health crisis in California, including in San Mateo County, by dramatically increasing opioid prescriptions and use. An unchecked supply of prescription opioids has provided a source for the illicit use or sale of opioids, while the widespread use of opioids has created a population of patients who are physically and psychologically dependent on them. When those patients can no longer afford or legitimately obtain opioids, they often turn to street-level dealers to buy prescription opioids or even heroin to satisfy their needs, resulting in detriments to both health (including through the potential ingestion of impure stock) and law enforcement (through crime related to street-level drug dealers and attempts to obtain illegal drugs).

121. California has an opioid prescription rate of 35.1 per 100 persons.[22] In California, an estimated 45% of drug overdose deaths involved opioids in 2018; totaling more than 2,400 fatalities.

[22] *California: Opioid-Involved Deaths and Related Harms*, NAT'L INST. ON DRUG ABUSE (Apr. 3, 2020), https://www.drugabuse.gov/drug-topics/opioids/opioid-summaries-by-state/california-opioid-involved-deaths-related-harms.

122. According to data from Rx Opioid Safe San Mateo, in just one year, over 24 million opioid pills were prescribed and filled for San Mateo County residents. That's 43 pills for every resident over the age of 18.[23] In 2015, nearly 350,000 opioid prescriptions were filled in San Mateo County, with the average doctor writing 100 prescriptions. The top prescriber wrote more than 3,900 prescriptions, according to County health officials.83 San Mateo County experienced 60 drug-induced deaths in 2015, with approximately 20 tied directly to Opioids.

123. San Mateo County has seen a steady increase in deaths from opioids in recent years. Like other counties, San Mateo County now spends millions of dollars each year dealing with the fallout of the opioid epidemic. San Mateo County's ongoing costs include costs related to drug treatment, emergency room visits, law enforcement, and social services (including for children born opioid-dependent and/or have parents who are unable to care for them because of their own addiction).

124. According to the data available, in 2017, 97 San Mateo County residents died from drug related causes with 11 deaths directly tied to heroin use and another 26 deaths directly tied to other opioids. In sum, 37 deaths in 2017 in San Mateo County were related to heroin or other opioids, which is 38% of all drug-related deaths. If anything, these statistics are conservative because of the complex nature of opioid abuse: the County is expected to directly attribute additional deaths, currently attributed elsewhere, to opioids. In the prior year, 2016, 61 deaths were drug related, with 11 related to heroine and 16 related to other opioids.

125. These deaths represent the tip of the iceberg. According to 2009 data, for every overdose death that year, there were nine abuse treatment admissions, 30 emergency department visits for opioid abuse or misuse, 118 people with abuse or addiction problems, and 795 nonmedical users. And as reported in May 2016, in California, opioid overdoses resulting in hospital visits increased by 25% (accounting for population growth) from 2011 to 2014.

126. Between 2010 and 2014, opioids accounted for almost half of all filled scheduled drug prescriptions. In 2015 there were an estimated hundreds of thousands of opioid prescriptions

[23] *Stay Rx Opioid Safe*, SAN MATEO COUNTY HEALTH, https://www.smchealth.org/sites/main/files/file-attachments/rxopioid_safe_flyer.pdf (last visited Aug. 3, 2021).

filled in San Mateo County, a figure that has gone up each year since. County health officials estimate that thousands of residents are opioid dependent.

127. San Mateo County continues to suffer significant financial consequences as a result of opioid over-prescription and addiction, including, but not limited to, increased law enforcement and judicial expenditures, increased jail expenditures, increased substance abuse treatment and diversion plan expenditures, increased emergency and medical care services, increased health insurance costs and lost economic opportunity.

128. The seriousness of the Opioid Epidemic initially compelled the police department in San Bruno, a city in San Mateo County, to issue kits with Naloxone to all sworn officers, to care for victims of opioid overdoses—including addicts on the street—before paramedics can arrive at the scene. But the problem became so severe and pervasive that the San Mateo County Sheriff's Office, through the San Mateo County Narcotics Task Force, has begun issuing Naloxone to its officers on a countywide basis.[24]

129. Through this litigation San Mateo County is doing its part to address the opioid epidemic through the two tools available: injunctive relief and damages. However, it is important not to lose sight of the human side of this tragedy – behind every death, and every dollar spent on the epidemic there is a human life and a family that irreparably harmed.

VII. CAUSES OF ACTION

COUNT I

NEGLIGENCE

130. Plaintiff incorporates herein by reference all of the allegations in this complaint.

131. Negligence is established where the defendant owes the plaintiff a duty of care, breaches that duty and the plaintiff sustains harm proximately caused by the defendant's breach.

132. McKinsey, through its work with Purdue, owed Plaintiff duties, including but not limited to, duty to not deceive, encourage, and facilitate the over-marketing and over-prescribing

[24] News Release from San Mateo County Sherriff's Office (Oct. 15, 2018), https://www.smcsheriff.com/sites/default/files/articles/Narcan%20all.pdf.

of a controlled substance known at the time to be addictive and known at the time to be a threat to public health, safety, and welfare.

133. McKinsey breached this duty by, for years, devising and assisting Purdue with implementing an aggressive sales and predatory marketing campaign, including *Project Turbocharge*, that promoted misleading claims regarding OxyContin to significantly bolster the amount of OxyContin prescribed and distributed throughout Plaintiff's community.

134. Plaintiff has suffered damages directly, proximately and foreseeably caused by defendants' breaches of duties.

135. It was reasonably foreseeable that McKinsey's breaches of the duties set forth in this Cause of Action would cause harm to Plaintiff in the form of higher costs related to opioid use in San Mateo County, as well as opioid abuse, addiction and opioid related deaths—costs that would not have been paid but for Defendants' wrongful conduct. Thus, Plaintiff has suffered monetary costs incurred to abate the effects of the opioid epidemic proximately caused by Defendants' breaches of their duties set forth in this Cause of Action.

136. McKinsey's breaches of the common-law duties that they owed to Plaintiff are the proximate cause of Plaintiff's injuries, and Plaintiff is entitled to all damages allowable by law, costs, and attorneys' fees, and any other relief the Court deems necessary and appropriate.

137. McKinsey's negligent acts as set forth herein were made with oppression, fraud or malice entitling Plaintiff to exemplary damages.

COUNT II

FRAUD AND MISREPRESENTATION

138. Plaintiff re-alleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged in this Cause of Action.

139. Fraud is established where the defendant makes a misrepresentation with knowledge of its falsity and the intent to induce reliance and the plaintiff justifiably relies on the misrepresentation and suffers damages. Negligent misrepresentation is established where the defendant makes a misrepresentation of a material fact without reasonable ground for believing it

to be true and with intent to induce the plaintiff's reliance on the misrepresented fact. The plaintiff must be ignorant of the truth and justifiably rely on the misrepresentation, resulting in damages.

140. McKinsey, through its business with Purdue, has committed misrepresentation by concealing the following acts and information:

a. McKinsey's and Purdue's conspiratorial behavior and active role in deceptive marketing and oversupply of opioids through overprescribing and suspicious sales, all of which fueled the opioid epidemic.

b. McKinsey's consulting services and the scope and content of such services.

c. The existence of Plaintiff's claims and hiding McKinsey's lack of cooperation from law enforcement and actively seeking to convince the public that Purdue's legal duties to report suspicious sales had been satisfied through public assurances that they were working to curb the opioid epidemic.

d. The high risk of addiction associated with opioid use and propensity of OxyContin's 12-hour dosing to lead to end of dose failure and addiction.

141. McKinsey knew that OxyContin had the potential to be dangerously addictive and that the false information they provided was material to healthcare providers' decision to prescribe opioids to patients.

142. Despite such knowledge, McKinsey worked in concert with Purdue to create an aggressive marketing campaign and intended that their misrepresentations be relied upon to encourage additional opioid prescriptions to bolster Purdue's profits.

143. Healthcare providers working in Plaintiff's community did rely on false representations made in Purdue's marketing plan that was created and implemented with McKinsey's assistance. Plaintiff did not know and did not have the means to know the truth, due to McKinsey's and Purdue's actions and omissions.

144. Plaintiff's reasonably and justifiably relied on McKinsey's and Purdue's affirmative statements regarding their purported compliance with their obligations under the law and consent orders.

145. McKinsey's fraudulent actions and misrepresentations proximately and directly resulted in harm to the Plaintiff. Plaintiff has suffered monetary costs incurred to abate the effects of the opioid epidemic proximately caused by McKinsey's actions.

COUNT III

PUBLIC NUISANCE
Violations of California Civil Code Sections 3479 and 3480

146. Plaintiff re-alleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged in this Cause of Action.

147. Civil Code Section 3479 provides that "[a]nything that is injurious to health … or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property … is a nuisance."

148. Civil Code Section 3480 defines a "public nuisance" as "one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

149. Civil Code section 3490 states that "[n]o lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right."

150. Pursuant to Section 731 of the Civil Code, this section is brought by Plaintiff to abate the public nuisance created by McKinsey.

151. McKinsey, acting in concert with Purdue, has created or assisted in the creation of a condition that is injurious to public health and interferes with the comfortable enjoyment of life and property of entire communities or neighborhoods or of any considerable number of persons in San Mateo County, in violation of Civil Code Sections 3479 and 3480.

152. The public nuisance is substantial and unreasonable. McKinsey's actions caused and continue to cause the public health epidemic described above in San Mateo County, and the harm outweighs in offsetting benefit.

153. McKinsey knew or should have known that their promotion of opioids was false and misleading and that their deceptive marketing scheme and other unlawful, unfair, and

fraudulent action would create or assist in the creation of the public nuisance – i.e., the opioid epidemic.

154. McKinsey's actions were, at the very least, a substantial factor in opioids becoming widely available and widely used. McKinsey's actions were, at the very least, a substantial factor in deceiving doctors and patients about the risks and benefits of opioids for the treatment of chronic pain. Without McKinsey's marketing scheme, opioid use, misuse, abuse, and addiction would not have become so widespread, and the opioid epidemic that now exists would have been averted or much less severe. As Purdue's management consulting company, McKinsey was in a unique position to observe the flow of opioids and take action when orders were placed for suspicious quantities and suspect intervals, among other things. Instead, McKinsey honed in on these prescribers as cash cows for Purdue. McKinsey's role in marketing opioids and facilitating access to opioid drugs for long-term use contributed to a vast increase in opioid overuse and addiction, as well as an increase in governmental entities, including San Mateo County. McKinsey's conduct thus directly caused a public health crisis, including costs for excessive prescribing addiction related treatment costs, law enforcement costs, costs related to deaths, costs related to lost productivity of the workforce, and costs related to caring for children born addicted or with addicted parents.

155. The public nuisance – i.e., the opioid epidemic – created, perpetuated, and maintained by McKinsey can be abated and further recurrence of such harm and inconvenience can be abated.

156. Pursuant to Code of Civil Procedure § 731, Plaintiff requests an order providing for abatement of the public nuisance that Defendants created or assisted in creating, Plaintiff, acting on its own behalf and on behalf of its residents, seeks costs associated with the county's efforts to abate the public nuisance caused in whole or in part by McKinsey.

COUNT IV

CIVIL CONSPIRACY

157. Plaintiff re-alleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged in this Cause of Action.

158. Civil conspiracy is established when there is an agreement to commit a wrongful act, resulting in damage. Such agreement may be made orally or in writing or may be implied by the conduct of the parties. A conspiracy may be inferred from the circumstances, including the nature of the acts done, the relationships between parties, and the interests of the alleged coconspirators.

159. McKinsey and Purdue, working together for decades, agreed to commit multiple unlawful acts relating to the sales and marketing of Purdue's opioid products. McKinsey and Purdue also agreed to use unlawful means to commit lawful acts as part of these marketing efforts and sales.

160. McKinsey and Purdue agreed to unlawfully and knowingly misrepresent the addictiveness of opioids in marketing OxyContin to healthcare providers within Plaintiff's community.

161. McKinsey and Purdue employed unlawful means of evading Purdue's reporting and compliance obligations to the Inspector General of the United States Department of Health and Human Services for the five years in which Purdue was subject to a Corporate Integrity Agreement, after Purdue pled guilty to criminal misbranding in 2007. McKinsey unlawfully assisted Purdue with evading these reporting and compliance obligations to accomplish the lawful act of maximizing Purdue's OxyContin revenue.

162. McKinsey and Purdue conspired to violate California law, including but not limited public nuisance, unlawful business practices and false advertising through McKinsey's misleading and predatory marketing campaign.

163. McKinsey and Purdue agreed to engage in deceptive trade practices, which included concealing the addictiveness of opioids, overstating the efficacy of opioid use and the ability to lead an active life.

164. McKinsey and Purdue agreed to engage in unfair trade practices, including intentionally understating risks, overstating the benefits, and misrepresenting the medical necessity of OxyContin and opioids generally, including for off-label uses. These practices are deceptive, unethical, and immoral to consumers.

165. McKinsey knowingly made or caused to be made false or misleading representations as to the characteristics, ingredients, uses, and benefits of OxyContin and opioids generally, specifically by understating the risks of addiction and abuse, overstating the efficacy, and misrepresenting the medical necessity of OxyContin and opioids generally.

166. McKinsey and Purdue agreed to employ an unlawful marketing and sales scheme to achieve the lawful purpose of maximizing revenue of a closely held company.

167. As a result, McKinsey is accountable, responsible, and liable for the improper marketing and sales practices used to promote Purdue's opioid products. Plaintiff's damages, including financial burden for law enforcement and opioid crisis abatement, are the proximate result of McKinsey's conspiracy. Plaintiff seeks all legal and equitable relief as allowed by law.

COUNT V

VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW

Ca. Bus. & Prof. Code § 17200, *et seq.*

168. Plaintiff re-alleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged in this Cause of Action.

169. Business and Professions Code Section 17200 prohibits any "unlawful, unfair or fraudulent act or business practice[]."

170. McKinsey's business practices, set forth in this Complaint, are unlawful, unfair and fraudulent and violate Section 17200 because their practices are likely to deceive consumers in California.

171. McKinsey understated the limitations of 12-hour dosing (including end of dosage failure), the risks of addiction, and other side effects of opioids.

172. McKinsey overstated the effectiveness, usefulness, necessity, and safety of opioids by marketing Purdue's OxyContin for off-label uses (e.g., osteoarthritis) and asserting that opioid use can lead patients to live fuller, active lives, despite knowing that such representations were false.

173. McKinsey engaged in the predatory targeting of high-prescribing physicians to fuel the opioid epidemic and marketed OxyContin as an efficient drug that could lead patients to live

fuller, more active lives. This conduct likely deceived California doctors who prescribed opioid medications, patients, and payors, who purchased or covered the purchase of opioids for chronic pain, and Counties, such as San Mateo were burdened with the devastating effects of the opioid epidemic.

174. McKinsey aided and abetted the actions of Purdue and knew or should have known that false and misleading statements about opioids were being made and likely to mislead the public. McKinsey made or disseminated false and misleading statements or caused false and misleading statements to be made or disseminated.

175. The misrepresentations and omissions alleged herein are fraudulent, and thus amount to unfair competition as set forth by the Unfair Competition Law, in that McKinsey pioneered a deceptive marketing campaign to understate the addictiveness of opioids and circumvent the Corporate Integrity Agreement.

176. The misrepresentations and omissions alleged herein are unlawful, and thus amount to unfair competition as set forth by the Unfair Competition Law, in that they violate, among other things, California Civil Code §§ 3479 and 3480, California Business and Professions Code § 17500, and several other common law violations, including negligence, fraud and misrepresentation, and civil conspiracy. As set forth above, McKinsey misrepresented the dangers of OxyContin. McKinsey disseminated these untrue and misleading misrepresentations with the intent to boost sales and profits for Purdue.

177. The misrepresentations and omissions alleged herein are unfair, and thus amount to unfair competition as set forth by the Unfair Competition Law, in that they are immoral, oppressive, unscrupulous and substantially injurious to consumers and Plaintiff's community. The injury to Plaintiff and Plaintiff's community caused by the opioid epidemic, fueled by McKinsey's actions, greatly outweighs any benefit to consumers or competition under all of the circumstances.

178. As a direct and proximate cause of McKinsey's violations of the Unfair Competition Law, Plaintiff suffered an injury and monetary harm, in the form of money expended to abate the opioid epidemic.

/./. /

<u>COUNT VI</u>

VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW

Ca. Bus. & Prof. Code § 17500, *et seq.*

179. Plaintiff re-alleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged in this Cause of Action.

180. Business and Professions Code Section 17500 makes it unlawful for a business to make, disseminate, or cause to be made or disseminated to the public "any statement, concerning . . . real or personal property . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

181. As alleged above, McKinsey violated Section 17500 by making and disseminating false or misleading statements about the use of opioids to treat chronic pain, or by causing false or misleading statements about opioids to be made or disseminated to the public.

182. McKinsey's marketing scheme, set forth in this Complaint, are false deceptive and violate Section 17500 because McKinsey, in furtherance of the scheme, made misrepresentations and omissions regarding the addictiveness, safety, and efficacy of OxyContin to deceive consumers in Plaintiff's community.

183. McKinsey understated the limitations of 12-hour dosing (including end of dosage failure), the risks of addiction, and other side effects of opioids.

184. McKinsey overstated the effectiveness, usefulness, necessity, and safety of opioids by marketing Purdue's OxyContin for off-label uses (e.g., osteoarthritis) and claiming that opioid use can lead patients to live fuller, active lives, despite knowing that such representations were false.

185. McKinsey engaged in the predatory targeting of high-prescribing physicians to fuel the opioid epidemic and marketed OxyContin as an efficient drug that could lead patients to live fuller, more active lives. This conduct likely deceived California doctors who prescribed opioid medications, patients, and payors, who purchased or covered the purchase of opioids for chronic pain, and Counties, such as San Mateo were burdened with the devastating effects of the opioid epidemic.

186. At the time it made or disseminated its false and misleading statements or caused these statements to be made or disseminated, McKinsey knew or should have known that the statements were false and misleading and therefore likely to deceive the public. In addition, McKinsey knew and should have known that their false and misleading advertising created a false or misleading impression of the risks and benefits of long-term opioid use and would result in unnecessary and improper opioid prescriptions and use.

COUNT VII

NEGLIGENCE PER SE

187. Plaintiff re-alleges and incorporates by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged in this Cause of Action.

188. A presumption of negligence (negligence *per se*) is established where McKinsey's negligence involves the violation of a statute or regulation, where plaintiff is within the class of persons that the statute or regulation was designed to protect, and the violation is a substantial factor in the plaintiff's harm.

189. McKinsey's violation of the California Business and Professions Code have caused and exacerbated the opioid epidemic.

190. Plaintiff is the class of persons the statute was designed to protect. The California Business Professions Code is intended to protect consumers from McKinsey's harmful practices, and Plaintiff is asserting suit to recover damages on behalf of the consumers in reside its community.

191. As a result of McKinsey's statutory violations, Plaintiff has incurred monumental costs to abate the crisis in the form of public health resources, healthcare, treatment facilities, and law enforcement, Plaintiff seeks to recover all damages caused by McKinsey's negligence per se unlawful and deceptive marketing and sale of opioids.

VIII. JURY TRIAL DEMAND

192. Plaintiff requests a trial by jury on all issues so triable.

/./.

/./.

IX. RELIEF REQUESTED

WHEREFORE, in consideration of the claims stated above, the Plaintiff in this case respectfully submits that upon a full hearing of the evidence that this Honorable Court, and the jury hearing this case, grant the following relief:

193. Judgment in favor of the Plaintiff against each Defendant separately and severally, based on joint and several liability, against each and every Defendant in this case;

194. An entry of equitable relief and Order of Abatement against the Defendants, jointly and severally, along with all those acting in concert with the Defendants including all agents, subsidiaries and all other persons acting in concert or participation with the Defendants from continuing the conduct made the subject of this Complaint;

195. An Order of Injunction against the Defendants on a permanent basis along with accompanying restitution;

196. An Order from this Court against the Defendants that they fully compensate Plaintiff for past and future expenses required to abate the nuisance caused by the opioid epidemic;

197. A judgement and award of compensatory damages, including without limitation, all damages previously outlined in this Complaint;

198. An award of punitive damages;

199. An award of pre-judgment and post-judgment interests;

200. In addition to the damages outlined herein, Plaintiff demands that Defendants pay court costs, including attorneys' fees, applicable interest and all other relief as allowed under California law and as this Court deems appropriate and just; and

201. Such other and further relief as the Court deems just and appropriate.

Dated: August 03, 2021

COTCHETT, PITRE & McCARTHY, LLP

By: ______________________________
JOSEPH W. COTCHETT
ANNE MARIE MURPHY
JULIA Q. PENG

Attorneys for Plaintiff