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Thunder Bay

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JORDAN FRANCIS CHARLIE

Plaintiff

and

MCKINSEY & COMPANY CANADA and MCKINSEY & COMPANY, INC.,
UNITED STATES

Defendants

Proceeding commenced under the *Class Proceedings Act, 1992*, SO 1992, c 6

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

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IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____ Local Registrar
Address of Superior Court of Justice
court office: 125 Brodie Street North
Thunder Bay, ON P7C 0A3

TO: McKinsey & Company Canada
110 Charles St. W
Toronto, ON M5S 1K9

AND TO: McKinsey & Company, Inc., United States
55 East 52nd Street, 21st Floor
New York, NY 10022
United States

CLAIM

I. DEFINED TERMS

1. In this Statement of Claim, the following terms have the following meanings.
 - (a) “**CCQ**” means the *Civil Code of Quebec*, CQLR c CCQ-1991.
 - (b) “**Class**” and “**Class Members**” means all persons resident in Canada who were prescribed Opioids and subsequently developed an addiction to Opioids between 2002 and the date of certification of this action.
 - (c) “**Consumer Protection Statutes**” means the *Business Practices Act*, RSPEI 1988, c B-7; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2; the *Consumer Protection Act*, RSA 2000, c C-26.3; the *Consumer Protection Act*, RSNS 1989, c 92; the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *The Business Practices Act*, CCSM, c B120; and *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.
 - (d) “**Co-Conspirators**” means all of the companies mentioned below in section III(B)(iv).
 - (e) “**Health Care Recovery Statutes**” means the *Crown’s Right of Recovery Act*, SA 2009, c C-35 and the *Health Care Costs Recovery Act*, SBC 2008, c 27.
 - (f) “**McKinsey**” means McKinsey Canada and McKinsey US.
 - (g) “**McKinsey Canada**” means McKinsey & Company Canada (NS-3084653).

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- (h) “**McKinsey US**” means McKinsey & Company, Inc., United States.
- (i) “**Opioids**” means any drug created, manufactured, or sold by any of the Co-Conspirators that contains buprenorphine, butorphanol, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, normethadone, opium, oxycodone, oxymorphone, pentazocine, tapentadol, or tramadol. That includes, but is not limited to the various Abstral, Belbuca, Butrans, Codeine Contin, Dilaudid, Duragesic, Hydromorph Contin, Hydromorph.IR, Jurnista, Metadol, Methadose, Movapo, MS Contin, MS IR, Nucynta, Opana, OxyContin, Oxyneo, Oxy.IR, Palladone, Pat-Fentanyl, Pat-Tramadol, Statex, Targin, Tramacet, Tridural, Ultram, and Zyram.
- (j) “**QCPA**” means the *Consumer Protection Act*, CQLR c P-40.1.
- (k) “**Quebec Charter**” means the *Charter of Human Rights and Freedoms*, CQLR c C-12.

II. RELIEF SOUGHT

2. The plaintiff, on behalf of the Class, claims:

- (a) An order certifying this action as a class proceeding and appointing him as representative Plaintiff for the Class Members;
- (b) A declaration that McKinsey owed a duty of care to Class Members to conform their behaviour to the legal standard of reasonable conduct under the circumstances, commensurate with the dangers involved in providing advice, consultation and

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management service to the Co-Conspirators related to the regulatory licensing, distribution, sale, and marketing of opioids, and that it breached such a duty;

- (c) A declaration that McKinsey was negligent in its provision of advice, consultation and management service to the Co-Conspirators related to the regulatory licensing, distribution, sale, and marketing of opioids;
- (d) A declaration that McKinsey is vicariously liable for the acts and omissions of its officers, directors, agents, employees, and representatives;
- (e) A declaration that McKinsey conspired with the Co-Conspirators in the manner hereinafter described;
- (f) A declaration that McKinsey was unjustly enriched at the expense of the Class Members and that it account for, disgorge, and make full restitution for its enrichment;
- (g) A declaration that McKinsey breached article 1 of the Quebec Charter, articles 219, 220(a), 228, and 239 of the QCPA, and articles 1457, 1468, 1469, 1480, 1481, and 1493 of the CCQ with respect to Class Members residing in Quebec;
- (h) Damages in the amount of \$1,000,000,000 for:
 - (i) Breach of the Consumer Protection Statutes;
 - (ii) Unlawful means conspiracy;
 - (iii) Predominant purpose conspiracy;

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- (iv) Conspiracy contrary to sections 45 and 46 of the *Competition Act*, RSC 1985, c C-34;
- (v) Negligence; and
- (vi) Concerted action joint liability for all of the above;
- (i) Recovery of the past and future cost of health care services incurred for the benefit of Class Members residing in Alberta and British Columbia;
- (j) Punitive damages in the amount of \$50,000,000;
- (k) The costs of distributing all monies received to class members;
- (l) Investigative costs and costs of this proceeding pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34;
- (m) The costs of this proceeding on a substantial indemnity basis, plus applicable taxes;
- (n) Pre- and post-judgment interest; and
- (o) Such further relief as this court may deem just.

III. NATURE OF THE ACTION

A. OVERVIEW

3. This case centres on the role of one of the world's largest and most influential global consulting firms in creating and exacerbating a medical crisis: the misuse, abuse, and over-prescription of opioids. This crisis arose from the opioid manufacturers' deliberately deceptive marketing strategy to expand opioid use. McKinsey helped orchestrate that strategy, supervised it,

and coordinated it with its opioid manufacturer clients, in exchange for a steady stream of lucrative consultancy fees.

4. At all material times, McKinsey and its Co-Conspirators knew that Opioids are highly addictive, ineffective, and unsafe for the treatment of long-term chronic pain. Nevertheless, McKinsey advised and encouraged its Co-Conspirators to:

- (a) Mislead medical professionals into believing that Opioids are less addictive, safer, and more effective at treating chronic pain than they actually were;
- (b) Mislead medical professionals into believing that, when patients started developing tolerance to Opioids, it was safe to “titrate up” – that is, to prescribe higher doses;
- (c) Identify the most credulous medical professionals and mislead or incentivize them into prescribing even more medically unnecessary Opioids; and
- (d) Not take steps to prevent Opioids from being diverted to channels that do not depend on prescriptions, or even enable such diversion, so that demand would continue even if prescriptions dried up.

5. This was not mere recklessness to the possibility of harm to patients; that harm was part of their plan. Addicted patients consume more Opioids, resulting in more profits. Nor was McKinsey merely dispensing professional or business advice to its clients. McKinsey was a primary actor in an unlawful conspiracy which had as its goal addicting tens of thousands of vulnerable Canadians to destructive substances.

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6. As a result of their actions, millions of inappropriate prescriptions for Opioids have been written, millions of Opioids have been diverted to the black market, and tens of thousands of Canadians have become addicted to Opioids.

7. McKinsey is jointly liable with its Co-Conspirators for the consequences of this conspiracy.

8. As a former McKinsey consultant described it, McKinsey's work driving revenues for Opioids was the “the banality of evil, M.B.A. edition...They knew what was going on. And they found a way to look past 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.”

B. THE PARTIES

(i) *The Representative Plaintiff*

9. The representative plaintiff, Jordan Francis Charlie (“**Jordan**”), resides in Armstrong, Ontario.

10. In 2001, at seventeen years old, Jordan was employed at an outland forestry station near Thunder Bay. His job was very physically demanding and caused Jordan to sustain a back injury.

11. Jordan sought treatment for his back injury from his family physician, who prescribed him medicine to treat the muscle inflammation, and Tylenol 3 for the pain.

12. Although Jordan took the anti-inflammation medicine, his back pain continued.

13. In 2002, Jordan visited his family physician again to seek treatment for his back. He was ordered to take an MRI, which he did. The results were forwarded to his physician’s clinic. When Jordan subsequently met with his physician, he was prescribed Oxycet (a now discontinued brand-

name Opioid product, containing the same chemical properties as found in Percocet) and instructed to take it for his pain.

14. Jordan took the drugs as prescribed, but his back pain continued, so his physician continued to prescribe him various forms of Percocet, in increasing dosages. In 2007, his physician prescribed him OxyContin. As a result, Jordan became addicted to Opioids.

15. In 2009, Jordan was referred to a specialist who concluded that there was nothing medically wrong with him and who advised him that he should no longer be prescribed Opioids.

16. The consequences of Jordan's Opioid addiction were devastating. He lost his job and fell into significant debt. His marriage deteriorated and then ended. He lost custody of his child.

(ii) The Class

17. Jordan seeks to certify this action on behalf of all persons resident in Canada who were prescribed Opioids and subsequently developed an addiction to Opioids between 2002 and the date of certification of this action.

(iii) The Defendants

18. The defendant McKinsey & Company Inc., United States (“**McKinsey US**”) is a New York corporation with its principal office in New York, NY. The defendant McKinsey & Company Canada (NS-3084653) (“**McKinsey Canada**”) is a Canadian affiliates of McKinsey US. McKinsey Canada and McKinsey US are collectively “**McKinsey**”.

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19. McKinsey is a global management consulting firm, with over 30,000 employees and operations in more than 65 countries. As a management consulting firm, McKinsey provides advice to managers on how to run their companies or other enterprises.

20. McKinsey is an integrated global entity. It describes itself in its fact sheet (https://www.mckinsey.com/~/media/mckinsey/about%20us/media%20center/mckinseymediafac tsheet_1jul2021.pdf) as a “truly global firm” with no headquarters. It has a single website for all of its branches worldwide. It works for multinational companies, in what its fact sheet describes as “working in an integrated way across regions, sectors, and disciplines”. Employees in each office have full access to all advice provided by different branches.

21. McKinsey has “extensive experience” working for the pharmaceutical industry according to its webpage for this industry (<https://www.mckinsey.com/industries/life-sciences/how-we-help-clients/commercial>). Its “efforts span the entire organization”. Its consultants “[train] and restructure sales forces, work directly in the field to provide coaching, maximize value from back-office services, develop strategies to accelerate short-term sales, and assist with company-wide commercial transformations.” It also “works with clients to develop compelling real world evidence in support of their drugs.”

22. Since 2002, McKinsey worked in conjunction with manufacturers and distributors of a wide variety of Opioids (the “**Co-Conspirators**”). Their goal was to increase the demand for Opioids in Canada and the United States.

23. McKinsey worked directly with both the Canadian and foreign Co-Conspirators. It directly provided the conspiratorial strategy to both the Canadian and foreign Co-Conspirators. In the

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alternative, it provided the conspiratorial strategy to the the foreign Co-Conspirators with the intention that they would share the conspiratorial strategy with the Canadian Co-Conspirators, or with reckless indifference or wilful blindness as to whether the foreign Co-Conspirators would share the conspiratorial strategy with the Canadian Co-Conspirators.

(iv) The Co-Conspirators

24. The Co-Conspirators are Endo, Janssen, Mallinckrodt, and Purdue, as defined below. They manufacture, market, distribute, and sell Opioids in Canada.

Endo

25. Endo International plc (Ireland corporation), Endo Pharmaceuticals Inc (Pennsylvania corporation), Endo Ventures Ltd (Ireland corporation), and Paladin Labs Inc. (CD-9282718) are related corporations that are inextricably interwoven with each other. Each acted as agent for the others for the purpose of manufacturing, marketing, and selling Opioids (collectively “**Endo**”).

26. Endo Ventures Ltd and Paladin Labs Inc. directly or indirectly marketed, and sold Opioids in Canada. They were directed, incited, advised, encouraged, persuaded, and/or supported by Endo International plc and Endo Pharmaceuticals Inc.

Janssen

27. Janssen Inc. (NS-3324007; ON-5008072), Johnson & Johnson Inc. (New Jersey corporation; CD-9556010; NS-3295677; PE-27114), and McNeil Consumer Healthcare (NB-638143; NS-3228064; NT-312233; NU-403280; ON-180467052; SK-0101263125; YT-220864) are related corporations that are inextricably interwoven with each other. Each acted as agent for

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the others for the purpose of manufacturing, marketing, and selling Opioids (collectively “**Janssen**”).

28. Janssen Inc. and the Canadian Johnson & Johnson Inc. corporations directly or indirectly manufactured, marketed, and sold Opioids in Canada. They were directed, incited, advised, encouraged, persuaded, and/or supported by the US Johnson & Johnson Inc.

Mallinckrodt

29. Mallinckrodt Canada ULC (BC-C1264033; NS-3296793), Mallinckrodt Hospital Products Inc. (Delaware corporation), and Mallinckrodt Pharmaceuticals plc (Ireland corporation) are related corporations that are inextricably interwoven with each other. Each acted as agent for the others for the purpose of manufacturing, marketing, and selling Opioids (collectively “**Mallinckrodt**”).

30. Mallinckrodt Canada ULC and Mallinckrodt Hospital Products Inc. directly or indirectly manufactured, marketed, and sold Opioids in Canada. They were directed, incited, advised, encouraged, persuaded, and/or supported by Mallinckrodt Pharmaceuticals plc.

Purdue

31. Purdue Frederick Inc. (CD-2556057), Purdue Pharma (NB-687604; ON-941377053), Purdue Pharma Inc. (CD-2555379), Purdue Pharma LP (Delaware corporation), P.F. Laboratories, Inc. (New Jersey corporation), and The Purdue Frederick Company Inc. (New York corporation) are related corporations that are inextricably interwoven with each other. Each acted as agent for the others for the purpose of manufacturing, marketing, and selling Opioids (collectively “**Purdue**”).

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32. Purdue Frederick Inc., Purdue Pharma, and Purdue Pharma Inc. directly or indirectly manufactured, marketed, and sold Opioids in Canada. They were directed, incited, advised, encouraged, persuaded, and/or supported by Purdue Pharma LP, P.F. Laboratories, Inc., and The Purdue Frederick Company Inc.

C. FACTS

(i) *The Opioid Epidemic in Canada*

33. Opioids are a class of drugs that are defined by a chemical compound that is naturally found in the opium poppy plant or which are synthetically made using the same chemical structure. Opioids are powerful narcotics that work by binding to receptors on the spinal cord and in the brain, lessening the perception of pain. In addition to pain controlling effects, opioids can also induce an addictive, euphoric high.

34. With continued use, users grow tolerant to opioids and require progressively higher doses over time, significantly increasing the risks of withdrawal, addiction, and overdose.

35. Until the mid-1990s, prescription opioids were generally limited to being used for treatment of terminal cancer patients and in acute post-surgical care, as they were thought to be too addictive to treat pain conditions which would require long-term use of such drugs.

36. In the late 1990s, the consumption of prescription opioids skyrocketed in Canada and the US. This was due to the aggressive and concentrated marketing efforts made by pharmaceutical companies, including the Co-Conspirators, to promote the long-term use of their opioid products for widespread chronic conditions such as back pain, sports injuries, and arthritis, in order to broaden the market for opioid prescriptions and expand their profits.

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37. In the late 1990s and early 2000s, the Co-Conspirators spent hundreds of millions of dollars on promotional activities and materials intended to “educate” Canadian healthcare professionals on the use of opioids and market their opioid products as a safe, non-addictive means for treating long-term chronic pain. The Co-Conspirators falsely represented that the risk of addiction was less than one percent.

38. For instance, Purdue had a yearly promotional budget of \$14 million in Canada for promotion of OxyContin, its patented opioid product. In 2016, Purdue gave Canadian doctors more than \$2 million as part of its marketing efforts – nearly three times more per population of the country than it gave prescribers in the US.

39. The marketing efforts of the Co-Conspirators in both the United States and Canada specifically targeted family physicians who were the most likely to see patients with chronic pain conditions and least likely to have the training necessary to be in a position to verify the Co-Conspirators’ marketing representations about the safety and effectiveness of opioids.

40. In addition to peddling the Co-Conspirators’ messaging through presentations and in-person meetings, healthcare professionals in Canada were also subjected to and influenced by promotional material produced by the Co-Conspirators in the United States which both downplayed the risk of addiction and overstated benefits of opioid use. The Co-Conspirators disseminated false representations about the safe and non-addictive properties of their opioid products in paid advertisements in medical journals such as the *Canadian Medical Association Journal*, which is mailed to almost every physician in Canada.

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41. In addition to targeting healthcare professionals for dissemination of their misleading messaging, the Co-Conspirators also funded patient advocacy groups to produce misleading materials, encourage chronic opioid therapy and push for more liberal prescription of opioids. In Canada, groups such as the Canadian Pain Coalition, the Chronic Pain Association of Canada, and People in Pain Network received funding from the Co-Conspirators.

42. The aggressive marketing efforts of the Co-Conspirators proved to be enormously successful. In Canada, prescription use of prescription opioids increased by 203% between 2000 and 2010, even though the proportion of Canadians who reported experiencing chronic pain did not change substantially over this period.

43. Canada is the second largest per capita consumer of prescription Opioids in the world, surpassed only by the United States.

44. In 2016 alone, over 20 million opioid prescriptions were dispensed in Canada, equivalent to nearly one prescription for every adult over the age of 18 years.

45. The over-prescription of Opioids in Canada that resulted from the actions of the Co-Conspirators has caused severe harm to Canadians.

46. According to the Government of Canada, from January 2016 to December 2020, there were 21,174 apparent opioid-related deaths across Canada and 24,671 hospitalizations for opioid-related overdoses.

47. A 2017 analysis by the Canadian Institute for Health Information found that between 2007-2008 and 2016-2017, the rate of hospitalizations due to opioid-poisoning increased by more than

50%, with more than 40% of the increase occurring over the last three years. In Ontario, 10.6% of individuals seeking substance use treatment in 2005–2006 were seeking treatment for addiction to prescription opioids. By 2014–2015, this had increased to over 20%.

48. The over-prescription of opioids in Canada has resulted in both an increase in prescription opioid-related harms and in rates of nonmedical prescription opioid use. By 2008, nonmedical prescription opioid use was the fourth most prevalent form of substance use (after alcohol, tobacco, and cannabis), making it more common to misuse a prescription opioid than to use heroin or cocaine.

49. The increased rates of opioid prescribing paired with the more recent influx of illegal opioids have led to even further increased rates of addiction, overdoses, and overdose deaths in recent years, resulting in what Canada’s Chief Public Health Officer has called a “major public health crisis”.

50. In 2016, Canada’s Minister of Health declared the opioid crisis a public health emergency, putting the epidemic at the forefront of government oversight, funding, and legislative reform.

51. Recognizing the devastating effects of the pharmaceutical industry’s marketing and advertising activities on opioid prescribing practices, on June 18, 2018, Canada’s Minister of Health issued a Notice of Intent to Canadian manufacturers and distributors of opioids, requesting that they immediately cease all marketing and advertising of opioids to health care professionals.

52. In response to the increased government scrutiny and facing an onslaught of litigation, Purdue announced that it had ceased “all promotional and advertising activities relating to our prescription opioids” as of June 20, 2018. The other Co-Conspirators shortly followed suit.

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53. Unfortunately, the cessation of these marketing efforts came far too late. Studies consistently demonstrate that despite overall reductions in prescription opioid dispensing in Canada, incidences of opioid-related harm and death have continued to rise substantially in the past five years.

54. Due to the conduct of McKinsey and the Co-Conspirators, hundreds of thousands of Canadians have become addicted to opioids. Tens of thousands of Canadians have died of opioid overdoses in the past two decades. Young Canadians, aged 15 to 24, are the most affected.

(ii) McKinsey's Advice to the Co-Conspirators Spurs Opioid Prescription Demand

55. McKinsey's actions, as set out below, caused and/or materially contributed to the opioid crisis in Canada.

56. From as early as 2002, McKinsey advised the Co-Conspirators on how to maximize the number of prescriptions for Opioids, and thereby maximize their collective profits. Beyond simply providing advice and guidance, McKinsey consultants supervised the implementation of certain initiatives of the Co-Conspirators that had the effect of addicting Canadians to Opioids. McKinsey was directly involved in helping the Co-Conspirators to market, distribute, and sell Opioids in a manner that addicted the most Canadians. McKinsey's actions had the effect of diverting substantial quantities of Opioids to the black market, such that demand continued even if prescriptions dried up.

(iii) McKinsey's Work for Purdue

57. McKinsey advised Purdue for fifteen years, from 2004 to 2019.

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58. In 2007, Purdue pleaded guilty in the United States to felony misbranding of OxyContin, admitting that it had misrepresented the safety and effectiveness of OxyContin to regulators, doctors, and the public. Specifically, Purdue admitted to falsely marketing OxyContin as a less addictive, safer alternative to other pain medications. In the global settlement resolution, Purdue and its parent company paid over \$600 million and entered into a Corporate Integrity Agreement (“CIA”) with the U.S. Department of Health and Human Services Office of Inspector General.

59. Under the CIA, 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.

60. Instead of complying with the CIA, Purdue turned to McKinsey to find a way to circumvent the CIA. McKinsey knew that Purdue had made misrepresentations, that those misrepresentations were illegal, and that Purdue had signed an agreement to stop making those misrepresentations.

61. In 2008, McKinsey advised Purdue to develop its FDA-mandated risk evaluation and mitigation strategy (“REMS”). McKinsey advised Purdue to “band together” with other opioid manufacturers, including the other Co-Conspirators, to convince the FDA to treat all Opioids the same, regardless of dosage. They succeeded. The FDA adopted a class-wide REMS that resulted in high-dose OxyContin remaining subject to the same oversight as lower-dose opioids.

62. In 2009, McKinsey advised Purdue to target patients, including patients new to Opioids, in addition to targeting physicians. The goal was to increase “brand loyalty” to OxyContin. Purdue

agreed, and McKinsey helped Purdue to implement this strategy. McKinsey was more than just an advisor. It was directly involved in implementing this advice.

63. On January 20, 2010, McKinsey proposed a new “physician segmentation” initiative. McKinsey created a new metric to identify the medical professionals most likely to be persuaded to prescribe more Opioids – generally those who had historically been the highest prescribers. McKinsey then worked with Purdue’s sales and marketing staff to specifically target those high-volume prescribers with a marketing blitz to encourage them to prescribe even more medically unnecessary Opioids.

64. In 2013, McKinsey made presentations to Purdue identifying voluminous evidence that Opioids were unsafe and addictive, and that medical professionals were complaining. Instead of taking these concerns seriously, McKinsey advised Purdue to see these complainants as obstacles that could be surpassed by doubling down on aggressive marketing. McKinsey advised Purdue to:

- (a) Mislead medical professionals into believing that, when patients begin to develop tolerance to low doses of Opioids, it is safe to “titrate up” – that is, to prescribe ever higher doses until the patient is satisfied;
- (b) Remove sales representatives’ discretion to not target prescribers;
- (c) Significantly increase the number of sales visits to high-volume prescribers; and
- (d) Create an “alternative model for how patients receive Oxycontin”, including direct distribution to patients, allowing patients to get Opioids without a prescription.

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65. Purdue approved McKinsey's plan, and together with McKinsey, moved to implement the plan to "Turbocharge Purdue's Sales Engine," under the name Evolve 2 Excellence ("E2E"). E2E significantly increased Purdue's sales of Opioids.

66. McKinsey partners participated in E2E as part of an Executive Oversight Team and Project Management Office, reporting to Purdue's Executive Committee, the Purdue board, and to Purdue's founders and major shareholders, the Sackler family, individually. McKinsey worked side by side with Purdue and helped Purdue plan and implement E2E, assisting with virtually all aspects of the plan. This included:

- (a) Forecasting demand;
- (b) Crafting messaging and promotional strategies;
- (c) Developing policies, procedures, and sales targets for sales representatives;
- (d) Creating compensation schemes for sales representatives that rewarded them with large bonuses for increasing prescriptions of Opioids;
- (e) Training Purdue's sales representatives, including encouraging them to call high-volume prescribers multiple times per month; and
- (f) Assessing the degree to which sales representatives increased prescriptions of Opioids, and adjusting messaging accordingly.

67. When a large pharmacy chain in the United States took steps to scrutinize suspicious opioid orders, McKinsey stressed to Purdue's owners the "need to take action" on this "urgent" issue

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affecting OxyContin. McKinsey advised Purdue's owners to engage in senior level discussions with the pharmacy chain, increase efforts with patient advocacy groups to protest dispensing limits, and accelerate considerations of an alternative distribution channel, such as delivering OxyContin directly to patients through mail-order pharmacies.

68. After E2E, McKinsey continued to work with Purdue, including on a project that identified the growing addiction crisis as a profit-making opportunity. McKinsey advised Purdue to start manufacturing, marketing, and selling opioid rescue and treatment medications, profiting from dependence, addiction, and misuse of OxyContin. Indeed, in 2018, Purdue owner Dr. Richard Sackler received a patent for a drug to treat opioid addiction.

69. McKinsey created and asked Purdue to test FieldGuide, a proprietary software that would enable other opioid manufacturers to target and aggressively pursue high-volume prescribers

70. McKinsey continued to help Purdue increase sales of OxyContin well after the opioid epidemic began ravaging the United States and Canada. In 2017, picking up on the ever increasing numbers of opioid overdoses taking place across the country, McKinsey recommended that Purdue pay pharmacies "additional rebates on any new OxyContin related overdose or opioid use disorder diagnosis." This dollars-for-deaths program would encourage medical professionals to continue prescribing, and pharmacies to continue supplying Opioids even when it became clear that they were killing patients. In the end, this macabre scheme was not initiated, despite McKinsey conspiring to carry it out.

71. McKinsey's efforts in maximizing the sales of OxyContin were bountiful. Sales of OxyContin *tripled* in the years following Purdue's 2007 guilty plea, despite the restrictions

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imposed by the CIA. 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.”

72. McKinsey knew that its advice was immoral and illegal. In a 2018 email thread, fearing the consequences for McKinsey’s work with Purdue, two McKinsey senior partners who had participated in McKinsey’s work advising Purdue discussed destroying or deleting documents related to their work for Purdue.

73. McKinsey’s work for Purdue went far beyond the role of the traditional consultant. McKinsey partners effectively dictated and oversaw corporate strategy. McKinsey was an active co-conspirator.

74. McKinsey’s work for Purdue was designed to be a global strategy. The same advice was shared with, and the same tactics were used aggressively by Purdue’s Canadian affiliates. Purdue gave Canadian doctors three times more per capita than it gave American doctors.

(iv) McKinsey’s Related Work for the Other Co-Conspirators

75. McKinsey’s work for opioid manufacturers extended beyond Purdue. McKinsey designed and implemented marketing programs for the country’s largest opioid manufacturers and distributors, including the Co-Conspirators, collecting millions of dollars in fees, and further increasing the sale and use of Opioids in Canada.

76. As early as 2002, McKinsey was advising the other Co-Conspirators regarding methods to boost sales of their Opioid products.

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77. From at least 2002 and continuing for more than a decade, McKinsey advised Janssen, first with the Duragesic fentanyl patch, then with Nucynta. McKinsey advised Janssen to concentrate their sales and marketing efforts on medical professionals who were already prescribing large amounts of Purdue's OxyContin. The logic was that, if these medical professionals were open to over-prescribing Purdue's products, then they would be open to over-prescribing Janssen's products.

78. McKinsey also advised Endo on marketing Opana ER, and Mallinckrodt on marketing Methadose. McKinsey's advice was similar to its advice to the other Co-Conspirators. McKinsey had such intricate knowledge of the sales and marketing practices of opioid manufacturers generally, and Purdue's efforts with OxyContin specifically, that it was able to recommend and implement the same strategies for the other Co-Conspirators.

79. McKinsey's work for each Co-Conspirator helped the other Co-Conspirators. They all benefited from expanding the market for Opioids in North America – that is, by addicting more patients to opioids as a drug class, they increased the pool of customers for all of the Co-Conspirators' Opioids.

80. McKinsey also coordinated the Co-Conspirators into working together to fight what it saw as obstacles to profits. In 2008, McKinsey convinced the Co-Conspirators to collectively lobby the FDA to adopt less onerous oversight of opioids. Later, when medical professionals started to raise concerns about Opioids, McKinsey coordinated the Co-Conspirators' messages to medical professionals to convince or incentivize them to continue prescribing.

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81. McKinsey's work for the other Co-Conspirators was designed to be a global strategy. The same advice was shared with, and the same tactics were used by their Canadian affiliates.

(v) *In the Face of Mounting Pressure, McKinsey Ceases its Consulting Work with the Co-Conspirators*

82. In 2019, when Purdue began facing mounting legal pressure and McKinsey's own reputation was impacted, McKinsey announced that it would no longer work for Purdue, and later ceased "opioid-specific" work on behalf of the other Co-Conspirators.

(vi) *Purdue Pleads Guilty*

83. Months after McKinsey stopped its Opioids work, Purdue filed for bankruptcy. Mallinckrodt similarly filed for bankruptcy in October 2020.

84. In 2019, an Oklahoma state court granted \$465 million in damages against one of Janssen's companies, Johnson & Johnson, for helping to create the opioid crisis in that state.

85. In 2020, Purdue pleaded guilty for a second time for improper marketing of OxyContin and other Opioids. This time, the plea agreement concerned Purdue's conduct from 2010 to 2018, the decade during which McKinsey advised Purdue.

86. In that 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". All or virtually all of these illegal activities were coordinated, endorsed, encouraged, and carried out under the advice, direction, and supervision of McKinsey.

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87. Although the Purdue Settlement Agreement does not identify McKinsey as a co-conspirator by name; it directly implicates McKinsey. For instance, Purdue admitted that E2E “was overseen by the consulting company and some of Purdue’s top executives through the creation of the E2E Executive Oversight Team (‘EOT’) and Project Management Office (‘PMO’)”.

(vii) McKinsey Settles with the Department of Justice

88. After being named in the Purdue Settlement Agreement, McKinsey posted a statement on its website announcing it would stop Opioids work. It took responsibility, half-heartedly, not for its extensive role in exacerbating the opioid epidemic, but merely for not taking into account the “broader context” of its work. The statement reads:

“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 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.”

89. McKinsey US was sued by Attorneys General of 47 states, the District of Columbia, and five American territories for directing the opioid crisis in the US.

90. On February 4, 2021, McKinsey settled all but one of those cases for almost \$600 million. The Nevada case will continue.

IV. CAUSES OF ACTION

91. McKinsey was an active participant in the conspiracy that resulted in and exacerbated the opioid crisis in Canada. It advised its Co-Conspirators to act in concert to addict patients to opioids, thereby manufacturing demand and maintaining prices. McKinsey knew that its proposed tactics would hurt the Class. Indeed, McKinsey, along with its co-conspirators set out to addict as many people as possible to Opioids, or at the very least was recklessly indifferent to the consequences of its actions. McKinsey is therefore liable for the consequences of those addictions.

A. CONCERTED ACTION JOINT LIABILITY

92. McKinsey encouraged, incited, and persuaded its Co-Conspirators to engage in a wide variety of misconduct designed to addict patients to Opioids.

93. McKinsey advised the Co-Conspirators to misrepresent Opioids as less addictive than they actually are, and having fewer adverse effects in the long term than they actually do, by the following means:

- (a) McKinsey advised the Co-Conspirators to falsely represent that Opioids have a low risk of addiction, even at high dosages;
- (b) McKinsey advised the Co-Conspirators to falsely represent that time-released dosing of Opioids prevents addiction;
- (c) McKinsey advised the Co-Conspirators to falsely represent that symptoms of withdrawal from Opioids can be easily and effectively managed;

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- (d) McKinsey advised the Co-Conspirators to falsely represent that Opioids provide “freedom” and “peace of mind”, and reduce patients’ stress and isolation;
- (e) McKinsey advised the Co-Conspirators to falsely represent that long-term use of Opioids improves function and quality of life; and
- (f) McKinsey advised the Co-Conspirators to falsely represent that Opioids provide patients their “best possible chance to live a full and active life”.

94. McKinsey advised the Co-Conspirators to convince doctors and pharmacies to sell Opioids at a higher dosage, knowing that those higher dosages were more likely to addict patients, by the following means:

- (a) McKinsey advised the Co-Conspirators that higher dosages of Opioids carried higher profit margins across the entire supply chain, inducing the Co-Conspirators to sell higher dosages of Opioids;
- (b) McKinsey helped the Co-Conspirators create marketing campaigns to convince doctors and pharmacies to “titrate up” – that is, to increase the dosage of Opioid prescriptions when patients began to develop tolerance to them;
- (c) McKinsey knew or ought to have known that increasing the dosage was more likely to addict patients to Opioids; and
- (d) McKinsey advised the Co-Conspirators to tell doctors and pharmacies that the Opioids had no “ceiling dose”.

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95. McKinsey advised the Co-Conspirators to target doctors and pharmacies that they knew were prescribing Opioids for medically unnecessary reasons, in hopes that those prescriptions would result in more addictions, by the following means:

- (a) McKinsey created a new metric to identify the doctors that were most likely to be swayed into overprescribing opioids, either because they were already overprescribing opioids or because they were especially receptive to sales representatives;
- (b) McKinsey knew or ought to have known that these were the doctors most likely to be prescribing Opioids for medically unnecessary reasons, or diverting Opioids to illegal uses; and
- (c) McKinsey advised the Co-Conspirators to provide those doctors with inducements – including illegal kickbacks – to prescribe even more medically unnecessary Opioids.

96. McKinsey advised the Co-Conspirators to circumvent restrictions on Opioid prescriptions and reluctance to prescribe, ship, or sell Opioids, by the following means:

- (a) When doctors expressed concerns about prescribing Opioids, McKinsey advised the Co-Conspirators to circumvent the doctors and contact patients directly;
- (b) When wholesalers began imposing quantity limits on orders or stopping shipments for fear that Opioids were being abused, McKinsey advised the Co-Conspirators to circumvent wholesalers and sell directly to retailers;

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- (c) When major retailers became concerned about the high rate of overdoses on Opioids, McKinsey advised the Co-Conspirators to pay retailers a “rebate” per overdose (dollar-per-death incentives), to encourage them to continue prescribing despite the overdoses (a strategy which was not adopted despite McKinsey’s promotion);
- (d) When major retailers began rejecting prescriptions for Opioids for fear that Opioids were being abused, McKinsey advised the Co-Conspirators to circumvent the major retailers by selling Opioids through specialty pharmacies that would be willing to accept kickbacks to look the other way; and
- (e) When smaller pharmacies began rejecting prescriptions for Opioids for fear that Opioids were being abused, McKinsey advised the Co-Conspirators to circumvent pharmacies entirely by selling Opioids directly to patients by mail.

97. McKinsey advised the Co-Conspirators to push their own sales representatives to increase sales of all Opioids, knowing that increasing consumption of any Opioid would increase the rate of addiction, and so increase demand for each of the Co-Conspirators’ opioids:

- (a) McKinsey advised the Co-Conspirators to train their employees to increase sales of all Opioids, including those sold by their competitors; and
- (b) McKinsey advised the Co-Conspirators to provide monetary incentives to their employees to increase sales of all Opioids.

98. McKinsey provided the Co-Conspirators with detailed strategies to do all of the above.

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99. The Co-Conspirators put McKinsey's strategies into operation. They misrepresented the effects of Opioids, convinced doctors to prescribe Opioids at a higher dosage, targeted doctors that they knew were prescribing Opioids for medically unnecessary reasons, circumvented restrictions on Opioid prescriptions and reluctance to prescribe, ship, or sell Opioids, and pushed their own sales representatives to increase sales of all Opioids.

100. McKinsey is jointly liable for all of the actions that its Co-Conspirators took that:

- (a) Followed McKinsey's advice;
- (b) Were undertaken as part of McKinsey's overall strategy to addict patients; or
- (c) Were caused by a culture of reckless disregard for the harm that would be caused by overprescribing Opioids, which McKinsey helped instill in its Co-Conspirators.

B. BREACH OF THE CONSUMER PROTECTION STATUTES

101. McKinsey directed, incited, advised, encouraged, and persuaded the Co-Conspirators to make the following representations (the "**Representations**"):

- (a) Opioid treatment for chronic pain is safe and non-addictive, and in particular:
 - (i) The risk of addiction to Opioids is small;
 - (ii) All Opioids carry the same low risk of addiction, no matter the dose; and
 - (iii) There is no upper limit to the dose of Opioids that can be safely prescribed;
- (b) Opioids are highly effective at treating chronic pain;

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- (c) Opioids do not lose their effectiveness over the long term;
- (d) When patients begin to develop tolerance to Opioids, it is safe to “titrate up” – that is, to prescribe higher and higher doses;
- (e) Pharmacies do not need dispensing limits to prevent abuse or diversion; and
- (f) Medical and academic literature supports all of the above.

102. The Representations are false, misleading, and deceptive. In particular:

- (a) They represent that Opioids have performance characteristics, benefits, and qualities that they do not have;
- (b) They represent that Opioids are of a particular standard or quality that they are not;
- (c) They exaggerate the benefits and safety of Opioids; and
- (d) They fail to state material facts about the safety and addictiveness of Opioids.

103. The Representations are unconscionable. In particular:

- (a) McKinsey and the Co-Conspirators knew that consumers could not protect their interests because of their disability (chronic pain), ignorance, inability to access or understand the medical literature, and reliance on medical professionals;
- (b) Consumers are unable to receive a substantial benefit from Opioids because they are not effective at treating chronic pain in the long term;

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- (c) The consumer transactions are excessively one-sided in favour of McKinsey and the Co-Conspirators;
- (d) The consumer transactions are so adverse to the customer as to be inequitable;
- (e) Consumers relied to their detriment on the Co-Conspirators' misleading statements of opinion with respect to the effectiveness, safety, and addictiveness of Opioids; and
- (f) Consumers' chronic pain and the absence of alternative medications put undue pressure on them to enter into the consumer transactions.

104. Thus, the Representations breach various provisions of the Consumer Protection Statutes.

105. With respect to Class Members in Alberta, Ontario and PEI, McKinsey is jointly liable with the Co-Conspirators pursuant to:

- (a) Section 7.3(1) of the *Consumer Protection Act*, RSA 2000, c C-26.3;
- (b) Section 18(12) of the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A; and
- (c) Section 4(3) of the *Business Practices Act*, RSPEI 1988, c B-7.

106. With respect to Class Members in other provinces and territories, McKinsey is jointly liable for concerted action with the Co-Conspirators in making the Representations.

C. UNLAWFUL MEANS CONSPIRACY

107. McKinsey and its Co-Conspirators are jointly liable for unlawful means conspiracy. They engaged in unlawful conduct directed at the Class. They labeled, sold, and advertised the Opioids in a manner that is:

- (a) False, misleading, deceptive, and likely to create an erroneous impression that they were safer and less addictive than they actually were, in breach of section 9(1) of the *Food and Drugs Act*, RSC 1985, c F-27;
- (b) False, misleading, and for the purpose of promoting the supply or use of Opioids, in breach of section 52(1) of the *Competition Act*, RSC 1985, c C-34; and
- (c) False, misleading, deceptive, and unconscionable, in breach of various provisions of the Consumer Protection Statutes.

108. McKinsey continued to advise its Co-Conspirators to make these representations until at least 2019. This was 12 years after Purdue pleaded guilty to offences in the United States for making similar representations, and was ordered to pay a fine of roughly \$600,000,000 and enter into the CIA. McKinsey and its Co-Conspirators were all well aware that these representations were illegal.

109. They knew or ought to have known that these representations were likely to result in injury to the Class.

110. The Class suffered injuries as a result of this conspiracy.

D. PREDOMINANT PURPOSE CONSPIRACY

111. McKinsey and its Co-Conspirators are jointly liable for predominant purpose conspiracy.

Acting for the purpose of addicting as many people as possible to Opioids, they:

- (a) Misled medical professionals into believing that Opioids are less addictive, safer, and more effective at treating chronic pain than they actually were;
- (b) Misled medical professionals into believing that, when patients started developing tolerance to Opioids, it was safe to “titrate up” – that is, to prescribe higher doses;
- (c) Identified the most credulous medical professionals and misled or incentivized them into prescribing even more medically unnecessary Opioids; and
- (d) Did not take steps to prevent Opioids from being diverted to channels that do not depend on prescriptions, or even that enabled such diversion.

112. The Class suffered injuries as a result of this conspiracy.

E. CONSPIRACY TO MAINTAIN PRICES

113. McKinsey’s Co-Conspirators conspired, agreed, or arranged to fix, maintain, increase, or control the price for the supply of opioids, in breach of section 45 of the *Competition Act*, RSC 1985, c C-34, by:

- (a) Collectively following McKinsey’s advice to misrepresent opioids as safer and less addictive than they are, pressuring doctors to overprescribe opioids, and appealing directly to patients when doctors raised concerns; and

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- (b) Focusing on inducing demand for opioids instead of competing by reducing prices, reducing addictiveness, or increasing safety.

114. McKinsey was in a position to direct or influence the policies of the Co-Conspirators. In breach of section 46 of the *Competition Act*, RSC 1985, c C-34, the Co-Conspirators implemented McKinsey's directives, instructions, and intimations of policy to fix, maintain, increase, or control the price for the supply of opioids by:

- (a) Collectively misrepresenting opioids as safer and less addictive than they are, pressuring doctors to overprescribe opioids, and appealing directly to patients when doctors raised concerns; and
- (b) Focusing on inducing demand for opioids instead of competing by reducing prices, reducing addictiveness, or increasing safety.

115. McKinsey is jointly liable for this breach and the resulting damages, as well as the full investigative costs and legal costs of this proceeding, under section 36(1) of the *Competition Act*, RSC 1985, c C-34.

F. NEGLIGENCE

116. McKinsey and its Co-Conspirators are jointly and severally liable for negligence.

117. McKinsey owed a duty to not advise the Co-Conspirators to act illegally or in a manner that McKinsey knew would injure the Class and addict them to Opioids. The Co-Conspirators owed a duty to not act illegally or in a manner that the Co-Conspirators knew would injure the Class and addict them to Opioids.

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118. McKinsey was in a proximate relationship with the Class because it was hired by the Co-Conspirators to affect the behaviour of the Class. The Co-Conspirators were in a proximate relationship with the Class because their business was to sell Opioids to the Class, or to retailers to be resold to the Class.

119. The injuries to the Class were reasonably foreseeable to both McKinsey and its Co-Conspirators because they set out to addict the Class to Opioids, or at least to get the Class to consume more Opioids knowing that those Opioids were harmful and addictive.

120. McKinsey breached the standard of care by advising the Co-Conspirators to illegally misrepresent that Opioids were safe and non-addictive, including at high doses. The Co-Conspirators breached the standard of care by illegally misrepresenting that Opioids were safe and non-addictive, including at high doses.

121. As a result of these misrepresentations, the Class suffered damages.

G. UNJUST ENRICHMENT

122. McKinsey and its Co-Conspirators are jointly and severally liable for unjust enrichment.

123. The Co-Conspirators were enriched by the value of its sales of Opioids. McKinsey was enriched by the value of its consulting fees, which were related to the profits from the sales of Opioids.

124. The Class suffered a corresponding deprivation in the amount that they spent on Opioids.

125. There was no juristic reason for this enrichment. The Class's contracts to buy Opioids were unconscionable, procured under duress of addiction, and vitiated by the Co-Conspirators'

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misrepresentations. McKinsey's contracts to provide consulting services to its Co-Conspirators could not have authorized it to advise its clients to act illegally, and to the extent that they were carried out in that way, they are void for illegality.

H. HEALTH CARE COSTS RECOVERY

126. As a result of all of the above, McKinsey and its Co-Conspirators are “wrongdoers” within the meaning of the Health Care Recovery Statutes.

127. The wrongful actions of McKinsey and its Co-Conspirators caused the Class to suffer personal injuries within the meaning of the Health Care Recovery Statutes.

I. QUEBEC CLAIMS

(i) Breach of the Quebec Charter

128. With respect to Class Members resident in Quebec, McKinsey is subject to the Quebec Charter, article 1 of which protects the fundamental right of all Quebec residents to “personal security”. Addiction to Opioids is associated with significant harmful physical and psychological consequences, all of which interfere with an individual’s personal security, including their health and bodily integrity.

129. McKinsey developed, coordinated, and supervised a global strategy implemented by the Co-Conspirators to aggressively market Opioids and encourage the over-prescription of medically unnecessary Opioids through the use of inducements, such as illegal kickbacks to doctors. In doing so, McKinsey exacerbated the opioid crisis and is liable for violating the personal security of Class Members resident in Quebec, contrary to article 1 of the Quebec Charter.

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130. Class Members resident in Quebec are entitled to punitive damages pursuant to article 49 of the Quebec Charter.

(ii) Breach of the QCPA

131. With respect to Class Members resident in Quebec, McKinsey and the Co-Conspirators are subject to the QCPA, which prohibits persons who conduct transactions with consumers from engaging in prohibited practices, such as making false, misleading, and deceptive representations.

132. As set out above at paragraphs 102 to 104, McKinsey directed, incited, advised, encouraged, and persuaded the Co-Conspirators to make false, misleading, and deceptive Representations regarding the safety and addictiveness of Opioids. McKinsey's conduct as an "advertiser" under the QCPA or, in the alternative, as a "representative" or agent of the Co-Conspirators who are "merchants" and "manufacturers" under the QCPA, was contrary to articles 219, 220(a), 228, and 239 of the QCPA. Class Members suffered damages as a result of these breaches of the QCPA.

133. Class Members resident in Quebec are entitled to punitive damages pursuant to article 272 of the QCPA.

(iii) Breach of the CCQ

134. Where the actions of McKinsey and the Co-Conspirators took place in Quebec and/or impacted Class Members resident in Quebec, they constitute:

- (a) Fault giving rise to extra-contractual liability of McKinsey and the Co-Conspirators to Class Members resident in Quebec, pursuant to articles 1457, 1468, and 1469 of the CCQ, including for the reasons set out above at paragraphs 117-122; and

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(b) Unjust enrichment giving rise to the liability of McKinsey and the Co-Conspirators to Class Members resident in Quebec, pursuant to article 1493 of the CCQ, including for the reasons set out above at paragraphs 123-126.

135. Further, the conduct of McKinsey and the Co-Conspirators described above at paragraphs 108 to 116 was unlawful in Quebec, by virtue of being contrary to the CCQ, the QCPA, the Quebec Charter and the *Competition Act*, RSC 1985 c C-34. McKinsey and the Co-Conspirators should have known in the circumstances that injury to Quebec residents would be likely to result.

136. Consequently, pursuant to articles 1480 and 1481 of the CCQ, McKinsey and the Co-Conspirators should be held solidarily responsible and liable for any damages suffered by Class Members resident in Quebec caused by McKinsey's and the Co-Conspirators' failures in their legal obligations.

J. DAMAGES

137. As a result of McKinsey's statutory breaches and common law tortious conduct, the Class has suffered and will continue to suffer damages including, but not limited to, damages for personal injuries, mental anguish, pain and suffering, loss of employment income and benefits, loss of enjoyment of life, possible death, and special damages and expenses.

138. The Class has suffered injuries which are permanent and lasting in nature, including diminished enjoyment of life, as well as the need for lifelong medical treatment.

(i) *Punitive Damages*

139. The plaintiff claims punitive damages as a result of McKinsey's egregious, outrageous, and unlawful conduct, and in particular, its callous disregard for the health and lives of vulnerable persons in Canada.

140. McKinsey's conduct in the creation and implementation of strategies relating to the regulatory licensing, distribution, sale, and marketing of Opioids after obtaining knowledge that Opioids were addictive showed a complete indifference to or a conscious disregard for the safety of others. This justifies an award of additional damages in a sum that will serve to deter McKinsey and others from similar conduct in the future.

141. McKinsey coordinated – indeed masterminded – marketing efforts resulting in an opioid crisis that kills thousands of Canadians every year. It colluded with its Co-Conspirators to maximize the number of people addicted to their Opioids, and then shared in the profits from those Opioids through enormous consulting fees. McKinsey prioritized its lucrative opioid consulting profits over tens of thousands of lives. Its conduct was willful, deliberate, flagrant, and outrageous, and warrants an award of punitive damages.

(ii) *Quebec Damages*

142. With respect to Class Members resident in Quebec, the actions of McKinsey and the Co-Conspirators give rise to the liability of McKinsey to pay:

- (a) Bodily, moral, and material damages pursuant to articles 1457, 1468, and 1469 of the CCQ; and

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- (b) Punitive damages pursuant to article 49 of the Quebec Charter, article 272 of the QCPA, and article 1621 of the CCQ.

K. REAL & SUBSTANTIAL CONNECTION WITH ONTARIO

143. The plaintiff pleads that this action has a real and substantial connection with Ontario because, among other things:

- (a) McKinsey assisted their Co-Conspirators in advertising, distributing, and selling their opioid products in Ontario and derived substantial revenue from these efforts;
- (b) Class Members were administered Opioids in Ontario and sustained consequent damages in Ontario;
- (c) The torts were committed in Ontario; and
- (d) McKinsey carries on business in Ontario.

L. STATUTES RELIED UPON

144. The plaintiff pleads and relies on:

- (a) *Business Practices Act*, RSPEI 1988, c B-7, ss 1-4;
- (b) *Business Practices and Consumer Protection Act*, SBC 2004, c 2, ss 4-5, 8-10, 171-172;
- (c) *Charter of Human Rights and Freedoms*, CQLR c C-12, arts 1, 49;
- (d) *Civil Code of Quebec*, CQLR c CCQ-1991, arts 1457, 1468, 1469, 1480, 1493;

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- (e) *Competition Act*, RSC 1985, c C-34, ss 36, 45(1), 46(1), 52(1);
- (f) *Consumer Protection Act*, RSA 2000, c C-26.3, ss 1-4, 7.3;
- (g) *Consumer Protection Act*, CQLR c P-40.1, arts 215, 218-221, 228, 229, 252-253, 271-272;
- (h) *Consumer Protection Act*, RSNS 1989, c 92, s 28;
- (i) *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A, ss 8-9, 14-15, 17-18;
- (j) *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, ss 7-10;
- (k) *Courts of Justice Act*, RSO 1990, c C.43, ss 127-129;
- (l) *Food and Drugs Act*, RSC 1985, c F-27, s 9(1);
- (m) *Rules of Civil Procedure*, RRO 1990, Reg 194, r 17.02(g); and
- (n) *The Business Practices Act*, CCSM, c B120, ss 3-6, 8, 23;
- (o) *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2, ss 2, 4, 6, 16, 19-22, 24-33, 36-37, 39, 91, 93.

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Court File No./N° du dossier du greffe: CV-21-00000365-00CP
MCKINSEY & COMPANY, INC. et al.
Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT THUNDER BAY

STATEMENT OF CLAIM

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