

Original Notice of Civil Claim filed January 20, 2023

Amended pursuant to Rule 6-1(1)(a) on December 19, 2023

No. VLC-S-S-230495

Vancouver Registry

In the Supreme Court of British Columbia

B E T W E E N :

DAVID SCOTT JAMIESON

Plaintiff

- and -

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

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C, 1996, c. 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- a) file a response to civil claim in Form 2 in the above-named registry or this court within time for response to civil claim described below, and
- b) serve a copy of the filed response to civil on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil

A response to civil claim must be filed and served on the plaintiff(s),

- a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- d) if the time for response to civil claim has been set by order of the court, within that time.

Claim of the Plaintiff

Part 1: Statement of Facts

A. Defined Terms

1. In this Notice of Civil 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) “**Co-Conspirators**” means all of the companies mentioned below in paragraph 12.
 - (d) “**Competition Act**” means the *Competition Act*, RSC 1985, c C-34;
 - (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.~~
 - (e) (f) “**McKinsey**” means McKinsey Canada and McKinsey US.

(f) ~~(g)~~ “**McKinsey Canada**” means McKinsey & Company Canada (NS-3084653).

(g) ~~(h)~~ “**McKinsey US**” means McKinsey & Company, Inc., United States.

(h) ~~(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, Journista, Metadol, Methadose, Movapo, MS Contin, MS IR, Nucynta, Opana, OxyContin, Oxyneo, Oxy.IR, Palladone, Pat-Fentanyl, Pat-Tramadol, Statex, Targin, Tramacet, Tridural, Ultram, and Zytram.

(i) ~~(j)~~ “**Quebec Charter**” means the *Charter of Human Rights and Freedoms*, CQLR c C-12.

B. The Representative Plaintiff

2. The representative plaintiff, David Scott Jamieson, resides in Campbell River, British Columbia. He is a single father of four daughters, and until recently, worked for decades as a logger in the Campbell River region.
3. Logging is a physically demanding job. In 2008, Mr. Jamieson sustained a knee injury while employed at an outland forestry station near Campbell River. The injury was severe and required Mr. Jamieson to have surgery to replace a joint in his knee.

4. While Mr. Jamieson was awaiting surgery on his knee, his family physician prescribed him Percocet pills and instructed him to take the pills for his pain.
5. Mr. Jamieson took the Percocet pills as prescribed, but his knee pain continued. Mr. Jamieson's physician prescribed him 40mg OxyContin pills, instructing him to take the pills on a as needed basis for as long as necessary. As a result, Mr. Jamieson became addicted to opioids.
6. The consequences of Mr. Jamieson's opioid addiction were devastating. He lost his job and was not able to sustain any other employment. He fell into significant debt and lost the home in which he was raising his children.
7. Mr. Jamieson brings this action on his own behalf and on behalf of ~~a~~ the Class, ~~as~~ ~~defined below, on the following bases:~~
 - (a) ~~Conspiracy;~~
 - (b) ~~Conspiracy contrary to sections 45 and 46 of the *Competition Act*, RSC 1985, c C-34;~~
 - (c) ~~Negligence;~~
 - (d) ~~Unjust enrichment;~~
 - (e) ~~Public nuisance;~~
 - (f) ~~Breach of the CCQ, Quebec Charter; and~~
 - (g) ~~Concerted action joint liability for (c) and (e) above.~~

C. The Defendants

8. 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 affiliate of McKinsey US with offices in Vancouver, British Columbia, and Toronto, Ontario. McKinsey Canada and McKinsey US are collectively “**McKinsey**”.

9. McKinsey is a global management consulting firm, with over 30,000 employees and operations in more than 65 countries.

10. McKinsey describes itself 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.

11. McKinsey has extensive experience working for the pharmaceutical industry. Its efforts span the entire organization. ~~Its consultants train and restructure sales forces, provide coaching, develop strategies to accelerate short term sales forces, provide coaching, develop strategies to accelerate short term sales, and assist with company wide commercial operations.~~ It is unlike other consultants in that it integrates itself into client organizations, providing “implementation consulting” in addition to “strategy consulting”. In its marketing materials posted on YouTube, one Implementation Leader stated that in some of the most successful engagements, observers cannot tell the difference between a McKinsey team member and clients because they are working so cohesively together.

D. The Co-Conspirators

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

13. McKinsey was retained to work for all the Co-Conspirators, with staff from McKinsey US and McKinsey Canada sharing work and expertise on projects. McKinsey was also retained to work for other participants in the opioid market and regulators, including the Health Industry Distributors Association, the FDA, Cardinal Health, AbbVie Inc., Bayer AG, Pfizer Inc., Optimer Pharmaceuticals Inc., Astellas Pharmaceuticals Inc. and Valeant Pharmaceuticals International. The strategies employed with the Co-Conspirators was a North American strategy to boost the sale of Opioids, regardless of whether the advice and direction was given to Canadian or US Co-Conspirators.

i. Endo

14. 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. Paladin Labs Inc. is a Canadian company that is controlled by Endo Pharmaceuticals Inc. and Endo International plc. Each acted as agent for the others for the purpose of manufacturing, marketing, and selling Opioids (collectively “**Endo**”).

15. 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.

ii. Janssen

16. Janssen Inc. (NS-3324007; ON-5008072), Janssen Pharmaceuticals, Inc. (New Jersey corporation), Johnson & Johnson Inc. (New Jersey corporation; CD-9556010; NS-3295677; PE-27114), and McNeil Consumer Healthcare (New Jersey corporation; 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 the others for the purpose of manufacturing, marketing, and selling Opioids (collectively “**Janssen**”).

17. Janssen Inc., the Canadian Johnson & Johnson Inc. corporations, and the Canadian McNeil Consumer Healthcare 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.

iii. Mallinckrodt

18. 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**”).

19. 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.

iv. Purdue

20. 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**”).

21. 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.

E. The Class and the Class Period

22. The plaintiff 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.

F. Creating the Opioid Epidemic

i. Overview and McKinsey’s Role

23. The opioid epidemic 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, including the Co-Conspirators, in exchange for a steady stream of lucrative consultancy fees.

24. From 2002, McKinsey worked in conjunction with and became integrated with manufacturers and distributors of a wide variety of Opioids. Their goal was to increase the demand for and consumption of Opioids in Canada and the United States.

25. McKinsey was integrated into all stages of the Co-Conspirators' sales processes.

McKinsey worked directly within the Co-Conspirators; restructured their sales forces; created new incentive programs; trained and coached their employees; designed, recommended, and implemented strategies to obtain and maintain regulatory approval, turbocharge sales, and respond to concerns from regulators, healthcare professionals, pharmacies, and the public; designed marketing materials; identified individual targets for marketing campaigns; and took on direct roles within their clients' organizations to implement all of their advice and ensure that employees were complying with it.

26. With respect to all of the conduct described in this claim, McKinsey and the Co-Conspirators acted pursuant to a common design, namely to increase the market for opioids in Canada – addicting more Canadians to opioids – in a manner that:

- (a) Constitutes the torts of unlawful means and predominant purpose conspiracy and breaches sections 45-46 of the *Competition Act*;
- (b) Constitutes a misrepresentation in breach of section 52 of the *Competition Act* and section 9(1) of the *Food and Drugs Act*, RSC 1985, c F-27;
- (c) Breached their duties of care to the Class;
- (d) Constitutes the tort of unjust enrichment;

(e) Breaches the Quebec Charter and the CCQ.

27. The ultimate purpose of this common design was to sell more Opioids and extract more profits, millions of dollars of which would be paid in consulting fees to McKinsey.

28. ~~25.~~ McKinsey Canada regularly provided services to the Co-Conspirators in the United States, as part of a North American effort to increase Opioid sales in the US and Canada. McKinsey US regularly provided services to Co-Conspirators in the US, services that were intended to directly increase Opioid sales in Canada as part of a North American sales strategy. ~~The principal consultant with McKinsey US who strategized to “turbocharge” Opioid sales, Arnab Ghatak, was the partner at McKinsey who also did the most Pharmaceuticals and Medical Products (PMP) work in Canada~~

29. ~~26.~~ McKinsey worked directly with both the Canadian and US Co-Conspirators. It directly provided the conspiratorial strategy to both the Canadian and US Co-Conspirators. In the alternative, it provided the conspiratorial strategy to the US Co-Conspirators with the intention that the strategy would directly impact Canada or that the US Co-Conspirator would share the conspiratorial strategy with the Canadian Co-Conspirators, or with reckless indifference or wilful blindness as to whether the US Co-Conspirators would share the conspiratorial strategy with the Canadian Co-Conspirators.

30. ~~27.~~ McKinsey’s advice and direction provided to the Co-Conspirators was intended to increase Opioid sales in Canada. Such advice and direction consisted of, but was not limited to:

- (a) Recruiting and instructing Canadian Key Opinion Leaders to promote Opioid use in Canada;
- (b) Guiding or drafting opioid promotional material for medical conferences located in Canada;
- (c) Guiding or drafting opioid promotional material for US conferences that would attract Canadian doctors or Canadian medical professionals such as nurses;
- (d) Supporting patient advocacy groups that were North American in scope;
- (e) Placing Opioid related articles and adverts in medical journals, medical magazines or other publications with circulation in Canada and the US; and
- (f) Assisting in getting Food and Drug Administration (“FDA”) approval of misleading Opioid formulations and monographs, knowing that FDA regulatory approval would be influential or directly followed by Health Canada.

31. 28. Beyond simply providing advice and guidance, McKinsey consultants supervised the implementation of certain sales 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.

32. 29. At all material times, McKinsey and its Co-Conspirators knew, or ought to have known, that Opioids are highly addictive, and unsafe for the treatment of long-term chronic pain. Nevertheless, McKinsey ~~advised and encouraged its Co-Conspirators~~ abetted, advised,

encouraged, incited, induced, or persuaded the Co-Conspirators; and knowingly aided and assisted them 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, which carried higher profit margins;
- (c) Identify the most credulous and charismatic medical professionals, generally known as Key Opinion Leaders, and incentivize them into prescribing even more medically unnecessary Opioids and to advocate for increaseing Opioid use; ~~and~~
- (d) Identify the sales representatives who generated sales of Opioids larger than any plausible medical need for the area, especially those who had cultivated pill mills, and have those sales representatives be in charge of training other sales representatives;
- ~~(e)~~ Turn a blind eye towards the diversion of Opioids to channels that do not depend on prescriptions, or even enable such diversion, so that demand would continue even if prescriptions dried up;
- ~~(f)~~ Encourage the prescription of higher doses of Opioids;
- ~~(g)~~ Increase bonuses and sales quotas for sales representatives; and

~~(h)~~ ~~(g)~~ Target doctors already prescribing high volumes of Opioids.

(Collectively the “**Misleading Sales Tactics**”)

~~33. 30.~~ ~~McKinsey and T~~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, and pushed ~~their own~~ sales representatives to increase sales of all Opioids.

~~34. 31.~~ This conduct did not involve mere recklessness to the possibility of harm to patients; 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 that integrated itself into the day-to-day operations of the Co-Conspirators with the goal of addicting tens of thousands of vulnerable Canadians to Opioids.

~~35. 32.~~ As a result of their actions, tens of thousands of Canadians have become addicted to Opioids.

ii. The Opioid Epidemic in Canada

~~36. 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 to have similar chemical structures. 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.

37. ~~34.~~ With continued use, users grow tolerant to opioids, meaning that they need to take progressively higher doses in order to get the same level of pain relief. The existence of a tolerance effect significantly increases the risks of withdrawal, addiction, and overdose.

38. ~~35.~~ 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.

39. ~~36.~~ In addition to peddling the Co-Conspirators' messaging through presentations, conferences, and in-person meetings, medical 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 that their Opioid products were safe and non-addictive in paid advertisements in the *Canadian Medical Association Journal*, which is mailed to almost every physician in Canada.

40. ~~37.~~ In addition to targeting Canadian healthcare professionals for dissemination of their misleading messaging, the Co-Conspirators 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.

~~41.~~ ~~38.~~ The aggressive marketing efforts of the Co-Conspirators proved to be enormously successful. In Canada, prescription use of prescription opioids increased immensely between 2000 and 2010, even though the proportion of Canadians who reported experiencing chronic pain did not change substantially over this period.

~~42.~~ ~~39.~~ Canada has the second largest per capita consumption of prescription opioids in the world, surpassed only by the United States. No other G7 nations experienced similar opioid epidemics. The experience of Canada and the US is a direct result of the North American efforts of McKinsey and the Co-Conspirators coupled with the porous border for Opioid promotional materials and Misleading Sales Tactics.

~~43.~~ ~~40.~~ The over-prescription of Opioids in Canada that resulted from the actions of the Co-Conspirators has caused severe harm to the Class and Canadians generally ~~Canadians~~.

~~44.~~ ~~41.~~ 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.

~~45.~~ ~~42.~~ 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.

46. ~~43.~~ The over-prescription of opioids in Canada has resulted in both an increase in prescription opioid-related harms and in higher 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.

47. ~~44.~~ On April 14, 2016, British Columbia's health officer declared the opioid crisis a public health emergency under the *Public Health Act*, SBC 2008, c 28.

48. ~~45.~~ 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.

49. ~~46.~~ 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.

50. ~~47.~~ 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.

~~51. 48.~~ Due to the conduct of McKinsey and the Co-Conspirators, tens of thousands of Canadians have become addicted to opioids. Many thousands of Canadians have died of opioid overdoses in the past two decades. Young Canadians, aged 15 to 24, are the most affected.

iv. McKinsey's Work for Purdue

~~52. 49.~~ McKinsey advised Purdue for fifteen years, from 2004 to 2019.

~~53. 50.~~ 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.

~~54. 51.~~ 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.

~~55. 52.~~ 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.

56. 53. In 2008, McKinsey advised Purdue on the development of 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. In 2012 the FDA adopted a class-wide REMS that resulted in high-dose OxyContin remaining subject to the same oversight as lower-dose opioids. Canada followed suit in 2015 by issuing guidance on risk management plans and in 2018 by issuing a targeted guidance to the opioid industry that was no more onerous than the FDA REMS. In a clear conflict of interest, McKinsey was simultaneously advising the FDA and specifically the FDA’s drug regulation division, as well as the subjects of the FDA’s regulation i.e. the Co-Conspirators. McKinsey used its privileged position with the FDA to further the interests of the Co-Conspirators.

57. 54. 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.

58. In June 2009, McKinsey developed a strategy to counter emotional messages from mothers with teenagers that overdosed in OxyContin. The strategy involved marketing that OxyContin can provide “freedom”, “peace of mind”, and give patients “the best possible chance to live a full and active life”. McKinsey pitched this strategy to Craig Landau. Since September 2013, Mr. Landau has been the CEO of Purdue Canada.

~~59.~~ 55. 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.

~~60.~~ 56. In 2010, McKinsey was involved in Purdue’s decision to introduce a tamper-resistant formulation of controlled-release oxycodone in the United States, without introducing the tamper-resistant formulation in Canada. The continued availability of the original controlled release oxycodone (OxyContin) in Canada for a 12-month period when it was no longer available in the United States resulted in a four-fold increase in the rate of dispensing OxyContin at pharmacies in Windsor, Ontario.

~~61.~~ 57. 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 double its sales budget, and directed Purdue in the implementation of the Misleading Sales Tactics. McKinsey called this plan “Project Turbocharge”.

~~62.~~ 58. 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.

63. E2E had two main prongs. Under the first prong, McKinsey split doctors into deciles based on prescription levels, and advised that sales reps should focus their efforts on those already in the top decile. Those doctors were most likely to be willing to prescribe medically-unnecessary Opioids, and so could be influenced into prescribing without having to convince them of the medical need. In particular, McKinsey redrew sales rep territory allocations to prioritize deciles over workload, set standards for the minimum number of times that sales reps should contact the highest-prescribing physicians, and set up new compensation mechanisms to incentivize compliance.
64. The second prong was to use a “wildfire” strategy: identifying the sales reps with the highest prescriptions (“Toppers”), significantly increasing their compensation as a means to incentivize others to become Toppers, and having Toppers train teams of other sales reps. The regions with Toppers account for a disproportionate share of Opioid pill mills in Canada and the United States.
65. 59. McKinsey partners participated directly 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.

~~66. 60.~~ 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.

~~67. 61.~~ 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.

~~68. 62.~~ 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.

69. ~~63.~~ 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 imposed by the CIA.

70. ~~64.~~ 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 Martin Elling and Arnab Ghatak, ~~who had participated in McKinsey's work advising Purdue,~~ discussed destroying or deleting documents related to their work for Purdue. Mr. Ghatak's role is described further below.

71. ~~65.~~ 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.

v. *Connections to Purdue Canada*

72. ~~66.~~ McKinsey's work for Purdue was designed to be a North American 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 payments and perks per capita than it gave American doctors in respect of OxyContin.

73. ~~67.~~ Purdue Canada benefited directly from the Opioid promotional work undertaken by Purdue US under the direction of McKinsey, such as but not limited to, the recruitment

of Canadian Key Opinion Leaders, promotional materials placed in medical journals and delivered at conferences in the US and Canada. When advising Purdue US, McKinsey did not limit its strategies to the US market for Opioids. McKinsey included in its advice strategies that would directly impact the Class Members in Canada.

74. ~~68.~~ Purdue Canada and Purdue US were operationally connected in respect of the marketing of Opioids and employed global strategies. In 2013, the new CEO of Purdue Canada, Craig Landau, came from Purdue US, having worked for Purdue US since 1999. Even while a CEO of Purdue Canada, Craig Landau continued to be active with Opioid work for Purdue US and to communicate with McKinsey through his Purdue US email.

75. ~~69.~~ On March 11, 2014, Mr. Landau met with the architects of McKinsey's work for Purdue US regarding Opioids, on behalf of Purdue Canada. According to internal McKinsey documents, they shared some of their insights from the US work with him, for which Mr. Landau was very appreciative.

76. ~~70.~~ One week later, McKinsey's senior partner Arnab Ghatak presented a memo to Mr. Landau titled "Identifying Growth Opportunities in Canada". It noted that doctors were increasingly reluctant to prescribe opiates, but instead of taking this concern seriously, it proposed opportunities to better target and reach high-potential prescribers and changing incentive compensation to better align the sales force goals to company objectives. In other words, McKinsey was recommending that Purdue Canada follow the same tactics used by Purdue US.

77. Mr. Ghatak's role involvement is especially noteworthy. He was McKinsey's global relationship manager with Purdue. The E2E program was his brainchild, and he was in

charge of McKinsey's program to "turbocharge" Purdue's sales of Opioids. He also led McKinsey's program to "turbocharge" sales of Nucynta (another opioid) in 2011, and a "Sales Force Blitz" for Endo's Opioids in 2015. He also did the most Pharmaceuticals and Medical Products work for McKinsey in Canada.

78. Mr. Ghatak's role in the Canadian market did not stop in 2014. For example, he had a meeting at 575 Granite Court in Pickering, Ontario on August 25, 2017. That address is the headquarters of Purdue Canada. He billed his time to an American Purdue company, suggesting that even where McKinsey was technically retained by American Purdue companies, part of the retainer was to do work for Purdue Canada.

79. Mr. Ghatak had further meetings with Purdue Canada executives in Ontario on February 21, 2018; February 23, 2018; and February 27, 2018. McKinsey billed Purdue for his time and expenses for all of these meetings.

vi. *McKinsey's Related Work for the Other Co-Conspirators*

80. 71. As early as 2002, McKinsey was advising the other Co-Conspirators regarding the Misleading Sales Tactics, combined with other strategies, to boost sales of their Opioid products. McKinsey was retained by each Co-Conspirator and any advice and direction provided to Co-Conspirators in the US was to the direct benefit of, or directly used by, Co-Conspirators in Canada. The result was the increase in Opioid sales in Canada and the exacerbation of the Opioid epidemic.

81. 72. 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.

~~82. 73.~~ McKinsey enjoyed a close and integrated working relationship with Janssen because former McKinsey partners were in management roles at Janssen.

~~74.~~ McKinsey was engaged by US Janssen corporations but advised on Janssen's entire North American business. In particular, it advised on a "Canada jnj project". The principal consultant behind Purdue's Opioid strategy, Arnab Ghatak, was also heavily involved in Janssen's marketing strategies and provided the same advice and guidance as was given to Purdue.

~~83. 75.~~ McKinsey advised Endo on marketing Opana ER, and its advice to Endo was effectively a copy of the strategy and advice provided to Purdue, with the corporate and product names changed. McKinsey enjoyed a particularly close and integrated relationship with Endo when it came to guiding Endo's overall marketing strategy that included Opana. The relationship was so close that Endo was reporting weekly to McKinsey regarding sales targets.

~~84. 76.~~ McKinsey advised 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.

85. 77. McKinsey's work for each Co-Conspirator helped the other Co-Conspirators. They all benefited from expanding the market for opioids in North America and creating and exacerbating an opioid epidemic – 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.

86. 78. McKinsey also corralled 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.

vii. *Connections to Other Canadian Co-Conspirators*

87. 79. McKinsey's work for the other Co-Conspirators was designed to be a North American strategy that would impact Canada. The same advice was shared with, and the same tactics were used by their Canadian affiliates to increase sales and Opioid consumption in Canada. Further, the promotional efforts of the US Co-Conspirators had a direct impact on Canadian sales and prescriptions of Opioids through promotional work that was not confined to the US.

88. For example, McKinsey was engaged by US Janssen corporations but advised on Janssen's entire North American business. In particular, it advised on a "Canada jnj project". The principal consultant behind Purdue's Opioid strategy was Arnab Ghatak.

vii. In the Face of Mounting Pressure, McKinsey Ceases its Consulting Work with the Co-Conspirators

~~89. 80.~~ 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.

viii. Purdue Pleads Guilty

~~90. 81.~~ Months after McKinsey stopped its Opioids work, Purdue filed for bankruptcy. Mallinckrodt filed for bankruptcy in October 2020.

~~91. 82.~~ In 2020, Purdue pleaded guilty for a second time to improper marketing of OxyContin and other Opioids. This time, the plea agreement concerned Purdue’s conduct from 2010 to 2018, a decade during which McKinsey was heavily integrated with Purdue.

~~92. 83.~~ 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. All or virtually all of these illegal activities were coordinated with, endorsed or, encouraged by, and carried out under the advice, direction, and supervision of McKinsey.

~~93. 84.~~ 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’)”.

94. 85. After being named in the Purdue Settlement Agreement, McKinsey posted a statement on its website announcing it would stop opioids work. It took responsibility, not for its extensive role in exacerbating the opioid epidemic, but merely for not taking into account the “broader context” of its work.

95. 86. 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.

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

ix. Findings of the U.S. House of Representatives

97. At least 22 McKinsey employees simultaneously worked for Co-Conspirators seeking FDA approval for their Opioids and for the FDA department that was reviewing whether the Opioids were safe. McKinsey marketed its ongoing work for the FDA to convince the Co-Conspirators to retain McKinsey and continue to use its services.

98. In its conflicted role, McKinsey recommended to the United States Department of Health & Human Services ("HHS") the benefits of Opioids, and made other recommendations to enable increased sales of Opioids by the Co-Conspirators

99. McKinsey knew at the time that it was providing conflicted advice to the FDA and HHS that their decisions and findings would be directly adopted or, alternatively, would be extremely influential on the decisions of Health Canada in respect of Opioids.

Part 2: Relief Sought

100. 88. The plaintiff, on behalf of the Class, claims:

- (a) An order certifying this action as a class proceeding pursuant to section 4 of the *Class Proceedings Act*, RSBC 1996, c 50 and appointing Mr. Jamieson as representative Plaintiff for the Class Members;
- (b) Damages in the amount of \$1,000,000,000 for:
- (i) Common law conspiracy;
 - (ii) Conspiracy contrary to sections 45 and 46 of the *Competition Act*, RSC 1985, c C-34;
 - (iii) Misrepresentation contrary to section 52 of the *Competition Act*;
 - ~~(iv)(iii)~~ Negligence;
 - ~~(iv)~~ Public nuisance;
 - (v) Breach of the Quebec Charter and the CCQ *Charter of Human Rights and Freedoms*, CQLR c C-12 and *Civil Code of Quebec*, CQLR c CCQ-1991; and
 - (vi) ~~Concerted action~~ Joint liability by concerted action or common design for (iii), and (iv).
- (c) Restitution in the amount of \$1,000,000,000 for unjust enrichment;
- ~~(d)~~ ~~Recovery of the past and future cost of health care services incurred for the benefit of Class Members residing in Alberta and British Columbia;~~
- ~~(d)~~(e) Punitive damages in the amount of \$50,000,000;

- (e)(f) The costs of giving notice to the class pursuant to section 25 of the *Class Proceedings Act*, RSBC 1996, c 50;
- (f)(g) The costs of distributing all monies received to class members pursuant to section 33(6)(a) of the *Class Proceedings Act*, RSBC 1996, c 50;
- (g)(h) Investigative costs and costs of this proceeding pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34;
- (h)(i) The costs of this proceeding on a substantial indemnity basis, plus applicable taxes;
- (i)(j) Pre- and post-judgment interest in accordance with the *Court Order Interest Act*, RSBC 1995, c 79 ; and
- (j)(k) Such further relief as this court may deem just.

Part 3: Legal Basis

101. ~~89.~~ 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, maintaining prices, and creating a national epidemic of addiction. McKinsey knew that the Misleading Sales Tactics that it proposed and implemented, along with its advice and direction to the Co-Conspirators, would hurt the Class. Indeed, McKinsey, along with its Co-Conspirators set out to addict as many people as possible to opioids so as to maximize the size of the market for opioids. In the alternative, it was recklessly indifferent to the consequences of its actions.

A. Common Law Conspiracy

i. Unlawful Means Conspiracy

102. ~~90.~~ McKinsey is jointly liable with the Co-Conspirators for conspiracy. They engaged in unlawful conduct directed at the Class. They labelled, sold, and advertised the Opioids in a manner that is:

- (a) False, misleading, deceptive, and likely to create an erroneous impression that Opioids 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 provincial consumer protection acts.

103. ~~91.~~ 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.

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

105. ~~93.~~ The Class suffered injuries as a result of this conspiracy.

ii. Predominant Purpose Conspiracy

106. 94. McKinsey is jointly liable with the Co-Conspirators 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.

107. 95. The Class suffered injuries as a result of this conspiracy.

B. Conspiracy to Maintain Prices

108. 96. 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
- (b) Focusing on inducing demand for opioids instead of competing by reducing prices, reducing addictiveness, or increasing safety.

109. 97. 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.

110. 98. ~~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. This conspiracy harmed the Class. McKinsey is directly liable for its own role in the conspiracy, and jointly liable for the concerted actions of the Co-Conspirators in furtherance of the conspiracy, under section 36 of the *Competition Act*.~~

C. Misrepresentation

111. Both directly (with employees integrated within the Co-Conspirators) and indirectly (by abetting, advising, encouraging, inciting, inducing, or persuading the Co-Conspirators; by knowingly aiding or assisting them), McKinsey made the following representations:

- (a) Opioids have a low rate of addiction, even at high dosages;
- (b) When patients start developing tolerance to Opioids, it is safe to “titrate up” – that is, to prescribe higher doses;
- (c) It is appropriate to “individualize the dose” of Opioids – that is, to prescribe higher doses if patients say they are in more pain; and
- (d) Opioids provide “freedom”, “peace of mind”, and “the best possible chance to live a full and active life”.

112. Both directly (with employees integrated within the Co-Conspirators) and indirectly (by abetting, advising, encouraging, inciting, inducing, or persuading the Co-Conspirators; by knowingly aiding or assisting them), McKinsey actively concealed the harms of Opioids. Its actions included:

- (a) Using its privileged position as a consultant to the FDA to:
 - (i) Convince the FDA to accept a class-wide REMS for Opioids;
 - (ii) Convince the FDA to allow the package insert for OxyContin to state, “Delayed absorption, as provided by OxyContin tablets, is believed to reduce the abuse liability of the drug”;

- (iii) Convince the FDA not to require prescribers to be trained on the risks of Opioids or obtain certification before prescribing Opioids; and
- (iv) Ensure that Sentinel, the FDA’s system of monitoring the safety of drugs on the market – for which McKinsey was tasked with interviewing “industry organizations” and “drug and device industry leaders” – would not raise red flags about Opioids;
- (b) Developing strategies to counter alarms raised by medical professionals, such as funding medical conferences and articles in medical journals with misleading content and paying pharmacies additional rebates for each overdose; and
- (c) Developing strategies to prevent Co-Conspirators’ sales reps from discovering from discovering the harms of Opioids, such as by reducing the amount of time they spent in training by one third.

113. McKinsey advised the Co-Conspirators to make further representations, and helped them to do so more effectively, by:

- (a) Tracking prescriptions of Opioids, using that information to identify the highest-volume and highest-dose prescribers, and encouraging the Co-Conspirators’ sales reps to focus on those at the highest levels;
- (b) In particular, asking the Co-Conspirators to test or use FieldGuide;

- (c) Developing the Toppers program and designing other incentives for sales reps to strive to create high-volume prescribers, and to ignore the strong likelihood that those high-volume prescribers were pill mills;
- (d) Developing compensation structures for Co-Conspirators; sales reps that made their bonuses a function of the size of the overall market, incentivizing sales reps to see addiction to any opioid as an end in itself; and
- (e) Convincing the Co-Conspirators that they did not have to address prescribers' underlying concerns about over-prescribing Opioids, and instead making them believe that sufficient marketing could overcome any reluctance.

114. McKinsey knew that the Co-Conspirators were making false representations to the public about the safety of Opioids, and could have used its influence to convince the Co-Conspirators to stop doing so. Instead, McKinsey permitted the Co-Conspirators to make these representations within the meaning of section 52(1.2) of the *Competition Act*, and knowingly helped them to do so. The false representations included that:

- (a) A one-paragraph letter to the editor of the New England Journal of Medicine in 1980 was an “extensive study” that found that the risk of addiction from Opioids was “less than one percent”;
- (b) There is no “ceiling dose” for Opioids, so prescribers could safely prescribe any dose of Opioids; and
- (c) The package insert of OxyContin meant that time-controlled Opioids cannot or were very unlikely to be abused.

115. The conduct described above in paragraphs 108-111, by both McKinsey and the Co-Conspirators, are the “**Misrepresentations**”. The general impression created by the Misrepresentations was that high doses and high prescription volumes of Opioids were safe and carried low risks of addiction.
116. The purpose of the Misrepresentations was to promote the supply and use of Opioids, thereby justifying, maintaining, and increasing McKinsey’s consulting fees from the Co-Conspirators, and burnishing McKinsey’s reputation in pharmaceutical consulting. All of those were key business purposes for McKinsey, as Pharmaceuticals and Medical Products was one of its largest industry groups.
117. McKinsey knew that all of the Misrepresentations were false. For example:
- (a) In 2007, McKinsey was retained to help Purdue circumvent the CIA, which was imposed as a result of Purdue’s first guilty plea for felony misbranding – a form of misrepresentation – and McKinsey was itself bound by the CIA and required to comply with it as a “Covered Person” under paragraph II.C.1(b);
 - (b) In 2011, McKinsey presented a slideshow to Endo that described the “opioid dependence treatment pathway”, drawing a clear connection between “patient begins opioid therapy following serious injury/surgery” and “patient pain not controlled, dosages increase, patient seeks additional medication options”;
 - (c) In 2013, McKinsey presented a slideshow warning Purdue that “side effects and addiction are concerns” and “most prescribers are concerned about abuse”;

- (d) On March 18, 2014, McKinsey presented a slideshow to Purdue Canada asking, “Are MDs increasingly reluctant to prescribe opiates due to negative perceptions?”; and
- (e) On August 13, 2015, McKinsey presented a slideshow to Endo saying that OxyContin is “commonly abused”.

118. The Misrepresentations breached section 52 of the *Competition Act*.

119. The Misrepresentations harmed the Class. McKinsey is liable for its own actions in making the Misrepresentations, and jointly liable for the concerted actions of the Co-Conspirators in making the Misrepresentations, under section 36 of the *Competition Act*.

DC Negligence

i. Attributed from the Co-Conspirators

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

121. 100. The Co-Conspirators were in a proximate relationship with the Class because their business was to sell Opioids to the Class, or to medical professionals who would provide Opioids to the Class.

122. 101. The injuries to the Class were reasonably foreseeable to the Co-Conspirators because they set out to addict the Class to Opioids, or, in the alternative, to get the Class to consume more Opioids knowing that those Opioids were harmful and highly addictive.

123. ~~102.~~ The Co-Conspirators breached the standard of care by illegally misrepresenting that Opioids were safe and non-addictive, including at high doses.

124. ~~103.~~ As a result of these misrepresentations, the Class suffered damages.

125. ~~104.~~ The negligence of the Co-Conspirators can be attributed to McKinsey under the doctrine of concerted action joint liability.

ii. By McKinsey Directly

126. ~~105.~~ McKinsey owed a duty to the Class that it would not advise the Co-Conspirators to act illegally and in a manner that McKinsey knew would injure the Class and addict them to Opioids.

127. ~~106.~~ McKinsey was in a proximate relationship with the Class because it was hired by the Co-Conspirators to affect the behaviour of the Class.

128. ~~107.~~ The injuries to the Class were reasonably foreseeable to McKinsey because they set out to addict the Class to Opioids, or, in the alternative, to get the Class to consume more Opioids knowing that those Opioids were harmful and highly addictive.

129. ~~108.~~ 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.

130. ~~109.~~ As a result of these misrepresentations, the Class suffered damages.

E. D. Unjust Enrichment

i. Attributed from the Co-Conspirators

131. ~~110.~~ The Co-Conspirators were enriched by the value of its sales of Opioids.

~~132.~~ ~~111.~~ The Class suffered a corresponding deprivation in the amount that was spent on Opioids.

~~133.~~ ~~112.~~ 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' misrepresentations.

ii. By McKinsey Directly

~~134.~~ ~~113.~~ McKinsey was enriched by the value of its consulting fees, which were related to the profits from the sales of Opioids. Additionally, McKinsey was heavily invested in the opioid market and Co-Conspirators through its hedge fund. As a direct result of increased Opioid sales, McKinsey not only received vast consulting fees, but also benefited through growth in its investments in the Co-Conspirators. The more Opioids the Co-Conspirators sold, the more McKinsey's investments profited.

~~135.~~ ~~114.~~ The Class suffered a corresponding deprivation, as those fees and profits were obtained out of the amounts that the Class spent on Opioids.

~~136.~~ ~~115.~~ There was no juristic reason for the enrichment. 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.

E. Public Nuisance

~~116.~~ ~~McKinsey's conduct, individual and in concert with the Co-Conspirators, has caused or contributed to a public nuisance in the form of the opioid epidemic in Canada. The~~

~~opioid epidemic fuelled by McKinsey's actions has caused increased overdose deaths and disrupted health, order, and safety across Canada and particularly harmed the Class.~~

~~117. McKinsey's unlawful acts and omissions annoyed, injured, or endangered the comfort, health, and safety of the Class in the of the following ways:~~

~~(a) From January 2016 to December 2020, there were 21,174 apparent opioid-related deaths across Canada and 24,671 hospitalizations for opioid-related overdoses;~~

~~(b) 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;~~

~~(c) 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;~~

~~(d) A decrease in life expectancy at birth between 2016 and 2017 in Canadian males and females; and~~

~~(e) Canada being the second highest per capita consumers of opioids in the world.~~

~~118. The opioid epidemic which McKinsey orchestrated in concert with the Co-Conspirators has resulted in widespread addiction, adverse health side effects, physical dependence, and death amongst the Class combined with causing undue strain and depletion of public~~

~~health resources. The harms identified in the above constituted a breach of a public right. Thus, McKinsey is directly liable for causing a public nuisance.~~

~~119. In the alternative, McKinsey is liable for continuing or adopting a public nuisance. It had actual knowledge that Opioids were causing a public nuisance, and yet not only failed to abate it, but also continued to encourage the Co-Conspirators to exacerbate it and continued to profit from it.~~

~~120. In the further alternative, the Co-Conspirators are liable for causing, continuing, or adopting a public nuisance, and their misconduct and the associated liability can be attributed to McKinsey under the doctrine of concerted action joint liability.~~

~~F. Health Care Costs Recovery~~

~~121. As a result of all of the above, McKinsey and its Co-Conspirators are “wrongdoers” within the meaning of the Health Care Recovery Statutes.~~

~~122. 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.~~

E. G. Quebec Claims

i. Breach of the Quebec Charter

~~137. 123.~~ 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.

~~138. 124.~~ 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.

~~139. 125.~~ Class Members resident in Quebec are entitled to punitive damages pursuant to article 49 of the Quebec Charter.

ii. Breach of the CCQ

~~140. 126.~~ 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
- (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 ~~123-126-137-~~
139.

~~141. 127.~~ Further, the conduct of McKinsey and the Co-Conspirators described above at paragraphs ~~120-136 108 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.

~~142. 128.~~ 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.

G. H Damages

i. Compensatory Damages

~~143. 129.~~ 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.

~~144. 130.~~ 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.

~~144. 131.~~ By virtue of an agreement reached with Purdue Canada, the Plaintiff limits his claim against the defendants to their several liability with respect to the sale of OxyContin and OxyNeo from January 1, 1996 to February 28, 2017. With respect to all other sales by Purdue and the other Co-Conspirators, the Plaintiff claims joint and several damages.

ii. Punitive Damages

145. ~~132.~~ 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.

146. ~~133.~~ 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.

147. ~~134.~~ 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.

iii. Quebec Damages

148. ~~135.~~ 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

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

iv. Carveout

149. Notwithstanding anything else herein, the Class does not seek damages with respect to the portion of the loss that is:

- (a) Attributable to the conduct of Purdue, as opposed to that of McKinsey or any of the other Co-Conspirators;
- (b) Attributable to the consumption of OxyContin or OxyNEO, as opposed to any of the other Opioids; and
- (c) Attributable to conduct that occurred before April 15, 2016.

H. I Statutes Relied Upon

150. ~~136.~~ The plaintiff pleads and relies on:

- (a) *Charter of Human Rights and Freedoms*, CQLR c C-12, arts 1, 49;
- (b) *Civil Code of Quebec*, CQLR c CCQ-1991, arts 1457, 1468, 1469, 1480, 1493;
- (c) *Class Proceedings Act*, RSBC 1996, c. 50;
- (d) *Competition Act*, RSC 1985, c C-34, ss 36, 45(1), 46(1), 52(1);
- (e) *Court Order Interest Act*, RSBC 1995, c 79;
- (f) *Food and Drugs Act*, RSC 1985, c F-27, s 9(1);

(g) *Supreme Court Civil Rules*, BC Reg 168/2009.

I. J. Jurisdiction

151. ~~137.~~ The plaintiff relies on sections 7(c), 8(b), 10(g)(h) and 11(c)(d) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 and pleads that there is a real and substantial connection between the subject matter of this action and the Province of British Columbia for the following reasons:

- (a) the representative plaintiff resides in British Columbia, was prescribed Opioids and became addicted to Opioids while resident in British Columbia;
- (b) a substantial number of class members reside in British Columbia;
- (c) McKinsey has an office in Vancouver and carries on business in British Columbia;
- (d) the tortious and illegal marketing and promotion of Opioids by the Co-Conspirators under the advice and guidance of McKinsey occurred in British Columbia;
- (e) over the duration of the class period opioid prescriptions and sales in British Columbia increased resulting in a significant provincial opioid epidemic; and
- (f) the province of British Columbia has commenced litigation against McKinsey in British Columbia, relying on substantively similar legal and factual allegations.

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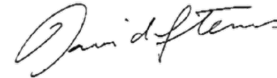
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Place of trial: Vancouver

The address of the registry is: 800 Smithe St., Vancouver, BC, V6Z 2E1

Date: December 20, 2023



Signature of

plaintiff lawyer for plaintiff

Rule 7-1(1) of the Supreme Court Civil Rules states:

- 1) Unless all parties or record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - a) Prepare a list of documents in Form 22 that lists
 - i. all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial or to prove or disprove a material fact, and
 - ii. all other documents to which the party intends to refer at trial, and
 - b) serve the list on all parties of record.

Appendix**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:****Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: ENACTMENTS

- Builders Lien Act
- Court Order Interest
- Insurance (Motor Vehicle) Act
- Insurance (Vehicle) Act

- Motor Vehicle Act
- Occupiers Liability Act
- Supreme Court Act
- Wills Variation Act
- Other:

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