

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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COMMONWEALTH OF PENNSYLVANIA	:	
by Attorney General JOSH SHAPIRO	:	Case No.
	:	
PLAINTIFF,	:	
	:	CIVIL ACTION
v.	:	
	:	
MCKINSEY & COMPANY, INC., UNITED STATES,	:	
	:	
DEFENDANT.	:	
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**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action **within twenty (20) days** after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you, and a judgment may be entered against you without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE(S) SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU**

**WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

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	:	

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

Comes now the Plaintiff, the Commonwealth of Pennsylvania by Attorney General Josh Shapiro, and brings this action against Defendant McKinsey and Company, Inc., United States (“McKinsey” or “Defendant”) for violating the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. §§ 201-1, *et seq.* (“Consumer Protection Law”), and states as follows:

**I. Parties**

1. Plaintiff is the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro (“Commonwealth” or “Plaintiff”). The Commonwealth is charged with, among other things, enforcing and seeking redress for violations of Pennsylvania’s consumer protection laws, including Sections 201-1 – 201-9.2 of the Consumer Protection Law.

2. The Attorney General is authorized to bring this action on behalf of the Commonwealth in his *parens patriae* capacity, as the Commonwealth has a quasi-sovereign interest in the health and well-being—physically and economically— of its citizens who have suffered because of McKinsey’s conduct. The Commonwealth of Pennsylvania, as a legal entity, has suffered damages and losses as a direct and proximate result of McKinsey’s conduct in violation of Section 201-3 of the Consumer Protection Law.

3. Defendant McKinsey is a privately owned entity headquartered in New York, N.Y. At all times relevant to this proceeding, McKinsey engaged in trade and commerce within the Commonwealth of Pennsylvania.

## **II. Jurisdiction and Venue**

4. The Court has jurisdiction over this action pursuant to 42 Pa. C.S.A. § 761.

5. This Court has personal jurisdiction over Defendant pursuant to Pennsylvania’s long-arm statute, codified as 42 Pa.C.S.A. § 5322, because Defendant transacts business in Pennsylvania, some of the transactions upon which this action is based occurred in Pennsylvania, or Defendant purposefully directed business activities into Pennsylvania that gave rise to the Commonwealth’s claims in this action.

### **III. Factual Allegations**

6. Beginning in the mid-1990s, opioid manufacturers pursued aggressive sales strategies to increase sales of their prescription opioids, a plan that resulted in a dramatic rise in opioid prescriptions in Pennsylvania. The rise in opioid prescriptions caused an equally devastating rise in opioid abuse, dependence, addiction, and overdose deaths.

7. Prescription opioids continue to kill hundreds of people across Pennsylvania every year. Thousands more suffer from negative health consequences short of death and countless others have had their lives ruined by a friend or family member's addiction or death. Every community in Pennsylvania suffers from the opioid crisis of addiction and death.

8. McKinsey worked with entities involved in manufacturing and selling opioids and thereby contributed to the opioid crisis.

9. McKinsey is one of the world's largest consulting companies. Its partners work worldwide for corporations and governments across diverse industries. Its influence is vast because of its best-in-class reputation. McKinsey sells the notion that it can take whatever a company or government is doing and make them do it better.

10. The Commonwealth brings this action against McKinsey for the consulting services it provided to opioid companies in connection with designing the

companies' marketing plans and programs that helped cause and contributed to the opioid crisis. McKinsey sold its ideas to OxyContin maker Purdue Pharma, L.P. ("Purdue") for more than fifteen years, from 2004 to 2019, including before and after Purdue's 2007 guilty plea for felony misbranding.

11. McKinsey advised Purdue and other manufacturers to target prescribers who write the most prescriptions, for the most patients, and thereby make the most money for McKinsey's clients.

12. Early in their relationship, McKinsey advised Purdue that it could increase OxyContin sales through physician targeting and specific messaging to prescribers. These McKinsey strategies formed the pillars of Purdue's sales tactics for the next fifteen years.

13. In 2008, McKinsey worked with Purdue to develop its FDA mandated risk evaluation and mitigation strategy ("REMS"). McKinsey advised Purdue to "band together" with other opioid manufacturers toward a class REMS to "formulate arguments to defend against strict treatment by the FDA." Ultimately, the FDA adopted a class-wide REMS that resulted in high-dose OxyContin remaining subject to the same oversight as lower-dose opioids.

14. In 2009, Purdue hired McKinsey to increase "brand loyalty" to OxyContin. McKinsey recommended the best ways to ensure loyalty to the brand by targeting specific patients, including patients new to opioids, and developing

targeted messaging for specific prescribers.

15. Purdue thereafter adopted McKinsey's proposed prescriber messaging and patient targeting advice and incorporated them into Purdue's marketing and sales strategies.

16. In 2013, McKinsey conducted another analysis of Oxycontin growth opportunities for Purdue, and laid out new plans to increase sales of OxyContin.

Among the key components of McKinsey's plan adopted by Purdue were to:

- a. focus sales calls on high-volume opioid prescribers, including those who wrote as many as 25 times as many OxyContin scripts as their lower volume counterparts;
- b. remove sales representative discretion in target prescribers;
- c. focus Purdue's marketing messaging to titrate to higher, more lucrative dosages;
- d. significantly increase the number of sales visits to high-volume prescribers; and
- e. create an "alternative model for how patients receive OxyContin," including direct distribution to patients and pharmacies, to help address the "product access" problem.

17. Purdue approved McKinsey's plan, and together with McKinsey, moved to implement the plan to "Turbocharg[e] Purdue's Sales Engine," under the name Evolve 2 Excellence ("E2E"). E2E significantly increased Purdue's opioid sales, in particular, for OxyContin.

18. McKinsey partners participated as part of an Executive Oversight Team and Project Management Office, reporting to Purdue's Executive, the Purdue board,

and with the Sacklers, individually. McKinsey worked side by side with Purdue and helped Purdue plan and implement E2E, assisting with sales representative training, productivity, messaging, and call plans, IT systems, promotional strategies, and market forecasting.

19. In developing the targeted messaging to increase sales of OxyContin, McKinsey conducted significant market research, including through ridealongs with Purdue sales representatives to learn how they promoted OxyContin. McKinsey carefully monitored Purdue sales representatives and provided guidance on prescriber messaging and adhering to target prescriber lists. McKinsey advised that sales representatives do more to promote the so-called abuse deterrent properties of a reformulated version of OxyContin to address prescriber concerns about abuse risk.

20. When a large pharmacy chain took steps to scrutinize suspicious opioid orders, McKinsey stressed to Purdue's owners the "need to take action" on this "urgent" issue affecting OxyContin. McKinsey told Purdue's owners to engage in senior level discussions with the pharmacy chain, increase efforts with patient advocacy groups to clamor against dispensing limits, and accelerate considerations of an alternative distribution channel, such as delivering OxyContin directly to patients through mail-order pharmacies.

21. After E2E, McKinsey continued to work with Purdue, including on a



project that identified the growing addiction crisis as a profit-making opportunity. McKinsey told Purdue that it should strive to become a provider across the spectrum of drug abuse and addiction because of the opportunities it presented. McKinsey advised Purdue to get into the manufacturing and marketing of opioid rescue and treatment medications in order to profit from the realities of dependence, addiction, and abuse. Indeed, in 2018, Purdue owner Dr. Richard Sackler received a patent for a drug to treat opioid addiction.

22. McKinsey also partnered with Purdue to test a program called FieldGuide, a proprietary software that McKinsey sought to license to other manufacturers. This software would enable other opioid manufacturers to target and aggressively pursue high-volume prescribers.

23. McKinsey continued to design and develop ways that Purdue could increase sales of OxyContin well after the opioid epidemic peaked. One proposal McKinsey recommended was for Purdue to pay “additional rebates on any new OxyContin related overdose or opioid use disorder diagnosis.” McKinsey advised Purdue on its strategies to obtain and maintain broad formulary coverage for OxyContin with insurers and pharmacy benefit managers, even as payors began reducing coverage for OxyContin as the opioid crisis mounted.

24. Subsequently, in the wake of hundreds of thousands of opioid deaths and thousands of lawsuits, McKinsey proposed a plan for Purdue’s exit from the

opioid business whereby Purdue would continue selling opioids as a way to fund new Purdue ventures. According to McKinsey, this change was necessary because of the negative events that materially compromised the Purdue brand.

25. McKinsey's work for opioid manufacturers extended beyond Purdue. McKinsey collected millions of dollars designing and implementing marketing programs for the country's largest opioid manufacturers, including Johnson & Johnson and Endo, increasing the sale and use of opioids in Pennsylvania. McKinsey designed and implemented for other opioid manufacturers marketing plans similar to those it created for Purdue.

26. At the same time McKinsey was working for opioid companies, McKinsey also consulted with governments and non-profits working to abate the raging opioid crisis—a crisis that McKinsey's own research showed was caused in large part by prescription opioids.

27. There are indications that individuals at McKinsey considered destroying or deleting documents related to their work for Purdue.

28. In 2019, McKinsey announced that it no longer worked for Purdue or other opioid manufacturers. But the harm created by McKinsey's marketing plans for opioid manufacturers has not stopped.

29. Opioids have killed thousands in Pennsylvania, and continue to ravage the lives of many more, creating one of the largest public health epidemics in the

country's history. Economically, the toll is equally grim. The opioid crisis has forced Pennsylvania to pay billions of dollars for increased costs in health care, child welfare, criminal justice, and many other programs needed to abate the epidemic.

30. Months after McKinsey stopped its opioid work, Purdue filed for bankruptcy. More than a hundred thousand individuals filed claims for personal injuries. States and local governments filed claims for trillions of dollars incurred as a result of the opioid crisis. Another McKinsey client, opioid manufacturer Mallinckrodt plc, similarly filed for bankruptcy protection in October 2020.

31. In 2019, an Oklahoma state court found that McKinsey client Johnson & Johnson helped cause the opioid epidemic in Oklahoma, ordering it to pay \$465 million to help abate the crisis.

32. In 2020, Purdue pleaded guilty to three felonies as a result of conduct spanning a decade – from 2007 to 2017 – during which Purdue worked side-by-side with McKinsey to design and implement marketing campaigns to increase dangerous opioid sales.

33. In 2020, Purdue and the members of the Sackler family who owned Purdue also settled civil claims by the Department of Justice for hundreds of millions of dollars. The materials filed in connection with that plea and settlement agreements contain a statement of facts regarding McKinsey's conduct and involvement in the conduct leading to the civil claims against Purdue and the Sackler family.

## **IV. Claims for Relief**

### **Violations of the Consumer Protection Law**

34. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if they were set out herein.

35. In the course of its business, McKinsey unfairly and unconscionably worked with certain of its opioid manufacturing clients to aggressively promote and sell more opioids to more patients for longer periods of time.

36. The aforesaid methods, acts or practices of Defendant constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce prohibited by Section 201-3 of the Consumer Protection Law, including, but not limited to, the following:

- a. Section 201-2(4)(ii), which prohibits causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- b. Section 201-2(4)(v), which prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
- c. Section 201-2(4)(vii), which prohibits representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- d. Section 201-2(4)(xxi), which prohibits engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

73 P.S. § 201-2(4)(ii), (v), (vii), and (xxi).

37. The methods, acts or practices of Defendant described herein occurred in trade or commerce as defined in Section 201-2(3) of the Consumer Protection Law.

38. The methods, acts or practices of Defendant described herein injured consumers in the Commonwealth of Pennsylvania. McKinsey's actions directly and proximately caused Pennsylvania's injuries.

39. The Commonwealth believes that the public interest is served by seeking before this Court a permanent injunction to restrain the methods, acts and practices described herein, as well as seeking civil penalties for violation of the law. The Commonwealth believes that citizens of the Commonwealth are suffering and will continue to suffer harm unless the acts and practices complained of herein are permanently enjoined.

#### **V. Request for Relief**

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter an Order:

- a. Adjudging and decreeing that McKinsey has engaged in the acts or practices complained of herein, and that such constitute unfair acts or practices in violation of the Consumer Protection Law;
- b. Issuing a permanent injunction prohibiting McKinsey, its agents, servants, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair trade practices in violation of the Consumer

Protection Law, and any amendments thereto;

- c. Ordering McKinsey to make such financial payments as are authorized by law;
- d. Ordering McKinsey to pay all costs for the investigation and litigation of this action; and
- e. Ordering such other and further relief as the Court may deem just and proper.

***[Remainder of Page Intentionally Blank; Signature on Next Page]***

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO  
Attorney General

JAMES A. DONAHUE, III  
Executive Deputy Attorney General

Date: February 4, 2021

By: /s/ Neil F. Mara

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<b>DEFENDANT.</b>	:	
	:	

**VERIFICATION**

I, Neil Mara, hereby state that I am an attorney with the Pennsylvania Office of Attorney General and am authorized to make this verification on behalf of the Plaintiff in the within action. I hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge or information and belief.

I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: February 4, 2021

By: /s/ Neil Mara  
Neil Mara  
Chief Deputy Attorney General



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**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 02/04/21 By: /s/ Neil F. Mara

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