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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 IN RE: MCKINSEY & CO., INC.
12 NATIONAL PRESCRIPTION OPIATE
CONSULTANT LITIGATION

Case No. 21-md-02996-CRB (SK)

**~~PROPOSED~~ PRETRIAL ORDER NO. 8:
STIPULATED DEPOSITION PROTOCOL**

13 This Order Relates to:

Judge: The Honorable Charles R. Breyer

14 ALL NAS ACTIONS;
15 ALL THIRD PARTY PAYOR ACTIONS;
16 ALL TRIBAL ACTIONS

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18 Pursuant to Federal Rules of Civil Procedure 30 and 45, and the Local Rules of this
19 Court, Plaintiffs and McKinsey Defendants¹ (each a "Party" and, collectively, the "Parties")
20 jointly stipulate to the following protocol for conducting depositions in all cases currently
21 pending in MDL No. 2996 and to all related cases that have been or will be transferred or
22 removed to, or directly filed in, this Court and assigned hereto (collectively, the "McKinsey
23 Opioid MDL").

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26 ¹ McKinsey Defendants (collectively, "McKinsey") in this action are: McKinsey & Company,
27 Inc.; McKinsey & Company, Inc. United States; McKinsey & Company, Inc. Washington D.C.;
28 and McKinsey Holdings, Inc.

1 **I. GENERAL PROVISIONS**

2 **A. Scope.**

3 This Deposition Protocol shall apply to all depositions in the McKinsey Opioid MDL,
4 including witnesses who are current or former employees of McKinsey, designees pursuant to
5 Federal Rule of Civil Procedure 30(b)(6), Plaintiffs, and all generally applicable non-party or
6 third-party witnesses.

7 **B. Cooperation.**

8 The Parties and their counsel acknowledge their duty to work together cooperatively in
9 both scheduling and conducting depositions.

10 **C. Disputes.**

11 Disputes arising prior to and/or during the depositions that cannot be resolved by
12 agreement shall be presented to Magistrate Judge Sallie Kim. If a dispute arises during a
13 deposition and Judge Kim is not available during the deposition, the deposition shall continue
14 with full reservation of rights by all Parties for a ruling at the earliest possible time. Nothing in
15 this Deposition Protocol shall preclude any Party from seeking relief with Judge Kim
16 subsequent to the deposition, including through the filing of an appropriate motion.

17 **II. SCHEDULING, NOTICING, AND LOGISTICS**

18 **A. Content of Notice.** Each deposition notice and subpoena shall comply with
19 Federal Rule of Civil Procedure 30(b) and include the name, address, and telephone number of
20 an attorney point of contact designated by the Party noticing the deposition (the “Deposition
21 Liaison Counsel”) as well as the date, time, and place of the deposition, including whether the
22 deposition will proceed in person or remotely. The Deposition Liaison Counsel will be
23 responsible for all logistical issues and communications related to the noticed deposition. For
24 depositions pursuant to Rule 30(b)(6), the noticing party shall make a good faith effort to include
25 all related topics in a single notice.

1 **B. Service of Counsel Copies.** Deposition notices and subpoenas shall be served
2 by email on Plaintiffs’ Lead Counsel and McKinsey’s counsel.

3 **C. Date and Location.**

4 1. The Parties will reasonably cooperate regarding the date and location for
5 depositions and agree upon deposition locations for fact witnesses. To the extent reasonably
6 possible, depositions of witnesses located in the United States will take place in the deponent’s
7 home district, or upon agreement in another district convenient to the deponent. For purposes of
8 this provision, the location of a Rule 30(b)(6) deposition will be determined by the location of
9 the individual designated to testify on behalf of the organization.

10 2. The Federal Rules of Civil Procedure, the Local Rules of this Court, and
11 all Orders of this Court will apply to the conduct of any deposition occurring in a foreign
12 location. Depositions of witnesses who are located outside of the United States shall occur, by
13 agreement, in a location at which depositions may occur consistent with the Federal Rules of
14 Civil Procedure and in a location that is convenient to the deponent. To the extent that the laws
15 of the foreign location prohibit the application of the Federal Rules of Civil Procedure, the Local
16 Rules of this Court, or any Order of this Court, or substantially interfere with the ability to take a
17 deposition in that location, the Parties shall meet and confer, and hold the deposition in an
18 alternate, convenient location that allows for their application.

19 3. Remote depositions. Upon agreement of the Parties and counsel for the
20 witness, a deposition may be held remotely using a secure Zoom connection or a similar
21 audio/video conferencing technology platform. In the event that a deposition proceeds remotely
22 (“Videoconference Deposition”), the following shall also apply:

23 a. If the witness’s counsel or any Party’s counsel is physically
24 located in the room or facility where the witness is located, then the noticing counsel has the
25 right to be physically located in the room or facility where the witness is located.

26 b. Any Videoconference Deposition taken pursuant to this Court’s
27 Orders must comply with the requirements in Rule 30(b)(5). This includes the requirements
28 that, (1) “[u]nless the parties stipulate otherwise, a deposition must be conducted before an

1 officer appointed or designated under Rule 28,” and (2) that officer must administer the oath or
2 affirmation to the deponent. Fed. R. Civ. P. 30(b)(5). A Videoconference Deposition taken
3 pursuant to this Order will be deemed to have been taken before an appropriate officer despite
4 the court reporter not being in the same physical location as the witness—as long as the court
5 reporter attends the deposition by the same remote means as the other participants and is able to
6 hear and communicate with other attendees. To the extent permitted by the law of the state in
7 which the witness is located, the witness may be sworn in remotely with the same effect as an
8 oath administered in person.

9 c. The deposition notice for any Videoconference Deposition
10 pursuant to Rule 30 must list the location(s) (city and state) from where the witness will attend,
11 which information the witness’s counsel must provide upon request of the noticing party.

12 d. All deposition notices must identify the company that will host
13 and record the remote deposition (the “Remote Deposition Vendor”) and contain a general
14 description of how those attending may access the remote connection being utilized (*e.g.*,
15 Zoom, GoToMeeting, WebEx). The party noticing the deposition must provide the witness and
16 all other attendees with detailed instructions regarding how to participate in the
17 Videoconference Deposition at least three (3) business days before the deposition.

18 e. At the time of the deposition, the witness must advise the court
19 reporter of their physical location. The witness should endeavor to participate in the deposition
20 from a quiet, well-lit, indoor location, while seated in front of a neutral background and facing
21 the camera being used to record the witness. To avoid any potential disruptions of a
22 Videoconference Deposition, those attending must enable “do not disturb” settings for
23 applications not in use, including but not limited to, Skype, instant messaging, and/or e-mail
24 notifications. The Court recognizes that the microphones for certain attendees (such as the
25 witness, the court reporter, the attorney taking the deposition, and the attorney defending the
26 deposition) must remain on when the deposition is on the record. Other attendees should mute
27 microphones when not speaking. The Remote Deposition Technology must be able to show in
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1 real-time a list of all persons attending the Videoconference Deposition. The attorneys
2 participating in the examination may be visible to all other participants during the deposition.

3 f. Counsel and/or the interpreter shall be on camera and shall ensure
4 no audio disruption if there are multiple remote attendees in a single location.

5 g. During live testimony on the record, no one, including attorneys,
6 shall communicate in any manner with the deponent in any way that cannot be heard or seen by
7 all Participants to the deposition. This includes silent signals and private messages of any kind,
8 including, but not limited to, instant messages or text messages conveyed through phones, smart
9 watches, or similar devices. Such prohibition shall not affect the right of the deponent and their
10 lawyer(s) to communicate in private off the record to the extent otherwise permitted under
11 Federal Rule of Civil Procedure 30(c)(1).

12 h. During the deposition, full and complete copies of deposition
13 exhibits must be provided to the witness and counsel who are attending the deposition.
14 Deposition exhibits may be made available in physical (hardcopy) form or via the Remote
15 Deposition Technology, file sharing software, or other electronic means. A witness may be
16 required to use a keyboard, mouse, or other similar means to open and/or advance the pages of
17 an exhibit. Access to a full copy of the deposition exhibit electronically via iPad, tablet, laptop,
18 or other device, will be deemed to equate to hardcopy access. The fact that a witness was
19 provided with an electronic copy of an exhibit will be an insufficient basis, by itself, to object to
20 the admissibility of that exhibit at trial. During the deposition, the Remote Deposition
21 Technology must allow: (1) the witness to privately access any part of the exhibit; (2) counsel
22 to display and annotate exhibits for the witness; (3) counsel to add and remove exhibits; and (4)
23 counsel to change the order in which the exhibits are presented to the witness.

24 i. Any pauses, lags, and/or disruptions in technology, including but
25 not limited to interruptions in Internet connectivity, will not result in waiver of objections by
26 any party. If any pauses, lags, and/or disruptions are persistent or prolonged, the Parties should:
27 (1) extend the remote deposition by an amount of time equal to the duration of the pause, lag,
28 and/or disruption, provided that the additional time is less than an hour; or (2) consider

1 rescheduling the remote deposition for a later date, if the additional time required is an hour or
2 more.

3 **D. Adequacy of Notice.** Absent agreement of the Parties or Order of the Court,
4 fact witness depositions other than Rule 30(b)(6) depositions shall be noticed at least thirty (30)
5 days in advance of the noticed deposition date. The Parties anticipate that more time may be
6 required to adequately prepare Rule 30(b)(6) corporate representatives, and therefore the Parties
7 agree to cooperate regarding the scheduling of Rule 30(b)(6) depositions once the requested
8 topics for the depositions have been provided.

9 **E. Custodial Files.** With respect to agreed-upon document custodians, the Parties
10 intend for the witnesses' custodial files to be produced sufficiently in advance of the noticed
11 deposition date to permit adequate time to review such documents before the deposition. If
12 Plaintiffs notify Defendants of an intent to depose a witness for whom their custodial file has
13 not yet been produced, the Parties will meet and confer over timing of the production of the
14 custodial file in relation to the noticed deposition date.

15 **F. Change of Date or Time.** Once a deposition has been mutually scheduled, it
16 shall not be taken off calendar, postponed, rescheduled, or relocated less than one week in
17 advance of the date it is scheduled to occur, except upon agreement of the counsel responsible
18 for scheduling as set forth above, or by other relief obtained from the Court.

19 **III. CONDUCT OF DEPOSITIONS**

20 1. **Attendance.** Unless otherwise agreed to by the Parties, depositions may
21 be attended only by the Parties, the Parties' counsel, the deponent, the deponent's attorney, in-
22 house counsel for the Parties, experts, court reporters, videographers, interpreters, translators,
23 assistants invited by counsel to assist, and any person (including experts) who is assisting in the
24 litigation and whose presence is reasonably required by the aforementioned counsel of record.
25 Unnecessary attendance in person or by telephone by non-examining counsel is discouraged and
26 may not be compensated in any common benefit fee application to the Court without good cause
27 shown or if the attendance was approved by Plaintiffs' Lead Counsel. Any such request must be
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1 submitted to Plaintiffs' Lead Counsel, or their designee, by email at least five (5) days prior to
2 the deposition.

3 2. Notice of Attendees. For there to be adequate deposition space and to
4 notify building security, counsel intending to attend a deposition noticed in the MDL should
5 advise all Parties, including counsel for the noticing party, of the number of people anticipated to
6 attend in person at least five (5) business days prior to the deposition.

7 3. Number of Examiners. Plaintiffs, collectively, and Defendants,
8 collectively, may designate two examiners of each deponent. In the event of two examiners, the
9 first and second examiners must coordinate in advance of the deposition to avoid duplicative
10 areas of inquiry, repetition, and inefficiencies. The first examiner must conclude their
11 examination before the second examiner may begin their examination.

12 4. Sequence of Examinations Generally. The Parties agree to be reasonably
13 guided by the principle that the party that first issued the deposition notice or subpoena will
14 proceed first, followed by the subsequent noticing party. If the Parties cannot reach agreement
15 regarding the sequence of examination, they must submit their dispute to the Court for a
16 determination on the sequence of examination.

17 **IV. CORRECTING AND SIGNING DEPOSITIONS**

18 1. Upon completion of the transcription of a deposition, the original
19 transcript shall be sent to counsel for the witness by the court reporter. Counsel shall promptly
20 forward it to the witness for review, correction, and signature under penalty of perjury. Within
21 thirty (30) days of receiving the transcript from the court reporter, the witness's counsel shall
22 then forward the original transcript plus corrections to the court reporter, who will promptly
23 notify all counsel of its receipt and any changes to testimony made by the witness. If no
24 corrections are made during this time, the transcript will be deemed to be accurate.

25 2. If the witness is not represented by counsel, the original transcript will be
26 sent to the witness by the court reporter. After review, correction, and signature within thirty
27 (30) days from the date of receipt, the witness shall return the original transcript to the court
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1 reporter, who will notify all counsel of its receipt and any changes to testimony made by the
2 witness. If no corrections are made during this time, the transcript will be deemed to be accurate.

3 3. The court reporter will provide the original transcript to the first
4 examining attorney. If, for any reason, the original is lost, misplaced, not returned, not signed, or
5 unavailable, a certified copy may be used in its place for all purposes.

6 **V. PRESERVATION OF RIGHTS AND DEFENSES**

7 Any Party’s agreement to and appearance on this Stipulation does not constitute a
8 waiver of any defense or right not specifically addressed.

9 **IT IS SO STIPULATED.**

10 Dated: March 31, 2023

By: /s/Elizabeth J. Cabraser

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~~PROPOSED~~ ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

DATED: April 3, 2023



CHARLES R. BREYER
United States District Judge