

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”); the Defense Health Agency (“DHA”), acting on behalf of the TRICARE program; the Office of Personnel Management (“OPM”), which administers the Federal Employees Health Benefits Program (“FEHBP”); and the United States Department of Veterans Affairs (“VA”), which administers the Veterans Health Administration (“VHA”) (collectively, the “United States”), and McKinsey & Company, Inc. United States (“McKinsey”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. McKinsey is a management consulting firm headquartered in New York. At all relevant times, McKinsey provided consulting services to Purdue Pharma L.P. (“Purdue”), a pharmaceutical company based in Connecticut that marketed the prescription opioid drug OxyContin. Additionally, at all relevant times, McKinsey provided consulting services to the United States Food and Drug Administration (“FDA”), which regulates the marketing of prescription drugs in the United States.

B. The United States contends that McKinsey caused other parties to submit claims for payment for OxyContin to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395III (“Medicare”); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (“Medicaid”); the TRICARE Program, 10 U.S.C. §§ 1071-1110b; the FEHBP, 5 U.S.C. §§ 8901-8914; and the VHA, 38 U.S.C. Chapter 17. Additionally, the United States contends that McKinsey submitted claims for payment for consulting services to the FDA.

C. The United States contends that it has certain civil claims against McKinsey arising from the following conduct:

- i. Between in or about January 2013 and April 2014, aware of the ongoing opioid crisis, McKinsey advised Purdue to intensify OxyContin marketing to certain health care providers, some of whom were already prescribing very large quantities of OxyContin, as a means to increase OxyContin sales, and thereby knowingly caused false and fraudulent claims for OxyContin to be submitted to Medicare, Medicaid, TRICARE, the FEHBP, and the VHA. Regarding this contention, McKinsey admits the facts set forth in Paragraphs 1 through 209 of the Agreed Statement of Facts incorporated by reference into the Deferred Prosecution Agreement (“DPA”) signed contemporaneously herewith.
- ii. After representing to the FDA that individual McKinsey “consultants serving FDA will not be assigned to a competitively sensitive project for a significant period of time (typically two years) following an assignment for FDA,” between in or about November 2014 and September 2017, McKinsey assigned one or more individual McKinsey consultants to work on both the FDA’s Sentinel Initiative (which includes monitoring the safety of all prescription drugs) and Purdue projects involving drug research and development, drug-related data analytics, and cost cutting in areas including data management and regulatory compliance, around the same time, thereby knowingly misleading the FDA. As to this contention, McKinsey admits the facts set forth in Paragraphs 210 through 224 of the Agreed Statement of Facts incorporated by reference into the DPA signed contemporaneously herewith.

The conduct set forth in Paragraph C is referred to below as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by McKinsey nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. McKinsey shall pay to the United States \$323,020,647.75 plus interest accruing at a rate of 4.125% per annum from July 10, 2024, and continuing until and including the date of payment (collectively, "Settlement Amount"), of which \$109,370,963.40 is restitution, by electronic funds transfers pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice, according to the following payment schedule. The Settlement Amount is secured in part pursuant to the Security Agreement incorporated by reference into the DPA signed contemporaneously herewith.

DUE DATE	PRINCIPAL	INTEREST	PAYMENT DUE
12/15/2024	\$86,967,097.47	\$5,767,909.79	\$92,735,007.26
10/1/2025	\$86,967,097.47	\$7,736,412.59	\$94,703,510.06
10/1/2026	\$49,695,484.27	\$6,149,816.18	\$55,845,300.45
10/1/2027	\$49,695,484.27	\$4,099,877.45	\$53,795,361.72
10/1/2028	\$49,695,484.27	\$2,055,555.00	\$51,751,039.27

2. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and subject to Paragraphs 11 (concerning default) and 12 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, the United States releases McKinsey, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary

Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. In consideration of the obligations of McKinsey in this Settlement Agreement and the Corporate Integrity Agreement (“CIA”) entered into between OIG-HHS and McKinsey, and upon the United States’ receipt of full payment of the Settlement Amount plus interest due under Paragraph 1, the OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against McKinsey under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 4 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude McKinsey from Medicare, Medicaid, and other federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4, below.

4. Notwithstanding the releases given in Paragraphs 2 and 3 of this Settlement Agreement, or any other term of this Settlement Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Settlement Agreement, any administrative liability or enforcement right, including mandatory exclusion from federal health care programs;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Settlement Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. McKinsey waives and shall not assert any defenses McKinsey may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement Agreement bars a remedy sought in such criminal prosecution or administrative action.

6. McKinsey fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that McKinsey has asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. McKinsey agrees to the following:

- a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social

Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of McKinsey, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (i) the matters covered by this Settlement Agreement and the DPA executed herewith;
- (ii) the United States' audits and civil and criminal investigations of the matters covered by this Settlement Agreement;
- (iii) McKinsey's investigation, defense, and corrective actions undertaken in response to the United States' audits and civil and criminal investigations in connection with the matters covered by this Settlement Agreement (including attorneys' fees);
- (iv) the negotiation and performance of this Settlement Agreement and the DPA;
- (v) the payments McKinsey makes to the United States pursuant to this Settlement Agreement, and
- (vi) the negotiation of and obligations undertaken pursuant to the CIA to retain an independent review organization to perform annual reviews as described in Section III of the CIA, and to prepare and submit reports to the OIG-HHS,

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and the FEHBP (hereinafter referred to as "Unallowable Costs"). However, nothing in paragraph 7.a.(vi) that

may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to McKinsey.

- b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by McKinsey, and McKinsey shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by McKinsey or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: McKinsey further agrees that within 90 days of the Effective Date of this Settlement Agreement it shall identify to applicable Medicare and TRICARE contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by McKinsey or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. McKinsey agrees that the United States, at a minimum, shall be entitled to recoup from McKinsey any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

- d. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by McKinsey or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on McKinsey or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.
- e. Nothing in this Settlement Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine McKinsey's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

8. McKinsey agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Settlement Agreement. Upon reasonable notice, McKinsey shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. McKinsey further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

9. This Settlement Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 10 (waiver for beneficiaries paragraph), below.

10. McKinsey agrees that it waives and shall not seek payment for any of the health care billings covered by this Settlement Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

11. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct.

- a. In the event that McKinsey fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, McKinsey shall be in Default of McKinsey's payment obligations ("Default"). The United States will provide a written Notice of Default, and McKinsey shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to McKinsey Chief Legal Officer Pierre M. Gentin, or to such other representative as McKinsey shall designate in advance in writing. If McKinsey fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule ("Uncured Default"), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

- b. In the event of Uncured Default, McKinsey agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Settlement Agreement and pursue the Civil Action, or bring any civil and/or administrative claim, action, or proceeding against McKinsey for the claims that would otherwise be covered by the release provided in Paragraph 2 above, with any recovery reduced by the amount of any payments previously made by McKinsey to the United States under this Settlement Agreement; (ii) take any action to enforce this Settlement Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to McKinsey and/or affiliated companies by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Settlement Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, McKinsey agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, McKinsey waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against McKinsey within 120 days of written notification that this Agreement has been

rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Settlement Agreement. McKinsey agrees not to contest any offset, recoupment, and/or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

- c. In the event of Uncured Default, OIG-HHS may exclude McKinsey from participating in all Federal health care programs until McKinsey pays the Settlement Amount, with interest, as set forth above (“Exclusion for Default”). OIG-HHS will provide written notice of any such exclusion to McKinsey. McKinsey waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, McKinsey wishes to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. McKinsey will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Settlement Agreement or otherwise available.

12. In exchange for valuable consideration provided in this Settlement Agreement, McKinsey acknowledges the following:

- a. McKinsey has reviewed its financial situation and warrants that it is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and it has

a good faith belief that it will remain solvent following payment to the United States of the Settlement Amount.

- b. In evaluating whether to execute this Settlement Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to McKinsey, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.
- c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.
- d. The Parties do not intend to hinder, delay, or defraud any entity to which McKinsey was or became indebted to on or after the date of any transfer contemplated in this Settlement Agreement, within the meaning of 11 U.S.C. § 548(a)(1).
- e. If any of McKinsey's payments or obligations under this Settlement Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, McKinsey or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of McKinsey's debts, or to adjudicate McKinsey as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for McKinsey or for all or any substantial part of McKinsey's assets:

- (i) the United States may rescind the releases in this Settlement Agreement and bring any civil and/or administrative claim, action, or proceeding against McKinsey for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3 above; and
 - (ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against McKinsey in the amount of \$328,112,890.20, less any payments received pursuant to Paragraph 1 of this Settlement Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by McKinsey, a receiver, trustee, custodian, or other similar official for McKinsey.
- f. McKinsey agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 24.e is not subject to an “automatic stay” pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States’ police and regulatory power. McKinsey shall not argue or otherwise contend that the United States’ claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). McKinsey waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to McKinsey that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of this Settlement Agreement.

13. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Settlement Agreement.

14. Each Party and signatory to this Settlement Agreement represents that it freely and voluntarily enters into this Settlement Agreement without any degree of duress or compulsion.

15. This Settlement Agreement is governed by the laws of the United States. The exclusive venues for any dispute relating to this Settlement Agreement are the United States District Court for the District of Massachusetts or the United States District Court for the Western District of Virginia. For purposes of construing this Settlement Agreement, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

16. This Settlement Agreement constitutes the complete agreement between the Parties.

17. This Settlement Agreement may not be amended except by written consent of the Parties.

18. The undersigned counsel represent and warrant that they are fully authorized to execute this Settlement Agreement on behalf of the persons and entities indicated below.

19. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Settlement Agreement.

20. This Settlement Agreement is binding on McKinsey's successors, transferees, heirs, and assigns.

21. All Parties consent to the United States' disclosure of this Settlement Agreement, and information about this Settlement Agreement, to the public.

22. This Settlement Agreement is effective on the date of signature of the last signatory to the Settlement Agreement ("Effective Date of this Settlement Agreement"). Facsimiles and

electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

[SIGNATURE PAGE(S) FOLLOW]

THE UNITED STATES OF AMERICA

DATED: 12/11/2024

BY:



CHRISTOPHER TERRANOVA
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 12/10/24

BY:

SUSAN GILLIN

Digitally signed by SUSAN
GILLIN
Date: 2024.12.10 16:42:57
-05'00'

SUSAN E. GILLIN
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services

DATED: 12/10/2024

BY:

BLEY.PAUL.NICHO

Digitally signed by
BLEY.PAUL.NICHOLAS.1099873821
Date: 2024.12.10 08:40:41 -05'00'

LAS.1099873821

SALVATORE M. MAIDA
for General Counsel
Defense Health Agency
United States Department of Defense

DATED: 12/11/2024

BY:

CYNTHIA BUTLER

Digitally signed by CYNTHIA
BUTLER
Date: 2024.12.11 14:31:59 -05'00'

CINDY BUTLER AS ACTING DEPUTY ON BEHALF
OF
EDWARD M. DEHARDE
Deputy Associate Director of Federal Employee
Insurance Operations,
Healthcare and Insurance
United States Office of Personnel Management

DATED: 12/11/2024

BY:

PAUL ST
HILLAIRE

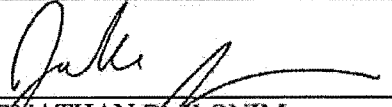
Digitally signed by PAUL ST
HILLAIRE
Date: 2024.12.11 07:17:55
-05'00'

PAUL ST. HILLAIRE
Assistant Inspector General for Legal & Legislative Affairs
Office of the Inspector General
United States Office of Personnel Management

MCKINSEY & COMPANY INC. UNITED STATES


DATED: 12/9/24

BY:


JONATHAN E. SLONIM
Vice President

DATED: 12/9/24

BY:


CHARLES E. DUROSS
Counsel for McKinsey