

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No. 21-md-02996-CRB

IN RE: MCKINSEY & COMPANY,
INC. NATIONAL OPIATE
CONSULTANT LITIGATION

**ORDER DENYING MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION**

This multi-district litigation arises from consulting work that McKinsey & Company performed for several opioid companies. Plaintiffs consist of school districts, Indian tribes, political subdivisions, children with neonatal abstinence syndrome, and third-party payors from 31 states. Plaintiffs generally allege that McKinsey helped the opioid companies develop aggressive sales and marketing tactics to boost opioid sales, despite knowing that rapidly increasing supplies of opioids were causing serious harms in communities across the country. McKinsey moves to dismiss the claims of all Plaintiffs from 19 states for lack of personal jurisdiction. For the reasons discussed below, the Court denies McKinsey's motion.

I. BACKGROUND

A. Parties

McKinsey is a global management consulting firm with offices in over 130 cities across 65 countries. Political Subdivision Master Complaint ("Compl.") (dkt. 295–2)

¶ 29.¹ Four McKinsey entities are named as defendants in this action: "McKinsey &

Company, Inc.” is incorporated and has its principal place of business in New York, while “McKinsey Holdings, Inc.,” “McKinsey US,” and “McKisney & Company, Inc. Washington D.C.” are Delaware corporations with their principal places of business in New York (collectively, “McKinsey”). Compl. ¶¶ 24–27; Jain Decl. (dkt. 313–1) at 2.

For purposes of this motion, Plaintiffs are persons and entities from Alaska, Arizona, Colorado, Hawai’i, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Montana, New Mexico, Oklahoma, Oregon, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin (“subject states”). See Mot. (dkt. 313) at 4.

B. The Complaint

The complaint alleges that McKinsey “played a central role” in the opioid crisis by advising opioid companies on how “to sell as many opioids as conceivably possible.” Compl. ¶ 2. McKinsey allegedly “did more than just give advice”; it “worked collaboratively alongside its clients to implement McKinsey’s recommendations.” Id. ¶ 7. The work involved “strategy work—‘providing big picture advice to clients’—and implementation of the strategies” McKinsey devised. Id. ¶¶ 59–60, 62. In managing the implementation of the strategies it provided, McKinsey worked hand-in-hand with its clients. See id. In the words of one of the company’s employees, “you can’t even tell the difference between a McKinsey team member and one of our clients[.]” Id. ¶ 62, 64. Specific examples of McKinsey’s work are discussed in more detail below.

1. McKinsey’s Contacts with the Subject States

Plaintiffs’ allegations regarding McKinsey’s contacts with the subject states center on McKinsey’s work for Purdue Pharma, the pharmaceutical company that created and manufactured the blockbuster opioid OxyContin. See Compl. ¶¶ 10–11. McKinsey provided consulting services for Purdue for 15 years, including during the core of the national opioid epidemic. Id. ¶¶ 10–11, 101; Scheidler Decl. (dkt. 313-2) at 4. Between 2009 and 2014, Purdue “relied extensively on McKinsey to develop and implement its

1 sales and marketing strategy for OxyContin.” Id. ¶ 106. During that time, McKinsey
2 employed a “granular” approach in its work for Purdue, identifying specific geographic
3 regions where the company could significantly increase sales of OxyContin. Id. ¶¶ 194,
4 199, 478; Humphreville Decl. (dkt. 347-1) Ex. A at 50, Ex. D 1–3.

5 McKinsey’s “micro market analysis” helped identify “important pockets of growth
6 that Purdue should focus on.” Humphreville Decl. Ex. D at 2. As specific examples,
7 McKinsey prepared an analysis titled “Micro Markets by Territory” that detailed the
8 market attractiveness for OxyContin in “hundreds of cities, including locations in each of
9 the subject states.” Opp. at 4 n.10; Humphreville Decl. Ex. B. The analysis ranked cities
10 on an “Overall Favorability Index” that determined the likelihood that targeting the city
11 would yield increased OxyContin sales. See Humphreville Decl. Ex. B. McKinsey also
12 used prescriber-level data to create a map of the United States that ranked the market
13 attractiveness of regions for OxyContin growth. See Opp. at 5; Compl. ¶ 249;
14 Humphreville Decl. Ex. A at 0, 50. McKinsey’s analysis discusses the market
15 attractiveness of cities located in several of the subject states, including Colorado,
16 Kentucky, Maryland, Oklahoma, Utah, Virginia, Washington, and Wisconsin. Opp. at 4;
17 Humphreville Decl. Ex. A at 51. These efforts were part of a broader strategy focused on
18 boosting opioid sales nationwide.

19 McKinsey also sought to target “existing high prescribers” of OxyContin, including
20 in the several of the subject states. Compl. ¶ 255. McKinsey prepared an analysis for
21 Purdue of another map of the United States that detailed at the zip-code level total
22 prescription growth for OxyContin across all 50 states. Opp. at 4; Compl. ¶¶ 51, 194–207,
23 478. The map includes a chart with example zip codes that identify where a growth or
24 decline in OxyContin prescriptions occurred. Compl. ¶ 478. Similar to McKinsey’s other
25 analysis, the chart includes market analysis for multiple subject states. Id.

26 Additionally, McKinsey helped Purdue target specific doctors through a project
27
28

1 titled “Evolve to Excellence” (“E2E”).² Id. ¶¶ 244, 255–69. McKinsey and Purdue
 2 executives headed the E2E Executive Oversight Team. Humphreville Decl. Ex. E at 5.
 3 The primary goal of E2E was “to significantly bolster OxyContin . . . sales.” Id. Ex. E at
 4 4. McKinsey designed E2E and oversaw “the creation of target lists, internal dashboards
 5 to track progress, and changes to Purdue’s incentive compensation plan.” Compl. ¶¶ 238–
 6 39, 242, 244, 254. As part of the E2E initiative, McKinsey prepared an analysis
 7 identifying 30,704 prescribers in almost all of the subject states. Humphreville Decl. Ex.
 8 F. The analysis included details such as the specialty of the prescriber (e.g., Family
 9 Medicine or Anesthesiology), the prescriber’s location, and the prescriber’s “OxyContin
 10 Valuation.” Id. McKinsey used this data to create prescriber profiles and worked with
 11 Purdue’s sales staff to develop sales messages likely to persuade specific prescribers. See
 12 Compl. ¶¶ 205–07.

13 McKinsey also worked with Purdue sales representatives in the field. McKinsey
 14 consultants accompanied Purdue representatives on sales visits in several subject states.
 15 Opp. at 7; Humphreville Decl. Ex. H at MCK-MDL2996-0310910-11, Ex. I. The “ride-a-
 16 longs” with Purdue sales representatives helped McKinsey consultants “gain as much
 17 insight as possible into prescriber’s responses to [Purdue’s] promotion of OxyContin.”
 18 Humphreville Decl. Ex. J. They were part of the hand-in-hand process that McKinsey
 19 employed to help Purdue refine its nationwide and state-specific sales and marketing
 20 campaigns. See id.

21 C. Procedural Posture

22 Plaintiffs filed their Master Complaints on December 6, 2021. McKinsey moves to
 23 dismiss all of Plaintiffs’ claims in the subject states for lack of personal jurisdiction. See
 24 Mot. at 1. Plaintiffs opposed the motion, and McKinsey replied. See Opp. at 1–2; Reply
 25 (dkt. 363) at 1.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(2), a defendant may move to dismiss for lack of personal jurisdiction. In assessing whether personal jurisdiction exists, the court may consider evidence presented in affidavits or order discovery on jurisdictional issues. Data Disc, Inc. v. Sys. Tech. Assoc., Inc., 557 F.2d 1280, 1285 (9th Cir. 1977). “When a district court acts on a defendant’s motion to dismiss under Rule 12(b)(2) without holding an evidentiary hearing, the plaintiff need make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss.” Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir. 1995).

A prima facie showing is established if the plaintiff produces admissible evidence which, if believed, would be sufficient to establish personal jurisdiction. See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1129 (9th Cir. 2003). “[U]ncontroverted allegations in [the plaintiff’s] complaint must be taken as true, and conflicts between the facts contained in the parties’ affidavits must be resolved in [the plaintiff’s] favor.” Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1127 (9th Cir. 2010). However, “bare bones assertions of minimum contacts with the forum or legal conclusions unsupported by specific factual allegations will not satisfy a plaintiff’s pleading burden.” Swartz v. KPMG LLP, 476 F.3d 756, 766 (9th Cir. 2007).

A federal district court’s jurisdiction over a defendant is the same as “the jurisdiction of a court of general jurisdiction in the state where the district court is located.” Fed. R. Civ. P. 4(k)(1)(A). To determine whether it can exercise jurisdiction, a district court employs a two-step inquiry. First, “the plaintiff must show . . . the forum state’s long arm statute confers personal jurisdiction over the out-of-state defendants.” Gray & Co. v. Firstenberg Mach. Co., 913 F.2d 758, 760 (9th Cir. 1990). Second, “the exercise of jurisdiction [must] not violate federal constitutional principles of due process.” Id. When a state’s long-arm statute permits the exercise of jurisdiction to the limits of due process, the two-step inquiry collapses into one: “whether the exercise of jurisdiction . . . comports with due process.” Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284

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