

FILED
JAN 27 2022

RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA TRIBAL COURT

Red Cliff Tribal Court
Heather Deragon
Clerk of Court

RED CLIFF BAND OF LAKE SUPERIOR
CHIPPEWA INDIANS,

Case No. 22-CV-02

Plaintiff,

v.

MCKINSEY & COMPANY, INC. and
JOHN DOES 1-100,

Defendants.

SUMMONS AND COMPLAINT

TO: McKinsey and Company, Inc. is organized under the laws of the state of New York. McKinsey's principal place of business is located at 711 Third Avenue, New York, NY 10017.

Pursuant to Red Cliff Code of Laws (RCCL) 4.26, you are hereby required to appear at the Red Cliff Band Tribal Court, 37290 Community Road, Red Cliff Reservation, Wisconsin, at 9:00 am on Thursday, March 24. to answer the attached Complaint. Failure to appear may result in a judgment being taken against you for the relief requested by the Plaintiff, plus costs and attorney fees.

Issued this 27th day of January, 2022

Heather Deragon

Heather Deragon, Deputy Court Clerk





Join a meeting or search for a meeting, recording, or transcript



English

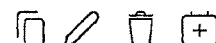
Red \



< Back to List



22 CV 02 hearing; Judge Buffalo presiding



Red Cliff Tribal Court 9:00 AM - 10:00 AM Thursday, Mar 24 2022
(UTC-06:00) Central Time (US & Canada)



Start Meeting



Join Information

Meeting link:

<https://redcliff.webex.com/redcliff/j.php?>

MTID=me882961292144f5ed09679ca3e0de53f

Meeting number:

2485 840 4635

Password:

22CV02

Host key:

845912

Join by video system

Dial 24858404635@redcliff.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

1-844-992-4726 United States Toll Free

+1-408-418-9388 United States Toll

Access code: 2485 840 4635

Host PIN: 2001

[Global call-in numbers](#) | [Toll-free calling restrictions](#)

COMPLAINT

I. INTRODUCTION

1. This case arises from a greed-driven and manufactured public health epidemic – the prescription opioid crisis. Defendant, McKinsey and Company, Inc. (“Defendant” or “McKinsey”), helped create the opioid pill market and the consequent misuse, abuse, over-prescription, and diversion of opioid pills and other opiate-based substances. This crisis arose from certain opioid manufacturers’ deliberately deceptive marketing strategy to expand opioid use and alter medical standards of care in pain management in creating an opioid demand and supply fueled by greed at the highest levels of a number of symbiotic companies.

2. McKinsey played an integral role in creating, deepening, maintaining, and continuing the opioid epidemic and the nuisance of the opioid epidemic in upper Wisconsin and throughout the United States. It is only recently in the past few months that Plaintiff, Red Cliff Band of Lake Superior Chippewa (“Plaintiff”, “Red Cliff”, or “Tribe”), has learned of McKinsey’s secret and extensive role in the creation and maintenance of the opioid epidemic.

3. McKinsey worked closely with a number of opioid pill supply companies, including the now notorious Purdue Pharma, to increase the supply and demand of opioid pills. McKinsey propped up OxyContin sales to profit levels of immense proportion by directly creating a marketing and public relations strategy for Purdue and the Sackler family, the family that has owned and controlled Purdue, a closely-held private company. McKinsey maximized OxyContin sales by creating schemes to sidestep and bypass consent judgments and settlement agreements that Purdue entered into for its early role in the opioid epidemic. McKinsey performed related

work for other manufacturers of opioids, including Johnson & Johnson and Endo/Par. Through the conduct described in this Complaint, McKinsey participated in and executed a broad scheme to deceptively market opioids and fuel demand and supply of opioid pills.

4. McKinsey knew of the dangers of opioids and of Purdue's prior misconduct, but nonetheless advised Purdue to improperly market and sell OxyContin, supplying sales and marketing strategies and remaining intimately involved throughout implementation of those strategies. McKinsey's actions resulted in a surge in sales of OxyContin, the rise of the generic opioid pill market, as well as other opioids that fueled and prolonged the opioid crisis.

5. In a series of pre-announcement secret agreements, McKinsey recently settled opioid-related claims with all 50 states, the District of Columbia, and five U.S. territories. McKinsey specifically excluded Indian Tribal Governments from the settlement agreements and even negotiations for the settlements. Once the settlements were announced, McKinsey expressly rebuffed Native American Indian Tribes, even though Native Americans have suffered from a disproportionate, tragic impact in comparison to non-Natives and even though Indian Tribes are sovereign governments.

6. Until the McKinsey settlement was publicly announced and appropriately analyzed, Plaintiff was unaware of McKinsey's role and acknowledgement of culpability in the opioid epidemic.

7. Upon information and belief, McKinsey's work has included representation of tobacco-related companies and nicotine-related companies, with said representation giving McKinsey an insider's knowledge of the threat of addictive substances to Native Americans.

8. Red Cliff is a sovereign Indian tribe responsible for the health, safety, and welfare of its citizens. Red Cliff, along with other Native American tribes, have disproportionately borne

the toll of the opioid crisis. Plaintiff brings suit to hold McKinsey responsible for its role in the opioid epidemic wrought upon Red Cliff and its citizens, which has created a nuisance and posed an existential threat to Red Cliff.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction under RCCL §§ 4.1.1 and pursuant to the Tribe's inherent sovereign authority over its territory. Jurisdiction is further supported by the circumstances that (i) Defendants, while present on the Tribe's Indian Lands, entered into or otherwise sought consensual relationships with the Tribe and its Tribal Members, through commercial dealings, contracts and other arrangements (ii) Defendants, while present on the Tribe's Indian Lands, engaged in conduct that threatens the political integrity, economic security and welfare of the Tribe and (iii) it is the Tribe's right to regulate Defendants' activities on Indian Lands and to exercise adjudicative jurisdiction over claims arising from such activities.

10. This Court has personal jurisdiction over Defendant because at all relevant times, McKinsey has purposely availed itself of the privilege of doing business on the Tribal Lands, including by engaging in the business of researching, designing, and implementing marketing and promoting strategies for various opioid manufacturers, including Purdue, in support of their sales and marketing of opioids in Wisconsin and on Tribal Lands. Upon information and belief, McKinsey has members, employees, equity holders, and/or partners in the State of Wisconsin.

11. Defendants' activities and conduct took place on or near, or had direct impacts on, land that constitutes Indian Lands of Red Cliff and the Red Cliff Tribal Members in the State of Wisconsin. The Tribe brings this action against Defendants based on Defendants' activities and conduct that harmed the Tribes, Tribal Members, and non-Tribal Member inhabitants of Indian Lands. Defendants have purposefully availed themselves of the advantages of conducting business within the economic proximity of the Tribes.

12. Defendants' conduct caused and is causing damages to the Red Cliff's proprietary and sovereign interests by imposing significant costs to the Tribe's welfare and security. In addition, Defendants' conduct has caused decreased economic productivity of Tribal Members and non-Tribal Member inhabitants of Red Cliff Lands and employees of the Tribe or wholly owned enterprises of the Tribe and has harmed the long-term welfare of the Red Cliff Tribal Members and non-Tribal Member inhabitants of Tribal Lands and employees of the Tribe or wholly owned enterprises of the Tribe.

13. Venue is proper as the claims herein arose in this judicial district.

III. PARTIES

A. Plaintiff

14. The Red Cliff Band of Lake Superior Chippewa Indians is a sovereign Indian tribe with over 7,500 tribal members. Red Cliff is governed by its organic documents and laws and is principally located in Bayfield County, Wisconsin. Red Cliff exercises inherent sovereign governmental authority over members within its reservation and on behalf of the safety and welfare of Red Cliff and its members ("Tribal Members"), descendant children, and grandchildren and other inhabitants of Red Cliff's reservation. Red Cliff's reservation is located in Bayfield County, Wisconsin. Members of Red Cliff are adversely affected by the actions and conduct of McKinsey both directed at or near Red Cliff's reservation, as well as areas outside of Red Cliff's reservation. Tribal Members live both on and off the Red Cliff reservation.

15. Red Cliff is exercising governmental authority over its citizens and territory pursuant to its aboriginal sovereignty and a Constitution. This action is brought by Red Cliff in the exercise of its authority as a sovereign government and on behalf of Red Cliff in its proprietary capacity and under its *parens patriae* authority in the public interest to protect the health, safety, and welfare of all Red Cliff Members to stop the growing prescription opioid epidemic within the

Tribe. Red Cliff also brings this action as to recover damages and seek other redress for harm caused by Defendants' improper, wrongful, fraudulent, and tortious conduct with respect to the distribution and sale of prescription opioids. Defendants' actions have caused, and continue to cause, a crisis that threatens the health, safety, and welfare of Red Cliff.

16. Nothing herein shall be deemed a general waiver of Red Cliff's sovereign immunity as to issues that are not necessary to decide this action brought by Red Cliff.

17. The opioid epidemic is straining Red Cliff's ability to provide adequate services to its members. With its limited resources, Red Cliff has been forced to divert funds from other tribal priorities to staff new positions needed to address the opioid crisis, including substance abuse counselors, nurses, and physicians specializing in addiction.

B. Defendants

18. Defendant McKinsey and Company, Inc. is organized under the laws of the state of New York. McKinsey's principal place of business is located in the heart of corporate America at 711 Third Avenue, New York, NY 10017.

19. McKinsey is an international management consultant and public relations company. From approximately 2004-2019, McKinsey provided consulting services to Purdue Pharma L.P., working to maximize sales of OxyContin and knowingly perpetuating the opioid crisis. McKinsey has provided related consulting services to other manufacturers of opioids including Johnson & Johnson and Endo Pharmaceuticals, as well as lucrative rebate programs for national pharmacies, including CVS. These consulting services were calculated to pump up demand for opiate pills through false and misleading marketing schemes that ranged from direct-to-consumer TV advertisements to point of sale by opioid pill sales representatives.

20. Plaintiff presently lacks information sufficient to specifically identify the true names or capacities, whether individual, corporate or otherwise, of the Defendants sued herein

under the fictitious names JOHN DOES 1-100 inclusive. Plaintiff will amend this Complaint to show their true names and capacities if and when they are ascertained. Plaintiff is informed and believes, and on such information and belief alleges, that each of the Defendants named as a DOE is responsible in some manner for the wrongful conduct alleged in this Complaint either as an employee or board member or equity owner of McKinsey, or as a related company or enterprise, and is liable for the relief sought herein. JOHN DOES 1-100 include but are not limited to individual partners or members of McKinsey who invested in and/or profited from enterprises related to the opioid epidemic and/or opioid addiction.

IV. FACTS

A. The Corporate Integrity Agreement

21. In May of 2007, Purdue Frederick Company, the parent company of Purdue Pharma L.P. (“Purdue”) pleaded guilty to charges for misleading regulators, doctors, and the public regarding Purdue's opioid OxyContin. In pleading guilty, Purdue admitted to falsely marketing OxyContin as a less addictive, safer alternative to other pain medications.

22. In the global settlement resolution, Purdue and its parent company paid over \$600 million and entered into a Corporate Integrity Agreement with the U.S. Department of Health and Human Services Office of Inspector General.

23. Under the Corporate Integrity Agreement, 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.

B. McKinsey's Role Following the Corporate Integrity Agreement

1. The Sacklers seek to divert money to themselves.

24. The Sackler family is among the richest families in the United States. Members of the Sackler family have controlled Purdue at all times relevant to this complaint.

25. Following the guilty plea, the Sacklers sought to insulate themselves from the risk they perceived in Purdue. Email threads between the Sacklers in early 2008 indicate that the Sacklers had become concerned about personal liability regarding opioid-related misconduct.

26. The Sacklers considered selling Purdue or merging with another pharmaceutical company as an option for limiting their risk. Mortimer Sackler Jr. advocated for a sale or merger in a February 21, 2008 email to Dr. Richard Sackler (a former president and co-chairman of Purdue) and several others, writing “[t]he pharmaceutical industry has become far too volatile and risky for a family to hold 95% of its wealth in. It simply is not prudent for us to stay in the business given the future risks we are sure to face and the impact they will have on the shareholder value of the business and hence the family's wealth.” The risk he referred to was, at least in significant part, further liability related to misconduct in the marketing and sale of OxyContin.

27. Alternatively, the Sacklers considered extracting as much wealth as possible from Purdue through distributions to themselves as shareholders. Such distributions would allow the Sacklers to diversify their assets and make their wealth less vulnerable to judgments regarding Purdue's sales and marketing of opioids, including OxyContin.

28. Either option, a sale or significant distributions to shareholders would require Purdue to increase profitability in the short term. Purdue turned to McKinsey, with which it had an existing business relationship, for help maximizing sales of OxyContin given the requirements of the Corporate Integrity Agreement and the scrutiny that came along with it.

2. McKinsey supplied Purdue with Granular Sales and Marketing Strategies and Remained Intimately Involved in Implementation

29. McKinsey touts its model of engaging in transformational partnerships with its clients. Rather than giving one-off advice, McKinsey learns each client's business intimately and provides tailored, granular strategies for business performance and growth.

30. McKinsey began collaborating with Purdue on or around June 2009. McKinsey was tasked with increasing OxyContin sales despite the Corporate Integrity Agreement.

31. McKinsey provided sales and marketing strategies designed to sell as much OxyContin as possible, at one point in 2010 telling Purdue that the new strategies McKinsey had developed could generate as much as \$400 million in additional annual sales. McKinsey worked with Purdue to implement the strategies, with McKinsey's ongoing and extensive involvement.

32. OxyContin sales grew dramatically, and the Sacklers diverted the resulting profits into other holdings.

33. In a 2009 report, among other sales strategies, McKinsey advised Purdue sales representatives to push the highest dosages of OxyContin, which were the most profitable for Purdue. In order to maximize dosages and improve targeting of the coordinated marketing strategy, McKinsey investigated the prescribing habits of individual physicians.

34. McKinsey helped shape Purdue's OxyContin marketing, which misleadingly centered on freedom and peace of mind for users. The marketing was tailored to avoid running directly afoul of the Corporate Integrity Agreement, but it remained misleading given what Purdue and McKinsey knew about opioids. One advertisement said, "we sell hope in a bottle," despite the fact that both McKinsey and Purdue already understood the addiction problems associated with opioid use and abuse. McKinsey encouraged Purdue to tell doctors that OxyContin would give their patients "the best possible chance to live a full and active life."

35. McKinsey urged Purdue to train and incentivize its sales representatives to increase sales across the market for opioids, even if sales went to Purdue's competitors. This was intended to serve the Sackler family's goal of increasing the marketability of Purdue for potential mergers, but it had the effect of worsening the opioid crisis even beyond the portion of the crisis directly attributable to sales and use of OxyContin.

C. Project Turbocharge

36. The Corporate Integrity Agreement expired in 2012. With this restriction lifted, McKinsey devised additional marketing and sales strategies for Purdue to further increase OxyContin sales.

37. In the second half of 2013, McKinsey made recommendations to Purdue to increase OxyContin revenue, including "Turbocharging Purdue's Sales Engine."

38. McKinsey's "Project Turbocharge" recommendations included revising the existing process for targeting high-prescribing physicians, with a shift from targeting solely on the basis of prescription deciles to considering additional factors. Based on its analysis, McKinsey told Purdue that "[t]here is significant opportunity to slow the decline of OxyContin by calling on more high-value physicians" and that "[t]he revenue upside from sales re-targeting and adherence could be up to \$250 million."

39. Also, as part of the "Project Turbocharge" recommendations, McKinsey determined and advised Purdue that the top half of prescribing physicians "write on average 25 times more scripts per prescriber" than the lower half. McKinsey was behind the "hyper-targeting" of high-volume prescribing doctors and "pain clinics" many of which later became known as "pill mills."

40. Despite knowing that the recently-expired Corporate Integrity Agreement required Purdue to refrain from improperly incentivizing OxyContin sales, McKinsey also recommended increasing incentive compensation for incremental OxyContin prescriptions, advising Purdue that “[r]evision to incentive comp could better align reps to Purdue's economics.” The McKinsey plan was to give persons in the sales chain a stake in “bonus” compensation based upon the volume of pills prescribed in that sales chain.

41. To further turbo charge the opioid pill market, McKinsey recommended decreasing training by six days a year in order to allow employees more time to make sales calls. Meanwhile, McKinsey advised Purdue to exercise closer control over its sales staff in order to generate more efficient physician targeting.

42. Physician targeting paid off. McKinsey advised Purdue that visiting high-prescribing doctors many times per year increased sales, that a “high touch” of “hyper targeted” doctors would pay off in profits.

43. Armed with knowledge of how opiate pills were being tracked by governments, McKinsey recommended that Purdue circumvent pharmacies entirely with a mail order program because enforcement by regulators was decreasing OxyContin dispensing through Walgreens.

44. At the board level, McKinsey urged the Sacklers to impose a “revenue growth goal” on management.

45. With McKinsey’s ongoing involvement and advice, Purdue implemented McKinsey's recommendations discussed above, but rebranded the program from Project Turbocharge to Evolve to Excellence.

46. McKinsey's efforts had the effect the Sacklers had asked McKinsey to achieve. Sales of OxyContin tripled in the years following the 2007 guilty plea, despite the restrictions

imposed by the Corporate Integrity Agreement. According to the U.S. Department of Justice, “[f]rom 2010 to 2018, Purdue’s profits were almost entirely driven by its success in selling OxyContin.”

47. The Sacklers did not sell Purdue or enter into a merger, but their goal of extracting wealth from the business was realized. The Sackler family has withdrawn over \$10 billion from Purdue since 2008, including \$1.7 billion in 2009 alone. These distributions were made possible by McKinsey’s services and came at the expense of a deepening national opioid crisis.

D. McKinsey knew about dangers of opioids and acted to maximize OxyContin prescriptions anyway

48. McKinsey has a long history of consulting in the pharmaceutical industry. In addition to its work with Purdue, McKinsey has performed “opioid-related work” for Johnson & Johnson, Endo International, and Mallinckrodt Pharmaceuticals. McKinsey’s sales efforts for these companies were tragically similar to the Purdue “TURBO CHARGE.” For instance, a McKinsey presentation prepared for Johnson & Johnson recommended that Johnson & Johnson aggressively target and influence doctors treating back pain in order to increase opioid sales.

49. Purdue’s 2007 guilty plea put McKinsey on notice of Purdue’s misconduct. By that time, McKinsey had access to public information indicating that OxyContin and other opioids pose significant risk of addiction and misuse.

50. McKinsey’s presentations to Purdue in 2013 included extensive discussion of doctors’ concerns about opioid misuse and side effects, demonstrating McKinsey’s awareness of the dangers of opioids. Rather than working to limit these disastrous effects, McKinsey treated doctors’ misgivings as obstacles to confront with new messaging.

51. McKinsey continued working with Purdue long after the severity of the opioid crisis was well known. In 2017, McKinsey proposed that Purdue pay CVS and other distributors of OxyContin rebates “for every OxyContin overdose attributable to pills they sold.”

52. A former McKinsey consultant described McKinsey's work with Purdue as “the banality of evil, M.B.A. edition...They knew what was going on. And they found a way to look past it, through it, around it, so as to answer the only questions they cared about: how to make the client money, and when the walls closed in, how to protect themselves.”

53. In a 2018 email thread, apparently fearing consequences for McKinsey's work with Purdue, two McKinsey senior partners who had participated in McKinsey's work advising Purdue discussed deleting documents related to opioids.

E. Purdue's 2020 Guilty Plea and McKinsey's Recent Statement

54. In October of 2020, Purdue once again reached an agreement (the “2020 Settlement Agreement”) with the U.S. Department of Justice to enter a guilty plea related to its marketing of OxyContin. The agreement includes \$8.3 billion in penalties from Purdue and \$225 million from the Sackler family.

55. In the 2020 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--frivolous prescriptions that experts say helped fuel a drug addiction crisis that has ravaged America for decades.”

56. The 2020 Settlement Agreement was entered by Purdue and the United States government. It explicitly states that it does not release Purdue of “[a]ny liability for claims of the states or Indian tribes.”

57. The 2020 Settlement Agreement includes a provision specifically reserving claims regarding “[a]ny liability of entities other than the [Purdue Bankruptcy] Debtors, including consultants.”

58. On December 5, 2020, McKinsey issued the following statement regarding its work with Purdue:

December 5, 2020—As we look back at our client service during the opioid crisis, we recognize that we did not adequately acknowledge the epidemic unfolding in our communities or the terrible impact of opioid misuse and addiction on millions of families across the country. That is why last year we stopped doing any work on opioid-specific business, anywhere in the world.

Our work with Purdue was designed to support the legal prescription and use of opioids for patients with legitimate medical needs, and any suggestion that our work sought to increase overdoses or misuse and worsen a public health crisis is wrong. That said, we recognize that we have a responsibility to take into account the broader context and implications of the work that we do. Our work for Purdue fell short of that standard.

We have been undertaking a full review of the work in question, including into the 2018 email exchange which referenced potential deletion of documents. We continue to cooperate fully with the authorities investigating these matters.

59. In recent weeks, McKinsey has settled opioid-related claims with 49 states, the District of Columbia, and five U.S. territories. McKinsey completely rebuffed Native Americans and Indian tribes.

60. McKinsey took further action recently by firing its CEO who had agreed to the 49-state settlement, with the indication that the CEO had made a mistake in confessing the wrongdoing of McKinsey.

F. Impact of Opioid Abuse, Addiction and Diversion on American Indians and Alaska Natives

61. There are 574 federally recognized Tribes in the United States, located within the borders of 35 states. They are diverse in terms of their size, geography, culture, and resources, but they share a status as sovereign governments responsible for the well-being of their citizens.

62. Native Americans have disproportionately borne the toll of the opioid crisis.

63. Native Americans suffer the highest per capita rate of opioid overdoses.

64. According to the Indian Health Service (“IHS”), there has been a “four-fold increase in opioid overdoses from 1999 to 2013 among American Indians and Alaska Natives . . . [T]wice the rate of the general U.S. population.”

65. The CDC reported that the “rates of death from prescription opioid overdose among American Indian or Alaska Natives increased almost four-fold from 1.3 per 100,000 in 1999 to 5.1 per 100,000 in 2013.” By 2014, the CDC reported “8.4 per 100,000 Native Americans were dying of opioid overdoses, the highest number of any racial demographic.”

66. In 2014, Native Americans had the highest death rate from opioid overdoses out of any ethnic group in the country.

67. The impact on Native American children is particularly devastating. In a study conducted to examine substance-related disorders among adolescents across racial and ethnic groups, “Racial/Ethnic Variations in Substance-Related Disorders Among Adolescents in the United States,” the authors found, of 72,561 adolescents aged 12 to 17 years:

- a. Analgesic opioids were the second most commonly used illegal drug after marijuana;
- b. Analgesic opioid use was comparatively prevalent among Native American adolescents (9.7%);
- c. Native Americans have the highest prevalence of use (47.5%) and disorders (15.0%); and

d. 31.5% of Native Americans had substance-related disorders.

68. The study concluded:

Native Americans have the highest prevalence of substance use and substance-related disorders, adding to evidence that young Native Americans are a vulnerable group facing numerous stressors, trauma, and health disparities (e.g., highest rate of suicide, underfunded systems of care, and lack of access to appropriate care). The results herein highlight a critical need for intervention to reduce their burdens from substance use and for policies to address presently underfunded systems of care and improve infrastructures linking behavioral and primary health care services. [footnotes omitted.]

69. The CDC reported that approximately 1 in 10 Native American youths ages 12 or older used prescription opioids for nonmedical purposes in 2012, double the rate for white youth.

70. The fact that adolescents are able to easily obtain prescription opioids through the black market created by opioid diversion highlights the direct impact on Plaintiff and its community by Purdue and McKinsey's actions and inactions.

71. Even the youngest members of tribal communities bear the consequences of the opioid abuse epidemic fueled by McKinsey's conduct working with Purdue and other manufacturers of opioids. Between 2009 and 2012, "American Indian women [were] 8.7 times more likely to be diagnosed with maternal opiate dependence or abuse during pregnancy," compared to non-Hispanic women. That translates into 1 in 10 pregnancies among American Indian women. As a result, many tribal infants suffer from opioid withdrawal and Neonatal Abstinence Syndrome ("NAS").

72. The impact of NAS can be life-long. Most NAS infants are immediately transferred to a neonatal intensive care unit for a period of days, weeks, or even months. NAS can also require an emergency evacuation for care to save the infant's life.

73. Many NAS infants have short-term and long-term developmental issues that prevent them from meeting basic cognitive and motor-skills milestones. Many will suffer from vision and digestive issues; some are unable to attend full days of school. These disabilities follow these children through elementary school and beyond.

74. Many of the parents of these children continue to relapse into prescription opioid use and abuse, having an impact on their families and tribal communities.

G. The Impact of McKinsey's Work with Opioid Manufacturers on Plaintiff

75. Red Cliff's own experience treating opioids illustrates these national trends and those of the tribal community generally.

76. Indeed, Red Cliff is currently facing a public crisis that threatens to undermine the safety and well-being of the entire community living on and adjacent to Red Cliff lands. Overarching health, public safety and law enforcement concerns relate to, among others, prescription opioid drug abuse and major crimes involving opioid and drug use.

77. The opioid epidemic has escalated in the Red Cliff community with devastating effects. Substantial opiate-related substance abuse, hospitalization, and death mirror the distribution of opioids.

78. Because of the well-established relationship between the use of prescription opioids and the use of non-prescription opioids, such as heroin, the increasing distribution of opioids to members of Red Cliff caused the opioid epidemic to include heroin addiction, abuse, and death. This is particularly concerning in light of the recent influx of synthetic fentanyl products trafficked into and around the United States.

79. In addition, there has been an increase in major crimes on the Red Cliff's reservation involving opioid use, undermining the safety of the members of Red Cliff.

80. Prescription opioid abuse, addiction, morbidity, and mortality are hazards to public health and safety in the Red Cliff community.

81. Increases in issues related to the misuse, addiction, and/or overdose of opioids Red Cliff has borne include, but are not limited to the following:

- a. Emergency medical visits for opioid misuse, addiction, and/or overdose.
- b. Emergency medical visits for infections, injuries, illnesses, and drug-seeking related to opioid misuse, addiction, and/or overdose.
- c. Hospitalizations related to the misuse, addiction, and/or overdose of opioids.
- d. Administering and staffing Red Cliff's social services and resources aid those members of the Red Cliff addicted to and/or dependent on opioids.
- e. Increased burdens related to cases of abuse or neglect of children whose guardians are addicted to opioids, and the many foster or adoptive guardians who take on the role of caretaker resulting from increased out of home placements.
- f. Increased burden in administering and staffing Red Cliff's public safety infrastructure, personnel, and resources to respond to increased opioid and related drug trafficking and human trafficking, including coordination with County and State law enforcement.
- g. Care, education and support of pregnant women addicted to opioids and of their children born with NAS; including ongoing educational and developmental support to address the long-term consequences of fetal opioid exposure; and
- h. Treatment of victims, including holistic community-based treatment programming and regular drug screening.

H. Tolling of Statutes of Limitations

1. Equitable Estoppel and Fraudulent Concealment

82. McKinsey is equitably estopped from relying upon a statute of limitations defense because, alongside Purdue, McKinsey undertook active efforts to deceive Plaintiff and to purposefully conceal their unlawful conduct and fraudulently assure the public and Plaintiff that they were undertaking efforts to comply with their obligations under the controlled substances laws, all with the goal of protecting their registered manufacturer or distributor status in the State

and to continue generating profits. Notwithstanding the allegations set forth above, McKinsey and Purdue affirmatively assured the public and Plaintiff that they were working to curb the opioid epidemic. Until late 2020, McKinsey's instrumental role in the opioid epidemic and crisis had been concealed from the public and from Red Cliff.

83. McKinsey and Purdue were deliberate in taking steps to conceal their conspiratorial behavior and active role in the deceptive marketing and the oversupply of opioids through overprescribing and suspicious sales, all of which fueled the opioid epidemic.

84. McKinsey's consulting services were given confidentially, and both McKinsey and Purdue concealed the content of those services from the public. Even many of Attorney Generals of several states were unaware of McKinsey's wrongful conduct in creating and fostering the opioid epidemic.

85. McKinsey and its clients also concealed from Plaintiff the existence of Plaintiff's claims by hiding their lack of cooperation with law enforcement and affirmatively seeking to convince the public that Purdue's legal duties to report suspicious sales had been satisfied through public assurances that they were working to curb the opioid epidemic. They publicly portrayed themselves as committed to working diligently with law enforcement and others to prevent diversion of these dangerous drugs and curb the opioid epidemic, and they made broad promises to change their ways insisting they were good corporate citizens. These repeated misrepresentations misled regulators, prescribers and the public, including Plaintiff, and deprived Plaintiff of actual or implied knowledge of facts sufficient to put Plaintiff on notice of potential claims.

86. Plaintiff did not discover the nature, scope and magnitude of McKinsey's misconduct, and its full impact on Plaintiff, and could not have acquired such knowledge earlier through the exercise of reasonable diligence.

87. McKinsey's campaign to misrepresent and conceal the truth about the opioid drugs that they were aggressively pushing on Plaintiff deceived the medical community, consumers, and Plaintiff.

88. McKinsey intended that their wrongful conduct, schemes, actions and omissions made in tandem with its clients would be relied upon by the public and the medical community, including by Red Cliff. Plaintiff did not know and did not have the means to know the truth, as even those charged with the enforcement of laws, many states' Attorneys General, did not know.

89. Plaintiff reasonably relied on McKinsey and Purdue's affirmative statements regarding their purported compliance with their obligations under the law and consent orders.

2. McKinsey and Purdue Persisted in The Fraudulent Scheme Despite a Guilty Plea and Large Fine

90. In May 2007, Purdue and three of its executives pled guilty to federal charges of misbranding OxyContin in what the company acknowledged was an attempt to mislead doctors about the risk of addiction. Purdue was ordered to pay \$600 million in fines and fees. In its plea, Purdue admitted that its promotion of OxyContin was misleading and inaccurate, misrepresented the risk of addiction and was unsupported by science. Additionally, Michael Friedman, the company's president, pled guilty to a misbranding charge and agreed to pay \$19 million in fines; Howard R. Udell, Purdue's top lawyer, also pled guilty and agreed to pay \$8 million in fines; and Paul D. Goldenheim, its former medical director, pled guilty as well and agreed to pay \$7.5 million in fines.

91. After Purdue's 2007 guilty plea and various settlements and consent judgments with state Attorneys General, McKinsey implemented a strategy of using an army of lobbyists to fight any legislative actions that might encroach on its business. Between 2006 and 2015, Purdue and other opioid businesses, along with associated nonprofits, spent approximately \$900 million dollars on lobbying and political contributions— eight times what the gun lobby spent during that period. McKinsey participated extensively in these actions and provided Purdue with strategies and assistance to turbo charge the opioids market and maximize sales of opioid pills.

92. With McKinsey's key participation, Purdue continued to pay doctors on speakers' bureaus to promote hyper prescribing of OxyContin for chronic pain and to fund seemingly neutral organizations to disseminate the message that opioids were non-addictive and could be used safely. At least until early 2018, Purdue via McKinsey continued to deceptively market the benefits of opioids for chronic pain while diminishing the associated dangers of addiction.

93. McKinsey knew or should have known that the actions it took with Purdue were unlawful, and yet deliberately proceeded in order to increase Purdue's sales and profits, and in turn to serve McKinsey's financial interests.

94. Johnson and Johnson suffered one of the largest verdicts in the history of pharmaceutical drug litigation in the State of Oklahoma case regarding Johnson & Johnson's role in the opioid crisis, due in large part to McKinsey.

95. Mallinckrodt, a large generic manufacturer and distributor of opioid pills, filed for bankruptcy protection due to its liabilities and role regarding the opioid crises, due in part to McKinsey.

96. CVS continues to thrive due in part to McKinsey's wrongful rebate scheme involving opiate pills.

97. The overall opioid crisis continues to burn wildly due to the turbo charging of the market and the hyper-targeting of high-volume prescribing doctors by Endo, due in part to the wrongful conduct of McKinsey.

98. In general, the overall opioid crisis, the rise of pill mills, the proliferation of pill pushing high volume doctors, and the creation of pain clinics operated by anesthesiologists are due in part to the wrongful conduct of McKinsey. There also were many “copycats” in the opioid industry who mimicked the McKinsey way. All of this led to the opioid epidemic reaching epic proportions throughout the United States.

99. Knowing that their products were highly addictive, ineffective, and unsafe for the treatment of long-term chronic pain, non-acute and non-cancer pain, McKinsey, who participated in the marketing and sale of opioids as described in this Complaint, and manufacturers of opioids, including Purdue, Johnson & Johnson, Cephalon, Janssen, Endo, and Mallinckrodt (collectively, including McKinsey, the “Opioid Marketing Enterprise Members”) formed an association-in-fact enterprise and engaged in a scheme to unlawfully increase their profits and sales, and grow their share of the prescription painkiller market, through repeated and systematic misrepresentations about the safety and efficacy of opioids for treating long-term chronic pain.

100. In order to unlawfully increase the demand for opioids, the Opioid Marketing Enterprise, through their personal relationships, had the opportunity to agree to, form, and take actions in furtherance of the Opioid Marketing Enterprise’s common purpose. The Opioid Marketing Enterprise Members’ substantial financial contribution to the Opioid Marketing Enterprise, and the advancement of opioid-friendly messaging, helped to turbo charge the U.S. opioids epidemic.

101. The Opioid Marketing Enterprise Members, through the Opioid Marketing Enterprise, concealed the true risks and dangers of opioids from the medical community and the public, including Plaintiff, and made misleading statements and misrepresentations about opioids that downplayed the risk of addiction and exaggerated the benefits of opioid use. The misleading statements included: (a) that addiction is rare among patients taking opioids for pain; (b) that addiction risk can be effectively managed; (c) that symptoms of addiction exhibited by opioid patients are actually symptoms of an invented condition the Opioid Marketing Enterprise Members named “pseudo-addiction”; (d) that withdrawal is easily managed; (e) that increased dosing presents no significant risks; (f) that long-term use of opioids improves function; (g) that the risks of alternative forms of pain treatment are greater than the adverse effects of opioids; (h) that use of time-released dosing prevents addiction; (i) that abuse-deterrent formulations provide a solution to opioid abuse; and (j) that opioids would bring patients freedom and peace of mind.

102. The scheme devised, implemented and conducted by the Opioid Marketing Enterprise Members was a common course of conduct designed to ensure that the Opioid Marketing Enterprise Members unlawfully increased their sales and profits through concealment and misrepresentations about the addictive nature and effective use of the Opioid Marketing Enterprise Members’ drugs. The Opioid Marketing Enterprise Members acted together for a common purpose and perpetuated the Opioid Marketing Enterprise’s scheme, including through the unbranded promotion and marketing network as described above.

103. There was regular communication between the Opioid Marketing Enterprise Members in which information was shared, misrepresentations were coordinated, and payments were exchanged. The Opioid Marketing Enterprise Members functioned as a continuing unit for

the purpose of implementing the Opioid Marketing Enterprise's scheme and common purpose, and each agreed and took actions to hide the scheme and continue its existence.

104. As public scrutiny and media coverage focused on how opioids ravaged communities in throughout the United States, McKinsey was unshaken by its opioid sales and marketing strategies – McKinsey at a minimum did not challenge Purdue or other manufacturers' misrepresentations, seek to correct their previous misrepresentations, terminate their role in the Opioid Marketing Enterprise, nor disclose publicly that the risks of using opioids for chronic pain outweighed their benefits and were not supported by medically acceptable evidence. Instead, McKinsey continued to participate in the Opioid Marketing Enterprise for financial gain and significant profit directly and indirectly.

105. Certain McKinsey partners also used the information they gained in the firm's representation of the various opioid pill companies to make related personal investments that profited from a turbo charged opioid pill market. These partners are included in the JOHN DOE DEFENDANTS.

106. The Opioid Marketing Enterprise Members engaged in certain discrete categories of activities in furtherance of the common purpose of the Opioid Marketing Enterprise. The Opioid Marketing Enterprise's conduct in furtherance of the common purpose of the Opioid Marketing Enterprise involved misrepresentations regarding the risk of addiction and safe use of prescription opioids for long-term chronic pain, including targeting physicians with misleading claims.

107. The impact of the Opioid Marketing Enterprise's scheme is still in place—*i.e.*, the opioids continue to be prescribed and used for chronic pain throughout the area of the Plaintiff, and the epidemic continues to injure Plaintiff, and consume Plaintiff's resources.

108. As a result, it is clear that the Opioid Marketing Enterprise Members, including McKinsey, were willing actors in the Opioid Marketing Enterprise, had a common purpose and interest in the object of the scheme, functioned within a structure designed to effectuate the Enterprise's purpose, and profited from the Opioid Marketing Enterprise.

109. For many years, each of the Opioid Marketing Enterprise Members exerted control over the Opioid Marketing Enterprise and participated in the operation or management of the affairs of the Opioid Marketing Enterprise, directly or indirectly, in the following ways:

- a. Creating and providing a body of deceptive, misleading and unsupported medical and popular literature about opioids that (i) understated the risks and overstated the benefits of long-term use; (ii) appeared to be the result of independent, objective research; and (iii) was thus more likely to be relied upon by physicians, patients, and payors;
- b. Creating and providing a body of deceptive, misleading and unsupported electronic and print advertisements about opioids that (i) understated the risks and overstated the benefits of long-term use; (ii) appeared to be the result of independent, objective research; and (iii) was thus more likely to be relied upon by physicians, patients, and payors;
- c. Creating and providing a body of deceptive, misleading and unsupported sales and promotional training materials about opioids that (i) understated the risks and overstated the benefits of long-term use; (ii) appeared to be the result of independent, objective research; and (iii) was thus more likely to be relied upon by physicians, patients, and payors;
- d. Devising and implementing marketing schemes that included targeting and misleading physicians, unlawfully incentivizing sales representatives to maximize prescriptions and dosages, and evading regulatory constraints;
- e. Disseminating many of their false, misleading, imbalanced, and unsupported statements through unbranded materials that appeared to be independent publications; and
- f. Using front groups and key opinion leaders ("KOLs") to mislead the public about opioids.

110. The scheme devised and implemented by the Opioid Marketing Enterprise Members amounts to a common course of conduct intended to increase the Opioid Marketing

Enterprise Members' sales from prescription opioids by encouraging the prescribing and use of opioids for long-term chronic pain. The scheme was a continuing course of conduct, and many aspects of it continue through to the present.

111. The Opioid Marketing Enterprise Members' scheme described herein was perpetrated, in part, through multiple acts of fraud and misrepresentation.

112. The Opioid Marketing Enterprise Members devised and knowingly carried out an illegal scheme and artifice to defraud by means of materially false or fraudulent pretenses, representations, promises, or omissions of material facts regarding the safe, non-addictive and effective use of opioids for long-term chronic, non-acute and non-cancer pain.

113. By intentionally concealing the material risks and affirmatively misrepresenting the benefits of using opioids for chronic pain, to, prescribers, regulators and the public, including Plaintiff, the Opioid Marketing Enterprise Members engaged in a fraudulent and unlawful course of conduct.

114. The Opioid Marketing Enterprise Members' opioids marketing scheme involved thousands of communications, publications, representations, statements, advertisements, sales presentations to physicians, internet posts, payments, and rebate schemes including, *inter alia*:

- a. Marketing materials about opioids, and their risks and benefits, which the Opioid Marketing Enterprise Members sent to health care providers, transmitted through the internet and television, published, and transmitted to front groups and KOLs located across the country and Plaintiff;
- b. Written representations and telephone calls among the Opioid Marketing Enterprise Members, and between the Opioid Marketing Enterprise Members and front groups, regarding the misrepresentations, marketing statements and claims about opioids, including the non-addictive, safe use of chronic long-term pain generally;
- c. Written representations and telephone calls among the Opioid Marketing Enterprise Members, and between the Opioid Marketing Enterprise Members and KOLs regarding the misrepresentations, marketing statements and claims about opioids, including the non-addictive, safe use of chronic long-term pain generally;

- d. E-mails, telephone and written communications among the Opioid Marketing Enterprise Members, and between the Opioid Marketing Enterprise Members and the front groups agreeing to or implementing the opioids marketing scheme;
- e. E-mails, telephone and written communications among the Opioid Marketing Enterprise Members, and between the Opioid Marketing Enterprise Members and the KOLs agreeing to or implementing the opioids marketing scheme;
- f. Communications among the Opioid Marketing Enterprise Members, and between the Opioid Marketing Enterprise Members, front groups and the media regarding publication, drafting of treatment guidelines, and the dissemination of the same as part of the Opioid Marketing Enterprise;
- g. Communications among the Opioid Marketing Enterprise Members, and between the Opioid Marketing Enterprise Members, KOLs and the media regarding publication, drafting of treatment guidelines, and the dissemination of the same as part of the Opioid Marketing Enterprise;
- h. Written and oral communications directed to Plaintiff and/or its members and that fraudulently misrepresented the risks and benefits of using opioids for chronic pain; and
- i. Receipts for increased profits that show the wrongful proceeds of the scheme.

115. To achieve the common goal and purpose of the Opioid Marketing Enterprise, the Opioid Marketing Enterprise Members and members of the Opioid Marketing Enterprise hid from the consumers, prescribers, regulators and the Plaintiff: (a) the fraudulent nature of the Opioid Marketing Enterprise Members' marketing scheme; (b) the fraudulent nature of statements made by the Opioid Marketing Enterprise Members and by their KOLs, front groups and other third parties regarding the safety and efficacy of prescription opioids; and (c) the true nature of the relationship between the members of the Opioid Marketing Enterprise.

116. The Opioid Marketing Enterprise Members, and each member of the Opioid Marketing Enterprise agreed, with knowledge and intent, to the overall objective of the Opioid Marketing Enterprise Members' fraudulent scheme and participated in the common course of conduct to commit acts of fraud and indecency in marketing prescription opioids.

117. Indeed, for the Opioid Marketing Enterprise Members' fraudulent scheme to work, each of them had to agree to implement similar tactics regarding fraudulent marketing of prescription opioids. This conclusion is supported by the fact that opioid manufacturers among the Opioid Marketing Enterprise Members financed, supported, and worked through the same KOLs and Front groups, and often collaborated on and mutually supported the same publications, continuing medical education (CME) materials, presentations, and prescription guidelines.

118. The Opioid Marketing Enterprise Members' predicate acts all had the purpose of creating the opioid epidemic that substantially injured Plaintiff's operation of the tribal government and property, while simultaneously generating billion-dollar revenue and profits for the Opioid Marketing Enterprise Members. The predicate acts were committed or caused to be committed by the Opioid Marketing Enterprise Members through their participation in the Opioid Marketing Enterprise and in furtherance of its fraudulent scheme.

V. CAUSES OF ACTION

Count I: Unfair and Deceptive Practices

119. Red Cliff re-alleges and incorporates by reference the foregoing paragraphs.

120. Defendants, individually, jointly, and severally, made representations to the public with the intent to induce an obligation; the representations were untrue, deceptive, and/or misleading; and, the representations materially induced and/or caused pecuniary loss to the Plaintiff.

121. At times, places, and involving participants known exclusively to Defendant and concealed from Plaintiff, Defendant has engaged in unlawful, unfair, and fraudulent business practices. Defendant's business practices as described in this Complaint are deceptive and are likely to deceive consumers in violation of common law.

122. These unlawful practices include, but are not limited to, representing that opioids had sponsorship, approval, characteristics, ingredients, uses, or benefits which they did not have, that opioids were of a particular standard, quality, or grade when they were of another, and that opioids could be safely used by all to treat chronic pain without consequence.

123. Defendants knew and should have known at the time of making or disseminating these statements, or causing these statements to be made or disseminated, that such statements were false and misleading and therefore likely to deceive the public.

124. Defendants' omissions, which are deceptive and misleading in their own right, render even Defendants' seemingly truthful statements about opioids false and misleading. All of this conduct, separately and collectively, was likely to deceive Red Cliff and its members.

125. The aforementioned actions and conduct of Defendants constitute unfair and deceptive trade practices and each directly and proximately caused substantial damage and injury to Red Cliff or its tribal members in that Red Cliff was materially induced, mislead, or otherwise deceived by Defendants' actions.

126. The foregoing conduct constitutes an unfair, deceptive, unscrupulous, and immoral trade practice that is against public policy.

127. The aforementioned actions and conduct of Defendants categorically constitute unfair and deceptive trade practices.

128. As a direct and proximate result of the foregoing acts and practices, Defendant has received, or will receive, income, profits, and other benefits, which it would not have received if it had not engaged in the violations described in this Complaint.

129. As a direct and proximate result of the foregoing acts and practices, McKinsey have obtained an unfair advantage over similar businesses that have not engaged in such practices to the detriment of Red Cliff.

130. Red Cliff is entitled to recover civil penalties for each of Defendants' violations, as well as injunctive relief, reasonable attorney's fees, and whatever other relief may be deemed appropriate.

Count II: Fraudulent Drug Advertising

131. Red Cliff re-alleges and incorporates by reference the foregoing paragraphs.

132. Defendants have engaged in untrue, deceptive, or misleading acts or practices in the marketing and advertising of drugs.

133. Defendants, individually, jointly, and severally, made representations or caused representations to be disseminated with respect to the efficacy and safety of prescription opioids to the public; the representations were untrue, deceptive, and/or misleading; and the representations materially induced and/or caused pecuniary loss to the Plaintiff.

134. Defendants implemented a series of misleading advertisements, falsely promoting the efficacy of prescription opioids for the treatment of chronic pain. False information included, but was not limited to, statements about the use of opioids to treat chronic pain, or misleading statements about opioids to be made or disseminated to the public. The Defendants' actions turbo charged the opioid market.

135. Defendants implemented a series of misleading advertisements, deceptively diminishing and concealing the risks of opioid addiction and the safety of using opioids to improve quality of life.

136. Defendants knew or should have known, at the time it made or disseminated the false and misleading statements, or caused these statements to be made or disseminated, that the statements were false or misleading and therefore likely to deceive the public.

137. Defendants knew or should have known that its false and misleading advertising created a false or misleading impression of the risks and benefits of long-term opioid use and would result in unnecessary and improper opioid prescriptions and use.

138. The aforementioned actions and conduct of the Defendants constitute false and misleading statements in the advertising of opioids, and each directly and proximately caused substantial damage and injury to Red Cliff and its members.

139. Plaintiff is entitled to a monetary award for compensatory damages, abatement, and punitive damages.

Count III: Public Nuisance

140. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

141. The opioid epidemic is a public nuisance as it has been and is (a) injurious to the public health of Red Cliff and its members health; (b) indecent and/or offensive to the public and Red Cliff; (c) an obstruction to the free use of Red Cliff's property and community so as to interfere with the comfortable enjoyment of Red Cliff's property and the lives and properties of the Tribal Members.

142. The public nuisance of the opioid epidemic has adversely affected, is adversely affecting, and will continue to adversely affect the whole community and many individual members of Red Cliff due to the annoyance or damage inflicted upon individual members of an unequal nature.

143. This action is brought by the Plaintiff to abate the public nuisance created by the McKinsey.

144. McKinsey has created or assisted in the creation of a condition that is injurious to the health and interferes with the comfortable enjoyment of life and property of Red Cliff and its Tribal Members, its entire community and neighborhoods and of a considerable number of persons.

145. The public nuisance is substantial and unreasonable. McKinsey's actions caused and continue to cause the public health epidemic described above and that harm outweighs any offsetting benefit.

146. McKinsey knew and should have known that their promotion of opioids was false and misleading and that their deceptive marketing scheme and other unlawful, unfair, and fraudulent actions would create or assist in the creation of the public nuisance—the opioid epidemic.

147. McKinsey's actions were, at the very least, a substantial factor in opioids becoming widely available and widely used; at the very least, a substantial factor in deceiving doctors and patients about the risks and benefits of opioids for the treatment of chronic pain. Without McKinsey's actions, opioid use, misuse, abuse, and addiction would not have become so widespread, and the opioid epidemic that now exists would have been averted or would have been much less severe.

148. McKinsey has breached its duties to Red Cliff by disseminating false and misleading information regarding the dangers of opioid use and by targeting physicians likely to prescribe opioids for pain management despite the availability of other, less or non-addictive pain killers, and by turbo charging the opioid pill market.

149. McKinsey unlawfully provided false or misleading material information about prescription opioids or unlawfully failed to use reasonable care or comply with statutory requirements in the distribution of prescription opioids.

150. McKinsey's acts and omissions created the opioid epidemic and thereby caused injury to the health of Plaintiff and the Plaintiff's members and interfered with the comfortable enjoyment of life and property of others, specifically the Plaintiff and its members.

151. McKinsey's acts and omissions offend decency and include the illegal sales of controlled substances.

152. McKinsey's acts and omissions render members of Red Cliff insecure.

153. Plaintiff did not consent, expressly or impliedly, to the wrongful conduct of Defendant.

154. As a direct and legal result of the conduct of McKinsey, Plaintiff suffered harm that is different from the type of harm suffered by the general public. McKinsey's acts and omissions proximately caused injury to Plaintiff and its members including, *inter alia*, recoupment of costs of providing or paying for the services of Plaintiff, flowing from an ongoing and persistent public nuisance which Plaintiff seeks to abate.

155. McKinsey has a duty to pay for and/or remedy and abate the nuisance caused the by the prescription opioid epidemic.

156. The public nuisance created, perpetuated, and maintained by McKinsey can be abated and further recurrence of such harm and inconvenience can be abated.

157. The hazardous condition which was created by and/or permitted to exist by McKinsey affected a substantial number of people at the same time within the general public, including Plaintiff, and constitutes a public nuisance.

158. McKinsey has failed to abate the nuisance it created.

159. Plaintiff seeks economic damages from the Defendant as reimbursement for the costs associated with past efforts to eliminate the hazards to public health and safety.

160. Plaintiff seeks an order providing for abatement of the public nuisance that Defendant created or assisted in the creation of, and enjoining Defendant from future nuisance creations.

161. Plaintiff seeks economic damages from the Defendant to pay for the costs to permanently eliminate the hazards to public safety and abate the public nuisance.

162. As a direct result of Defendant's conduct, Plaintiff and its community have suffered actual injury and economic damages including, but not limited to, significant expenses for police and emergency responders, education and training, child protection, corrections, judicial and other services.

163. McKinsey is liable to Plaintiff for the costs borne by Plaintiff as a result of the opioid epidemic and for the costs of abating the nuisance created by McKinsey. Plaintiff is entitled to a monetary award for compensatory damages, abatement, and punitive damages.

Count IV: Negligence and Gross Negligence

164. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

165. The opioid epidemic was a direct, legal, and proximate result of McKinsey's negligence. As a direct, proximate, and legal result of said negligence, Plaintiff suffered damages as alleged herein.

166. Through its work with Purdue and other opioid companies, McKinsey assumed and owed Plaintiff duties of care. McKinsey's failure to comply with their duties of care proximately caused damage to Plaintiff.

167. The negligence of McKinsey was a substantial factor in causing Plaintiff's damages.

168. As a further direct and proximate result of McKinsey's negligence, Plaintiff suffered damages including, but not limited to economic loss, business loss, emotional distress, annoyance, disturbance, shame, inconvenience, drug addiction and/or dependency, and neonatal abstinence syndrome.

169. There is moral blame attached to McKinsey as a result of the terrible injuries and suffering their misconduct caused, including the damage to Plaintiff.

170. Public policy supports finding a duty of care in this circumstance, and a finding of a duty of care on McKinsey will also deter McKinsey from engaging in such behavior in the future.

171. Further, the conduct alleged against McKinsey in this complaint was despicable and subjected Plaintiff to cruel and unjust hardship in conscious disregard of its rights, constituting oppression, for which McKinsey must be punished by punitive and exemplary damages in an amount according to proof. McKinsey's conduct evidences a conscious disregard for the safety and welfare of others, including Plaintiff. One or more of McKinsey's officers, directors, or managing agents, including one or more of John Does 1-100, personally committed, authorized, and/or ratified the despicable and wrongful conduct alleged in this complaint.

172. Plaintiff is entitled to a monetary award for compensatory damages, abatement, and punitive damages.

Count V: Unjust Enrichment

173. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

174. Plaintiff has expended substantial amounts of money to fix or mitigate the societal harms caused by Defendant's conduct and that of John Does 1-100.

175. The expenditures by Plaintiff in providing services to people who use opioids have added to Defendant's wealth, including John Does 1-100. The expenditures by Plaintiff have helped sustain Defendant's businesses and make John Does 1-100 very wealthy.

176. Plaintiff has conferred a benefit upon Defendants by paying for what may be called Defendants' externalities – the costs of the harm caused by Defendants' negligent distribution and sales practices.

177. Defendants are aware of this obvious benefit, and that retention of this benefit is unjust.

178. Defendants made substantial profits while fueling the prescription drug epidemic in Plaintiff's community.

179. Defendants have been unjustly enriched by their negligent, intentional, malicious, oppressive, illegal and unethical acts, omissions, and wrongdoing.

180. It would be inequitable to allow Defendants to retain benefit or financial advantage.

181. Plaintiff demands judgment against the Defendant McKinsey and John Does 1-100 for restitution, disgorgement, and any other relief allowed in law or equity. Plaintiff is entitled to a monetary award for compensatory damages, abatement, and punitive damages.

Count VI: Common Law Fraud

182. Red Cliff re-alleges and incorporates by reference the foregoing paragraphs.

183. Defendants falsely represented material facts and concealed material facts concerning their knowledge and data showing red flags of opioid over-prescription, opioid diversion, and opioid-related crime.

184. Defendants' fraudulent conduct includes but is not limited to: (a) facilitating the sales of opioids; (b) facilitating the promotion and marketing of opioids to potential users and prescribing physicians; (c) facilitating the overprescribing of patients by physicians; and (d) identifying and targeting for sales demographics especially likely to be opioid users, all while fraudulently misrepresenting or concealing the dangerous characteristics of opioids.

185. These false representations and concealments were reasonably calculated to deceive prescribing physicians in the patient areas of Red Cliff, were made with the intent to deceive, and did in fact deceive physicians who prescribed opioids for chronic pain.

186. These false representations and concealments were reasonably calculated to deceive prescribing Red Cliff physicians were made with the intent to deceive, and did in fact deceive physicians who prescribed opioids for chronic pain.

187. But for these false representations and concealments of material fact, Red Cliff, upon which Plaintiff relied to its detriment, would not have incurred excessive costs and economic loss.

188. Defendants' false representations and concealments of material fact were intentional, with malice aforethought, in reckless disregard of Plaintiff's rights, and/or grossly negligent.

189. As a direct and proximate cause of Defendants' fraudulent conduct, Red Cliff has suffered damages and is entitled to an award of compensatory and punitive damages.

Count VII: Civil Conspiracy

190. Red Cliff re-alleges and incorporates by reference the foregoing paragraphs.

191. Defendants participated in and helped orchestrate a broad scheme to deceptively market opioids.

192. Defendants were paid to provide consulting services to Purdue Pharma L.P., and other pharmacy manufacturers working to maximize sales of OxyContin and other opioids and knowingly perpetuating the opioid crisis.

193. Defendants continuously supplied their services to their pharmacy manufacturer clients despite having actual or constructive knowledge that those pharmacies were breaching their common law duties, among others.

194. Neither Defendants nor their clients, the opioid manufacturers, would have profited so significantly without their concerted conduct.

195. As a result of the concerted action between the Defendants and their clients, Red Cliff and its members have suffered damage.

196. The Red Cliff Tribe demands judgement against Defendants for compensatory and punitive damages.

VI. PRAYER FOR RELIEF

197. WHEREFORE, Plaintiff prays that the Court:

a. Enter judgment against McKinsey and in favor of Plaintiff;

b. Award damages caused by the opioid epidemic, including but not limited to: compensatory damages in an amount sufficient to compensate Plaintiffs fairly and completely for all damages; punitive damages; treble damages; disgorgement of illicit proceeds; pre-judgment and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate;

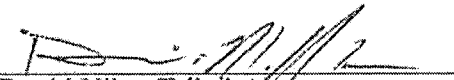
- c. Enter orders and procedures to abate the nuisance created by McKinsey's wrongful conduct and award monetary damages for abatement of the nuisance;
- d. Enjoin McKinsey from continuing or repeating the wrongful conduct alleged herein and from the publication and/or dissemination of false and misleading materials directly or indirectly;
- e. Award Plaintiff its costs of suit, including reasonable attorneys' fees as provided by law;
- f. Award such further and additional relief as the Court may deem just and proper under the circumstances; and
- g. Grant Plaintiff the right to amend its pleadings to conform to the evidence produced at trial.

DATED this 27th day of January, 2022.

Respectfully submitted,

RED CLIFF BAND OF
LAKE SUPERIOR CHIPPEWA INDIANS

By Its Attorneys,



David Ujke, Tribal Attorney
Red Cliff Band of Lake Superior Chippewa Indians
88385 Pike Road
Bayfield, Wisconsin 54814
715-779-3725 ext. 4519
715/209-3857
dujke@redcliff-nsn.gov

and

T. Roe Frazer II (*PHV* Motion to be Filed)

FRAZER PLC

30 Burton Hills Blvd., Ste. 450

Nashville, TN 37215

615/647-6464