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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

This document relates to:

Master Complaint (Subdivision)

Master Complaint (School Districts)

Individual cases listed in Dkt. 340 Appx. L

Case No. 3:21-md-2996-CRB

BRIEF OF *AMICI CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN TORT REFORM ASSOCIATION IN SUPPORT OF MOTION TO DISMISS THE COMPLAINTS ON THE GROUNDS OF *RES JUDICATA* AND RELEASE

Date: March 31, 2022
Time: 10:00 a.m.
Courtroom: 6 (17th Fl.)
Judge: Hon. Charles R. Breyer

IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Tort Reform Association ("ATRA") is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil-justice system with the goal of ensuring fairness, balance, and predictability in civil litigation.

This multi-district litigation ("MDL") concerns a national crisis, the opioid epidemic. *Amici* recognize the epidemic's enormous human and economic costs, as do the state attorneys general who have reached settlements aimed at combating the epidemic and alleviating the harm it is causing. But the master complaints filed in this MDL by hundreds of political subdivisions (collectively, the "Municipality Complaints") of States that have already settled with the same defendant threaten to frustrate, not further, efforts to resolve litigation over the opioid epidemic and achieve meaningful resolutions. These follow-on complaints, and other, similar duplicative municipal litigation against businesses, threaten to usurp the States' traditional authority to act in the interests of their citizens. Allowing the Municipality Complaints to proceed will harm not just the settling parties but the prospects of resolution for future MDLs—and the administration of justice itself.

[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *Amici* are simultaneously filing a motion for leave to submit this *amicus* brief.

As set forth in the motion for leave to file that accompanies this brief, *amici* are well positioned to advise the Court on these issues, and this *amicus* brief will aid the Court in evaluating the Municipality Complaints and McKinsey's motion to dismiss them.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Municipality Complaints[2] seek to recover on broad theories of public harm that are properly asserted only by the States, not by their political subdivisions. As a matter of law and settled practice, only the States, as sovereigns, can act as *parens patriae* for all their citizens. And the States have in fact done so here. They brought suits against McKinsey alleging the same harms from the same conduct that the Municipality Complaints now target. And they achieved a global settlement worth more than half a billion dollars, the funds from which are expressly earmarked to compensate public costs from the opioid crisis and harms claimed by individual citizens. Under straightforward principles of preclusion, the relief already awarded bars the Municipality Complaints from seeking more—in effect, not just a second bite, but dozens.

Allowing the Municipality Complaints to go forward would have dramatic consequences for future public-harm litigation. In recent years, litigation brought by municipal plaintiffs has dramatically increased. The Municipality Complaints here are a particularly extreme example of an increasing flow of litigation by municipalities seeking large sums through outside counsel. Holding that the Municipality Complaints may proceed *despite judgments already won, and releases already issued, by the States* would signal that there are no limits to localities' ability to pile on. Tens of thousands of localities would be encouraged to compete with state authorities for a slice of the pie in future cases. Global settlements would become exceedingly difficult, if not impossible, to secure. MDLs would become more difficult for courts to manage and for litigants to defend. And the individuals on whose behalf the governmental plaintiffs say they are suing would be the ultimate losers: as dueling government claims make litigation more splintered and harder to settle, the funds available for genuine relief will inevitably thin out.

[2] For the purposes of this *amicus* brief, "Municipality Complaints" refers to the complaints brought by political subdivisions, school districts, and similarly-situated plaintiffs in the "Subject States" identified in McKinsey's motion to dismiss. *See* Dkt. 310, at 1 n.1, 17 n.9.

Fortunately, principles of *res judicata* and release do not require that result. The States have reached settlements and judgments that resolve the claims on behalf of their citizens and release further claims. Counties, parishes, cities, towns, and school boards in those same States may not relitigate those claims. The Court should therefore grant McKinsey's motion to dismiss the Municipality Complaints.

ARGUMENT

I. THE MUNICIPALITY COMPLAINTS UNDERMINE THE STATES' SOVEREIGN ROLE IN PROTECTING THE INTERESTS OF THEIR RESIDENTS AND ARE PRECLUDED BY *RES JUDICATA* AND BY THE STATES' RELEASES.

1. Each State has the power to decide whether and how to litigate claims of public harm to its citizens. As federal courts recognize, any proper authority to act in *parens patriae*, meaning as protector of their citizens, lies with the States: "[I]f the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 603–04 (1982) (citation omitted). Municipalities, on the other hand, are subordinate creatures of the State, "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion." *Nixon v. Missouri Mun. League*, 541 U.S. 125, 140 (2004) (citation omitted). As a result, "political subdivisions" generally "cannot sue as *parens patriae* because their power is derivative and not sovereign." *Colorado River Indian Tribes v. Town of Parker*, 776 F.2d 846, 848 (9th Cir. 1985).

Constitutional and political principles reinforce this hierarchy. The Tenth Amendment reserves power "to the States respectively, or to the people," not to municipalities. U.S. Const. amend. X. State attorneys general, not municipal officials, are typically empowered under state law to investigate and pursue claims that affect the citizenry generally. U.S. Chamber Inst. for Legal Reform, *Mitigating Municipality Litigation: Scope and Solutions* 15 & nn. 78–79 (2019), https://www.instituteforlegalreform.com/research/mitigating-municipality-litigation-scope-and-solutions [hereinafter *Municipality Litigation*]. For good reason: The state attorneys general derive their office from the statewide electorate and are accountable to it, either directly or through the state officials that appoint them. Local authorities have no such statewide mandate. Likewise, the state

legislatures, not municipal bodies, are responsible for passing statewide regulatory laws, because only the state legislatures represent all their citizens' interests. *Id.* at 16.

2. The Municipal Complaints cannot be squared with these principles. Indeed, their encroachment on the States' traditional *parens patriae* authority is unusually aggressive here, because the States have *already* exercised their authority and litigated the claims in this case to judgment, and have also released those claims.

As recounted in greater detail in McKinsey's motion to dismiss, starting in 2019, a group of state attorneys general investigated and pursued claims against McKinsey for the firm's advice to opioid manufacturers. The complaints filed by the state attorneys general all invoke the States' duty to protect public health and safety, and they all allege that McKinsey's advice contributed to a rise in opioid prescriptions and the resulting epidemic of opioid abuse, leading to increased public costs for treating the epidemic. The complaints sought injunctive and monetary relief related to those public costs. *See* Dkt. 310, at 4–5 (collecting citations). Though it denied liability, McKinsey cooperated and, through negotiations with an executive committee of the state attorneys general, reached a global settlement. The settlement was memorialized in consent orders or agreements between February and April 2021 in all 50 States, the District of Columbia, and five territories. Under the settlement, McKinsey agreed to pay more than $642 million to be used "to remediate the harms caused to [each State] and [its] citizens by the opioid epidemic." In return, the States granted McKinsey a broad release for a broad range of public-harm claims for "any and all acts … or other activity of any kind whatsoever … related in any way" to the opioid epidemic. *See generally* Dkt. 310, at 6–8 (collecting citations).

The Municipality Complaints seek to relitigate these claims. Like the complaints filed by the state attorneys general, the Municipality Complaints all assert broad claims on behalf of the public, and allege that McKinsey "substantially contributed to an explosion in the use of opioids *across the country*," harming municipalities across the country by driving up costs associated with responding to the epidemic, Dkt. 296, at 103, 130–31 (emphasis added) (subdivisions' master complaint); Dkt. 297, at 101, 123–28 (school districts' master complaint) (similar). As that language from the Municipality Complaints makes clear, many of the claims reach far beyond any one

municipality—indeed, municipalities from 11 States filed putative class-action suits seeking to sue on behalf of *all* those States' municipalities. Dkt. 310, at 11–12 (collecting citations). The Municipality Complaints also seek the same relief pursued by the state attorneys general: injunctive relief and damages to compensate for public costs allegedly caused by the opioid epidemic. *See* Dkt. 310, at 11 (collecting citations).

The upshot is that the Municipality Complaints assert the same claims that have already been litigated and resolved by the state authorities with actual power to bring the claims in the first place. And the state authorities released further claims. So the Municipality Complaints, which assert the same basic claims that the States asserted through their attorneys general, do not just impinge on the States' *parens patriae* authority as a theoretical matter—they sue on the same basic grounds that the States specifically sought to preclude.

That is impermissible. Under straightforward principles of the law of judgments, municipalities suing on behalf of the public are in privity with States suing on behalf of *the same public*. Thus, the Ninth Circuit has held that "to the extent [a city plaintiff] claim[ed] to represent the public interest," it was "considered to be in privity" with the responsible state agency that also represented the same interest of the same public, and the city's claims were "clearly barred" by a prior judgment won by the state agency. *City of Martinez v. Texaco Trading & Transp., Inc.*, 353 F.3d 758, 763 n.3, 764 (9th Cir. 2003).

That holding is entirely consistent with how principles of privity are applied nationwide. The Fourth Circuit's decision in *Nash Cnty. Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484 (4th Cir. 1981), illustrates the point well. The North Carolina Attorney General had previously filed antitrust claims under state law alleging that nine dairy companies had engaged in price-fixing of milk sales to the North Carolina school system. Those claims were resolved in a consent decree entered in state court. *See id.* at 485–86. Soon after, the Nash County Board of Education filed suit in federal district court, alleging federal antitrust violations on the same facts and seeking slightly different damages from the Attorney General's suit. *Id.* at 486.

The Fourth Circuit held that the County's suit was barred. The Board had alleged (in substance) the same claim as the Attorney General, and the parties were in privity. While different

statutes were relied upon in the Board's action and the damages sought were not identical, it was "manifest that there is identity of causes of action," because the two actions alleged the same essential antitrust injury from the same conduct on behalf of the same injured parties—constituents of both governments. *Id.* at 488. As to privity, the court noted that the "[t]he Attorney General as legal representative of the sovereign and its constitutional subdivisions had both common law and statutory power to bind the State and the subdivisions by his acts," and rejected as "almost ludicrous" the County Board's argument that the Attorney General was required to consult it before taking binding action. *Id.* at 496. *Accord, e.g.*, *Boothbay v. Getty Oil Co.*, 201 F.3d 429 (table), 1999 WL 1319175, at *2 (1st Cir. 1999) (town precluded, in light of settlement between defendants and Maine Department of Environmental Protection, from seeking to recover on environmental claims against defendants).

This Court should hold the same here. The Municipality Complaints are seeking, on behalf of the same constituents, to assert the same public-harm claims based on the same conduct by the same defendant as the claims resolved and released by the global settlement. Minor variations in the particular causes of action asserted, or the precise forms of damages sought, do not change the analysis; nor does any assertion by the subdivisions and school boards that their individual interests were not sufficiently taken into account. *Nash Cnty. Bd. of Educ.*, 640 F.2d at 488–96.

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The States here actively pursued claims of public harm on behalf of their citizens. They recouped well over half a billion dollars from McKinsey in the process, and they have directed that recovery into financial relief to remediate the effects of the opioid epidemic on the public. Because the state attorneys general (and other state officials responsible for implementing the settlement) are accountable to all their States' citizens, they have legal duties and other structural incentives to ensure that the settlement funds are disbursed equitably and appropriately for the benefit of all communities and individuals within their States. The subdivisions and school districts that filed the Municipality Complaints, whose public duties and incentives are necessarily narrower in scope, may disagree with the settlement, or fear the amount is insufficient for their purposes, or wish to have some control over how the funds are disbursed. That is not a reason to allow them to relitigate

claims already litigated to judgment by their privies, the States—much less to litigate claims *released* by their privies as part of that same judgment. Bedrock principles of the law governing judgments and releases make clear that the Municipality Complaints are barred by *res judicata* and by the release provisions of the global settlement.[3]

II. MUNICIPALITY LITIGATION IMPERILS GLOBAL SETTLEMENTS AND DILUTES RECOVERY IN PUBLIC-HARM CASES.

Carving an exception to these settled legal principles in this case would harm not only the allocation of responsibility within state government, but the federal judiciary's ability to resolve nationwide public-harm litigation. Permitting copycat municipal litigation under these circumstances would signal approval of a trend that threatens to make nationwide public-harm litigation unmanageably complicated and expensive. The harm to businesses, victims, and the legal system would be profound.

1. For various reasons, municipalities have increasingly competed with States at the front lines of public-harm litigation, not just in the opioid crisis, but also for other hot-topic issues, like climate change and data privacy. *Municipality Litigation*, *supra* at 9.[4] The pile-on of municipal plaintiffs has added staggering complexity to these already-cumbersome public-harm cases.

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[3] The same basic conclusion applies to claims asserted by Wisconsin municipalities, which differ in one significant respect from the claims asserted by municipalities in the 22 other Subject States. As McKinsey noted in its motion to dismiss, "because McKinsey settled by private agreement with the State of Wisconsin, rather than by Consent Judgment, McKinsey is only arguing that Wisconsin released the claims of its political subdivisions. It is not arguing that political subdivisions from Wisconsin are barred under the doctrine of *res judicata*." Dkt. 310, at 17 n.9. Because of Wisconsin's releases of its municipalities' claims, the claims are barred irrespective of whether *res judicata* applies to those claims.

[4] The trend can be traced to litigation against the tobacco industry in the 1990s. *Municipality Litigation, supra* at 5. Under the resulting Master Settlement Agreement ("MSA"), virtually none of the funds went directly to municipal governments, aside from the handful of big-name local governments that were brought into the MSA. Municipalities took notice and began filing their own suits alleging public-harm torts. *Id.* at 6. Economic pressures on municipalities intensified the trend. Unlike the States, most municipalities lack the capacity to litigate such matters using their own employees as litigation counsel. Contingency-fee arrangements made it possible for such entities to secure representation without having to pay legal fees. *Id.* at 6–9. These arrangements with outside counsel give rise to fundamentally different financial incentives shaping the litigation than are operative for litigation conducted by full-time civil servants, who receive no share of the recovery in any such litigation.

Negotiation with the federal government and the 50 States is by no means simple, but it has proven to be a reasonably manageable dynamic, as the tobacco MSA and the global settlement with McKinsey here illustrate. *See supra* Section I.2. Allowing local authorities into the room enlarges the negotiating table by orders of magnitude, converting thorny collective-action problems into insoluble collective-action problems. As of 2017, the most recent year for which data have been published, there were nearly 39,000 "general-purpose governments" in the country, defined as "all counties, cities, towns, townships, villages and other jurisdictions serving as the primary government in an area," and somewhere north of 51,000 "special districts," defined as "school districts, water authorities, parks districts and other public entities serving a more specific function." *See* Michael Maciag, *Number of Local Governments by State*, Governing.com (Sept. 14, 2012), https://www.governing.com/archive/number-of-governments-by-state.html. There are thousands of such governments in a single state—indeed, nearly 4,500 in California alone. *Id.*

If hundreds of localities across more than 20 States are allowed to advance claims in this case *even after* achievement of a 50-State settlement, every future public-harm litigation will be fair game for the roughly 90,000 local authorities across the country. That prospect makes future global settlements highly unlikely. No rational defendant would pursue settlement with the States if the immediate result will simply be follow-on lawsuits from thousands of local governments. At the very least, the sheer number of litigants, plus concerns about hold-outs and pile-on suits, will dramatically prolong litigation, imposing massive costs that will bankrupt defendants before settlements can be worked out.

The threat is not theoretical. Take the MDL before Judge Polster in the Northern District of Ohio for cases against opioid manufacturers, distributors, and retailers. The Ohio MDL was formed in 2017 and now totals over 2,500 cases, many of them brought by municipalities.[5] Hundreds of other municipality suits have proceeded outside the MDL in state court. *Municipality Litigation*,

[5] *See In re Nat'l Prescription Opiate Litig.*, No. 1:17-md-2804 (N.D. Ohio transferred Dec. 12, 2017); Daniel Fisher, *Opioid Lawyers Say Settlement May Hinge On Forcing Plaintiffs Into Class Action*, Forbes (Sept. 17, 2018), https://www.forbes.com/sites/legalnewsline/2018/09/27/opioid-lawyers-say-settlement-may-hinge-on-forcing-plaintiffs-into-class-action/?sh=315c898a1d1c [hereinafter Forbes]; *Municipality Litigation*, *supra* at 10.

supra at 10. The clog of municipal plaintiffs has made swift resolution impossible, and a series of bellwether trials were set for different classes of plaintiffs. *Id.*[6] A potential settlement structure emerged only in July 2021, more than three years after the Ohio MDL was formed. *See* Christine Minhee, Opioid Settlement Tracker: Global Settlement Tracker, https://www.opioidsettlementtracker.com/globalsettlementtracker/#NSA (last visited Dec. 29, 2021).[7]

That settlement is neither comprehensive nor certain to succeed, largely due to the added complexity of municipality participation. Only 42 States have agreed to it; the other 8 have either partially or entirely opted out. *Id.* For those States that have opted in, a "complex formula" provides that each State will receive 100% of its share of the settlement funds only if the State can "convince [its] localities to surrender their opioid cases against the offeror-companies." *Id.* So "[a]t its core, the proposed $26 billion deal brokered by state attorneys general with major drug companies

[6] Arguments based on the States' superseding role as *parens patriae* were raised in the Ohio MDL as a basis for dismissing some of the municipal complaints, but they were not successful. The MDL defendants moved to dismiss claims brought by Ohio municipalities based on, among other things, the "statewide concern doctrine," under which a "municipality may not, in the regulation of local matters, infringe on matters of statewide concern." A magistrate judge rejected this argument. Report and Recommendation at 98–100, *In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804 (N.D. Ohio Oct. 5, 2018), Dkt. 1025 (citation omitted); *In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804, 2018 WL 6628898, at *1 (N.D. Ohio Dec. 19, 2018) (adopting portion of report and recommendation rejecting "statewide concern doctrine argument," and noting that there were no objections to the report and recommendation with regard to this argument). The State of Ohio then argued to the Sixth Circuit that the lawsuits brought by two Ohio counties, which had been selected as bellwether cases for trial, impinged on the State's *parens patriae* authority and improperly sought the same relief being pursued by the State in separate state-court proceedings. The Sixth Circuit denied Ohio's petition for mandamus, noting that the district court had rejected "a similar argument," and that Ohio had "made no attempt to intervene in the MDL proceeding for the limited purpose of raising the issues that it now asks us to decide by extraordinary means." Order at 2, *In re Ohio*, No. 19-3827 (6th Cir. Oct. 10, 2019), Dkt. 32-2.

[7] While the Ohio MDL may be the most prominent example of the complications that municipality plaintiffs bring to the settlement process, it is not the only one. In the MDL formed to coordinate claims arising out of the 2010 British Petroleum Deepwater Horizon oil spill, hundreds of municipal entities sought recovery—to the point where the MDL judge felt it necessary to create a special "pleading bundle" for governmental plaintiffs, with various opt-out procedures. Pretrial Order #33, *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010*, No. 10-md-02179 (E.D. La. Mar. 9, 2011), Dkt. 1549. As in the Ohio opioid MDL, a settlement structure that included the municipality plaintiffs took years to emerge—and even when it did, in 2015, not all municipalities opted in. *See* Order Regarding Dismissal of Local Governmental Entity Claims, *In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mexico, on Apr. 20, 2010*, No. 10-md-02179 (E.D. La. Aug. 28, 2015), Dkt. 15269.

depends on whether enough cities and counties agree to sign on." Emily Field, *$26B Opioid Deal Sparks 'Turf Wars' From Local Governments*, Law360 (Aug. 6, 2021), https://www.law360.com/articles/1410772. That has already spurred yet more litigation—the "rare spectacle" of two Pennsylvania district attorneys suing the Pennsylvania Attorney General in Pennsylvania court, arguing that the settlement is inadequate for their jurisdictions and that the Attorney General lacks authority to bind municipalities through the settlement. *Id.*[8]

So even in the best scenario, the Ohio MDL settlement will spawn years' more litigation, and it will not address all the claims in that MDL. Claims from several States will certainly proceed, as will hundreds of municipality suits that evaded the Ohio MDL in the first place. In the meantime, smaller defendants in the Ohio MDL face a real risk of going bankrupt before the settlement is finalized, with dim prospects for future solvency in light of future claims that the settlement will not cover. *Municipality Litigation*, *supra* at 14–15. And the longer litigation drags on, the longer it will take for settlement funds to be disbursed and put toward remediation.

2. Prolonged litigation and fragmented settlements do not just pose crippling litigation costs on businesses. They also harm the very citizens these lawsuits are meant to protect.

Potential funds for a settlement are not unlimited, no matter how big the case or deep-pocketed the defendants. The amount recoverable for victims does not grow simply because the number of government plaintiffs grows. In fact, the opposite is almost certainly true. Recall that although the Municipality Complaints invoke *harm* to individual victims and local communities, the *recovery* they seek would largely go to the municipalities themselves. *See supra* Section I.2. More funds directed to local governments necessarily means fewer funds for individuals and for public-facing remediation efforts that are not run by local government. And while the dramatic rise in litigation costs spurred by municipal participation in these cases are borne by business defendants in the first instance, there will be follow-on effects for victims. Permitting layer after layer of local government to seek and even win successive recoveries for the same harm creates a serious risk that

[8] A panel of the Pennsylvania Commonwealth Court heard argument on the Attorney General's dispositive motion earlier this month; a decision has not been issued. *See Commonwealth ex rel. Krasner v. Attorney General*, No. 233 MD 2021 (Pa. Commw. filed July 22, 2021).

liability will exceed the defendants' resources, reducing the likelihood of recovery for everyone. And the amounts that municipalities are seeking, and the amounts for which they are willing to settle, may be influenced by the contingency-fee arrangements that are increasingly common for municipal plaintiffs seeking a no-risk recovery.

3. Finally, while the focus here is on one of the largest waves of public-harm litigations ever and the handful of comparable historical examples, encouragement of municipality litigation here will have effects throughout the MDL process. That process has become a central component of the federal-court system. As of June 2019, 141,721 cases had been consolidated in MDLs—over 50 percent of all civil cases in federal court. *See* Alan Vickery and Zoha Barkeshli, *The Trend Toward MDLs in Product Cases*, Faegre Drinker: Faegre Drinker on PRODUCTS (Aug. 6 2019), https://www.faegredrinkeronproducts.com/2019/08/the-trend-toward-mdls-in-products-cases/#page=1.

Public-harm claims are a common component in MDLs, and governmental plaintiffs have become common MDL litigants. If municipality plaintiffs can advance claims even here, where a comprehensive 50-State settlement already resolves the claims, it is inevitable that future MDLs involving public harms will be burdened with additional tracks: not just a state track, but also a cities-and-counties track, and a school board track, and further tracks for other species of local governments. As described above, without the full application of privity across the layers of state and local government entities suing on behalf of the same public, the cases in the local subdivisions' track or tracks will impede settlement of the States' claims. That will undermine the "just and efficient conduct of [] actions" that the MDL process is supposed to promote. 28 U.S. Code § 1407(a).

CONCLUSION

The Court should grant McKinsey's motion to dismiss the Municipality Complaints.

Respectfully submitted,

Dated: December 30, 2021

By: */s/ Jaime A. Santos*

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **December 30, 2021**. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on **December 30, 2021**.

/s/ Jaime A. Santos
JAIME A. SANTOS