

**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

IN RE: § MDL - _____
NATIONAL PRESCRIPTION §
OPIATE LITIGATION §

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR
TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR
CONSOLIDATED PRETRIAL PROCEEDINGS**

Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Movants¹ respectfully submit this brief in support of their Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings. Movants seek the transfer and assignment of all actions currently filed by governmental entities, including cities and counties against companies in the chain of manufacture and/or distribution of prescription opioid painkillers² and identified in the Schedule of Actions, as well as any actions subsequently filed involving similar facts or claims by governmental entities, to the Honorable Edmund A. Sargus, Jr., United States District Court Chief Judge for the Southern District of Ohio, or alternatively to the Honorable Staci M. Yandle, United States District Court Judge, Southern District of Illinois.

Presently, there are at least 66 substantially similar federal actions, filed on behalf of governmental entities, in 11 different federal district courts alleging similar wrongful conduct on the part of the named defendants. Movants are the plaintiffs in 46 of these 66 cases. Of these 66, 14 cases are filed in the Southern District of Ohio, and all but one of those is pending before the

¹ Movants are the plaintiffs in 46 cases; Movants are named in the Motion filed herewith, at page 1 note 1.

² For example, prescription drugs containing oxycodone (*e.g.*, OxyContin®, OxyIR®, Percodan®, Roxicet®, Percocet®), hydrocodone (*e.g.*, Vicodin®, Lorcet®, Lortab®, Lortab ASA®, Vicoprofen®, Hycomine®), and fentanyl (*e.g.*, Actiq®).

Honorable Edmund A. Sargus, Jr. All actions involve common questions of law and fact that arise from the defendants' manufacture, distribution and/or sales of dangerously addictive opioid drugs which, due to defendants' breaches of non-delegable duties, foreseeably caused an epidemic of misuse and crippling addiction.

I. BACKGROUND

Across the nation, local governments are struggling with a pernicious, ever-expanding epidemic of opioid addiction and abuse. Every day, more than 90 Americans lose their lives after overdosing on opioids.³ There can be no dispute that the litigation instituted by the Movants addresses one of the most dire problems currently facing the country. The National Institute on Drug Abuse identifies misuse and addiction to opioids as “a serious national crisis that affects public health as well as social and economic welfare.”⁴ The economic burden of prescription opioid misuse alone is \$78.5 billion a year, including the costs of healthcare, lost productivity, addiction treatment, and criminal justice expenditures.⁵ Every day brings a new revelation regarding the depth of the opioid plague. In one recent example, the New York Times reported that the prescription opioid epidemic, which claims 60,000 lives a year, is now killing babies and toddlers because ubiquitous, deadly opioids are “everywhere” and mistaken as candy.⁶

The escalating opioid addiction crisis has become the subject of litigation nationwide, as local governments seek the resources necessary to address and abate the tragic epidemic

³ Opioid Crisis, NIH, National Institute on Drug Abuse (available at <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-crisis>, last visited Sept. 21, 2017) (“Opioid Crisis, NIH”) (citing, at note 1, Rose A. Rudd et al., *Increases in Drug and Opioid-Involved Overdose Deaths—United States, 2010-2015*, 65 MORBIDITY & MORTALITY WKLY. REP. 1445 (2016)).

⁴ Opioid Crisis, NIH.

⁵ *Id.* (citing, at note 2, C. S. Florence et al., *The Economic Burden of Prescription Opioid Overdose, Abuse, and Dependence in the United States, 2013*, 54 MED CARE 901 (2016)).

⁶ Julie Turkewitz, *The Pills are Everywhere’: How the Opioid Crisis Claims Its Youngest Victims*, N.Y. Times, Sept. 20, 2017 (“‘It’s a cancer,’ said [grandmother of dead one-year old], of the nation’s opioid problem, ‘with tendrils that are going everywhere.’”).

afflicting their communities. Cases against opioid manufacturers and distributors are pending in federal courts from coast to coast. While the effects are felt in hard-hit local communities, evidence and facts proving how this happened and who is to blame are in significant part uniform. Consolidation in a multidistrict litigation proceeding is necessary to prevent inconsistent rulings, including on *Daubert* motions, and to allow efficient and coordinated adjudication of the burgeoning number of cases.

The Moving Plaintiffs, County entities and Cities in 46 cases, each have instituted legal action against the nation's three largest wholesale distributors of opioid drugs: McKesson Corporation, AmerisourceBergen Corporation, and Cardinal Health, Inc., the so-called "Big Three."⁷ Also named as defendants in certain cases are the opioid manufacturers: Purdue,⁸ Teva/Cephalon,⁹ Janssen,¹⁰ Endo,¹¹ Actavis,¹² and Mallinckrodt.¹³

Of the 66 cases, 14 are pending in the Southern District of Ohio. All but one of the Southern District of Ohio cases is assigned to the Honorable Edmund A. Sargus, Jr., United States District Chief Judge, Southern District of Ohio. This Judicial Panel previously has recognized the Honorable Edmund A. Sargus, Jr.'s expertise when assigning him to MDL No.

⁷ See, generally, *Fed. Trade Comm'n v. Cardinal Health, Inc.*, 12 F. Supp. 2d 34, 37 (D.D.C. 1998) (describing Cardinal Health, Inc., McKesson Corporation, and AmerisourceBergen Drug Corporation predecessors). In some cases, Cardinal Health, Inc. subsidiaries also have been named as defendants.

⁸ Purdue Pharma L.P.; Purdue Pharma, Inc.; and, The Purdue Frederick Company, Inc.

⁹ Teva Pharmaceutical Industries, LTD.; Teva Pharmaceuticals USA, Inc.; and, Cephalon, Inc.

¹⁰ Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica Inc. n/k/a Janssen Pharmaceuticals, Inc.

¹¹ Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.

¹² Allergan PLC f/k/a Actavis PLS; Watson Pharmaceuticals, Inc. n/k/a Actavis, Inc.; Watson Laboratories, Inc.; Actavis LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.

¹³ Mallinckrodt PLC, Mallinckrodt LLC.

2433, *In re E.I. du Pont de Nemours and Company C-8 Personal Injury Litigation*,¹⁴ over which he has masterfully presided and shepherded to settlement.¹⁵

Other cases brought by Counties or Cities against the opioid manufacturers and/or distributors are pending in federal courts in the Southern District of Illinois, the Southern District of West Virginia, the Northern District of Alabama, the Eastern District of California, the Eastern District of Kentucky, the Western District of Kentucky, the District of New Hampshire, the Northern District of Ohio, the Eastern District of Tennessee, and the Western District of Washington.

While the cases are geographically disbursed throughout various federal courts, the actions assert similar claims and seek substantially similar relief. Plaintiffs assert claims under theories of public nuisance, negligence, the Federal Racketeer Influenced and Corrupt Practices Act, 18 U.S.C. §§1961, *et seq.* (“RICO”), and/or state corrupt or trade practices laws. Plaintiffs seek injunctive relief to prevent future misuses of opioid drugs and the ensuing catastrophic addiction, as well as damages, including costs to abate the public nuisance created by defendants, compensatory and treble damages for past and future expenditures, and attorney fees.

The commonality of factual and legal issues, and the need for coordinated adjudication, amply satisfy the standards for instituting a Multidistrict Litigation for adjudication of government entities’ opioid cases. As this national calamity continues to unfold, the federal judiciary should respond with a cohesive and efficient judicial methodology, rather than risking inconsistent decisions on pre-trial issues and duplication of efforts in different federal courts.

II. ARGUMENT

¹⁴ 939 F. Supp. 2d 1374, 1375 (J.P.M.L. 2013) (recognizing Judge Sargus as an “experienced judge”).

¹⁵ See *In re E.I. du Pont de Nemours and Company C-8 Personal Injury Litigation*, MDL No. 2433, No. 2:13-md-02433-EAS, Doc. #5086.

A. Transfer and Consolidation or Coordination Is Appropriate Under 28 U.S.C § 1407.

The purpose of multidistrict litigation is to “eliminate the potential for conflicting contemporaneous pretrial rulings by coordinate district and appellate courts in multidistrict related civil actions.” *In re Plumbing Fixture Cases*, 298 F. Supp. 484, 491-92 (J.P.M.L. 1968). Transfer of related actions to a single district for pretrial proceedings “eliminate[s] duplicative discovery; prevent[s] inconsistent pretrial rulings; and conserve[s] the resources of the parties, their counsel, and the judiciary.” *In re Ethicon Physiomesb Flexible Composite Hernia Mesh Products Liability Litigation*, _ F. Supp. 3d _, 2017 WL 2402828, at *1 (J.P.M.L. June 2, 2017).

Accordingly, pursuant to 28 U.S.C. § 1407, transfer of actions to one district for coordinated or consolidated pretrial proceedings is appropriate where: (1) actions pending in different districts involve one or more common questions of fact, and (2) the transfer of such actions will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions. 28 U.S.C. § 1407(a). Consolidation is especially important in multidistrict litigations where “the potential for conflicting, disorderly, chaotic” action is greatest. *In re Plumbing Fixture Cases*, 298 F. Supp. at 493.

1. The Actions Involve Common Fact Issues.

Each governmental entity’s case will require adjudication of the standards imposed as a prerequisite for the manufacture and distribution of prescription opioids. Because federal requirements and duties are uniform across the country, consolidation in one court will achieve judicial efficiencies and is necessary to avoid inconsistent rulings regarding defendants’ non-compliance with their mandatory, federally-imposed duties.

A core fact is that the Controlled Substances Act and Code of Federal Regulations imposed a closed system, which was specifically designed to prevent the harm that transpired – the diversion of highly addictive opioid drugs into unlawful channels, with foreseeably tragic

results. In each of their actions, Movants allege, *inter alia*, that the defendants are only allowed to manufacture or distribute dangerously addictive drugs under the closed distribution system created by the Controlled Substances Act of 1970 (CSA),¹⁶ but that they deliberately failed their duty to detect, report and halt “suspicious” orders of opioids, despite being required to do so by Federal and State law, and repeated admonitions and enforcement actions by the DEA regarding their failure to report. The registration system for manufacturers and distributors was specifically established to install wholesale distributors as watch dogs between the manufacturers and patients to prevent sales of prescription opioids for other than legitimate purposes. Notwithstanding the non-delegable duties to detect, halt and report suspicious orders, defendants sold as many pills as possible while ignoring the obvious evidence that the volume of addictive drugs flooding into local communities far exceeded any legitimate medical or scientific purpose. By failing to comply with the CSA’s mandatory duty to prevent diversion, including to identify, investigate, report and halt suspicious orders, defendants stripped Plaintiffs and the Drug Enforcement Agency of their ability to timely identify, investigate, and prevent the diversion of highly addictive and dangerous drugs, causing an epidemic of misuse and abuse of prescription opioids and increased rates of heroin use and addiction, which contributes to the burgeoning tragedy of opioid-related drug overdoses and deaths.

Before these defendants executed their enterprise to illegally profit from unlawful opioid sales, dangerously addictive opioid drugs were only parsimoniously prescribed, e.g. for short periods of hospitalization or end-of-life care. The manufacturer defendants changed that by adulterating the medical literature, spreading the sheer fiction that their drugs were not dangerous, and inventing untruths such as “pseudoaddiction” and touting the effectiveness of

¹⁶ See 21 U.S.C. §§ 801-971 (2006); 21 C.F.R. §§ 1300-1321 (2009); H.R. Rep. No. 91-1444; 1970 U.S.C.C.A.N. 4566, 4572 (Sept. 10, 1970).

screening tools. These companies used front groups and “key opinion leaders” to promote the untruth that their prescription pills presented very little risk of turning patients into addicts. A recent publication in the *New England Journal of Medicine* described how the fiction of safe opioids was propagated, and exposes common factual issues in cases against manufacturers:

The prescribing of strong opioids such as oxycodone has increased dramatically in the United States and Canada over the past two decades. From 1999 through 2015, more than 183,000 deaths from prescription opioids were reported in the United States, and millions of Americans are now addicted to opioids. The crisis arose in part because physicians were told that the risk of addiction was low when opioids were prescribed for chronic pain. . . .

[A] five-sentence letter published in the *Journal* in 1980 was heavily and uncritically cited as evidence that addiction was rare with long-term opioid therapy. We believe that this citation pattern contributed to the North American opioid crisis by helping to shape a narrative that allayed prescribers’ concerns about the risk of addiction associated with long-term opioid therapy. In 2007, the manufacturer of OxyContin and three senior executives pleaded guilty to federal criminal charges that they misled regulators, doctors, and patients about the risk of addiction associated with the drug.¹⁷

As noted by the *New England Journal of Medicine*, the manufacturers broke the law. Defendants’ illegal conduct has national implications, raising common issues in opioid litigation. McKesson was recently fined a record \$150 million by the federal government for its blatant failure to report suspicious orders.¹⁸ Cardinal Health, another member of the “Big Three” drug distributors, was fined \$44 million for its failure to report suspicious narcotic orders.¹⁹ The

¹⁷ Pamela T.M. Leung, et al., *A 1980 Letter on the Risk of Opioid Addiction*, 376 *New Eng. J. Med.* 2194-2195 (June 1, 2017) (Letter to the Editor) (notes om.), available at <http://www.nejm.org/doi/full/10.1056/NEJMc1700150#t=article>, last visited Sept. 21, 2017.

¹⁸ *Id.*

¹⁹ Press Release, District of Maryland, U.S. Attorney’s Office, U.S. Dep’t of Justice, *Cardinal Health Agrees to \$44 Million Settlement for Alleged Violations of Controlled Substances Act*, Dec. 23, 2016, <https://www.justice.gov/usao-md/pr/cardinal-health-agrees-44-million-settlement-alleged-violations-controlled-substances-act>, last accessed Sept. 21, 2017.

Department of Justice and the Drug Enforcement Agency have investigated, initiated, and settled actions against both McKesson and Cardinal Health on multiple occasions.²⁰

As for the manufacturers, Purdue agreed to pay approximately \$600 million in fines in 2007 as a result of its deceptive marketing regarding the addictive nature of OxyContin.²¹ Three Purdue executives pled guilty to the criminal violation of misbranding and agreed to pay an additional \$34.5 million in fines.²² In 2008, opioid manufacturer Cephalon pled guilty to a criminal violation of the Federal Food, Drug and Cosmetic Act for its misleading promotion of the opioid Actiq and two other drugs and agreed to pay \$425 million in fines.²³ In 2010, the Food and Drug Administration required Actavis to acknowledge to the doctors to whom it marketed its drugs that its sales representatives had distributed promotional materials that “are false or misleading because they omit and minimize the serious risks associated with” the opioid Kadian.²⁴

Transfer, coordination, and/or consolidation are appropriate because many common questions exist, including, but not limited to:

²⁰ *Curbing Prescription Drug Abuse in Medicare: Hearing Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 113th Cong. 11 (2013) (statement of Joseph T. Rannazzisi, Deputy Assistant Admin., Office of Diversion Control, Drug Enf't Admin.).

²¹ Barry Meier, *OxyContin Maker to Pay \$600 Million in Fines*, N.Y. Times, May 10, 2007, <http://www.nytimes.com/2007/05/10/business/worldbusiness/10iht-oxy.4.5655262.html>, last accessed Sept. 21, 2017.

²² *Id.*

²³ Press Release, *U.S. Dep't of Justice, Biopharmaceutical Company, Cephalon, to Pay \$425 Million & Enter Plea to Resolve Allegations of Off-Label Marketing*, Sept. 29, 2008, <https://www.justice.gov/archive/opa/pr/2008/September/08-civ-860.html>, last accessed Sept. 21, 2017.

²⁴ Letter from Thomas Abrams, Dir., Div. of Drug Mktg., Advert. & Commc'ns, U.S. Food & Drug Admin., to Doug Boothe, CEO, Actavis Elizabeth LLC (Feb. 18, 2010), <http://www.fdanews.com/ext/resources/files/archives/a/ActavisElizabethLLC.pdf>, last accessed Sept. 21, 2017.

- The nature of, Defendants' legal duty to design and operate a closed system to prevent the diversion of dangerous prescription opioid drugs into channels other than legitimate medical, scientific, or industrial uses;
- Whether Defendants breached their duty to design and operate a closed system to prevent the diversion of dangerous prescription opioid drugs into illicit channels;
- Whether Defendants breached their duty to halt suspicious orders of dangerous prescription opioid drugs into illicit channels;
- Whether Defendants conduct an enterprise, through mail and wire fraud, to profit from the sale of dangerous prescription opioid drugs;
- Whether Defendants conduct an enterprise, through the unlawful manufacture and distribution of controlled substances, to profit from the sale of dangerous prescription opioid drugs;
- Whether, and the degree to which, Defendants promoted and/or allowed the use of these drugs for off-label purposes;
- The nature and adequacy of Defendants' internal systems and standard operating procedures as they relate to identifying suspicious orders, investigating suspicious orders, reporting suspicious orders, and stopping shipment of suspicious orders of dangerous prescription opioid drugs;
- Defendants' knowledge of the dangers of diversion of opioid drugs into illicit channels and/or for off-label purposes;
- Defendants' response to, and failures to heed, the DEA's repeated warnings and instructions regarding the need to safeguard against diversion of opioids into illicit channels;
- Defendants' misrepresentations regarding the addictive nature of opioids, the rate of addiction, the progression of addiction (*e.g.*, coining the "pseudo-addiction" myth), and the negative effects of long-term opioid use;
- Defendants' misrepresentations regarding the alleged efficacy of their systems to monitor opioid prescriptions for illicit purposes, and the alleged implementation of policies and procedures to prevent diversion into unlawful channels;
- Whether the flood of dangerous prescription opioid drugs into illicit channels caused, and the degree to which such diversion caused, individuals to suffer crippling addiction and to then turn to heroin; and,
- The degree to which Defendants' ongoing perpetuation of a public nuisance should be enjoined and the terms of such injunction.

Determination of these and other common issues in a single District will benefit the parties and witnesses and promote the efficient prosecution and resolution of these Actions.

2. Transfer will serve the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions.

With 66 cases in 11 different Districts – and those numbers are sure to rise – the size of the burgeoning opioid litigation amply justifies coordination and consolidation.²⁵ Without transfer, coordination, and/or consolidation of these Actions and tag-along cases, litigation addressing a national crisis will needlessly entail judicial inefficiency, overlapping discovery, and unnecessary expense. Further, different federal courts, in duplicating rulings on the same issues, could make contradictory findings on significant pre-trial disputes. Litigation of this scope and importance should not be beset with such inconsistencies and inefficiencies.

This Panel has previously held that actions involving more than one pharmaceutical product can be combined into a single consolidated proceeding when, as here, common questions of fact exist.²⁶ And here, there is not a multiplicity of different drugs. Although the manufacturers made a variety of medications, each of the defendants' drugs fall either into general families (e.g., oxycodone and hydrocodone). Similarly, this Panel has ordered the transfer and consolidation of causes of action for nuisance²⁷ and RICO.²⁸

²⁵ This panel has created Multidistrict Litigation based on lower numbers. *E.g.*, *In re: Park W. Galleries, Inc., Mktg. & Sales Practices Litig.*, 645 F. Supp. 2d 1358, 1360 (J.P.M.L. 2009) (transfer ordered where three actions were pending in three districts); *In re FieldTurf Artificial Turf Mktg. & Sales Practices Litig.*, 2017 WL 2391963, at *2 (J.P.M.L. June 1, 2017) (transfer ordered where twelve to fourteen actions (including tag-alongs) were pending in nine districts).

²⁶ *E.g.*, *In re AndroGel Prods. Liab. Litig.*, 24 F. Supp. 3d 1378 (J.P.M.L. 2014); *In re: Incretin Mimetics Prods. Liab. Litig.*, 968 F. Supp. 2d 1345 (J.P.M.L. 2013); *In re Bextra and Celebrex Prods. Liab. Litig.*, 391 F. Supp. 2d 1377 (J.P.M.L. 2005); *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prods. Liab. Litig.*, 990 F. Supp. 834 (J.P.M.L. 1998).

²⁷ *In re LLRICE 601 Contamination Litig.*, 466 F. Supp. 2d 1351, 1352 (J.P.M.L. 2006) (ordering transfer for coordinated or pretrial proceedings; plaintiffs alleged negligence, and “[s]everal actions bring additional claims such as strict liability, negligence per se, public and/or private nuisance and conversion, in addition to state statutory claims.”).

²⁸ *E.g.*, *In re Dow Chem. Co. Sarabond Products Liab. Litig.*, 650 F. Supp. 187, 188 (J.P.M.L. 1986) (ordering consolidation of cases alleging violation of federal racketeering laws, with the vast majority of actions also pleading a broader range of common law theories including

With regard to the convenience of parties and witnesses, this Panel has recognized that having a substantial presence in Ohio is a factor favoring transfer.²⁹ As explained in detail below (at § II.B.1.a), all three of the “Big Three” distributors not only have a substantial presence in the State, but also operate distribution facilities in the Southern District specifically, including one Defendant maintaining its corporate headquarters in the District. Also explained below (at § II.B.1.b, § II.B.2), it is well recognized that the Southern District of Ohio is centrally located and well equipped to handle Multidistrict Litigation.

B. The Southern District of Ohio Is The Most Appropriate Forum for Transfer and Consolidation or Coordination.

The Southern District of Ohio is the most appropriate forum for opioid Multidistrict Litigation. The “Big Three” wholesale distributors maintain facilities in Ohio; conduct at those facilities is relevant to the cases; and, one such defendant, Cardinal Health, Inc., maintains its corporate headquarters within the Southern District of Ohio. The district courthouse is located close to mass transit and international airports and hotels. Furthermore, the Southern District of Ohio is well equipped to manage multidistrict litigation and provides a conveniently accessible forum for opioid litigation filed across the country. For these and other reasons described in more detail below, the Actions and tag-along cases should be transferred and consolidated before the Honorable Edmund A. Sargus, Jr., United States District Court Chief Judge for the Southern District of Ohio, who is currently presiding over 13 of the cases.

negligence); *see also Park W. Galleries, supra*, 645 F. Supp. 2d at 1360 (RICO and state consumer protection statutes raised in transferred actions); *In re Ocwen Fed. Bank FSB Mortgage Servicing Litig.*, 314 F. Supp. 2d 1376, 1378 (J.P.M.L. 2004) (ordering transfer of actions raising claims under federal statutes, including the Racketeer Influenced and Corrupt Organizations Act, and/or claims under state consumer protection/unfair trade practices statutes, as well as various common law theories of liability).

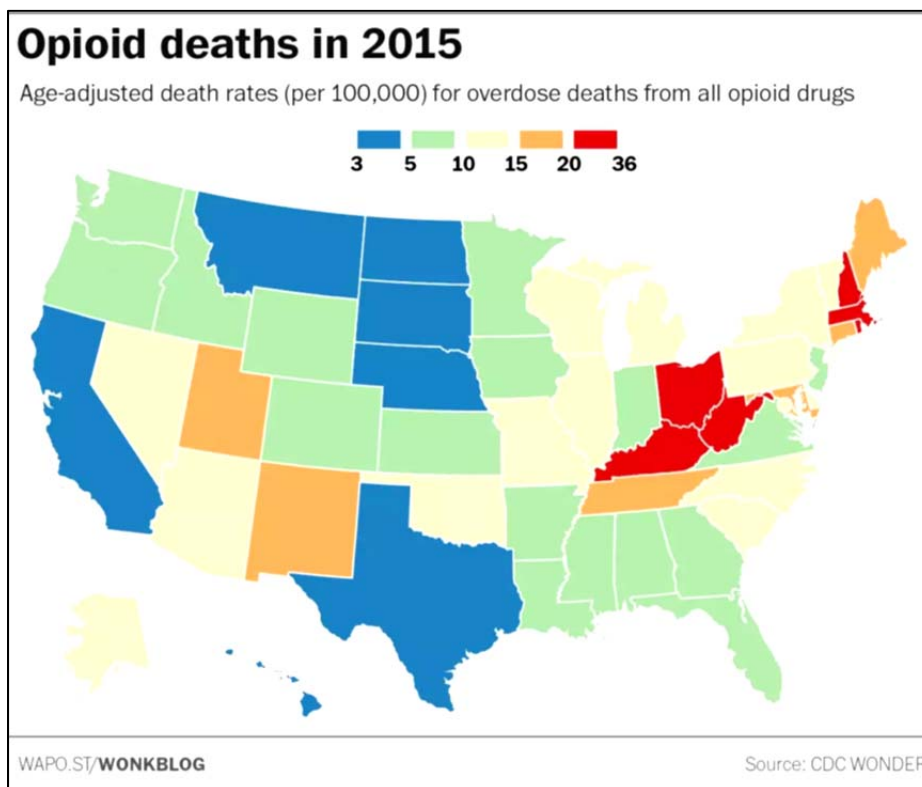
²⁹ *E.g., In re Am. Honda Motor Co., Inc., CR-V Vibration Mktg. & Sales Practices Litig.*, 140 F. Supp. 3d 1336, 1337 (J.P.M.L. 2015) (“Honda has a substantial presence in Ohio, including manufacturing and research and development facilities”).

1. The Southern District of Ohio Is a Central and Convenient Venue for Consolidated Proceedings.

a. The Southern District of Ohio bears a unique nexus to witnesses and evidence.

i) Ohio is one of the hardest hit areas.

Ohio is one of the states hardest hit by the opioid epidemic. From 2000 to 2015, Ohio’s death rate due to unintentional drug poisonings increased 642 percent, driven largely by opioid-related overdoses.³⁰ A map of opioid deaths illustrates Ohio’s central position in this crisis:³¹



Unintentional fatal drug overdoses cost Ohioans \$2.0 billion in 2012 in medical and work loss costs; while non-fatal, hospital-admitted drug poisonings cost an additional \$39.1 million. The total cost equaled an average of \$5.4 million *each day* in medical and work loss costs in

³⁰ Ohio Department of Health, Prevalence and Trends in Unintentional Drug Overdose, <https://www.odh.ohio.gov/health/vipp/drug/dpoison.aspx> (last visited Sept. 15, 2017).

³¹ https://www.washingtonpost.com/news/wonk/wp/2016/12/13/where-opiates-killed-the-most-people-in-2015/?utm_term=.491c1ee955da, last visited Sept. 21, 2017.

Ohio.³² And, the rate of opioid related Emergency Department visits increased 106% in Ohio between 2009 and 2014.³³

The Opioid epidemic is largely responsible for an 11 percent increase in children in state custody in Ohio in the past six years.³⁴ Seventy percent of infants placed in Ohio's foster care system are children of parents with opioid addictions.³⁵

ii) Cardinal Health is headquartered in the District and maintains distribution facilities here.

This Panel has recognized that maintenance of corporate headquarters in a District is one reason to select that district as a transferee forum.³⁶ Relevant documents and witnesses will likely be found in the district wherein a defendant maintains its corporate headquarters.³⁷

Cardinal Health, Inc., is an Ohio company with its corporate headquarters in Dublin, Franklin County, Ohio, within the Southern District of Ohio.³⁸ Key personnel (and likely witnesses) live and work within the Southern District, including, for example, the CEO of Cardinal Health's Pharmaceutical Segment (Jon Giacomini).³⁹ Mr. Giacomini is also the

³² Ohio Department of Health, Cost to Ohio, <https://www.odh.ohio.gov/health/vipp/drug/dpoison.aspx>, last visited Sept. 15, 2017.

³³ Agency for Healthcare Research and Quality, Healthcare Cost and Utilization Project, *Statistical Brief #219, Opioid-Related Inpatient Stays and Emergency Department Visits by State, 2009-2014*, <https://www.hcup-us.ahrq.gov/reports/statbriefs/sb219-Opioid-Hospital-Stays-ED-Visits-by-State.pdf>, last visited Sept. 21, 2017.

³⁴ Public Children Services Association of Ohio, Ohio's Opiate Epidemic and Child Protection (2016), available at <http://www.pcsao.org/programs/opiate-epidemic>, last visited Sept. 21, 2017.

³⁵ Ohio Child Welfare Opiate Engagement Project (Sept. 2014), page 1, available at <http://www.pcsao.org/perch/resources/downloads/cw-opiate-white-paper-final-9-18-14.pdf>, last visited Sept. 21, 2017.

³⁶ *In re Foundry Resins Antitrust Litig.*, 342 F. Supp. 2d 1346, 1347 (J.P.M.L. 2004) ("On balance, we are persuaded that the Southern District of Ohio is a preferable transferee forum for this litigation. Two defendants maintain headquarters within the district, which implies that relevant documents and witnesses will likely be found there.").

³⁷ *See id.*

³⁸ *See* Cardinal Health, Inc., 2017 10k Filing at 1.

³⁹ *See, e.g.*, Jon Giacomini, Professional Profile, accessed at <https://www.linkedin.com/in/jongiacomini/> on Sept. 19, 2017.

Chairman of the Executive Committee of the Health Distribution Alliance – an entity that figures largely in the RICO allegations against the defendants.⁴⁰ The interests of justice weigh in favor of bringing all members of the nationwide RICO enterprise before a single court, and the Southern District of Ohio is an ideal such court.

In addition to its corporate headquarters, Cardinal Health operates two distribution centers in the Southern District of Ohio. It operates its National Logistics Center, which serves as the “point of entry” into the Cardinal Health supply chain for pharmaceutical distribution *throughout the United States*, in Groveport, Franklin County, in the Southern District.⁴¹ Defendant Cardinal Health also operates a pharmaceutical repackaging distribution center in the Southern District, in Zanesville, which is located in Muskingum County.⁴²

iii) AmerisourceBergen maintains a distribution facility in the Southern District of Ohio.

AmerisourceBergen Drug Corporation also maintains a distribution facility in the Southern District of Ohio. Specifically, AmerisourceBergen operates its National Distribution Center for pharmaceuticals within the Southern District, at a facility in Lockbourne, Franklin County, Ohio.⁴³ Defendant AmerisourceBergen describes this facility—which is located just outside Columbus adjacent to the Rickenbacker International Airport—as the “nucleus of our

⁴⁰ See Executive Committee, Health Distribution Alliance, accessed at <https://www.healthcaredistribution.org/about/executive-committee-on-September-21>, 2017.

⁴¹ See Cardinal Health, “Manufacturer Reference Manual” (November 2016, Rev. 01/2017) at 18; and State of Ohio Board of Pharmacy, License Verification Search Results (Cardinal Health), accessed at <https://license.ohio.gov/lookup/default.asp> on Sept. 21, 2017.

⁴² *Id.*

⁴³ See AmerisourceBergen Corp., 2016 10k Filing at 17; State of Ohio Board of Pharmacy, License Verification Search Results (AmerisourceBergen), accessed at <https://license.ohio.gov/lookup/default.asp> on Sept. 21, 2017.

nationwide pharmaceutical business” and “a conduit between pharmaceutical manufacturers, retailers and licensed healthcare providers.”⁴⁴

iv) McKesson Corporation also maintains a distribution facility in the District.

McKesson Corporation operates a pharmaceutical distribution center in the Southern District of Ohio, located in Washington Court House, Fayette County, Ohio.⁴⁵ McKesson Corporation also maintains a strategic partnership with Cincinnati-based Omnicare, Inc. (a CVS subsidiary), to distribute generic drugs throughout the United States.⁴⁶

v) Teva also has a distribution facility in the District.

Teva Pharmaceuticals USA, Inc.’s licensing records with the Ohio Board of Pharmacy report the address of a distribution center in Groveport, Ohio,⁴⁷ which is located in Franklin County, in the Southern District of Ohio.

b. The Southern District of Ohio is convenient because of its central location.

The Southern District of Ohio is a geographically central district. *In re Nat’l Century Fin. Enterprises, Inc.*, 293 F. Supp. 2d 1375, 1377 (J.P.M.L. 2003). This Panel has emphasized the fact that “although air travel renders both [coasts of the United States, California and New York] readily accessible, there is still something to be said for the convenience of a geographically central forum.” *In re Library Editions of Children’s Books*, 297 F. Supp. 385, 387 (J.P.M.L.

⁴⁴ AmerisourceBergen Corp., News Release, “Columbus Becomes Center of Pharmaceutical Innovation” (April 8, 2014).

⁴⁵ See State of Ohio Board of Pharmacy License Verification Search Results (McKesson), accessed on September 18, 2017, at <https://license.ohio.gov/Lookup/SearchDetail.asp?ContactIdnt=3920774&DivisionIdnt=96&Type=L>.

⁴⁶ See McKesson Corporation, News Release, “Omnicare and McKesson Expand Distribution Agreement” (November 24, 2014).

⁴⁷ See State of Ohio Board of Pharmacy License Verification Search Results (Teva), accessed at <https://license.ohio.gov/Lookup/SearchDetail.asp?ContactIdnt=3922519&DivisionIdnt=96&Type=L> on September 18, 2017. According to the Ohio License Center, the registration was for the time period Dec. 15, 2007 through June 30, 2017.

1968). Further, the Southern District of Ohio is readily accessible to the parties and counsel, as the John Glenn International Airport serves 7 airlines that provide 144 non-stop flights to 35 airports.⁴⁸ Consistently, this Panel repeatedly has recognized that the Southern District of Ohio is an appropriate transferee forum, and is convenient to parties and witnesses.⁴⁹

2. The Southern District of Ohio is Well-Equipped to Efficiently Manage this Multidistrict Litigation.

Only two Multidistrict Litigations are assigned to the Southern District of Ohio,⁵⁰ and a settlement has been reached in the one that this Panel assigned to Judge Sargus.⁵¹ Therefore, the Southern District of Ohio currently is an underutilized district in a busy federal court system, which is another fact favoring transfer to this District.⁵²

The Southern District of Ohio should not remain underutilized, as it has a proven track record in administering Multidistrict Litigation. This Panel has determined that the Southern

⁴⁸ <http://flycolumbus.com/airline-info/non-stop-destinations/>, last accessed Sept. 21, 2017.

⁴⁹ See, e.g., *In re Am. Honda Motor*, *supra*, 140 F. Supp. 3d at 1337 (“the Southern District of Ohio will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation”); *In re E.I. du Pont de Nemours & Co. C-8 Pers. Injury Litig.*, 939 F. Supp. 2d 1374, 1375 (J.P.M.L. 2013) (“The Southern District of Ohio is both accessible and convenient for parties and witnesses.”); *In re: Porsche Cars N. Am., Inc.*, 787 F. Supp. 2d 1349, 1349 (J.P.M.L. 2011) (“We have selected the Southern District of Ohio as the transferee district for this litigation, because this district is geographically centrally located for parties and witnesses in this nationwide litigation and has the capacity to manage this MDL.”); *In re: Bill of Lading Transmission & Processing Sys. Patent Litig.*, 626 F. Supp. 2d 1341, 1342 (J.P.M.L. 2009) (“the Southern District of Ohio will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.”); *In re Vision Serv. Plan Tax Litig.*, 484 F. Supp. 2d 1356, 1357 (J.P.M.L. 2007) (“[C]entralization under Section 1407 in the Southern District of Ohio will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.”); *In re Foundry*, *supra*, 342 F. Supp. 2d at 1347 (“the Southern District of Ohio will serve the convenience of the parties and witnesses”).

⁵⁰ <http://www.ohsd.uscourts.gov/multidistrict-litigation-home> (last visited Sept. 19, 2017).

⁵¹ See note 15 *supra*.

⁵² See *In re Am. Honda*, *supra*, 140 F. Supp. 3d at 1337 n.5 (“observ[ing] that the Southern District of Ohio presently has just two MDLs”); accord *In re: Lending Tree, LLC, Customer Data Sec. Breach Litig.*, 581 F. Supp. 2d 1367, 1368 (J.P.M.L. 2008) (fact that district is underutilized recited as one persuasive reason to select it as the transferee court).

District of Ohio is equipped with the resources that a complex docket is likely to require. *Nat'l Century Fin. Enterprises, supra*, 293 F. Supp. 2d at 1377. The Southern District of Ohio provides a well-prepared, well-staffed, and overall top-notch staff and Clerk's office. In light of the previous complex litigations successfully managed and the thousands of cases filed in this district, the staff and Clerk's office in the Southern District of Ohio are experienced, efficient, and well-equipped to provide the necessary support services for managing this litigation.

As an added element of efficiency and convenience for all parties, the Southern District of Ohio's Clerk's office has proven its ability to provide a state-of-the art webpage for each Multidistrict Litigation, which provides an abundance of useful information and easily accessible court documents for attorneys and litigants, including a list of court contacts and liaison and lead counsel, and court orders organized by date or by classification.⁵³

The efficiency and experience of the Clerk's office in a district court is vital to the successful management and administration of large-scale Multidistrict Litigations, and the Clerk's office in the Southern District of Ohio has proven its exceptional work in this regard.

3. Judge Edmund A. Sargus, Jr., Is Amply Qualified to Manage This Multidistrict Litigation.

Appointed to the Southern District of Illinois over twenty years ago, Judge Sargus is an excellent choice for managing this complex litigation. He serves as Chief Judge for the Southern District of Ohio, and has gained significant experience in efficiently managing complex litigation.

This Panel recognized the Honorable Edmund A. Sargus, Jr., as "an experienced judge," when assigning him to MDL No. 2433. *In re E.I. du Pont, supra*, 939 F. Supp. 2d at 1375. Judge

⁵³ <http://www.ohsd.uscourts.gov/multidistrict-litigation-2433>, last visited Sept. 22, 2017; <http://www.ohsd.uscourts.gov/multidistrict-litigation-2661>, last visited Sept. 22, 2017.

Sargus has shepherded that MDL through numerous dispositive motions, extensive discovery, complex evidentiary disputes, bellwether trials, and settlement.⁵⁴

Judge Sargus serves as an adjunct Professor of Law and has received numerous honors, awards, and accolades for his devotion to the law and public service.⁵⁵ He is the author of numerous scholarly decisions resolving complex legal issues.⁵⁶ The proposed Multidistrict Litigation would address a nationwide crisis of deaths and other tragedies caused by opioid addiction, and Judge Sargus' well-established credentials and track record make him an excellent choice for judicial proceedings of this magnitude.

⁵⁴ See generally, <http://www.ohsd.uscourts.gov/select-orders-classification>, last visited Sept. 22, 2017; note 15 *supra*.

⁵⁵ Judge Sargus serves as an Adjunct Professor of Law at the Moritz College of Law, The Ohio State University, 2005-present. The honors and awards that Judge Sargus has received include: Honorary Doctor of Humane Letters, Muskingum College, 2006; Ohio Crime Prevention, Executive Director's Award, 1995; Annual President's Award, Franklin County-Columbus Domestic Violence Shelter, 1998; Annual Public Service Award, Ohio State Univ. Criminal Justice Research Center, 1999; Peacemaker Award, Tri-County Domestic Violence Shelter, 2006. See <http://www.ohsd.uscourts.gov/BioSargus>, last visited Sept. 22, 2017.

⁵⁶ Judge Sargus' noteworthy rulings include his rejection of the State of Ohio's contention that the Religious Land Use and Institutionalized Persons Act was unconstitutional. *Gerhardt v. Lazaroff*, 221 F. Supp. 2d 827 (S.D. Oh. 2002), *rev'd*, 349 F.3d 257, *rev'd*, 544 U.S. 709 (2005). The United States Supreme Court ruled that the Act was constitutional and reversed the Appeals Court's reversal of Judge Sargus' opinion. *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

The United States Supreme Court also reversed the Sixth Circuit Court of Appeals' reversal of Judge Sargus in litigation interpreting the Federal Reserve Board's Regulation Z and the Truth in Lending Act (TILA). *Household Credit Services, Inc. v. Pfennig*, 541 U.S. 232 (2004).

As an esteemed jurist, Judge Sargus was asked to sit by designation in the Sixth Circuit, and penned the scholarly opinion in *Steele v. Ind. Dev. Bd. of Metropolitan Nashville*, 301 F.3d 401 (6th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003).

These are but a few examples of Judge Sargus' work as a respected jurist. Other notable opinions include: *Libertarian Party of Ohio v. Brunner*, 567 F. Supp. 2d 1006 (S.D. Ohio 2008); *U.S. v. Ohio Edison Co.*, 276 F. Supp. 2d 829 (S.D. Ohio 2003); *Watchtower Bible & Tract Society of New York v. Stratton, Ohio*, 61 F. Supp. 2d 734 (S.D. Ohio 1999), *aff'd*, 240 F.3d 553 (6th Cir. 2001), *rev'd*, 536 U.S. 150 (2002).

C. Judge Yandle of the Southern District of Illinois Also Would Be an Excellent Choice to Steer the Federal Judiciary through this National Crisis.

Opioid cases filed by Illinois Counties are pending in the Southern District of Illinois, and have been assigned to the Honorable Staci M. Yandle. Judge Yandle was appointed to the Southern District of Illinois in 2014 after an illustrious career in private practice, and after a distinguished record of public service, including serving on the Illinois Advisory Committee to the United States Commission on Civil Rights, to name but one example.⁵⁷ This Panel has recognized the geographically central location of the Southern District of Illinois.⁵⁸ Further, Judge Yandle is not now presiding over a multidistrict litigation, and her underutilization further compels the conclusion that she is an appropriate transferee Judge. Therefore, Movants respectfully submit that the Honorable Staci M. Yandle, District Judge, the Southern District of Illinois, would be an excellent selection to shepherd the proposed multidistrict litigation.

In addition to Ohio and Illinois, Movants' cases are pending in Alabama, Kentucky, and West Virginia, where there are of course excellent federal judges.⁵⁹

Nonetheless, the Southern District of Ohio has the strongest nexus to the claims, in light of Cardinal Health Inc.'s corporate headquarters, the location of distribution centers, and the gravity of the opioid crisis there.

⁵⁷ See President Obama Nominates Four to Serve on the United States District Courts, White House Office of the Press Secretary (Jan. 16, 2014), accessed at <https://obamawhitehouse.archives.gov/the-press-office/2014/01/16/president-obama-nominates-four-serve-united-states-district-courts> on Sept. 19, 2017.

⁵⁸ *In re: Pradaxa (dabigatran etexilate) Prod. Liab. Litig.*, 883 F. Supp. 2d 1355, 1356 (J.P.M.L. 2012) (“The Southern District of Illinois’ geographically central location and accessibility also commend it for this nationwide products liability litigation.”).

⁵⁹ For example, the Honorable David A. Faber, United States District Court Senior Judge, Southern District of West Virginia, is an excellent jurist presiding over Counties’ opioid cases.

As another example, the Honorable Thomas B. Russell, United States District Court Senior Judge, the Western District of Kentucky, is another excellent jurist presiding over opioid litigation.

III. CONCLUSION

For the above-stated reasons, Movants respectfully request that the Panel transfer the actions recited on the attached Schedule and all subsequently filed tag-along cases for coordinated and consolidated pretrial proceedings in the Southern District of Ohio, and assign the matter to Judge Edmund A. Sargus, Jr. Alternatively, Movants request transfer to the Southern District of Illinois, and assignment to Judge Staci M. Yandle.

September 25, 2017

Respectfully submitted,

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