BEFORE THE
UNITED STATES JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

IN RE: INCRETINS PRODUCTS LIABILITY, SALES, AND MARKETING LITIGATION	§ § § § § § § §	MDL - _____

BRIEF IN SUPPORT PLAINTIFF'S MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407

MAY IT PLEASE THE COURT:

Pursuant to 28 USC § 1407 and Rule 7.2(a) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiff MOSES SCOTT, individually and as administrator of the estate of Regina Kelly, deceased, and Plaintiff ROSALIE DUHON submit this memorandum of law in support of Plaintiffs' motion for transfer of all currently filed cases identified in the included Schedule of Actions ("Actions"), as well as any cases subsequently filed involving similar facts or claims ("tag-along cases"), to the United States District Court for the Southern District of California, and to consolidate and coordinate all cases for pretrial proceedings before the Honorable Anthony J. Battaglia, United States District Judge, Southern District of California. Presently, there are at least **53** substantially similar actions pending in **7** different judicial districts in the United States of America alleging similar wrongful conduct on the part of Defendants.

Movants represent the Plaintiffs in 35 of the 53 cases that have been filed to date. All related actions, including those actions filed by Movants, by other Plaintiffs, and by future Plaintiffs, involve common questions of law and fact and arise from Plaintiffs' development of pancreatic cancer from ingestion of one, or often a combination of, the

diabetic drugs referred to as the incretin mimetics, which include the defective and unreasonably dangerous prescription drugs Janumet (metformin hydrochloride; sitagliptin phosphate), Januvia (sitagliptin phosphate); Victoza (liraglutide recombinant), and Byetta (exenatide synthetic) (collectively, the "Incretins"), which at all times relevant hereto, were manufactured, designed, tested, packaged, labeled, marketed, advertised, distributed, and sold by Defendants Merck Sharp & Dohme Corp., (the "Merck Defendant" for Janumet and Januvia); Novo Nordisk Inc., Novo Nordisk A/S, (collectively, the "Novo Nordisk Defendants" for Victoza); and Amylin Pharmaceuticals, LLC f/k/a Amylin Pharmaceuticals, Inc., and Eli Lilly and Company (collectively, the "Amylin Lilly Defendants" for Byetta) (the Merck Defendants, Amylin Lilly Defendants, and Novo Nordisk Defendants collectively are the "Defendants").

In addition to issues of causation, common issues also include whether the Defendants knew of the cancer risk associated with this class of drugs and failed to disclose it to the medical community and/or consumers. All related actions seek damages for personal injury and/or economic damages on behalf of individuals exposed to the Incretins, asserting various state law claims, such as negligence, products liability, breach of warranty, negligent misrepresentation, and/or fraud regarding the risks of ingestion of one or more of the Incretins. Movants respectfully request an Order transferring these related actions and future-filed actions to the Southern District of California as the most appropriate and convenient forum.

Likewise, because of the scope of Defendants' conduct, it is likely that hundreds (or thousands) of other actions will be filed in jurisdictions throughout the United States of America. Plaintiff's counsel herein is personally aware of over 500 related cases that are currently under contract with various law firms across the United States of America. Transfer for consolidation and coordination is proper because each of the Actions and

tag-along cases arise out of the same or similar nucleus of operative facts, arise out of the same or similar alleged wrongful conduct, will involve resolution of the same or similar questions of fact and law, will involve the same or similar scientific / medical evidence, and discovery will be substantially similar and will involve many of the same documents and witnesses.

I. Background

A. The Basis of Litigation

According to the American Diabetes Association, "Type 2 diabetes is the most common form of diabetes. Millions of Americans have been diagnosed with type 2 diabetes."[1] Type 2 diabetes mellitus is a chronic disease, characterized by insulin resistance and deficient insulin secretion leading to high blood sugar levels (or hyperglycemia), which is the hallmark of the condition. Diabetes remains the most frequent cause of blindness, amputations, and dialysis worldwide.[2] With the current estimate of more than 350 million patients worldwide[3] it is considered to be one of the major health challenges of the 21st century.

Byetta, Januvia, Janumet, and Victoza are diabetes drugs that are all members of the incretin mimetic class of drugs. Byetta, the first of the incretin mimetics to gain FDA approval, began sales in the United States of America in 2005. Byetta's competitors followed quickly and launched their drugs to market in 2006 (Januvia), 2007 (Janumet), and 2010 (Victoza).

The incretin mimetic class, which includes glucagon-like peptide-1 (GLP-1) receptor (GLP-1R) agonists (such as Byetta and Victoza) and dipeptidyl peptidase-4

[1] http://www.diabetes.org/diabetes-basics/type-2/?loc=DropDownDB-type2
[2] Id.
[3] IDF Diabetes Atlas, http://www.idf.org/diabetesatlas/5e/diabetes.

(DPP-4) inhibitors (such as Janumet and Januvia), "work by mimicking the incretin hormones that the body usually produces naturally to stimulate the release of insulin in response to a meal. They are used along with diet and exercise to lower blood sugar in adults with type 2 diabetes."[4] The Incretins are supposed to help prevent diabetic complications.

In February 2010, concerns were published regarding the Incretins and their potential linkage with pancreatic cancer. Writing in Diabetes Care, Butler et. al., published "GLP-1–Based Therapy for Diabetes: What You Do Not Know Can Hurt You" wherein they wrote, "History has taught us that enthusiasm for new classes of drugs, heavily promoted by the pharmaceutical companies that market them, can obscure the caution that should be exercised when the long-term consequences are unknown. Of perhaps greatest concern in the case of the GLP-1–based drugs, including GLP-1 agonists and dipeptidyl peptidase-4 (DPP-4) inhibitors, is preliminary evidence to suggest the potential risks of asymptomatic chronic pancreatitis and, with time, pancreatic cancer."

In February 2011, the journal Gastroenterology published on-line the work of Elashoff et. al. titled, "Pancreatitis, pancreatic, and thyroid cancer with glucagon-like peptide-1-based therapies."[5] Elashoff et. al. evaluated the reported rates of pancreatic cancer with Byetta and Januvia compared to control events relative to Avandia (rosiglitazone). The reported event rate for pancreatic cancer was 2.9-fold greater in patients treated with Byetta compared to other therapies. The reported event rate for pancreatic cancer was 2.7-fold greater with Januvia than other therapies.

[4] http://www.fda.gov/Drugs/DrugSafety/ucm343187.htm

[5] Elashoff M, Matveyenko AV, Gier B, Elashoff R & Butler PC, "Pancreatitis, pancreatic, and thyroid cancer with glucagon-like peptide-1-based therapies." Gastroenterology (2011) 141:150-156.

Concerns in the scientific and medical community regarding the often-deadly side effects of the Incretins continued to escalate over the next two years, and recently, garnered the full attention of the United States Food and Drug Administration (the "FDA").

In March 2013, following an alarming publication by Singh et. al.[6], the FDA commenced an investigation[7] into the potentially deadly side effects of the Incretins, including a possible nexus with precancerous lesions in the pancreas, and has required close postmarket observation and reporting of the incretin mimetics, including all of the Incretins, impact on the human pancreas and their overall carcinogenicity.[8]

The FDA's concerns were almost immediately followed by a March 22, 2013 study[9] involving the Incretins and their carcinogenic propensities. Commenting on the article, and the deadly side effects of the incretin mimetics, Dr. Sidney Wolfe, director of the health and research group at Public Citizen, a non-profit consumer-advocacy organization based in Washington DC, stated:

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[6] Singh S, Chang H-Y, Richards TM, Weiner JP, Clark JM, Segal JB. Glucagonlike peptide 1–based therapies and risk of hospitalization for acute pancreatitis in type 2 diabetes mellitus: a population-based matched case- control study [published online February 25, 2013].

[7] http://www.fda.gov/Drugs/DrugSafety/ucm343187.htm

[8] Id.; See also various postmarket requirements and commitments imposed on the Defendants by the FDA, which can be found at: http://www.accessdata.fda.gov/scripts/cder/pmc/index.cfm, and include the following examples: as to Januvia and Janumet ("A 3-month pancreatic safety study in a diabetic rodent model treated with sitagliptin."); as to Byetta ("A prospective observational cohort study to examine the incidence of pancreatic malignancy and thyroid neoplasm in patients with Type 2 diabetes mellitus initiated on Byetta compared to patients initiated on other antidiabetic agents"); and as to Victoza ("…assess adverse events of interest including the long-term effects of Victoza (liraglutide [rDNA origin]) injection on potential biomarkers of medullary thyroid carcinoma (e.g., serum calcitonin) as well as the long-term effects of Victoza (liraglutide [rDNA origin]) injection on pancreatitis, renal safety, serious hypoglycemia, immunological reactions, and neoplasms.").

[9] Alexandra E. Butler, Martha Campbell-Thompson, Tatyana Gurlo, David W. Dawson, Mark Atkinson and Peter C. Butler. Marked Expansion of Exocrine and Endocrine Pancreas with Incretin Therapy in Humans with increased Exocrine Pancreas Dysplasia and the potential for Glucagon-producing Neuroendocrine Tumors. American Diabetes Association Diabetes Journal, March 22, 2013.

> During the last six months for which AERS data are available, there was a substantial increase in reports of pancreatic cancer for these three drugs, out of proportion to the increase in U.S. prescribing for the drugs during that interval. Although we have previously petitioned the FDA to ban Victoza (liraglutide) because of concerns about pancreatic disease and thyroid cancer, **it is clear that all of the drugs in this family are associated with an increased risk of pancreatic cancer** and it is likely that they will all have to be removed from the market. The idea of putting a warning label about pancreatic cancer on drugs that have no unique benefit for diabetics but which have increasing evidence of the risk for pancreatic cancer—instead of banning the drugs altogether—would be an extraordinarily reckless approach for the FDA to initiate.[10]

While the FDA, scientists, doctors, researchers, and non-profit groups around the world have called for action ranging from withdrawal of the Incretins to further examination of their deadly side effects, the Defendants have continued to enjoy great financial success from their blockbuster drugs. Januvia and Janumet are some of Merck's best sellers with Janumet reaching over $1.3 billion in sales in 2011[11] and Januvia hitting $919 million in sales the first quarter of 2012 alone.[12] In 2010, the worldwide sales of Byetta reached $0.710 billion and sales are predicted to reach $1.00 billion by 2015.[13] Victoza's global sales reached $1.044 billion during 2011 and the first two sales quarters of 2012 reached an astonishing $748 million.[14]

Defendants' zeal for blindly manufacturing, marketing, and promoting the Incretins, putting corporate profit over patient safety, has left a horrific trail of pancreatic cancer, and often, resulted in the excruciating death of those who ingested these deadly drugs. Plaintiffs seek to consolidate the Actions to assist in holding the

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10 http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=3850 (emphasis added)

11 http://www.merck.com/investors/financials/annual-reports/home.html

12 Merck 2012 Januvia Product Insert

13 www.pipelinereview.com/store/toc/sample_pages_vg0151.pdf

14 http://webmedia.novonordisk.com/nncom/images/investors/investor_presentations/2012/Interim_report/PR120809_H1_UK.pdf (Victoza 2011sales amount converted from 804 million Euros to 1,044 million US dollars and 2012 quarters converted 576 Euros to 748 US dollars using Google Currency Converter accessed October 25, 2012)

Defendants accountable for their bad acts and to promote the efficient prosecution and resolution of the claims.

ARGUMENT

II. Transfer and Consolidation or Coordination of All Actions Is Appropriate Under 28 U.S.C. § 1407

A. The Purpose of Multidistrict Litigation

The purpose of the multidistrict litigation process is to "eliminate the potential for contemporaneous pretrial rulings by coordinating district and appellate courts in multidistrict related civil actions." *In re Multidistrict Private Civ. Treble Damages Litig.*, 298 F. Supp. 484, 491-92 (J.P.M.L. 1968).

Transfer of related actions to a single district for pretrial proceedings avoids conflicting pretrial discovery and ensures uniform and expeditious treatment in the pretrial procedures. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230 (9th Cir. 2006). Moreover, the Panel "considers that eliminating duplicate discovery in similar cases, avoiding conflicting judicial rulings, and conserving valuable judicial resources are sound reasons for centralizing pretrial proceedings." Hon. John G. Heyburn II, A View from the Panel: Part of the Solution, 82 Tul. L. Rev. 2225, 2236 (2008).

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. *Id.* at 493.

B. Common Fact Issues Require Transfer, Coordination and Consolidation

Here, transfer, coordination, and consolidation are appropriate because many common questions of fact exist, including, but not limited to:

- Whether the Incretins were defective;
- Whether Defendants conducted adequate testing of the Incretins;
- Whether Defendants breached their duty of care to Plaintiffs;
- Whether Defendants had knowledge regarding the existence of a defect in the Incretins;
- Whether Defendants failed to warn about their products as alleged in the various Actions;
- Whether Defendants beached any warranty, express or implied, related to their sale of the Incretins;
- Whether the Incretins caused the pancreatic cancer and related injuries of the Plaintiffs in the Actions;
- Whether Plaintiffs relied on Defendants' claims as to the safety and efficacy provided by the Incretins; and
- Whether Plaintiffs are entitled to compensatory and exemplary damages.

Determination of these and other common issues in a single district will benefit the parties and witnesses and serve to promote the efficient prosecution and resolution of these Actions. Notably, this Panel has routinely ordered the transfer and consolidation of multidistrict product liability actions involving drug products, often over the objections of one or more parties. *See, e.g., In re Bextra and Celebrex Prods. Liab. Litig.*, 391 F. Supp. 2d 1377 (J.P.M.L. 2005); *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352 (J.P.M.L. 2005); *In re Accutane Prods. Liab. Litig.*, 343 F. Supp. 2d 1382 (J.P.M.L. 2004); *In re Zyprexa Prods. Liab. Litig.*, 314 F. Supp. 2d 1380 (J.P.M.L. 2004); *In re Paxil Prods. Liab. Litig.*, 296 F. Supp. 2d 1374 (J.P.M.L. 2003); *In re Prempro Prods. Liab. Litig.*, 254 F. Supp. 2d 1366 (J.P.M.L. 2003); *In re Meridia Prods. Liab. Litig.*, 217 F. Supp. 2d 1377 (J.P.M.L. 2002); *In re Serzone Prods. Liab. Litig.*, 217 F. Supp. 2d 1372 (J.P.M.L. 2002); *In re Phenylpropanolamine Prods. Liab. Litig.*, 173 F. Supp. 2d 1377 (J.P.M.L. 2001); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 990 F. Supp. 834

(J.P.M.L. 1998); *In re the UpJohn Co. Antibiotic "Cleocin" Prods. Liab. Litig.*, 450 F. Supp. 1168 (J.P.M.L. 1978).

C. The Incretins Should be Coordinated on a Class Wide Basis

Without transfer, coordination, and consolidation of these Actions and tag-along cases, there exists a real and significant hazard of inconsistent rulings, in addition to judicial inefficiency, overlapping discovery, and unnecessary expense to all parties. Specifically, the majority of scientific studies and research relevant to the Actions consists of results and findings relating to the incretin mimetic drug class as a whole, and involve a singular, core issue of common fact – the Incretins relationship to the formation of pancreatic cancer in those patients who ingest these drugs. As noted by Dr. Wolfe, "it is clear that **all of the drugs in this family** are associated with an increased risk of pancreatic cancer,"[15] and as a result, it would be an unnecessary expense and burden to have expert witnesses vetted in multiple federal district courts on the same injuries, studies, evidence, and opinions. Moreover, the prospect of inconsistent rulings and the potential for conflicting, disorderly, and chaotic litigation would be immense absent consolidation of the Actions in a single multidistrict litigation.

Further, at least 20 of the 53 Plaintiffs in the Actions have ingested various combinations of one or more of Byetta, Januvia, Janumet, and Victoza, which would require each of the Defendants to litigate in multiple federal forums if the Incretins are not consolidated on a class level, subjecting the parties to potentially conflicting rulings on the exact same issues of fact. This Panel has previously held that actions involving more than one drug can be combined into a single consolidated proceeding when, as here, common questions of fact exist. *In re Bextra and Celebrex Prods. Liab. Litig.*, 391 F.

[15] http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=3850 (emphasis added)

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).

For example, in consolidating actions related to Bextra and Celebrex, the Panel noted, in part, the actions were ripe for consolidation and coordination because all actions focused on "alleged increased health risks from taking Celebrex and/or Bextra, anti-inflammatory prescription medications." *In re Bextra and Celebrex Prods. Liab. Litig.*, 391 F. Supp. 2d 1377 (J.P.M.L. 2005). In a similar fashion, when considering consolidation and coordination of actions that named in excess of one dozen unique defendants related to "alleged defects in three prescription drugs […] used in the treatment of obesity," the Panel held that "the core issues presented in the litigation involve the causal connection between use of the three diet drugs (singly or in combination) and the alleged incidence of serious side effects […]. Moreover, the sheer size of the litigation, coupled with its rapid growth rate at the present time, serve to underscore the economies of scale that centralized pretrial management of the federal court actions will provide." *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 990 F. Supp. 834 (J.P.M.L. 1998).

The Incretins litigation presents the Panel with a fact pattern that is similar to that of *In re: Bextra* and *In re: Diet Drugs.* First, all of these Actions are focused on the connection between the Incretins and an increased risk for pancreatic cancer. Second, all of the Actions involve the injured party's use of the Incretins either singly or in combination with other incretin mimetics. Finally, the Incretins litigation has similarly experienced rapid growth in size and is likely to continue its dramatic growth with a large number of filings in the future.

In addition to the foregoing, the Panel has similarly found coordination and consolidation appropriate for actions involving numerous unique defendants where the

cases were factually centered on a particular suspect ingredient contained within the subject class of products. *In re Ephedra Prods. Liab. Litig.*, 314 F. Supp. 2d 1373 (J.P.M.L. 2004). Similar to the class relationship of the products involved in the *Ephedra* litigation, Byetta, Januvia, Janumet, and Victoza are all members of the same suspect incretin mimetic class of drugs. In spite of the common factual issues, various respondents to the *In re: Ephedra* motion opposed the formation of a multidistrict litigation based on the "presence of unique questions of fact relating to each defendant," which the opponents argued could produce an "unwieldy situation." *Id.* In rejecting this argument, an "unpersuaded" Panel held, "transfer to a single district under Section 1407 has the salutary effect of placing all the related actions before a single judge who can formulate a pretrial program that: 1) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues […]; and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties." *Id.* To that end, the *In re: Ephedra* Panel held:

> Common factual questions arise because these actions focus on alleged side effects of ephedra-containing products, and whether defendants knew of these side effects and either concealed, misrepresented or failed to warn of them. Centralization under Section 1407 is thus necessary in order to avoid duplication of discovery, prevent inconsistent or repetitive pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.

A virtually identical situation is presented by the Incretins. Plaintiffs in the Actions have raised common factual questions by focusing their claims against the Defendants on a singular injury, pancreatic cancer, that each Plaintiff alleges was caused by the Defendants respective incretin mimetic products. To the extent "non-common" issues of fact exist, the consolidation of all Actions nevertheless ensures the pivotal common issues of fact will be able to proceed in an orderly, consistent, and

efficient manner.

Moreover, transfer, coordination, and consolidation are especially appropriate here because no formal discovery has commenced in any Action outside the Southern District of California, and no responsive pleadings have been filed in any Action outside of the Southern District of California. Accordingly, transfer, coordination, and consolidation of the Actions and tag-along cases to a single district are appropriate for the just and efficient prosecution of the Actions and convenience of the parties and witnesses.

III. The Southern District of California Is the Most Appropriate Forum for Transfer and Consolidation for Coordination.

Currently, there are 45 (of 53 total) active Byetta, Januvia, Janumet, and Victoza cases filed in the Southern District of California. The district courthouse is located in San Diego, California; in close proximtiy to mass transit, numerous hotels, and is only minutes away from an international airport. Furthermore, Counsel for the Januvia, Janumet, and or Byetta Defendants recently agreed to various Plaintiffs' nonsuit of more than a dozen New Jersey State court cases, as well as a removed action pending in the Northern District of Illnois, for refiling in the Southern District of California, ostensibly agreeing the Southern District of California is an acceptable and appropriate forum for the Actions. Similarly, Counsel for Novo Nordisk Inc. (Victoza), along with Counsel for the Januvia, Janumet, and Byetta Defendants, recently agreed to the dismissal of a New Jersey state court complaint for refiling in California State court, thereby evidencing at least an inferred admission that California is both a convenient and appropriate venue for litigating the Actions.

Moreover, Los Angeles County, California is home to the only other consolidated proceeding related to the Incretins and claims of pancreatic cancer. Indeed, In re: Byetta

Cases JCCP 4574 contains what is believed to be in excess of two dozen pancreatic cancer cases related to the ingestion of Byetta and or other incretin mimetics. Indeed, at least one petition in Los Angeles County that will be transferred to the Byetta JCCP by agreement of all parites thereto named as Defendants the manufactuers of each of the incretin mimetic drugs implicated herein.[16] As a result, all Defendants are or will be involved in California State court litigation related to their respective incretin mimetic drugs, and as such, the geographic proximity of the Southern District of California to the Los Angeles JCCP actions is likely to allow for easy coordination and cooperation. Indeed, Judge William Highberger, who is presiding over the California JCCP, has already indicated a willingness to consider some degree of coordination and cooperation with the Southern District of California.

For these and other reasons further detailed below, the Actions and tag-along cases should be transferred and consolidated before the Honorable Anthony J. Battaglia, United States District Judge, the Southern District of California, who is currently presiding over the majority, and will likely be presiding over all, of the 45 Byetta, Januvia, Janument, and Victoza cases filed in the Southern District of California.

A. San Diego Is a Convenient Location for Consolidated Proceedings

The Southern District of California courthouse is centrally located in San Diego, California, a large metropolitan area easily accessible for all parties and witnesses. The Court's location is particularly convenient in light of the fact that this litigation will unquestionably involve parties and witnesses located in a variety of areas throughout the United States. Moreover, Defendant Amylin Pharmaceuticals LLC is headquartered in San Diego, California.

[16] *Evelyn Moore v. Merck Sharp & Dohme Corp., Novo Nordisk Inc., Novo Nordisk A/S, Amylin Pharmaceuticals, LLC f/k/a Amylin Pharmaceuticals, Inc., and Eli Lilly and Company*, pending filing in the Superior Court of the State of California, County of Los Angeles as of this filing.

Additionally, traveling to this location is more convenient and efficient than traveling to other destinations in the United States of America. For instance, the Southern District of California courthouse is located within 10 minutes of the San Diego International Airport. San Diego International Airport is a large airport serviced by 22 major commuter airlines with 440 daily departures, making the Southern District of California an appropriate choice to serve as the transferee court for this multidistrict litigation. In addition, access to San Diego International Airport is publicly available through San Diego's public trolley and bus transportation system which both have convenient stops just blocks from the Southern District of California courthouse. Finally, there exist numerous reasonably priced hotels within the immediate vicinity of the courthouse. The cost of lodging, food and gas within the Southern District of San Diego area is near the national average.

B. The Southern District of California Is Well-Equipped to Manage a Multi-District Litigation.

The Southern District of California provides an ideal venue for managing this litigation in the most efficient and expeditious manner. As of March 5, 2013, the Southern District of California is currently handling eight multi-district litigations including another drug product liability case, *In re: Hydroxycut Litigation* (MDL- 2087). The staff and Clerk's office of the Southern District of California, therefore, are well equipped and have the experience to provide the necessary support services for managing this litigation.

C. Judge Anthony J. Battaglia Is Amply Qualified to Manage Multi-District Litigation.

With 18 years of federal judicial experience in the Southern District of California, Judge Battaglia is an excellent choice for managing this complex litigation. Judge Battaglia served the Southern District with distinction for 16 years as a magistrate judge

prior to his appointment as a United States District Judge in 2011. He was also president of the Federal Magistrate Judges, and was Chair of the Ninth Circuit Magistrate Judges Conference and its Executive Board.

Judge Battaglia has significant experience in managing complex litigation, as well as consolidated, mass tort litigation in an efficient manner. Among other complex cases, Judge Battaglia is currently presiding over one MDL, In re Sony Gaming Networks and Customer Data Security Breach Litigation, MDL No. 2258. This MDL is the second largest pending in the Southern District of California, and Judge Battaglia has managed this litigation in an efficient manner. Judge Battaglia has ruled on numerous procedural matters, and has been actively involved in the merits of the Sony MDL having ruled on numerous substantive claims in the litigation.

Judge Battaglia is an appropriate choice for managing this MDL in a manner that will facilitate this litigation for the benefit of all parties. Moreover, Judge Battaglia has an experienced and talented staff and law clerks that have managed his current caseload and MDL with great efficiency.

D. Judge Battaglia Has Taken an Active Role in Actions Currently in His Court

Judge Battaglia, with the assistance of Magistrate Judge Mitchell D. Dembin, has taken an active role in managing the Incretin litigation to date. The first cases began grouping into Judge Battaglia's court in or around December 2012. Since that time, the Court has held teleconferences with all counsel (excluding counsel for Victoza, who was only recently named in these proceedings), entered numerous orders, and demanded a speedy schedule for discovery and trial.

For example, on February 4, 2013, the Court entered an order consolidating all Incretins cases for pre-trial discovery in the Southern District of California. The order applies prospectively to future filed cases and allows for the efficient management of

discovery matters with the Court. Also, on February 13, 2013, the Court entered a case management order regulating discovery and other pretrial proceedings applicable to all Incretins cases pending in the Southern District of California. Further, on March 4, 2013, the Court entered numerous agreed orders dismissing various defendants who had been named in a number of individual cases, thereby streamlining the litigation. Moreover, with the Court's assistance on various points of contention, the parties recently agreed on a protective order, which should be entered by the Court in the near future, and will allow for the production of documents likely within the next few weeks. As a final example of the Court's involvement and commitment to the Actions over which it currently presides, the Court recently requested briefing on the final points of dispute related to the proposed plaintiff fact sheet, and as a result, it appears likely the parties will reach an agreement on the final points of contention within the week.

In short, Judge Battaglia and Magistrate Judge Dembin have shown a level of participation and commitment to the coordinated management and progress of this litigation that would be an asset to the efficient resolution of all the Actions.

IV. Conclusion

For the reasons discussed above, Plaintiff respectfully requests that the Panel transfer the above-mentioned actions and all subsequently filed tag-along cases for coordinated and consolidated pretrial proceedings before the Southern District of California, and assign the matter to Judge Anthony J. Battaglia.

Dated this 5th day of April, 2013

Respectfully submitted,

s/ Ryan L. Thompson

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ATTORNEYS FOR PLAINTIFFS IN THE FOLLOWING ACTIONS:

Case No. 3:12-cv-03021; Ann Jay, Individually and as Independent Executrix of the Estate of Jerry Jay, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02782; Christopher Borden, Individually and as the Administrator of the Estate of Ruby Borden, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly and Company; Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Merck Sharp & Dohme Ltd.; Merck Sharp & Dohme (Italia) S.P.A., Inc.; Patheon Pharmaceuticals, Inc.; Patheon Puerto Rico Inc. f/k/a Mova Pharmaceutical Corporation; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02965; Cheryl Ostman, Individually and as the Successor in Interest to the Estate of Ingrid Farha, Deceased, and Surviving Heir of Ingrid Farha, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-03079; Joyce Kovelman, Individually as the Successor in Interest and Surviving Heir of Gilbert Kovelman, Deceased vs. Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Merck Sharp & Dohme Ltd.; Merck Sharp & Dohme (Italia) S.P.A., Inc; Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly and Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00516; Lucian Baker vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02560; Betty Garber, Individually and as the Successor in Interest and Surviving Heir of Clyde Garber, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02572; Hamid Haqq, Individually and as Independent Administrator of the Estate of Athaniel Abdul Saboor Haqq, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00381; Vickie Lankford vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00515; Barbara Lenyard, Individually and as the Successor in Interest of the Estate of James Lenyard, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00662; Rosalie Duhon vs. Merck Sharp & Dohme Corp., Novo Nordisk Inc., Novo Nordisk A/S, Amylin Pharmaceuticals, LLC, Amylin Pharmaceuticals, Inc.; Eli Lilly and Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00076; Robin Raesky, Individually and as Successor in Interest of the Estate of Delphia Swaney, Deceased vs. Amylin Pharmaceuticals, LLC f/k/a Amylin Pharmaceuticals, Inc.; Eli Lilly and Company; Merck Sharp & Dohme Corp.; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02566; Linda Raines, Individually and as Successor in Interest and Surviving Heir of Reese Raines, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02556; Guy Riley, Individually and as Successor in Interest and Surviving Heir of Kathleen Riley, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly and Company; Merck Sharp & Dohme Corp.; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02549; Moses Scott, Individually and as the Administrator of the Estate of Regina Kelly, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly and Company; Merck Sharp & Dohme Corp.; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02561; Heidie Skinner, Individually and as the Personal Representative of the Estate of Peter Ditlevsen, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly and Company; Merck Sharp & Dohme Corp.; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02557; Clara Smith, Individually and as the Administrator of the Estate of Charles Smith, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly and Company; Merck Sharp & Dohme Corp.; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00126; Ralph Thibodeaux vs. Amylin Pharmaceuticals, LLC formerly known as Amylin Pharmaceuticals, Inc.; Eli Lilly and Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02562; Fayette Thomas vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; and Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02553; Jan Wright, Individually and as the Administrator of the Estate of Michael Wright, Deceased vs. Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly and Company; Merck Sharp & Dohme Corp.; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:12-cv-02553; Vernie Young vs. Amylin Pharmaceuticals, LLC F/K/A Amylin Pharmaceuticals, Inc., and Eli Lilly & Company; In the United States District Court for the Southern District of Kansas

Case No. 3:12-cv-02553; Dawn Mooney, Individually, As An Heir At Law Of Ruth Nash, Deceased, And On Behalf Of All Heirs At Law Of Ruth Nash, Deceased vs. Merck Sharp & Dohme Corp.; In the United States District Court for the Southern District of Missouri, St. Louis Division

Case No. 5:13-cv-00330; Roy Wickware, Individually and as The Representative of the Estate of Nancy Wickware Deceased vs. Merck Sharp & Dohme Corp.; In the United States District Court for the Western District of Oklahoma

Case No. 4:13-cv-00229; Mary Jo Andrews vs. Merck Sharp & Dohme Corp. Amylin Pharmaceuticals, LLC f/k/a Amylin Pharmaceuticals, Inc., Eli Lilly And Company; In the United States District Court for the Western District of Oklahoma

Case No. 3:13-cv-020745; Marlene Crowell, Individually and as the Executor of the Estate of Fredric Crowell, Deceased vs. Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Merck Sharp & Dohme Ltd.; Merck Sharp & Dohme (Italia) S.P.A., Inc.; Amylin Pharmaceuticals, LLC formerly known as Amylin Pharmaceuticals, Inc.; Eli Lilly and Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00747; John McGerald vs. Amylin Pharmaceuticals, LLC f/k/a Amylin Pharmaceuticals, Inc., Eli Lilly And Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00750; James Skazis vs. Merck Sharp & Dohme Corp; Amylin Pharmaceuticals, LLC; F/K/A Amylin Pharmaceuticals, Inc.; Eli Lilly and Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00754; Beverly Mitchell, Individually and as Successor-in-Interest of the Estate of Erma Mitchell vs. Amylin Pharmaceuticals, LLC; F/K/A Amylin Pharmaceuticals, Inc.; Eli Lilly and Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00817; Darrell Stevenson, Individually and as Successor-in-Interest of the Estate of Debra Stevenson, deceased vs. Merck Sharp & Dohme Corp., Novo Nordisk Inc., Novo Nordisk A/S, Amylin Pharmaceuticals, LLC F/K/A Amylin Pharmaceuticals, Inc., And Eli Lilly And Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 5:13-cv-00332; Marion Ross vs. Merck Sharp & Dohme Corp.; In the United States District Court for the Western District of Oklahoma

Case No. 3:13-CV-00821; Angela McMurren, Individually And As Administratrix Of The Estate Of Karon Tooley, Deceased vs. Merck Sharp & Dohme Corp., Amylin Pharmaceuticals, Inc.; Amylin Pharmaceuticals, LLC; Eli Lilly & Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-CV-00823; Francisca Anderson vs. Merck Sharp & Dohme Corp., Amylin Pharmaceuticals, LLC F/K/A Amylin Pharmaceuticals, Inc., Eli Lilly And Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-CV-00824; Juanita A. Benton, Individually, And As The Successor-In-Interest Of The Estate Of Robert E. Benton, Deceased Vs. Merck Sharp & Dohme Corp., Amylin Pharmaceuticals, LLC F/K/A Amylin Pharmaceuticals, Inc., And Eli Lilly And Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-CV-00748; Mollie McLin, Individually, And As The Successor-In-Interest Of The Estate Of J.C. McLin, Deceased vs. Merck Sharp & Dohme Corp., Amylin Pharmaceuticals, LLC F/K/A Amylin Pharmaceuticals, Inc., and Eli Lilly And Company; In the United States District Court for the Southern District of California, San Diego Division

Case No. 3:13-cv-00818; Regina Sponaugle, Individually and as Successor-in-Interest of the Estate of Kenneth Sponaugle, deceased vs. Novo Nordisk Inc., Novo Nordisk A/S, Amylin Pharmaceuticals, LLC F/K/A Amylin Pharmaceuticals, Inc., And Eli Lilly And Company; In the United States District Court for the Southern District of California, San Diego Division

Case 3:13-cv-00833; Jeanette Herbel vs. Merck Sharp & Dohme Corp., Amylin Pharmaceuticals, LLC f/k/a Amylin Pharmaceuticals, Inc., and Eli Lilly and Company; In the United States District Court for the Southern District of California, San Diego Division