BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: FLUOROQUINOLONE PRODUCTS LIABILITY LITIGATION	**§ § §**	**MDL No. 2642**

MOVANTS' REPLY BRIEF IN SUPPORT OF TRANSFER, COORDINATION, AND/OR CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407

Movants[1] respectfully submit this Reply to Defendants' Johnson & Johnson, Janssen Research & Development, LLC (f/k/a Johnson & Johnson Pharmaceutical Research & Development, LLC), Janssen Pharmaceuticals, Inc. (f/k/a Ortho-McNeil-Janssen Pharmaceuticals, Inc.), and McKesson Corporation ("J&J Defendants"), and Defendants' Bayer Healthcare Pharmaceuticals, Inc., Bayer Corporation, Merck & Co., Inc., Schering Corporation, and McKesson Corporation ("Bayer Defendants") Response to Movants' Motion for Transfer Coordination pursuant to 28 U.S.C. §1407 (the "J&J Defendants" and the "Bayer Defendants" are referred to collectively as "Defendants"). For the reasons set forth below, the motion for transfer should be granted, with all Fluoroquinolone actions transferred to the Southern District of Illinois before Judge David R. Herndon for coordinated or consolidated pretrial proceedings.

[1] Movants are the Plaintiffs in the following cases: *Bullard v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, Case No. 3:15-cv-0038; *Bush v. Johnson & Johnson, et al.*, Case No. 3:15-cv-00452; *Grossman v. Johnson & Johnson, et al.*, Case No. 1:15-cv-01082; *Higley v. Bayer HealthCare Pharmaceuticals, Inc. et al.*, Case No. 3:14-cv-05254; *Kellerman v. Bayer HealthCare Pharmaceuticals, Inc., et al.*, Case No. 3:14-cv-03680; *Lampard v. Johnson & Johnson, et al.*, Case No. 3:14-cv-04983; *Spiegel v. Johnson & Johnson, et al.*, Case No. 1:15-cv-03021; and *Street v. Johnson & Johnson, et al.*, Case No. 3:15-cv-08065.

I. INTRODUCTION

Defendants have opposed the motion to transfer on the basis that "individual issues" and plaintiff-specific discovery will predominate to foreclose the possibility of an efficient and convenient MDL for this litigation. While Defendants make every effort to distinguish Avelox® (moxifloxacin), Cipro® (ciprofloxacin), and Levaquin® (levofloxacin) (collectedly, the "fluoroquinolones" or "FLQs")[2], their arguments ignore the scientific literature and recent FDA activity surrounding the class of FLQs, as well as the primary allegations in Plaintiffs' complaints. Plaintiffs allege that the use of one or more FLQs caused them to develop irreversible peripheral neuropathy. This central dispute – whether FLQs have a tendency to cause irreversible peripheral nerve damage – is common to ***all cases*** regardless of the drug ingested or the indication for which it was prescribed. The common questions include not only general causation but specific causation as well, including but not limited to the mechanism of injury by which FLQs can cause or substantially contribute to adverse health events. There are also common questions among all cases as to various regulatory issues, including questions as to the scope of the FDA approval of the FLQs and the pharmacovigilance of the Defendants as it related to reporting and response to adverse events and signals. The litigation will also include significant commonality regarding questions of fact as they relate to marketing schemes used by the Defendants to improperly market these products as first line therapies.

In addition to opposing a class-wide MDL, the J&J Defendants also oppose a Levaquin-only MDL, arguing that "centralization would not create efficiencies … and the circumstances lend themselves especially well to voluntary cooperation." Dkt. 25, Brief of Johnson & Johnson Defendants in Opposition to Plaintiffs' Motion to Transfer ("J&J Brief") at 12. The J&J

[2] Avelox®, Cipro®, and Levaquin®, in any of their forms, shall herein be referred to as "Avelox," "Cipro," and "Levaquin," respectfully, unless otherwise indicated.

Defendants have repeatedly changed their position regarding the merits of coordination and consolidation depending upon what they perceive best serves their litigation position. Shortly after this litigation commenced, the J&J Defendants stipulated to three (3) Levaquin cases together in front of Judge Chhabria in the Northern District of California. *See Grossman v. Johnson & Johnson et al*, No. 3:14-cv-03557 (N.D. Cal.), Dkt. No. 39 (Stipulation re: Administrative Motion to Consider Whether Cases Should Be Related). By February 2015, four (4) more Levaquin cases were related by agreement before Judge Chhabria. *Grossman v. Johnson & Johnson et al*, No. 3:14-cv-03557 (N.D. Cal.), Dkt. No. 54 (Related Case Order). After the litigation continued to grow in number, on March 6, 2015, the J&J Defendants filed motions to transfer asking the Court to transfer non-California plaintiffs to the district courts in their state of residence, effectively asking the Court to "scatter" the previously related cases across multiple districts. *See e.g. Grossman v. Johnson & Johnson et al*, No. 3:14-cv-03557 (N.D. Cal.), Dkt. No. 56-1 (Memorandum of Points and Authorities in Support of Defendants' Motion to Transfer Venue). In support of venue transfer, the J&J Defendants argued that sending multiple non-California plaintiffs back to their home Districts "ultimately promotes efficiency and justice because, should the lawsuits later be consolidated, they will properly originate from their home states rather than this foreign District." *See id.* at 13. Defendants further noted "[t]here is no reason to expect that the JPML will not consider the benefits of Section 1407 consolidation if multiple of these actions are pending in multiple Districts following transfer as a result of Defendants' venue motions." *See id. at 14.* The J&J Defendants acknowledged the benefits of consolidating multiple cases pending in various federal district courts, noting that"[i]n such a JPML-ordered Multi-District Litigation ("MDL"), non-resident plaintiffs are consolidated for discovery purposes in the MDL District, but later are remanded to

their home District for trial." *Id.* at 18. They went so far as to point out to Judge Chhabria that the prior experience in the Levaquin/tendon MDL weighed in favor of venue transfer because the "bellwether and remand process [in the Levaquin/tendon MDL had] promoted fairness and economy…" *Id.* Based on Defendants' arguments, Judge Chhabria granted the Defendants' motion and expressly invited Plaintiffs to file a motion for centralization with this Panel. *See e.g. Grossman v. Johnson & Johnson et al*, No. 3:14-cv-03557 (N.D. Cal.), Dkt. No. 56 (Order Granting Motion to Transfer).

In their Opposition to Plaintiffs' motion for coordination before this Panel, Defendants switched their position once again – namely by asserting that there would no benefit to an MDL in this case, and that this position was supported because the *Levaquin/tendon* MDL "was not a productive use of the parties' resources and the transferee's Court's time." J&J Brief at 8.. And then as recently as this week, the J&J Defendants stipulated to relate together two Levaquin cases pending in the Northern District of California, and in so doing, the J&J Defendants acknowledged that: "(1) the actions concern substantially the same parties, property, transaction or event; and (2) it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different judges. *Lampard v. Johnson & Johnson et al*, No. 3:14-cv-04983 (N.D. Cal.), Dkt 53 (Notice of Related Cases).

It is clear that this Panel should consolidate and coordinate these actions because the criteria set forth in 28 U.S.C. § 1407 is satisfied. Common issues among plaintiffs clearly dominate and formal consolidation would promote the just and efficient conduct of the litigation while serving the convenience of all parties and witnesses. In addition, this is a litigation of national scope and the number of cases across the country is only expected to increase. The

Panel should transfer and consolidate the actions in the Southern District of Illinois[3] before Judge David R. Herndon because Judge Herndon is an experienced jurist and the Southern District of Illinois is a centrally located, geographically convenient forum for all parties and witnesses.

II. ARGUMENT

A. Transfer and Consolidation is Clearly Warranted and Would Promote the Goals of Enhancing Efficiency and Convenience Pursuant to §1407.

1. Common issues and shared allegations clearly predominate.

Defendants claim that consolidation is inappropriate because these cases involve "highly individualized issues" specific to each plaintiff's claims. However, it is undeniable that all actions share allegations and common factual issues concerning the ***safety*** of FLQs and their tendency to cause or increase the risk of developing irreversible peripheral neuropathy. In fact, there is a large body of scientific and medical literature concerning the FLQ class of antibiotics as a whole. Moreover, the issue of whether Avelox, Cipro and/or Levaquin can cause irreversible peripheral nerve damage was deemed a ***class issue*** by the Food and Drug Administration ("FDA").[4] Indeed, the FDA required manufacturers of ***all*** FLQs that are taken by mouth or by injection to revise the existing warnings regarding irreversible peripheral nerve damage. In short, when addressing FLQs, and specifically the risk associated with FLQ use and irreversible peripheral neuropathy, regulators, scientists and doctors alike recognize the commonality among Avelox, Levaquin and Cipro and so should this Panel.

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[3] The majority of plaintiffs advocate for the transfer and consolidation to the Southern District of Illinois. One (1) Interested Party Response that has been filed by Plaintiff *Kathleen Smith* argues for transfer to the District of Minnesota.

[4] *See* Food and Drug Administration. Drug safety communication. Available at: http://www.fda.gov/downloads/Drugs/DrugSafety/UCM365078.pdf. Accessed June 16, 2015.

Defendants argue that an MDL would be out of the ordinary here because the three FLQs in question belong to different "generations" of the FLQ antibiotic class. Whether these drugs belong to different "generations" is irrelevant. The key is that all FLQs at issue in this litigation share a commonality in biological mechanisms underlying the cause of neurotoxicity. As noted above, the FDA acknowledged the commonality of all three FLQs in its 2013 Safety Announcement requiring "the drug labels and Medication Guides for ***all fluoroquinolone*** antibacterial drugs [to] be updated to better describe the serous side effect of peripheral neuropathy."[5]

The mechanisms of the neurotoxicity of fluoroquinolones is common across all three drugs in question and has been attributed to their ability to interact with a number of different receptor complexes within the nervous system.[6] GABA (Gamma-aminobutyric acid) is the major inhibitory neurotransmitter; on the other hand, glutamate is the main excitatory neurotransmitter in the central nervous system ("CNS"), thus having the opposite effect of GABA. The direct actions on receptors can be broken down into two types. In one, the fluoroquinolone acts by binding to the GABA receptor and preventing the inhibitory neurotransmitter GABA from interacting with its own receptor and mediating its effect, thereby indirectly resulting in central nervous system CNS stimulation. In another, the fluoroquinolone exerts a primarily excitatory effect by interaction with the N-menthyl D-aspartate (NMDS) receptor, one of the three excitatory inotropic receptors with glutamate as its natural ligand.[7] The normal function of the

[5] *Id*. (Emphasis added.)

[6] Thomas, R.J., Neurotoxicity of antibacterial therapy. South Med J, 1994.87(9): p. 869-74.

[7] Schmuck G, Schurmann A, Schulter G (1998) Determination of the excitatory potencies of fluoroquinolones in the central nervous system by an *in vitro* model. *Antimicrob Agents Chemother* 42: 18311836.

peripheral nervous system depends on well-balanced GABA signaling. It follows that the blockade of GABA receptors by fluoroquinolones is likely a contributing factor to FLQ-induced irreversible peripheral neuropathy. Regardless of whether the Defendants agree with this mechanism of action, they cannot seriously dispute that there will common testimony across all FLQs that will address a common mechanism of action.

Defendants argue that differences in each drug's regulatory history somehow necessitates particularized fact discovery weighing against consolidation. However, any drug submitted under a different New Drug Application will have a somewhat different regulatory history. Defendants ignore that common questions among all fluoroquinolones remain as to the pharmacovigilance of the defendants as it related to reporting and response to the adverse events and signals.

To the extent that discovery issues vary slightly, this Panel has recognized that any unique issues can be effectively managed by the transferee court. *In re Phenylpropanalamine (PPA) Products Liab. Litig.*, 173 F. Supp. 2d at 1379 ("We note that Section 1407 does not provide a complete identify or even majority of common factual and legal issues as a prerequisite to centralization. We point out that transfer under Section 1407 has the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that: 1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F. Supp. 1403, 1404 (J.P.M.L. 1976); 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.").[8]

[8] The available management techniques for dealing with such variations are illustrated by Judge Kennelly's handling of the testosterone replacement therapy litigation. Judge Kennelly created separate tracts for pre-trial proceedings for Defendant-specific discovery. Similar management

2. Common Issues Relate as to the Adequacy of the Labels.

All of the Defendants argue that individualized issues make centralization (on both a class-wide and drug-specific basis) inconvenient due to varying state laws on the statute of limitations and application of a discovery rule. Defendants fail to recognize that within this framework exist two fundamental issues common to all fluoroquinolone actions - whether the 2004 and 2013 labels adequately warned patients of the risk of irreversible peripheral neuropathy and/or provided sufficient information to put Plaintiffs on notice of their claims as a matter of law.

As the Defendants have conceded, the 2004 labels for Cipro and Levaquin are essentially identical regarding their descriptions of the risk of peripheral neuropathy. Neither label adequately warns patients that the onset of irreversible peripheral neuropathy is often rapid and discontinuation of the drug will not ensure that the peripheral neuropathy is irreversible. Instead, the labels suggest that any risk of irreversible peripheral neuropathy can be avoided by discontinuing the drug upon the onset of certain symptoms. Similarly, the Avelox label fails to warn patients and physicians that merely taking the medication can lead to irreversible peripheral neuropathy. Thus, the common issue of the adequacy of these warnings, for both liability and any application of the discovery rule and/or fraudulent concealment, will be central issues that must be decided in all of these cases. The J&J Defendants actually concede this very point when they indicate in their brief that "even assuming the 2004 Levaquin warning was insufficient to foreclose failure-to-warn liability, it was unquestionably enough to place a reasonably diligent

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techniques can be implemented here for purposes of dealing with unique issues of fact with respect to each of the manufacturers and their respective FLQ product. Alternatively this Court could order the creation of three separate MDLs, similar to the approach it has taken in the pelvic mesh, but still transfer all of the cases to a single Court so that Court can address common issues across the products.

plaintiff who had taken Levaquin and developed peripheral neuropathy on notice that Levaquin might have been the cause." J&J Brief at 16. By so arguing, the J&J Defendants have effectively acknowledged that a single Court would be the proper venue to have this issue resolved, and indeed the determination of a "bar" date is frequently an issue that is determined by an MDL Court. *See e.g. In re: Vioxx Products Liability Litigation*, 522 F.Supp.2d 799, 804 (E.D. La. 2007) (establishing bar date based on date of withdrawal of drug from the market). The possibility of inconsistent rulings of different district court judges as to the adequacy of the warning labels and their effect on any statute of limitations supports centralization for pretrial proceedings.[9] The imposition of any bar date in the context of whether a label change should trigger notice inquiry will also be dependent upon information that was known or knowable by the Defendants, and this common discovery would appropriately be conducted before an MDL before any consideration of a potential limitations defense. *See e.g. In re: Avandia Marketing Sales, Practices and Products Liability Litigation*, MDL No. 1871 (E.D. Pa.), Dkt. No. 1751 (Memorandum and Order) (denying summary judgment because a reasonable jury could conclude that information in the label was incomplete, inaccurate or misleading as to congestive heart failure risks).

Consolidation before one federal district court in pre-trial proceedings will serve the interests of the parties and the court; moreover, any perceived differences in questions that may

[9] The J&J Defendants indicate that "Plaintiffs do not dispute that Levaquin's warning was adequate as of August 2013". J&J Brief at 16. In fact, some Plaintiffs have asserted that this label is also inadequate, which creates another common issue for the MDL Court to decide. *See Hatfield v. Johnson & Johnson et al*, No. 2:15-cv-07638 (S.D. W. Va), Dkt 1 (Complaint for Damages and Demand for Jury Trial) at § 90 ("Notwithstanding this updated 2013 label change, the label for Levaquin remains inadequate and confusing regarding the risk of developing irreversible peripheral neuropathy following the use of Levaquin). In their papers, the J&J Defendants indicate that that the August 2013 label change resulted in a "black box" warning, but this is not correct. J&J Brief at 17.

be plaintiff-specific is not an impediment to centralization where, as here, common questions of fact predominate. *See., e.g. In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices and Prod. Liab. Litig. (No. II)*, 997 F. Supp. 29 1354 (J.P.M.L. 2014); *In re Darvocet, Darvon & Propoxyphene Prod. Liab. Litig.*, 780 F. Supp. 2d 1379 (J.P.M.L. 2011).

3. The presence of generics in the market does not preclude centralization.

In arguing against formal consolidation, Defendants claim that the presence of generic FLQs on the market somehow mandates denial of the Motion for Consolidation. However, this Panel has frequently ordered centralization even when the drugs at issue have had generic competitors for many years. *See, e.g., In re Testosterone Replacement Therapy Prod. Lib. Litig.*, 24 F. Supp. 3d 1378 (J.P.M.L. 2014); *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices and Prod. Liab. Litig. (No. II)*, 997 F. Supp. 29 1354 (J.P.M.L. 2014); *In re Darvocet, Darvon & Propoxyphene Prod. Liab. Litig.*, 780 F. Supp. 2d 1379 (J.P.M.L. 2011). This is not at all surprising because it is frequently a label change and its implementation that awakens plaintiffs to the fact that they may have been harmed by a pharmaceutical product, which in turn leads to a large number of claims being filed.

4. **As predicted, there are substantially more actions pending in multiple federal district courts.**

When Plaintiffs filed their Motion to Consolidate on May 19, 2005, there were twenty four (24) FLQ cases on file, which were filed by fifteen (15) different law firms in sixteen (16) different federal courts. Since this filing, the number of filings has more than doubled. Presently, there are at least forty nine (49) FLQ actions[10], filed by twenty (20) different law

[10] These cases are comprised of twenty-nine (29) Levaquin cases, twelve (12) Avelox cases, four (4) Cipro cases, three (3) Levaquin/Cipro combination cases, and one (1) Levaquin/Avelox case.

firms, in twenty-nine (29) different federal district courts[11] alleging similar wrongful conduct on the part of one of more Defendants. *See Schedule of Actions.* Thus, contrary to the Defendants' suggestion, the litigation is not "small" and will not remain "small".

5. **Transfer will result in substantial elimination of duplicative work for the parties and the courts.**

The J&J Defendants claim that an MDL is unnecessary because "most of the common discovery already took place in the [Levaquin/tendon] MDL." *See J&J Brief* at 1. The J&J Defendants also suggest that all relevant document production from the custodial files of the Defendants' employees will be produced prior to the Panel hearing. *Id.* at 14. Neither of these contentions have merit. Moreover, because of the amount of common discovery that will be necessary, there will be substantial benefit to the parties and the Courts for this litigation to be centralized and consolidated for discovery. In addition, given the number of different law firms that have already filed cases, and given the number of federal district courts where actions are pending, it is simply not practical to have discovery "informally coordinated."

While it is correct that there were a large number of documents produced in the Levaquin/tendon MDL, it is indisputable that not all documents relevant to this litigation were produced by the J&J Defendants in that litigation. Setting aside the fact that there were minimal or no documents produced in the Levaquin/tendon MDL related to the Bayer Defendants'

[11] Currently, cases are pending in the following federal district courts: District of Arizona, Central District of California, Eastern District of California, Northern District of California, Southern District of California, District of Columbia, District of Colorado, Middle District of Florida, Southern District of Florida, Northern District of Georgia, Southern District of Illinois, Western District of Kentucky, District of Maryland, District of Minnesota, Northern District of Mississippi, Southern District of Mississippi, District of Nebraska, District of New Mexico, Southern District of New York, Eastern District of North Carolina, Western District of North Carolina, Western District of Oklahoma, Middle District of Pennsylvania, District of South Carolina, District of Vermont, Western District of Washington, Southern District of West Virginia, and the District of Wisconsin.

products, it is not even remotely accurate to suggest that all relevant Levaquin document production will likely be completed by the Panel hearing.

The J&J Defendants have already admitted in the course of discovery meet and confers in the *Grossman* case that the J&J Defendants reviewed substantially more Levaquin-related documents than were produced in the tendon litigation, and these non-produced documents remain available for inspection and production. In addition, the J&J Defendants have admitted that there are at least five (5) custodians whose files will need to be searched for additional documents that would be relevant to this litigation. The parties in the *Grossman* case have reached an agreement in principle regarding search terms that may be used to search "new" custodial files, and have also reached an agreement regarding an ESI protocol that will apply to any documents that were not produced in connection with the Levaquin/tendon MDL. *See, Grossman v. Johnson & Johnson et al.*, No. 1:15-cv-01082 (D. Md.), *Dkt. 85 and 85*-1 (Joint Proposed Order Regarding Electronically Stored Information).[12] However, the J&J Defendants have not even yet identified the names of the "new" custodians for whose files they will agree to search. There is no agreement whatsoever regarding the total number of additional custodians whose files should be searched for additional documents, nor is there any agreement regarding the scope of production that will take place from non-custodial files. [13]

[12] The J&J Defendants claim that "a single attorney-Thomas Sims of Baron & Budd-already is coordinating plaintiffs' general discovery for *all* of these peripheral neuropathy cases." This is not true. Mr. Sims has no authority, and has never represented he has any authority, to discuss discovery issues on behalf of any Plaintiffs other than those Plaintiffs that his firm represents. The ESI proposed order is not binding on any other Plaintiff or any other Court.

[13] Plaintiffs in this litigation most assuredly do not concede that the documents produced in the Levaquin/tendon MDL comprise "*all* aspects of Levaquin's labeling and regulatory history as well as all adverse events reports to the company-not merely tendon-specific issues." *See J&J Brief* at 14. For example, the J&J Defendants apparently had a document destruction policy whereby all email materials on the Company's central server would be deleted after 90 days. *See*

The J&J Defendants also claim that an MDL is not necessary because the Levaquin/tendon MDL production comprises all relevant documents for all Plaintiffs who suffered an injury on or before the 2011 discovery cut-off in the Levaquin tendon/MDL. Even if the Levaquin/tendon MDL production contains every document relevant to these Plaintiffs' claims as of 2011, which most likely they do not, the Defendants' position would still not be correct. Post-injury documents pertaining to the August 2013 label change for the Defendants' products would not only be discoverable but would also most likely be admissible at trial. *See In re: Levaquin Products Liability Litigation*, MDL No. 08-md-1943 (D. Minn.), Dkt. 2326 (Order Denying Defendants' Motion in Limine Regarding Post-2005 Labeling). Other documents pertaining to the Defendants' post-injury conduct and/or the Defendants' notice of additional instances of the development of irreversible permanent neuropathy by patients would be reasonably likely to lead to discoverable evidence in all of the Fluoroquinolone cases because they would be relevant to the lack of adequate warnings, causation, and/or punitive damages. *Id; see also Smith v. Ingersoll-Rand Co.*, 214 F.3d 1235, 1249 (10th Cir. 2000).

Thus, contrary to the J&J Defendants' suggestion, it is essentially impossible that all relevant Levaquin production will be completed by the Panel hearing for any of the Plaintiffs in this litigation. Rather, given the positions that have been taken so far in the meet and confer

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In re: Levaquin Products Liability Litigation, MDL No. 08-md-1943 (D. Minn.), Dkt. 1204 (Memorandum in Support of Motion to Compel Production of Various Documents and Things and Ex. 1 thereto). If, however, there is a litigation hold notice, such materials are maintained pursuant to that notice. *Id.* The J&J Defendants apparently have access to Levaquin-related documents that have been sequestered not only in connection with the Levaquin/tendon MDL but also in connection with other litigations concerning Levaquin that pre-dated the MDL. *Id.* at 1-3. It is not at all clear at this stage of this litigation that the emails produced by the J&J Defendants in the Levaquin/tendon MDL comprise all emails pertaining to Levaquin's labeling and regulatory history that relate to the risk of irreversible permanent neuropathy. It is Plaintiffs' position that the J&J Defendants should run the agreed search terms against any Levaquin sequestered documents, but at this point there has been no agreement reached on this issue.

process with all the Defendants, it is highly likely that the parties will need to obtain rulings on the scope of document production by all the Defendants, and absent centralization and coordination, there is a strong likelihood that that multiple district courts will need to address similar discovery issues pertaining to the Defendants' production of documents.

The J&J Defendants' claim that "most of the common discovery already took place in the [Levaquin/tendon] MDL" also ignores the obvious reality that the fact depositions and expert discovery in the Levaquin/tendon MDL were focused on Levaquin tendon injuries not the development of irreversible peripheral neuropathy. While some of the fact deposition testimony may overlap with some of the issues in this case, there is no question that a large amount of additional generic testimony will necessarily need to be developed in this litigation.[14] Moreover, the vast majority if not all of the common expert discovery will be new because it will be focused on the Defendants' failure to adequately warn of the risk of irreversible permanent neuropathy, as well as general causation related to that injury.

Oddly, the J&J Defendants' also claim that "[w]ith *another Levaquin tendon-injury* MDL formed in 2008 now concluding, [Plaintiffs'] motion is a meritless attempt to get a second bite of the apple". *J&J Brief* at 3 (emphasis supplied). This position seeks to have this Panel ignore the obvious: the Levaquin/tendon MDL was formed to address "allegations that [Levaquin] causes tendon rupture, and the warnings provided by Defendants informing Levaquin users of this risk were inadequate." *In re: Levaquin Products Liability Litigation*, 560 F.Supp.2d 1384, 1985

[14] Based on Plaintiffs' preliminary review, there were apparently a total of 70 custodial files produced in the Levaquin/tendon MDL which contained 1000 documents or more, but only 27 depositions were taken of employees of the J&J Defendants in the tendon litigation as a whole (including in litigation pending in New Jersey state court). The J&J Defendants have not yet produced the depositions from the tendon litigation, and have not indicated that they will stipulate to the admissibility of any of that testimony at the trial of cases in this litigation, but even if they will so stipulate, there is undoubtedly going to be the need to re-depose certain witnesses and to depose additional custodians who were not deposed in the tendon litigation.

(J.P.M. L. 2008). The Plaintiffs in this litigation have not suffered tendon-related injuries so they never had any opportunity to participate in the Levaquin/tendon MDL. Rather than seeking another "bite" of any apple, Plaintiffs are seeking centralization in a wholly distinct set of cases in order to eliminate duplicate discovery, prevent inconsistent pretrial ruling, and conserve the resources of the parties.

It not reasonable to expect that discovery can be "informally coordinated." These actions are now scattered across twenty nine (29) federal judicial districts, and it is likely that the number of affected Courts will continue to grow. These actions are substantially similar in terms of the Defendants' alleged conduct, and discovery will undoubtedly overlap. However, different federal courts have already adopted scheduling orders that are not in unison regarding the time for completion of discovery. Absent formal coordination, these cases will necessarily be on different discovery tracks, and Plaintiffs' counsel in later-filed cases will undoubtedly want to have additional time to prepare for important depositions, and, therefore, may not be willing to cooperate in the scheduling of otherwise generic depositions. In addition, although some experts may be used by multiple Plaintiffs' firms, the lack of formal coordination will substantially drive up the costs of the litigation because experts will necessarily need to be deposed multiple times if and when their opinions are supplemented based on the review of otherwise generic depositions taken at differing intervals in different cases. And, multiple federal courts will likely be faced with similar discovery motions, which will result an undue burden on the federal judiciary.

B. The Southern District of Illinois Is the Most Appropriate District For Transfer

Defendants argue that, if the Panel establishes an MDL, the Southern District of Illinois is not an appropriate transferee forum because the ligation "has no connection to that district." Of

course, Defendants downplay the importance of at least two (2) actions pending in the Southern District of Illinois in front of Judge Herndon.

Defendants further assert that these plaintiffs may have employed "procedural gamesmanship" to inflate the number of cases pending before Judge Herndon. This is absurd as Plaintiffs had absolutely nothing to do with the transfer of these cases to Judge Herndon. The two cases pending before Judge Herndon are *Bush v. Johnson & Johnson, et al*., 3:15-cv-452 (a Levaquin case) and *Bullard v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, 3:15-cv-38 (an Avelox case). *Bush* was filed on April 22, 2015 and originally assigned to Judge Michael J. Reagan. *See* 3:15-cv-452 (N.D.Ill.), Dkt. No. 1-2. *Bush* was then reassigned to Judge Herndon **because Judge Reagan recused himself**. *See* 3:15-cv-452 (N.D. Ill.), Dkt. No. 9 (Order of Recusal) (noting that the "Clerk's Office shall reassign the case by random draw"). *Bullard* was filed on January 13, 2015 and assigned to Judge J. Phil Gilbert. On May 26, 2015, the case was transferred to Judge Herndon upon an Order issued *by Judge Gilbert* that the case appeared to be related to *Bush* and the two cases should be heard by one judge "to preserve judicial economy, for the convenience of the parties and to avoid inconsistent judgments." *See* 3:15-cv-38 (S.D. Ill.) Dkt. No. 23. It is important to note that Plaintiffs had not filed any papers with Judge Gilbert-he simply recognized the common issues that exist between the Avelox case and the Levaquin case, and in order to preserve judicial economy, determined to transfer the Avelox case to Judge Herndon.

The Defendants' apparent position that these cases should not be transferred to Judge Herndon because the Defendants are not based in Illinois and/or because relevant company evidence is not there are not valid bases to deny transfer. This Court has frequently transferred cases to "neutral" judicial districts in the center of the country for the convenience of the parties.

See e.g. In re: Xarelto (Rivaroxaban) Products Liability Litigation, 2014 WL 7004048 (J.P.M.L. 2014). The Southern District of Illinois provides a geographically central and very appropriate forum for this nationwide litigation.

III. CONCLUSION

For the reasons stated above and in their original motion and opening brief, Movants respectfully request that the Panel grant their motion ordering transfer pursuant to § 1407 to Judge Herndon of the Southern District of Illinois as the transferee judge.

Dated this 17th of June, 2015

Respectfully submitted,

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Baron and Budd, P.C. is counsel of record for Movants Karyn Joy Grossman, Sherri Kellerman, Suzanne Higley, Simon Lampard and Olga Spiegel.

Clifford Law Offices PC is counsel of record for Movant Nancy Bush.

BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: FLUOROQUINOLONE PRODUCTS LIABILITY LITIGATION	**§ § §**	**MDL - 2642**

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge
Plaintiff/Movant: Lori Lynn Street **Defendants:** Johnson & Johnson; Janssen Research & Development, LLC; Janssen Pharmaceuticals, Inc.; McKesson Corporation	U.S.D.C. District of Arizona (Prescott Division)	3:15-cv-08065	Hon. David G. Campbell
Plaintiff: Marla Lombard **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Bayer Corporation	U.S.D.C. Central District of California (Western Division – Los Angeles)	2:15-cv-03120	Hon. Fernando M. Olguin
Plaintiff: Mateo Lopez **Defendants:** Bayer Healthcare Pharmaceuticals Inc.; Merck and Co Inc.	U.S.D.C. Central District of California (Southern Division – Santa Ana)	8:15-cv-00868	Hon. James V. Selna
Plaintiff: Kyle Richardson **Defendants:** Bayer Corporation; Bayer Healthcare Pharmaceuticals, Inc.	U.S.D.C. Central District of California	2:15-cv-04210	Hon. R. Gary Klausner
Plaintiff: Diane Standbridge Willey **Defendant:** Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C. Central District of California	8:15-cv-00964	*Judge Pending*
Plaintiff/Movant:	U.S.D.C. Northern	3:14-cv-03680	Hon. William Alsup

Sherri Kellerman **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.; Schering Corporation; McKesson Corporation	District of California (San Francisco)		
Plaintiff/Movant: Simon Lampard **Defendants:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development, LLC; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; McKesson Corporation	U.S.D.C. Northern District of California (San Francisco)	3:14-cv-04983	Hon. Vince Chhabria
Plaintiff/Movant/Movant: Suzanne Higley **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Bayer Corporation; McKesson Corporation	U.S.D.C. Northern District of California (San Francisco)	3:14-cv-05254	Hon. Samuel Conti
Plaintiff: Windy Garland **Defendants:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development, LLC; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; McKesson Corporation	U.S.D.C. Northern District of California (San Francisco)	3:14-cv-05440	Hon. Vince Chhabria
Plaintiff: Donna Pritchard **Defendants:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development, LLC; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; McKesson Corporation	U.S.D.C. Northern District of California (San Francisco)	3:14-cv-05593	Hon. Vince Chhabria
Plaintiff: Sheila Ellis **Defendants:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development,	U.S.D.C. Northern District of California (San Francisco)	3:14-cv-05669	Hon. Vince Chhabria

LLC; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; McKesson Corporation			
Plaintiff: Joseph DeSalvo **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Bayer Corporation; McKesson Corporation	U.S.D.C. Northern District of California (San Francisco)	3:14-cv-05670	Hon. Susan Illston
Plaintiff: Guillermo Goldbaum **Defendant:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development, LLC; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; McKesson Corporation	U.S.D.C. Northern District of California (Oakland)	5:15-cv-01555	Hon. Edward J. Davila
Plaintiff: Scott Allen Reiman **Defendants:** Johnson & Johnson; Janssen Research & Development, LLC; Janssen Pharmaceuticals, Inc.; McKesson Corporation	U.S.D.C. Northern District of California (Oakland)	4:15-cv-01610	Hon. Donna M. Ryu
Plaintiff: Dennis Armenta **Defendants:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development, L.L.C.; McKesson Corporation; Ortho-McNeil-Janssen Pharmaceuticals, Inc.	U.S.D.C. Southern District of California (San Diego)	3:15-cv-00513	Hon. Janis L. Sammartino
Plaintiff: Krista Ann Kirkwood **Defendant:** Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C. Southern District of California	3:15-cv-01329	Hon. Thomas J. Whelan
Plaintiff: Michael Francis Breene **Defendants:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development,	U.S.D.C. Eastern District of California (Fresno)	1:15-cv-00361	Hon. Troy L. Nunley

L.L.C.; McKesson Corporation; Ortho-McNeil-Janssen Pharmaceuticals, Inc.			
Plaintiff: Felicita Cortez **Defendants:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development, L.L.C.; McKesson Corporation; Ortho-McNeil-Janssen Pharmaceuticals, Inc.	U.S.D.C. Eastern District of California (Fresno)	1:15-cv-00525	Hon. Morrison C. England, Jr.
Plaintiff: Joanne Hanson **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Bayer Healthcare Pharmaceuticals, Inc.; Bayer Corporation	U.S.D.C. District of Colorado (Denver)	1:15-cv-01169	Hon. Michael E. Hegarty
Plaintiff: Walter Sanchez **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	U.S.D.C. District of Colorado (Denver)	1:15-cv-01177	Hon. Kathleen M. Tafoya
Plaintiff: Stephanie Heller **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C. District of Columbia (Washington, DC)	1:14-cv-01953	Hon. Beryl A. Howell
Plaintiff: Ronen Wolf **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	U.S.D.C. Southern District of Florida (Ft. Lauderdale)	0:15-cv-61189	Hon. Darrin P. Gayles
Plaintiff: Sharon Mandel **Defendants:** **Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.**	U.S.D.C Middle District of Florida (Tampa)	8:15-cv-01269	Hon. Steven D. Merryday
Plaintiff: Timothy Scribano	U.S.D.C Middle District of Florida	6:15-cv-00892	Hon. Roy B. Dalton, Jr.,

Defendants: Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	(Tampa)		
Plaintiff: Sylvia McRae **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	U.S.D.C Middle District of Florida (Tampa)	8:15-cv-01352	Hon. Susan C Bucklew
Plaintiff: Deborah Searcy **Defendants:** Bayer Corporation; Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C Middle District of Florida (Tampa)	8:15-cv-01391	Hon. Richard A. Lazzara
Plaintiff: Kathy D. Presley **Defendants:** Johnson & Johnson; Janssen Research & Development, LLC; Janssen Pharmaceuticals, Inc.	U.S.D.C. Northern District of Georgia (Atlanta)	1:15-cv-01293	Hon. Richard W. Story
Plaintiff: Deborah Johnson **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	U.S.D.C. Northern District of Georgia	1:15-cv-02082	Hon. Charles A. Pannell, Jr
Plaintiff: Pamela J. Lewis **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	U.S.D.C. Northern District of Georgia	2:15-cv-00133	Hon. Richard W. Story
Plaintiff: Patricia Ann Hobbs **Defendants:** Bayer Corporation; Bayer Healthcare Pharmaceuticals, Inc.; Janssen Pharmaceuticals, Inc.; Janssen Research &	U.S.D.C. Northern District of Illinois (Eastern Division – Chicago)	1:15-cv-04933	Hon. Milton I. Shadur

Development, LLC; Johnson & Johnson; Merck & Co., Inc.			
Plaintiff/Movant: Jeanne Bullard **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C. Southern District of Illinois (East St. Louis)	3:15-cv-0038	Hon. J. Phil Gilbert
Plaintiff/Movant: Nancy Lee Bush **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	U.S.D.C. Southern District of Illinois (East St. Louis)	3:15-cv-00452	Hon. David R. Herndon
Plaintiff: Jeffrey Baum **Defendants:** Johnson & Johnson; Janssen Research & Development, LLC; Janssen Pharmaceuticals, Inc.	U.S.D.C. Western District of Kentucky (Louisville)	3:15-cv-00293	Hon. David J. Hale
Plaintiff/Movant: Karyn Joy Grossman **Defendants:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development, LLC; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; McKesson Corporation	U.S.D.C. District of Maryland (Baltimore)	1:15-cv-01082	Hon. James K. Bredar
Plaintiff: Kathleen M. Smith **Defendants:** Johnson & Johnson; Janssen Research & Development, LLC; Janssen Pharmaceuticals, Inc.	U.S.D.C. District of Minnesota (Minneapolis)	0:14-cv-05021	Hon. Donovan W. Frank
Plaintiff: Rickey C. Talley **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	U.S.D.C. Northern District of Mississippi (Aberdeen Division)	1:15-cv-00103	Hon. Sharion Aycock
Plaintiff:	U.S.D.C. Southern	2:15-cv-00084	Hon. Herman Gerel

Gary Clark **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	District of Mississippi (Eastern Division – Hattiesburg)		
Plaintiff: Geraldine Blackmon **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C. District of Nebraska (Lincoln)	4:15-cv-03020	Hon. John M. Gerrard
Plaintiff: John R. Taylor **Defendants:** Bayer Corporation; Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C. District of New Mexico	1:15-cv-00468	Hon. Stephan M. Vidmar
Plaintiff/Movant: Olga Spiegel **Defendants:** Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development, LLC; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; McKesson Corporation	U.S.D.C. Southern District of New York (Foley Square)	1:15-cv-03021	Jed S. Rakoff
Plaintiff: Dean Uman **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Bayer Corporation; McKesson Corporation; Johnson & Johnson; Johnson & Johnson Pharmaceutical Research & Development, L.L.C.; Ortho-McNeil-Janssen Pharmaceuticals, Inc.; Janssen Pharmaceuticals, Inc.; Janssen Research & Development, LLC	U.S.D.C. Eastern District of North Carolina (Western Division)	5:15-cv-00197	Hon. Louise Wood Flanagan
Plaintiff: Amy King **Defendants:** Bayer Corporation; Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C. Western District of North Carolina (Charlotte)	3:15-cv-00194	Hon. Max O. Cogburn, Jr.
Plaintiff:	U.S.D.C. Western	5:15-cv-00647	Hon. Vicki Miles-

Sarah Moll **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	District of Oklahoma		LaGrange
Plaintiffs: Robert L. Heffelfinger Celia Heffelfinger **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C. Middle District of Pennsylvania (Harrisburg)	1:15-cv-00479	Hon. Sylvia H. Rambo
Plaintiff: Christina Morris **Defendants:** Bayer Healthcare Pharmaceuticals, Inc.; Merck & Co., Inc.	U.S.D.C. District of South Carolina (Florence)	4:15-cv-01322	Hon. R. Bryan Harwell
Plaintiff: Bonnie Lynch **Defendants:** Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.	U.S.D.C. District of Vermont	2:15-cv-00118	Hon. John M. Conroy
Plaintiff: Ronald Baughn **Defendants:** Johnson & Johnson; Janssen Research & Development, LLC; Janssen Pharmaceuticals, Inc.; McKesson Corporation	U.S.D.C. Western District of Washington (Tacoma)	3:15-cv-05283	Hon. Benjamin H. Settle
Plaintiff: Rebecca Hatfield **Defendants:** Bayer Corporation; Bayer Healthcare Pharmaceuticals, Inc.; Janssen Pharmaceuticals, Inc.; Janssen Research & Development, LLC; Johnson & Johnson; Merck & Co., Inc.	U.S.D.C Southern District of West Virginia	2:15-cv-07638	Hon. John T. Copenhaver, Jr.,
Plaintiff: Robert Meyer	U.S.D.C. District of Wisconsin	1:15-cv-00691	Hon. William C Griesbach

Defendants: Janssen Research & Development, LLC; Johnson & Johnson; Janssen Pharmaceuticals, Inc.			

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

IN RE: FLUOROQUINOLONE PRODUCTS LIABILITY LITIGATION	**§ § §**	**MDL Docket No. 2642**

PROOF OF SERVICE

I hereby certify that on June 17, 2015, I electronically filed the foregoing Reply to Response in Opposition to Plaintiffs' Motion for Transfer of Actions to the Southern District of Illinois, Brief in support of said Motion, Exhibits thereto, Schedule of Actions, and this Proof of Service with the United States Judicial Panel on the Multidistrict Litigation using the CM/ECF system, which sent notification of such filing to all counsel of record, and mailed to the following via US Mail:

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