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

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| **In re** Lipitor (Atorvastatin) Litigation | MDL-____ |

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

Pursuant to 28 U.S.C. § 1407 and Rules 6.1 and 6.2 of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, plaintiffs in the cases *Evalina Smalls v. Pfizer Inc., District of South Carolina, Civil Action No. 2:13-cv-796-RMG, Waltraud Gina Kane v. Pfizer Inc., District of South Carolina, Civil Action No. 2:13-cv-1012-RMG,* and *Susan Marie Turner v. Pfizer Inc., District of South Carolina, Civil Action No. 2:13-cv-01108-RMG,* submit this memorandum in support of their *Motion of Plaintiffs for Transfer of Actions to the District of South Carolina Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings*. For the reasons discussed herein, the plaintiffs respectfully request that the Judicial Panel on Multidistrict Litigation (the "Panel") enter an order consolidating and transferring all related actions to the District of South Carolina, Charleston Division, for coordinated or consolidated pretrial proceedings.

## I. BACKGROUND

### A. Lipitor/Atorvastatin

Lipitor (also known as atorvastatin calcium) is an HMG-CoA reductase inhibitor and member of the class of drugs known as statins. It is prescribed to reduce the amount of cholesterol and other fatty substances in the blood. In December 1996, Parke-

Davis Pharmaceutical Research, a division of Warner-Lambert Company, obtained FDA approval to market Lipitor. Warner-Lambert and Pfizer Inc. entered into a co-marketing agreement and the companies began distributing and selling Lipitor throughout the U.S. in 1997. In June 2000, Pfizer acquired Warner-Lambert and all rights to Lipitor.

In August 2011, FDA's Division of Metabolism and Endocrinology Products requested Pfizer make labeling changes for Lipitor. In February 2012, Pfizer complied with the FDA request and added language to the Warnings and Precautions section of the Lipitor label which stated: "Increases in HbA1c and fasting serum glucose levels have been reported with HMG-CoA reductase inhibitors, including Lipitor." Prior to this February 2012 change, the drug label had never warned patients or physicians of any potential relationship between changes in blood sugar levels and the use of the drug.

B. Lipitor/Atorvastatin Litigation

The plaintiffs Evalina Smalls, Waltraud Gina Kane, and Susan Marie Turner filed their actions in the District of South Carolina on March 25th, April 15th, and April 24, 2013, respectively, naming Pfizer Inc. as defendant. The plaintiffs allege, inter alia, that the defendant manufactured, marketed, distributed, supplied, promoted and/or sold Lipitor, which is defective and unreasonably dangerous in that it causes diabetes; that the defendant knew or should have known of the risk of diabetes injuries associated with the product; that the defendant marketed, distributed and/or sold the product without adequate warnings concerning its risks; and that as a direct and proximate result of use of the product the Movant suffered serious injury, physical and mental pain and suffering, as well as economic loss.

To date, multiple individual actions have been commenced against Pfizer Inc. See attached Schedule of Actions. Each of these actions asserts substantially similar claims and seeks substantially similar relief. Given the widespread use of Lipitor for over a decade, numerous additional filings are expected.

## II. ARGUMENT

### A. These actions are appropriate for transfer and pre-trial coordination under 28 U.S.C. § 1407

Title 28, section 1407(a) of the United States Code provides, "when civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." 28 U.S.C. § 1407(a). The Panel "shall" make such transfers when in furtherance of "the convenience of the parties and witnesses" and when transfer "will promote the just and efficient conduct of such actions." *Id.* Because of the number of current and anticipated Lipitor claims and the existence of common questions of fact, the requirements for transfer under §1407 are easily met here.

Each of the currently pending Lipitor actions involves common questions of fact, including whether the defendants knew or should have known of the dangerous propensity of the product to cause diabetes; whether the warnings were sufficient to alert users of the risk of adverse events; whether the defendants were negligent in marketing, promoting or distributing the product; and whether the product conformed to the defendant's implied warranties. Because of the common issues of fact and the number of current and anticipated claims, these cases are well suited for transfer and pretrial consolidation. Consolidation will foster the just and efficient conduct of these actions by preventing duplicative discovery and preventing inconsistent resolution of pretrial issues.

Finally, the convenience of the parties and witnesses clearly supports transfer and pretrial consolidation. Because of the common defendant, virtually identical issues of law and fact, and the number of current and anticipated claims, transfer and consolidation is most convenient for the parties and potential witness common to these actions.

**B. The District of South Carolina is the Appropriate Forum for this Litigation.**

The factors considered by this Panel in determining the appropriate MDL forum include: (1) the location of parties, witnesses and documents; (2) the accessibility of the proposed transferee district to parties and witnesses; and (3) the respective caseloads of the proposed transferee district courts. *See In re Corn Derivatives Antitrust Litig*., 486 F. Supp 929, 93 1-32 (J.P.M.L. 1980). Analysis of each of these factors supports transfer of these actions to the District of South Carolina for consolidated pre-trial proceedings.

Lipitor was used by potentially millions of persons all across the United States. At this juncture, it is impossible to determine if any jurisdiction will emerge as having substantially more Lipitor claims than any other.

Additionally, it would not be inconvenient for counsel, witnesses, or the parties to travel to the District of South Carolina for any hearings or other proceedings relating to the MDL. The federal courthouse for the division in which the plaintiffs' cases are pending is located in Charleston, South Carolina, in close proximity to the Charleston International Airport which is serviced by major airlines with direct flights to Nashville, Philadelphia, Cincinnati, Atlanta, Charlotte, Chicago, Dallas, Houston, Boston, Washington, D.C., Detroit, and New York.

Finally, the caseload of the District of South Carolina supports transfer to this district. Data from Federal Court Management Statistics reveals the District of South

Carolina is well-suited to provide an efficient disposition of these cases. According to judicial statistics for the twelve-month period ending March 31, 2012, civil cases proceeded to trial in the District of South Carolina in 24.3 months. The median time for filing to disposition other than trial for civil cases was only 8.5 months.

Moreover, the District of South Carolina has able jurists, and this Panel has already entrusted this judiciary with previous MDLs: *In re L-Tryptophan Products Liability Litigation* MDL-865, *In re Safety-Kleen Corp.* MDL-1378, *In re Laidlaw, Inc.* MDL 1397, *In re American General Life & Accident Insurance Company Industrial Life Insurance* MDL 1429, *In re Electrical Receptacle Product Liability Litigation* MDL 1595, *In re the Thaxton Group, Inc.* MDL 1612, *In re Bausch & Lomb, Inc. Contact Lens Solution Products Liability Litigation*, MDL 1785, *In re Household Goods Movers Antitrust Litigation*, MDL 1865, and *In re MI Windows and Doors, Inc. Products Liability Litigation*, MDL 2333. The plaintiffs' cases are currently pending in the Charleston Division of the District of South Carolina, which has successfully overseen several of the aforementioned MDL proceedings.[1]

The District of South Carolina, and the Charleston Division in particular, is a perfectly appropriate and logical choice for consolidated pretrial proceedings in this litigation.

## III. CONCLUSIONS

Transfer and consolidation for pretrial proceedings of all pending and subsequently filed Lipitor actions will promote the just and efficient conduct of these actions by allowing national coordination of discovery and other pretrial efforts, will prevent

[1] The *In re MI Windows and Doors, Inc. Products Liability Litigation* MDL is currently pending before the Honorable David C. Norton of the Charleston Division.

duplicative and potentially conflicting pretrial rulings, will reduce the costs of litigation and allow cases to proceed more efficiently to trial. For all of the foregoing reasons, the plaintiffs respectfully request the Panel enter an order that the related actions be consolidated and transferred to the District of South Carolina, Charleston Division.

Dated this 26th day of April, 2013.

Respectfully submitted,

By: s/ H. Blair Hahn

H. Blair Hahn, Esq. (Fed. I.D. #5717)
Christiaan A. Marcum, Esq. (Fed. I.D. #7556)
Richardson Patrick Westbrook & Brickman, LLC
1037 Chuck Dawley Blvd., Bldg. A
Mount Pleasant, SC 29464
bhahn@rpwb.com
cmarcum@rpwb.com
Telephone: (843) 727-6500
Facsimile: (843) 727-6642

Mark Charles Tanenbaum, Esq. (Fed. I.D. #4017)
Mia Lauren Maness, Esq. (Fed. I.D. #5457)
P.O. Box 20757
Charleston, SC 29413-0757
Telephone: (843) 577-5100
Facsimile: (843) 722-4688
mark@tanenbaumlaw.com
mia@tanenbaumlaw.com

Counsel for Plaintiffs, *Evalina Smalls*, 2:13cv-796-RMG, *Waltraud Gina Kane*, 2:13-cv-1012-RMG, and *Susan Marie Turner*, 2:13-cv-01108-RMG