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8 UNITED STATES DISTRICT COURT
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10 SOUTHERN DISTRICT OF CALIFORNIA
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12 IN RE INCRETIN-BASED THERAPIES
13 PRODUCTS LIABILITY LITIGATION

Case No. 3:13-md-02452-AJB-MDD
MDL 2452

Judge: Hon. Anthony J. Battaglia

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15 *This Document Relates to All Cases*
16

17
18 **JOINT STATUS REPORT NO. 1**

19 Pursuant to the Court's Order Setting Status Conference, entered on
20 September 11, 2013, Counsel representing the plaintiffs and Counsel for each of
21 the defendants, Amylin Pharmaceuticals, LLC, Eli Lilly and Company, Merck
22 Sharp & Dohme Corp. and Novo Nordisk Inc., have met in person, and conferred
23 by telephone, about the issues the Court identified for discussion at the first Status
24 Conference in this multidistrict proceeding.
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A. **Plaintiffs’ Co-Lead Counsel (“Lead”)**. Conferences have been held among counsel who have cases filed in, or transferred to, the Southern District of California and centralized in this Multidistrict proceeding pursuant to this Court’s Order and an agreement has been reached among the plaintiffs to recommend to the Court the appointment of the following individuals to serve as Co-Lead Counsel:

For membership on the Plaintiff Executive Committee, Plaintiff Steering Committee (“PSC”) and Co-Liaison counsel, the individuals listed in Attachment A are recommended by Plaintiffs for appointment by the Court.

<u>Amylin</u>	<u>Lilly</u>
O'Melveny & Myers	Pepper Hamilton
Lead: Richard Goetz	Lead: Nina Gussack

- 2 -

1 **2. Case Census.** The parties have filed a joint list of all related cases pending
2 in state or federal court that have not yet joined this multidistrict litigation
3 proceeding. The parties will be prepared to discuss the number of cases filed in
4 various jurisdictions.

5
6 **3. Master Consolidated Complaint and Master Answer.** The parties agree
7 in principle that a Master Consolidated Complaint as well as a Master Answer
8 will help facilitate the management of this litigation. The PSC has undertaken to
9 draft a Master Consolidated Complaint for review by the Defendants. Once
10 agreement is reached on a Master Complaint, Defendants will prepare a Master
11 Answer. In the event of any disagreement remaining by the date of the Status
12 Conference, the parties will be prepared to discuss this matter further at the Status
13 Conference.

14
15 **4. Direct Filing of Cases in the MDL.** The parties have agreed upon a
16 proposed order to provide for the filing of cases directly in this MDL proceeding
17 in order to eliminate delays associated with the transfer of cases filed in, or
18 removed to, other federal district courts to this Court, and to promote judicial
19 efficiency. The parties will soon submit their joint proposed order.

20
21 **5. Plaintiff Fact Sheets (“PFSs”) and Authorizations.** The parties have
22 agreed on a fact sheet for plaintiffs to complete to better inform the parties about
23 certain facts specific to the plaintiff’s case. Agreement was also reached on the
24 form of authorizations to be signed by individual plaintiffs, to allow the
25 defendants to obtain plaintiffs’ medical, pharmacy and other records from their
26 physicians and the healthcare institutions that treated them. The PFS and
27 Authorizations, along with deadlines and cure provisions, *inter alia*, have been
28

embodied in an Order approved by this Court on June 17, 2013 in the cases consolidated in this Court prior to the establishment of the MDL, and documents and other information are being produced pursuant to the Court's Order. Plaintiffs and Defendants request that the Court re-enter that order in this MDL proceeding to ensure applicability to the entire docket and will submit a proposed order to the Court for that purpose.

6. **Defense Fact Sheets ("DFS")**. The parties are in the process of negotiating a fact sheet for defendants to complete to inform the parties about certain facts in the possession of the defendants specific to each plaintiff's case. In the event of any disagreement remaining by the date of the Status Conference, the parties will be prepared to discuss this matter further at the Status Conference.

7. **Protective Order**. This Court approved, on June 3, 2013, a protective order submitted by the parties in connection with the cases consolidated in this Court prior to the establishment of the MDL to protect the confidentiality of documents produced by the parties. Similar to the parties' request with respect to the PFS and Authorizations, Plaintiffs and Defendants request that the Court re-enter that order in this MDL proceeding, to ensure applicability to all cases on the docket, and will submit a proposed order to the Court.

8. **In Extremis Depositions**. The parties agree that a protocol should be adopted by the Court to govern the conduct of depositions to preserve the testimony of individuals who are gravely ill. To better inform the parties on the most suitable terms for such a protocol, the parties have agreed to conduct depositions of several plaintiffs *in extremis* health. With this experience, the parties are hopeful that they will be able to reach agreement on a protocol to govern *in extremis* depositions thereafter.

1
2 **9. Deposition Protocol.** The parties have exchanged drafts of a protocol to
3 govern depositions of fact witnesses (other than *in extremis* depositions) and will
4 be prepared to discuss this matter further at the Status Conference if there are any
5 disagreements at that time.

6
7 **10. Rule 30 (b)(6) Depositions.** Plaintiffs intend to serve amended Rule
8 30(b)(6) notices, the scope of which will be discussed by the parties. In the event
9 of any disagreement remaining by the date of the Status Conference, the parties
10 will be prepared to discuss this matter further at the Status Conference.

11
12 **11. Document Production.** Documents have been produced, and will continue
13 to be produced, on a rolling basis. Defendants will be prepared to discuss the
14 status of the production at the Status Conference.

15
16 **A. ESI Protocol.** The parties have made significant progress in
17 negotiating the terms of an ESI protocol. In the event of any
18 disagreement remaining by the date of the Status Conference, the
19 parties will be prepared to discuss this matter further at the Status
20 Conference.

21
22 **12. Bellwether Trials.** The parties also agree that a bellwether process could
23 help facilitate, and focus the management of this litigation.

24
25 **13. Plans for Future Dispositive and/or Daubert Motions.** Defendants
26 believe that general causation, viz., whether any of the Incretin-based Therapies
27 cause pancreatic cancer, is a threshold issue that should be addressed at the outset
28

1 of the litigation. Plaintiffs disagree and believe that general causation should not
2 be addressed until after all discovery has been completed. Defendants plan to file
3 a motion or motions to address this as a threshold issue with the Court.
4

5 Dated: October 7, 2013
6

7 RESPECTFULLY SUBMITTED,
8

9 By: /s/ Gayle M. Blatt
10 GAYLE M. BLATT
11 Proposed Plaintiff Co-Liaison Counsel
12 CASEY GERRY SCHENK FRANCAVILLA
13 BLATT & PENFIELD, LLP
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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: INCRETIN-BASED THERAPIES
PRODUCTS LIABILITY LITIGATION

MDL No. 2452

Case No. 13md2452 AJB (MDD)

**JOINT APPLICATION FOR
APPOINTMENT TO LEAD COUNSEL;
EXECUTIVE COMMITTEE; LIAISON
COUNSEL AND THE PLAINTIFFS'
STEERING COMMITTEE**

Pertains To All Related Cases Consolidated in
12cv2549-AJB (MDD)

COMES NOW, Ryan L. Thompson, Hunter J. Shkolnik, and Tor Hoerman, who jointly make this application on behalf of themselves and all counsel identified herein, for appointment to the In re: Incretin-Based Therapies Products Liability Litigation Plaintiffs' Steering Committee and various roles therein. To date, Counsel for nearly all Plaintiffs with a case in this MDL have agreed to the appointments sought herein. No Plaintiff's Counsel has objected to the appointments sought herein. While the undersigned have tried to reach out to every identified Plaintiffs' counsel, it is possible that we have not communicated with Counsel for every Plaintiff prior to the filing of this application; however, should any such Counsel have an objection to this application, the undersigned invite them to consult with proposed Plaintiffs' Lead Counsel prior to the October 17, 2013 Status Conference so that proposed Plaintiffs' Lead Counsel might resolve any issue or objection prior to the Status Conference.

The proposed Plaintiffs' Lead Counsel have participated in meetings and telephone conferences with other plaintiffs' counsel, and have listened to, and considered, various ideas and proposals concerning the organizational structure of the Plaintiffs' Steering Committee ("PSC") before this MDL Court. Proposed Plaintiffs' Lead Counsel have received unanimous support for our appointment and the structure and appointment of others to the various positions set forth below from every plaintiffs' counsel we have

communicated with to date. The proposed Plaintiffs' Lead Counsel have also circulated a draft of this motion to all known plaintiffs' counsel for their review and consideration.

I. BACKGROUND

This Court entered an Order Setting a Status Conference on September 11, 2013. Pursuant to Paragraph A(1) of that Order, the Court ordered that any agreed slate appointing Lead Counsel, Liaison Counsel, and PSC members be *submitted* to the Court on or before October 7, 2013.

In light of the unanimous agreement of Counsel for Plaintiffs representing over 95% of the Incretin-Based cases filed in this MDL, and the lack of any known objection to the appointments sought herein, the following lawyers and their respective law firms collectively submit this application as one slate of attorneys who request their inclusion on a PSC to be appointed by the Court.

By way of brief background, there have been countless calls, emails, meetings and discussions by and between nearly all known plaintiffs' counsel with an interest in this litigation.¹ The overwhelming consensus is that the lawyers proposed and set forth herein possess the necessary attributes and skills needed to litigate these cases and have all agreed to work cooperatively on this PSC as proposed, subject, of course, to the Court's approval.

The proposed PSC slate herein identifies specific attorneys and delineates proposed roles for general PSC positions, Executive Committee work and Leadership Counsel, as well as a

¹ It has been no small task to convene "all" interested lawyers. To date, the list of interested attorneys who have met and conferred on this matter is over 50. We have utilized lists of lawyers who were prosecuting this case for nearly one year, lawyers who came in at the time of proposed consolidation, and lawyers who have just shown interest since the case was centralized to this Court. While we believe we have heard nearly all voices and that this jointly proposed PSC slate represents the consensus of all interested plaintiffs' counsel, it is of course possible that we may have overlooked someone, and other lawyers may seek inclusion on this slate.

separate role for Co-Liaison Counsel.²

Indeed, this proposed slate is submitted after extensive negotiations with the vast majority of all plaintiff attorneys and said slate is proposed on the consent and approval of said law firms as well as many other plaintiff lawyers and firms representing the overwhelming majority of Incretin-based claimants. This proposed slate is therefore a composition of attorneys that jointly and uniformly respectfully request this Court approve and appoint this proposed PSC.

It is important to note that, in forming this proposal and ultimately reaching a rarely accomplished and virtually unanimous approval for this jointly agreed upon slate, several factors were, and respectfully should be, considered, including:

- A. Number of known and represented cases from each firm;
- B. Time involved in the litigation (*i.e.*, whether the lawyer litigated an action prior to the Judicial Panel for Multidistrict Litigation (“JPML”) application and hearing);
- C. Interest in the litigation to perform meaningful work;
- D. Support for the Southern District of California in the JPML application;
- E. Past experience in pharmaceutical mass torts litigation;
- F. Past success in pharmaceutical mass torts and complex mass tort cases;
- G. Current commitments in other mass torts and/or complex litigations;
- H. Unique and special talent or ability that would benefit this litigation;
- I. Proven ability to work collectively with parallel state court venues;
- J. Liquidity of firm for financial commitment;
- K. Commitment to excellent work in this case;
- L. Reputation of the lawyer on a national level and by judiciary, if available; and

² As noted below, underneath the overall PSC structure, we have also identified a structure of initial committees and proposed chairpersons of same. These are general committees crucial to the litigation, and are as follows: a Discovery Committee, a Law & Briefing Committee, and a Science Committee.

M. Agreement to the proposal within.

The slate of proposed PSC members outlined below is comprised of the best and most talented attorneys (and their respective law firms). While we recognize that we recommend a large leadership structure, this proposed PSC slate represents lawyers with over ninety-percent (95%) of the currently known cases, including leading lawyers and law firms representing state court litigants. As a result, we hope this combined slate will provide efficiency for all parties, as well as for the Court, on issues related to discovery and trials, and many other aspects that all complex multi-jurisdictional mass tort cases present. Moreover, various lawyers on this proposed PSC will have a heightened role and hold key chair positions on the indicated committees. The contact information and position sought by each member of this agreed upon team/slate is identified herein. In addition, attached hereto are the submissions from each proposed PSC member.

A. Proposed Structure For Plaintiffs' Leadership

The proposed Plaintiffs' Lead Counsel respectfully recommend that the Court adopt a plaintiffs' leadership structure consistent with the Manual for Complex Litigation, 4th Edition ("MCL 4th"), as follows:

1. An appointment of proposed Plaintiffs' Co-Lead Counsel and a larger Executive Committee for communication purposes with the Court and lead defense counsel, and to ensure direction and oversight of the larger appointed PSC. The proposed Plaintiffs' Co-Lead Counsel will strive to reach a balance between giving the attorneys involved in this litigation ample opportunity to have input while at the same time avoiding unnecessary duplication of effort and other inefficiencies.

2. An appointment of Co-Liaison Counsel who are based in San Diego and who have

vast experience with the local courts, their judges, and preferred procedures and rules.

3. An appointment of a large, democratically created, and very inclusive PSC consisting of each of the nearly two dozen proposed law firms that have expressed a willingness and commitment to participate and fund the prosecution of this litigation.

B. Applications for Appointment to the Plaintiffs' Leadership

Consistent with the Manual for Complex Litigation, plaintiffs' counsel who seek to be appointed as Lead Counsel, Executive Committee, Liaison Counsel, and Plaintiff Steering Committee Members have submitted letter applications and or their curriculum vitae to the Court, setting forth their qualifications to prosecute and oversee this large and complex litigation. See Exhibit A, attached hereto.³

C. Creation of Internal PSC Committees

Additionally, consistent with the MCL 4th §22.62, Plaintiffs will form internal committees (among others, Law, Discovery, Science, Marketing, Experts, Trial, and Liaison Counsel), to gather the expertise necessary to prove causation and other elements of plaintiffs' cases; manage discovery; coordinate the various filings; and communicate with counsel for plaintiffs, counsel for defendants, and the Court. *See also* MCL 4th §10.22 (stating that counsel appointed to leadership positions assume "an obligation to act fairly, efficiently, and economically" and that "committees of counsel...should try to avoid unnecessary duplication of effort"). Attorneys who are not designated as Lead Counsel, Executive Committee Counsel, or Plaintiff Steering Committee members will have the opportunity to apply to either the Court or to proposed Plaintiffs' Lead Counsel to be added to a particular PSC sub-committee and to have input in the litigation through the committee.

³ Exhibit A will not be filed of record, but rather, only provided directly to the Court for review.

D. The Fairness and Propriety of the Proposed Organizational Structure

In proposing this organizational structure, the proposed Plaintiffs' Lead Counsel have solicited and taken into account the suggestions of other plaintiffs' counsel. We have been mindful of the suggestions and cautions of Sections 10.221-222 of the MCL 4th regarding fairness, efficiency, cost control, and avoidance of duplication in the context of the particular challenges of this litigation. Plaintiffs' proposed Leadership Order has taken the initiative in providing a structure, as the MCL 4th prescribes, for Co-Lead counsel and Executive Committee and a PSC which shall include committees "to coordinate discovery and other pretrial preparation" recognizing that "lead counsel and committees of counsel for the plaintiffs in mass tort litigation perform a host of functions. They develop proof of liability and anticipate defenses; gather the expertise necessary to prove causation and other elements of plaintiffs' cases . . . manage discovery; coordinate the various filings; and communicate with counsel for plaintiffs, counsel for defendants, and the court." MCL 4th § 22.62.

Pursuant to their appointment, it is anticipated that counsel appointed as Co-Lead Counsel would take the next step of preparing detailed proposed Orders for the Court's consideration and approval that delineate in greater detail, and consistent with the recommendations of Sections 10.221-10.222; 14.212-14.216; and 22.62 of the MCL 4th, the roles and responsibilities of respective counsel, the time and costs reporting systems essential to avoid waste and duplication, and a common benefit assessment system to equitably spread costs among all beneficiaries of the work of this MDL.

II. PROPOSED PLAINTIFFS' LEADERSHIP STRUCTURE

We jointly submit the following as the proposed structure that encompasses and

embodies those who meet the above requirements, who represent the overwhelming and vast majority of plaintiffs, and who are the most qualified attorneys interested in devoting their time and efforts to this litigation.

The undersigned counsel hereby jointly suggests the following individuals for appointment to the Plaintiffs' Steering Committee and designated sub-committees:

A. PLAINTIFFS' LEAD COUNSEL

Ryan L. Thompson WATTS GUERRA LLP 5250 Prue Rd., Ste. 525 San Antonio, Texas 78240 Phone: (210) 448-0500 Fax: (210) 448-0501 Email: RThompson@WattsGuerra.com	Tor Hoerman TOR HOERMAN LAW, LLC 101 W. Vandalia Street, Suite 350 Edwardsville, Illinois 62025 Phone: (618) 656-4400 Fax: (618) 656-4401 Email: THoerman@torhoermanlaw.com
Hunter J. Shkolnik NAPOLI, BERN, RIPKA & SHKOLNIK LLP 350 Fifth Avenue New York, New York 10018 Phone: (212) 267-3700 Fax: (212) 587-0031 Email: Hunter@NapoliBern.com	

B. PLAINTIFFS' EXECUTIVE COMMITTEE

John M. Restaino THE RESTAINO LAW FIRM 283 Columbine Street, Suite 169 Denver, Colorado 80206 Phone: (720) 924-2006 Fax: (720) 221-0449 Email: jRestaino@restainolawfirm.com	Neil D. Overholtz AYLSTOCK, WITKIN, KREIS & OVERHOLTZ 17 E. Main Street, Suite 200 Pensacola, Florida 32502 Phone: (850) 202-1010 Fax: (850) 916-7449 Email: NOverholtz@awkolaw.com
Nicholas J. Drakulich THE DRAKULICH FIRM 2727 Camino del Rio South, Suite 322 San Diego, California 92108 Phone: (858) 755-5887 Fax: (858) 755-6456 Email: njd@draklaw.com	Michael K. Johnson JOHNSON BECKER, PLLC 33 South Sixth Street, Suite 4530 Minneapolis, MN 55402 Phone: (612) 436-1802 Fax: (612) 436-1801 Email: mjohnson@johnsonbecker.com

C. CO-LIAISON COUNSEL

Michael S. Berg Law Offices of Michael S. Berg 401 West A Street, Suite 2600 San Diego, CA 92101 Phone: (619) 239.2186 Fax: (619) 237-1310 Email: Michael@criminallaw.com	Gayle M. Blatt CASEY, GERRY, SCHENK, FRANCA- VILLA, BLATT & PENFIELD LLP 110 Laurel Street San Diego, CA 92101 Phone: (619) 238-1811 Fax: (619) 544-9232 Email: gmb@cglaw.com
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D. STATE AND FEDERAL COURT LIAISON

Marc J. Bern NAPOLI, BERN, RIPKA & SHKOLNIK LLP 350 Fifth Avenue New York, New York 10018 Phone: (212) 267-3700 Fax: (212) 587-0031 Email: MJBern@NapoliBern.com
--

E. PLAINTIFFS' STEERING COMMITTEE

Ramon R. Lopez LOPEZ MCHUGH, LLP 100 Bayview Circle, Suite 5600 Newport Beach, California 92660 Phone: (949) 737-1501 Fax: (949) 737-1504 Email: rlopez@lopezmchugh.com	Thomas J. Preuss WAGSTAFF & CARTMELL LLP 4740 Grand Avenue, Suite 300 Kansas City, MO 64112 Phone: (816) 701-1168 Fax: (816) 531-2372 Email: tjpreuss@wcllp.com
Maxwell S. Kennerly THE BEASLEY FIRM 1125 Walnut St. Philadelphia, PA 19107 Phone: (215) 931-2634 Fax: (215) 592-8360 Email: max.kennerly@beasleyfirm.com	Stephen B. Murray, Jr. MURRAY LAW FIRM 650 Poydras Street, Suite 2150 New Orleans, LA 70130 Phone: (504) 584-5231 Fax: (504) 584.5249 Email: smurrayjr@murray-lawfirm.com

<p>Michael Goetz MORGAN & MORGAN, P.A. One Tampa City Center, 17th Floor 201 N. Franklin Street Tampa, Florida 33602 Phone: (813) 221-6581 Fax: (813) 222-4737 Email: MGoetz@forthepeople.com</p>	<p>Neal L. Moskow URY & MOSKOW, LLC 883 Black Rock Turnpike Fairfield, Connecticut 06825 Phone: (203) 610-6393 Fax: (203) 610-6399 Email: neal@urymoskow.com</p>
<p>Julia Reed Zaic HEAVISIDE REED ZAIC 312 Broadway Street, Suite 203 Laguna Beach, CA 92651 Phone: (949) 715-5120 Fax: (949) 715-5123 Email: julia@hrzlaw.com</p>	<p>Paul D. Stevens MILSTEIN ADELMAN, LLP 2800 Donald Douglas Loop North Santa Monica, CA 90405 Phone: (310) 396-9600 ext. 184 Fax: (310) 396-9635 Email: pstevens@milsteinadelman.com</p>
<p>James R. "Tripp" Segars, III DIAZ LAW FIRM, PLLC 208 Waterford Square, Suite 300 Madison, MS 39110 Phone: (601) 607.3456 Fax: (601) 607.3393 Email: tripp@msattorneys.com</p>	<p>Keith Altman THE LAW OFFICE OF KEITH ALTMAN 32250 Calle Avella Temecula, CA 92592 Phone: (516) 456-5885 Email: kaltman@lawampmmt.com</p>
<p>Jacob W. Plattenberger TOR HOERMAN LAW, LLC 234 S. Wabash, 7th Floor Chicago, IL 60604 Phone: (312) 372-4800 Fax: (312) 284-4914 Email: jplattenberger@torhoermanlaw.com</p>	<p>Robert A. Mosier PHILLIPS GROSSMAN PLLC 100 Herricks Road Mineola, NY 11501 Phone: (516) 741-5600 Fax: (516) 741-0128 Email: Rmosier@thesandersfirm.com</p>
<p>Michael S. Love Ridenour, Hienton & Lewis 201 N. Central Ave., Suite 3300 Phoenix, Arizona 85004 Phone: (602) 744-5726 Fax: (602) 254-9900 Email: mlove@rhlfirm.com</p>	

F. COMMITTEE FORMATIONS

The above proposed Plaintiffs' Lead Counsel will direct/supervise and approve all work to be conducted by the PSC. Further, the proposed Plaintiffs' Lead Counsel intends the following chair persons/co-chair persons to manage the below-designated critical litigation committees necessary for the prosecution of this case. Each committee will likely be comprised of more than a dozen individual lawyers that will include PSC members, associates at their firms, and other interested counsel in this litigation to focus on and develop these crucial areas of the case. The proposed initial committees and committee chairs that Plaintiffs' Lead Counsel would appoint and direct (following overall approval of the proposed PSC by this Court) are the following:

i. DISCOVERY COMMITTEE

1. Michael Johnson, Chair
2. Thomas J. Preuss
3. Jacob W. Plattenberger
4. Ramon R. Lopez

ii. LAW AND BRIEFING COMMITTEE

1. Maxwell S. Kennerly, Co-Chair
2. Stephen B. Murray, Jr., Co-Chair
3. Kenneth J. Brennan, Tor Hoerman Law, LLC
4. A. Cliff Gordon, Watts Guerra LLP

iii. SCIENCE COMMITTEE

1. John M. Restaino, Chair
2. Timothy Brown, Murray Law Firm
3. Edward J. Parr, Jr., Ury & Moskow LLC
4. Keith Altman

G. PROPOSED STATE COURT LIAISON

As discussed in further detail below (infra Section III.I), it is vital to the success of an MDL to coordinate and cooperate as much as possible with counsel representing clients in parallel state court actions in order to efficiently move the litigation as a whole. Even at the early stages of this litigation, it has become apparent that certain state court venues may play an

active role in the litigation and development of this case. To this end, this proposed PSC slate has included in its membership and/or the lawyers involved herein, some of those we believe to be the most active and involved state court litigants so as to ensure efforts at cooperation from the onset.

III. BASES FOR CONSIDERATION

While there are many gifted and talented attorneys, one must conduct the process of picking and compiling a team with utmost care and with the ultimate goal of setting the course for an efficient and effective MDL in the interest of all parties involved and to meet the expectations of this Court as set forth in the Order Setting Status Conference.

As noted above, when proposing and selecting the members of this agreed-upon proposed PSC slate, certain factors were considered important to the group as a whole and served as a somewhat objective measure in what is usually a subjective process and endeavor. As such, the basis and importance of each of the factors that could and should be considered is set forth below.

A. Number of known and represented cases from each firm:

The number of cases a firm has (whether under investigation or filed) is a highly relevant factor. Ultimately, lawyers with the most cases likely have the most at stake, and therefore have a significant interest in ensuring a fair and successful outcome for the litigation as a whole. While the principle of common benefit reimbursements can be utilized to incentivize lawyers with fewer cases to commit time and expenses, it is lawyers with the bulk of clients and cases who should drive the litigation. The lawyers named herein represent the overwhelming majority of cases from across the United States.

B. Time involved in the litigation:

The attorneys and firms who have demonstrated commitment to this litigation before the case was transferred to this Court, and even before the motion for consolidation and Interested Party Briefs were filed and oral arguments were conducted before the JPML, are those with the greatest interest and those who have committed to this litigation.

As the Court is likely aware, the Incretin-based litigation outside of the California JCCP began in late 2012. Plaintiffs' Lead Counsel filed all the very first federal cases in the United States. The majority of the PSC quickly followed, and started to investigate cases. At that time, proposed Plaintiffs' Lead Counsel and a small group began jointly strategizing first informally and then in a quasi-formal manner through the winter of 2012 and early 2013. This proposed PSC is now a large, well-organized group working together on the Incretin-based litigation. All lawyers in the initial groups are represented on the PSC.

C. Interest in the litigation to perform meaningful work:

While the number of known and represented cases is an important factor in determining which attorneys and law firms have the greatest stake in the litigation (as noted above), another important quality to consider is whether those attorneys show a genuine impassioned interest in the litigation as a whole. Those with less than a fiery interest in doing the work necessary to ensure the success of the litigation should not be allowed to lead it. Therefore, in terms of personal caseload and vested interest, it is not only size that matters, but also the quality of commitment to fighting for the cases of all involved. This proposed PSC is committed to performing meaningful work to push the Incretin-based litigation to resolution and or trial.

D. Support for the Southern District of California in their MDL application:

Although this factor is admittedly not dispositive, as support for 28 U.S.C. §1407

centralization and consolidation before another court can be prompted by a multitude of reasons that are not prejudicial to this Court, this factor merits some consideration.

It is clear from the Interested Party Responses filed before the JPML that all plaintiffs ultimately supported, in a unified voice, centralization before this Court based on the belief that it, and the lawyers informally spearheading the litigation to date, would best serve the interest of everyone involved in the litigation. This cooperative effort set a precedent for the ability of the plaintiffs' attorneys to work together and act in the best interest of the group, putting aside ego and self-promotion.

The decision to advocate and argue in one voice for this jurisdiction is a positive factor in considering who should comprise leadership roles on the PSC, as it serves as an indication of their true ability to work collectively and put the interests of the litigation first.

E. Past experience in pharmaceutical mass tort litigation:

When evaluating requirements for the PSC members, one can hardly dispute that an attorney or law firm must have had some involvement in the inner workings of pharmaceutical mass tort litigation in order to effectively serve as a leader of one. While one cannot suggest that every PSC should be repeatedly comprised of the same "cast of characters," and a new perspective is always an impetus to progress, one cannot overlook the fact that it is imperative for every member to be able to base his/her beliefs on some foundation of relevant and practical experience in this highly complex field of law. Each decision required of the PSC at every stage of this litigation will affect the next, and must be thoroughly contemplated with an eye to the expected outcomes and repercussions it will bring. Such foresight can only be borne of hindsight. Therefore, this factor should weigh heavily in determining who among all those

interested was more or less qualified to shoulder that weight, aided by what they had learned in past complex pharmaceutical mass tort litigations.

F. Past success in pharmaceutical mass torts and complex mass tort cases:

This factor goes hand-in-hand with past experience, as detailed above. Great experience can come from not only prior successes, but also failed attempts. However, the value of such experience is proven by later success. In that way, one must not only look at an attorney's or law firm's experience, but also at how they learned from it and put it to use in their future endeavors.

It is important to the success of this case to have the benefit of the wisdom of those who have succeeded in this type of litigation, and therefore know the best course to take when presented with various options.⁴ Often a decision which may seem to be the most obvious has unforeseen or unconsidered consequences, which has been proven time and time again in complex litigation. This proposed PSC aims to avoid as many of those pitfalls as possible by including those attorneys and firms who have proven their abilities in this area and are devoted to ensuring the same level of success in this litigation.

G. Current commitments in other mass tort and/or complex litigations:

Even if an attorney or law firm has met every proposed guidepost (and any others which this Court may deem appropriate), one must take into account whether the proposed attorney is already committed to other litigations that are in early stages, which would hinder his/her ability to fully commit their attention to this case.⁵

⁴ Success is not simply measured by jury verdicts and table-pounding, but rather, success is and should be measured by the ability to bring closure to a litigation. The team comprised herein has all the crucial elements to help make this a successful litigation.

⁵ Serving on a PSC requires an enormous amount of time and work to properly advance the case and thoroughly represent the plaintiffs in all matters that may arise over the course of the litigation. Therefore, in choosing the attorneys who will lead this litigation, their practical ability to actually spend the time necessary to fulfill their role has been taken into account.

H. Unique and special talent or ability that would benefit this litigation:

As in any group setting, a team is only as powerful as its component parts. One can rely on that axiomatic principle in concluding that if every member has the same strengths and weaknesses, then the whole will ultimately be weaker. In that way, successful PSCs contain attorneys and firms who are talented in many different areas of knowledge and practice, including medical science, depositions, legal and medical research, brief and legal writing, epidemiology, pharmacokinetics and pharmacodynamics, regulatory issues, organization, expert reports, *Daubert* motions, and other areas. Each of the proposed members of this PSC slate, both individual attorneys and sponsoring firms, has a unique quality or area of expertise to bring to the table in order to make this PSC as well-rounded and strong as possible.

I. Proven ability to work collectively with parallel state court venues:

In recent pharmaceutical MDLs, it has become regular practice to work jointly with the counsel of parallel state court actions. A high level of cooperation between the MDL PSC and the state leadership counsel has proven to be an integral component in moving towards an effective resolution of all litigations involved. The best interests of the PSC often align with those of the state counsel, and collaboration can be somewhat effortless. However, where interests or even timelines may not coincide, a certain level of diplomacy and compromise is essential to success in both venues. In addition, the MDL court and state courts often work jointly on issues affecting all parties, and all counsel should support and share with each other in order to fulfill the requirements of the courts. Therefore, in the event this litigation takes the same course as so many before it, it is absolutely necessary and critical that the PSC members be more than willing and able to work side-by-side with those involved in the state court venues in order to reach the same level of success.

J. Liquidity of firm for financial commitments:

An attorney or a law firm must have the financial means to serve on the PSC. Each member of the PSC must be prepared to bear and sustain a substantial financial burden. It can be estimated that this litigation will cost no small sum, and will require continuous financial support from all PSC members, both in cash contributions and held costs. Thus, despite any other qualifications, if an attorney or law firm cannot handle the financial strain of this MDL, they would not be able to serve equally and efficiently as a member of the PSC. This proposed PSC has dedicated significant financial resources to the Incretin-based litigation and is ready and able to continue with said commitment.

K. Commitment to excellent work in this case:

A PSC sets the tone for the level of devotion and work product of everyone involved, from the members of the subcommittees to those serving peripheral roles. Therefore, it is absolutely imperative that every member of the PSC be completely bound to the goal of producing the finest—and nothing short of excellent—work in every aspect of this case in order to properly serve and represent the clients. We can represent with utmost certainty that each and every one of the proposed attorneys and respective law firms in this proposed PSC slate have pledged themselves and their resources to doing just that.

L. Reputation of the lawyer on a national level and by judiciary, if available:

As the Court is well aware, a PSC essentially acts as one collaborative law firm prosecuting a general case in many ways on behalf of all lawyers and all individual plaintiffs against a pharmaceutical corporation defended by some of the most skilled law firms. To this end, one must ensure that the PSC, its members, and their respective firms adhere to the highest levels of ethical standards both in their dealings on this case and in matters that could potentially

come to bear or reflect on this PSC, and therefore reflect on this litigation and this Court. The PSC and leadership in this case represent a group of highly ethical lawyers that are respected by the judges with whom they have interacted and their peers on both the sides of the bar.

M. Agreement to the proposal within:

The agreement of counsel, as indicated by the Court in the Order Setting Status Conference, is a highly relevant and important factor to be considered. First and foremost, it is important that so many highly skilled, experienced and competent attorneys could agree on a structure and hierarchy of leadership. Secondly, this agreement is also very important because this decision-making and the ultimate comprises reached in presenting this agreed upon Committee will form the basis of cooperation for the many more difficult litigation-based decisions that the Committee will have to make in the future of this case. Third, both the *Manual For Complex Litigation (Fourth)* and the Third Circuit Task Force on the Selection of Class Counsel recognize that courts should not overlook the importance of this kind of “private ordering.”

Proposed Plaintiffs’ Lead Counsel have spent many months organizing, and now propose and recommend, the structure outlined herein to avoid the potentially disorganized and inefficient leadership that often results from a piecemeal structure cobbled together from competing lawyers or law firms.

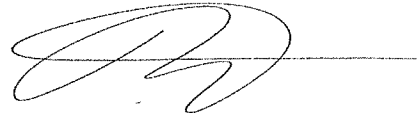
IV. CONCLUSION

In light of the above factors and reasoning, and after much careful thought and consideration, proposed Plaintiffs’ Lead Counsel respectfully submit to the Court this proposed PSC and subcommittee slate, and respective applications, to lead the Incretin-based Therapies

MDL, and jointly and uniformly request that the Court so appoint. We, the Plaintiffs' Lead Counsel of this proposed slate, thank the Court for its time and consideration.

Dated: October 7, 2013

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I, the undersigned, declare that I am over the age of 18 years, and not a party to the action. I am employed in the County of San Diego, California. My business address is 110 Laurel Street, San Diego, CA 92101. On October 7, 2013, I directed the following document(s) to be electronically filed with the Clerk of Court using the CM/ECF system, which will electronically serve all parties in this action, and I placed a copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed to the non-CM/ECF participants indicated on the Manual Notice List, for collection and mailing at Casey Gerry Schenk Francavilla Blatt & Penfield, LLP, 110 Laurel Street, San Diego, CA 92101, in accordance with the firm's ordinary business practices.

JOINT STATUS REPORT #1

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 7, 2013, at San Diego, California.

s/Gayle M. Blatt

Attorneys for Plaintiffs
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