BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: Cymbalta Products Liability Litigation MDL Docket No. _____

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION PURSUANT TO 28 U.S.C. § 1407 TO TRANSFER RELATED ACTIONS FOR COORDINATED PRETRIAL PROCEEDINGS IN THE CENTRAL DISTRICT OF CALIFORNIA

The Plaintiffs[1] (hereafter "Movants"), respectfully submit this memorandum of law in support of Plaintiffs' motion, pursuant to 28 U.S.C. § 1407, to centralize twenty-eight related federal actions, and any subsequently filed related actions, in the Central District of California before the Honorable Stephen V. Wilson or Honorable George H. King for coordinated pretrial proceedings. The related actions allege product liability claims against Defendant Eli Lilly and Company ("Lilly") for injuries caused by the use and discontinuation of the prescription drug Cymbalta (also known as duloxetine), i.e., "Cymbalta Withdrawal."

PRELIMINARY STATEMENT

Movants request coordination of these related Cymbalta withdrawal actions in a Multidistrict Litigation ("MDL") because: (i) the actions assert product liability claims against Lilly for injuries sustained by people discontinuing Cymbalta; (ii) the actions involve common questions of fact, including Cymbalta's capacity to cause withdrawal injuries and whether Lilly properly warned about the risks of Cymbalta withdrawal; (iii) transfer to a single district will be convenient for all parties and witnesses and will allow for just and efficient pretrial proceedings; and (iv) absent transfer and coordination, the parties and courts will face the burden and expense of duplicative discovery and pretrial proceedings and inconsistent pretrial rulings.

[1] Thomas Seagroves and Ute Seagroves, Sidney Carter, Erin Hexum and Nick Hexum, Claudia Herrera and Peter Lowry, Jesse McDowell, Veronica Lister, Peggy Barrett and Roger Barrett, Deborah Caporale and George Caporale, Anita Hollowell and Edward Hollowell, Kerry O'Shea and Sharlene O'Shea, Deanna Cheshier Carl Woodruff and Penny Woodruff, Elisa Wheeler and James Wheeler, Kelly Cheney, Heather Laica-Bhoge and Alberto Bhoge, Douglas Gollin and Lynn Gollin, Sandra Couch, Johnson Fairbanks, Karen Boling and Joseph Boling, Eric McCabe, Shelly Harris, Elizabeth Whitworth, Mark Williams, Gregory Mayes, Donna Loux, Melissa Rossero, Karen Wagner, and Adam Streeter.

The creation of an MDL for Cymbalta Withdrawal cases is appropriate because there are currently twenty-eight actions pending before twenty-two district courts and twenty-one federal district judges, each of which is in the pretrial stages of litigation. Moreover, undersigned Plaintiffs' counsel anticipates that there will be many additional Cymbalta Withdrawal cases filed in the future. Indeed, given that the alleged withdrawal injuries at issue here affect at least 44-50% of Cymbalta consumers,[2] it is likely that many hundreds of cases will be filed during the course of this litigation. This expected volume alone warrants an MDL.

In addition, Plaintiffs request that the MDL be centralized in the Central District of California before the Honorable Stephen V. Wilson or the Honorable George H. King. The Central District of California has a robust record with MDLs, including those involving pharmaceutical drugs, is in a highly accessible district in a metropolitan location, has the requisite resources and expertise to manage such an MDL, and has specific experience dealing with antidepressant withdrawal litigation, *see In re Paxil Prods. Liab. Litig.*, Case No.: 03-ML-1574 (C.D. Cal.) (J. Pfaelzer); *In re Paxil Products Liab. Litig.*, 296 F. Supp. 2d 1374, 1375 (J.P.M.L. 2003) (order centralizing Paxil withdrawal litigation in Central District of California)[3]

Since October 2012, Judge Wilson has been overseeing *Saavedra v. Eli Lilly & Co.*, Case No.: 2:12-cv-09366, (C.D. Cal.), a class action based on consumer protection law and the first case filed in federal court related to Cymbalta Withdrawal. Judge Wilson has developed significant familiarity with this litigation and has already issued several pretrial orders relating to important issues such as the learned intermediary doctrine and federal preemption. Moreover,

---

[2] *See* David G. Perahia et al., *Symptoms Following Abrupt Discontinuation of Duloxetine Treatment in Patients with Major Depressive Disorder*, 89 J. AFFECTIVE DISORDERS 207-212, 208-09 (2005) (indicating that approximately 51% of patients who *knowingly* stopped taking Cymbalta experienced withdrawal symptoms); *see also* Joseph Glenmullen, M.D., *The Antidepressant Solution: A Step-by-Step Guide to Safely Overcoming Antidepressant Withdrawal, Dependence and "Addiction,"* p. 83-84 (based on Cymbalta's half-life, the frequency of withdrawal reactions is more likely between 66% and 78%).

[3] Over 3000 cases were filed in the *In re Paxil* MDL.

the issue of class certification is fully briefed and has been under submission for several months. Similarly, California Central District Chief Judge King is familiar with Cymbalta withdrawal cases, as he has been presiding over three personal injury cases that are in the midst of pretrial discovery: *Carter v. Eli Lilly and Company*, 13-CV-2700 GHK (FFMx) (C.D. Cal.); *Hexum v. Eli Lilly and Company*, 13-CV-2701 GHK (FFMx) (C.D. Cal.); *Herrera v. Eli Lilly and Compan*y, 13-CV-2702 GHK (FFMx). Pretrial coordination before either Judge Wilson or Judge King would be appropriate and would further the goals and purposes of centralization under 28 U.S.C. § 1407.

STATEMENT OF FACTS

Lilly is one of the largest pharmaceutical companies in the world with annual revenues exceeding $22 billion. A substantial portion of Lilly's sales and profits were derived from its drug Cymbalta, whose 2012 annual sales approached $5 billion, making it the most profitable drug in Lilly's product line before going generic in 2013.

Lilly has long enjoyed considerable financial success from manufacturing and selling prescription antidepressant drugs, including the popular antidepressant, Prozac, which was introduced in the United State market in 1987. While marketing Prozac, Lilly pioneered research on the withdrawal effects of antidepressant medications. Prozac, unlike its early competitors Paxil and Zoloft, has a very long half-life (i.e., the time it takes for half of the drug to leave a patient's body). Lilly suggested that the longer it takes for a drug to leave a patient's system, the less risk there is of suffering from withdrawal symptoms because there is a gradual decrease of the drug's plasma concentration. Lilly used Prozac's long half-life to position Prozac as being superior to Paxil and Zoloft because Prozac posed significantly less risk of withdrawal syndrome.

In 2001, Lilly filled the void left behind by Prozac's patent expiration by seeking approval from the Food and Drug Administration ("FDA") for its next antidepressant, Cymbalta. Cymbalta is a "Serotonin-Norepinephrine Reuptake Inhibitor" ("SNRI"), which Lilly promoted as increasing the brain chemicals serotonin and norepinephrine in the synaptic clefts between the neurons in the brain. Lilly and other SNRI manufacturers admit that the precise mechanism of action is not clear, however, they have promoted the drugs by stating that higher levels of these neurotransmitters somehow improve and elevate mood.

In 2003, the FDA initially rejected Lilly's application to approve Cymbalta due to certain violations of good manufacturing practices and the risk of liver toxicity apparent in the drug's safety profile. Eventually, in 2004, manufacturing issues were resolved and the FDA approved Cymbalta for Major Depressive Disorder ("MDD") with a liver toxicity warning included in the prescribing information. In 2007, the FDA approved Cymbalta for treatment of Generalized Anxiety Disorder ("GAD") and, in 2008, for treatment of fibromyalgia.

Since the FDA's initial approval of Cymbalta in 2004, Lilly has aggressively marketed the drug to the public and the medical community, spending hundreds of millions of dollars each year on advertising and promotion. Lilly promoted Cymbalta directly to consumers through all major media channels, including internet, print media, and television. In addition, Lilly promoted Cymbalta to the medical community by utilizing its well-organized army of sales representatives to personally visit physicians and health care professionals to distribute free drug samples and promotional literature. Lilly further promoted Cymbalta through advertisements in medical journals and presenting talks and exhibits at medical conferences.

Lilly has continuously overstated the efficacy of Cymbalta and understated, downplayed, and/or failed altogether to state the true withdrawal side effects associated with Cymbalta. The

Cymbalta label concerning withdrawal states:

> Discontinuation symptoms have been systematically evaluated in patients taking duloxetine. Following abrupt or tapered discontinuation in placebo-controlled clinical trials, the following symptoms occurred at a rate **greater than or equal to 1%** and at a significantly higher rate in duloxetine-treated patients compared to those discontinuing from placebo: dizziness, nausea, headache, fatigue, paresthesia, vomiting, irritability, nightmares, insomnia, diarrhea, anxiety, hyperhidrosis and vertigo[.]

(Emphasis added).

Lilly's Cymbalta warning is grossly misleading and inadequate. In addition to using the euphemistic term "discontinuation" to describe withdrawal, the label overtly invites physicians and patients to believe that discontinuation symptoms are rare and affect only about 1% of Cymbalta users. But Lilly's own clinical trials for Cymbalta clearly show that a significant percentage (at least 44.3%) of Cymbalta patients suffered from "discontinuation" side effects when they stopped taking the medication. David G. Perahia et al., *Symptoms Following Abrupt Discontinuation of Duloxetine Treatment in Patients with Major Depressive Disorder*, 89 J. AFFECTIVE DISORDERS 207-212, 207 (2005). According to Lilly's scientists, the withdrawal rates for Cymbalta were nearly double that experienced by placebo users, and these findings were statistically significant. For those patients who knowingly took Cymbalta, 50.8% suffered withdrawal symptoms. Moreover, the study notes that these estimates are conservative because the data collected was from spontaneous reports rather than a symptoms checklist, which would "be expected to produce higher incidence rates." Accordingly, the rate of withdrawal or "discontinuation" for Cymbalta according to Lilly's own clinical trials was, at the very least, 44.3% to 50.8%. But Lilly misleadingly presented this rate as approximately 1%.[4]

[4] Additionally, Lilly's clinical trials showed that, overall, 9.6% to 17.2% of Cymbalta users suffered *severe* withdrawal side effects, yet the Cymbalta label is entirely silent on that risk. Cymbalta's withdrawal side effects include, among other things, headaches, dizziness, nausea, fatigue, diarrhea, paresthesia, vomiting, irritability, nightmares, insomnia, anxiety, hyperhidrosis, sensory disturbances, electric shock sensations, seizures and vertigo.

Notwithstanding Lilly's knowledge of the high rate of withdrawal symptoms in patients stopping Cymbalta, Lilly failed to adequately, properly, and fully warn patients and physicians about the risk. Instead, in its product labeling, marketing and advertising, and in information made available to consumers and physicians, Lilly reported a far lower risk, downplayed any difference in the withdrawal risk for Cymbalta as compared to other similar antidepressants, and affirmatively misled the consuming patient population and mischaracterized the drug's risk profile. Lilly pioneered the antidepressant research relating to withdrawal in its marketing of Prozac, so the company was well aware of the importance of the risk. Indeed, the half-life for Cymablta is approximately twelve hours, meaning it takes twelve hours for half of Cymablta to leave a patient's system. So a patient who misses only one dose (or even a patient simply in between daily doses), can begin to experience withdrawal symptoms. Lilly knew this information and knew that Cymbalta's short half-life was the second worst among antidepressant medications. But Lilly never adequately warned patients and prescribers about this risk.

In October 2012, the Institute for Safe Medication Practices ("ISMP"), a non-profit healthcare consumer safety watchdog, issued findings from its independent investigation of Cymbalta adverse events found in the FDA Adverse Event Reporting System ("FAERS"). *See* Thomas Moore et al., *Monitoring FDA MedWatch Reports, Why Reports of Serious Adverse Drug Events Continue to Grow*, QUARTERWATCH, Oct. 3, 2012, *available at* http://www.ismp.org/quarterwatch/pdfs/2012Q1.pdf. The report found a safety "signal for serious drug withdrawal symptoms associated with duloxetine (CYMBALTA)," and explained that "withdrawal symptoms were reported in 44-50% of patients abruptly discontinuing duloxetine at the end of clinical studies for depression, and more than half of this total did not resolve within a

When patients try to stop taking Cymbalta, the side effects can be severe enough to force them to start taking Cymbalta again, not to treat their underlying condition, but simply to stop the withdrawal symptoms. Indeed, some patients, according to Lilly's study, required hospitalization.

week or two." *Id.* at 11. The report stated that there was "a serious breakdown at both the FDA and the manufacturer, Eli Lilly and Company, in providing adequate warnings and instructions about how to manage this common adverse effect." *Id.* In conclusion, the report minced no words in its indictment of Lilly's product information: "A major lapse has occurred in the FDA-approved information for patients about the risks of stopping duloxetine." *Id.* at 15.

Numerous lawsuits have been filed against Lilly alleging injuries caused by the withdrawal effects of Cymbalta, including those listed in the accompanying Schedule of Actions. These lawsuits allege that Lilly failed to warn patients and prescribers adequately about the risks of suffering from withdrawal when ceasing Cymbalta. The complaints also allege that Lilly failed to provide information about how to effectively withdraw from Cymbalta. Because of these failures to warn, the complaints allege that Lilly caused patients who stopped ingesting Cymbalta to experience personal injuries and other forms of legally cognizable damages.

ARGUMENT

I. Transfer and Pretrial Coordination of These Related Cymbalta Withdrawal Cases Will Promote the Just and Efficient Conduct of Litigation and Further the Goals of 28 U.S.C. § 1407.

Transfer and pretrial coordination of these related actions in a single court is appropriate and will promote the goals of 28 U.S.C. § 1407. Transfer is appropriate where: (A) "civil actions involving one or more common questions of fact are pending in different districts"; (B) transfer and coordination "will promote the just and efficient conduct of such actions"; and (C) transfer and coordination will serve "the convenience of parties and witnesses." 28 U.S.C. § 1407(a). As set forth below, all of these criteria are satisfied here.

A. The Related Actions Involve Common Issues of Fact.

These Cymbalta Withdrawal actions share many factual issues. Each alleges that Cymbalta caused withdrawal reactions and injuries to patients who ceased ingesting Cymbalta and that

Lilly, through its labeling, advertising, and promotion, failed to adequately warn about the risk of withdrawal. This is why the plaintiffs all assert similar causes of action, including negligence, failure-to-warn, breach of warranty, fraud, and various state-specific consumer fraud claims. The actions also involve the same categories of plaintiffs—patients who stopped ingesting Cymbalta and allegedly experienced withdrawal injuries as a result—and the same defendant, Eli Lilly and Company. And, because Lilly takes the position that the Cymbalta warning label is adequate as it currently reads, significant pretrial discovery will be required to evaluate Cymbalta's propensity to induce withdrawal, Lilly's knowledge of Cymbalta's withdrawal risks, and any effort by Lilly to conceal those risks including Lilly's decision to implement, and its implementation of the "greater than or equal to 1%" labeling language—pretrial discovery that will apply equally to *all* plaintiffs.

Although these Cymbalta Withdrawal actions present certain individualized factual issues, (e.g., specific causation and damages), "Section 1407 does not require a complete identity or even a majority of common factual issues as a prerequisite to centralization." *In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, 717 F. Supp. 2d 1376, 1378; (J.P.M.L. 2010); *see In re Denture Cream Prods. Liab. Litig.*, 624 F. Supp. 2d 1379, 1381 (J.P.M.L. 2009). Instead, where, as here, the underlying factual and legal allegations are sufficiently similar, "[t]ransferee judges have demonstrated the ability to accommodate common and individual discovery tracks, gaining the benefits of centralization without delaying or compromising consideration of claims on their individual merits." *In re Yamaha Motor Corp. Rhino ATV Prods. Liab. Litig.*, 597 F. Supp. 2d 1377, 1378 (J.P.M.L. 2009); see *In re: Zoloft (Sertraline Hydrochloride) Products Liab. Litig.*, MDL 2342, 2012 WL 1389649 (Apr. 17, 2012) ("[W]e have found that products liability cases often present some individual factual issues, but that coordination of discovery across all actions,

with the use of common and individual discovery tracks, can offer efficiencies to all parties.") (citing *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 780 F. Supp. 2d 1379, 1381 (J.P.M.L. 2011)). Courts frequently apply a dual discovery approach in products liability actions involving pharmaceutical products. *See, e.g.*, *In re: Actos Products Liab. Litig.*, MDL 2299, 2011 WL 6889721 (Dec. 29, 2011); *In re: Zoloft*, 2012 WL 1389649; *In re Yasmin & Yaz (Drospirenone) Mktg., Sales Practices & Prods. Liab. Litig.*, 655 F. Supp. 2d 1343, 1344 (J.P.M.L. 2009); *In re Chantix (Varenicline) Prods. Liab. Litig.*, 655 F. Supp. 2d 1346, 1346 (J.P.M.L. 2009); *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005). "The transferee judge also can use any number of pretrial techniques, such as plaintiff fact sheets and separate motion tracks, to resolve threshold issues promptly." *In re Darvocet*, 780 F. Supp. 2d at 1381. Indeed, this litigation approach was successfully applied to similar injuries arising from withdrawal from the antidepressant Paxil. *See In re Paxil*, 296 F. Supp. 2d at 1375.

B. Coordination Promotes the Just and Efficient Management of Pretrial Proceedings for All Related Actions.

Because these related Cymbalta Withdrawal actions share common questions of fact and implicate overlapping fact and expert discovery, coordination of these actions before a single judge will provide the most efficient approach to managing the cases at this time.

In each of the twenty-eight pending actions, the Plaintiffs are likely to seek much of the same discovery from Lilly, including documents and deposition testimony related to the testing, design, labeling, marketing, and safety of Cymbalta and Lilly's research and evaluation of antidepressant withdrawal for other products like Prozac. Coordinating the actions before one judge allows the parties and the court to address this overlapping discovery in an organized manner and avoid the costly duplication of efforts and judicial resources that would be required if the cases proceeded on separate schedules and in separate courts. This Panel consistently

recognizes that Section 1407 coordination is a preferred way to manage individual lawsuits that raise similar questions regarding a defendant's development, design, and testing of a particular prescription medication or device. *See, e.g.*, *In re Zyprexa Prods. Liab. Litig.*, 314 F. Supp. 2d 1380, 1381-82 (J.P.M.L. 2004); *In re Prempro Prods. Liab. Litig.*, 254 F. Supp. 2d 1366, 1367 (J.P.M.L. 2003); *In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.*, 844 F. Supp. 1553, 1554 (J.P.M.L. 1994); *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, 793 F. Supp. 1098, 1100 (J.P.M.L. 1992); *In re A. H. Robins Co. "Dalkon Shield" IUD Prods. Liab. Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975).

Coordination is also appropriate to avoid potentially inconsistent pre-trial rulings on the same or similar issues, including expert challenges under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and the uncertainty and confusion that would result. *See In re Zimmer Nexgen Knee Implant Prods. Liab. Litig.*, MDL No. 2272, 2011 WL 3563293, at *1 (J.P.M.L. Aug. 8, 2011) ("Centralization under Section 1407 will eliminate duplicative discovery, [and] prevent inconsistent pretrial rulings on *Daubert* and other pretrial issues . . . ."); *In re Transocean Tender Offer Sec. Litig.*, 415 F. Supp. 382, 384 (J.P.M.L. 1976) ("[T]he likelihood of motions for partial dismissal and summary judgment in all three actions grounded at least in part on [a common issue] makes Section 1407 treatment additionally necessary to prevent conflicting pretrial rulings and conserve judicial effort."). By way of example, in the ongoing litigation in the *Carter*, *Herrera*, and *Hexum* cases, there is a discovery dispute about whether the plaintiffs are entitled to discovery from Lilly relating to the company's research into Prozac withdrawal and the company's understanding of how antidepressant withdrawal impacts sales and marketing. Resolution of this hotly contested issue—an issue that could impact many cases—should be resolved by a single judge in a single court. Allowing this pretrial issue to be

resolved by different courts in different jurisdictions could result in conflicting and inconsistent pretrial rulings.

It should also be noted that this proposed MDL will likely involve many hundreds, if not thousands, of cases and that, absent centralization and coordination, this blossoming litigation will become untenable and inefficient. Lilly's clinical trials indicate that as at least 44% to 50% of Cymbalta users experience withdrawal. This means that the potential number of individuals who suffered withdrawal effects and, thus, have a claim, number in the millions. A simple search of "Cymbalta Withdrawal" on the internet reveals that there is a large online community of people who have suffered from the withdrawal effects of Cymbalta.[5] Although this petition only identifies twenty-eight cases for transfer, this MDL is expected to balloon quickly. Undersigned counsel's experience as lead MDL counsel in *In re Paxil* confirms as much. In *In re Paxil*, which also involved withdrawal injuries associated with an antidepressant, the initial MDL petition only involved twelve actions. 296 F. Supp. 2d at 1374. However, the MDL quickly expanded to include over 3,000 claims. Absent centralization, coherent litigation of these cases would have been impossible and grossly inefficient. The same rationale applies here. Many hundreds of Cymbalta Withdrawal cases are in the pipeline and, unless an MDL is created to coordinate these actions, the litigation will become needlessly chaotic and untenable.

C. Coordination Will Serve the Convenience of Witnesses and Parties.

For many of the same reasons that coordination will promote the just and efficient management of the actions at this time, it will also serve the convenience of the witnesses and parties. In particular, coordinating and streamlining discovery will minimize unnecessary duplication, travel, and other expenses, and allow the parties to conserve, and more effectively

[5] Indeed, one of Plaintiffs' firms has reviewed or is reviewing thousands of potential cases related to Cymbalta Withdrawal and expects many more in the coming months.

focus, their resources in litigating these actions. This Panel has noted:

> Since a Section 1407 transfer is for pretrial proceedings only, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise. Furthermore, the judicious use of liaison counsel, lead counsel and steering committees will eliminate the need for most counsel ever to travel to the transferee district. And it is most logical to assume that prudent counsel will combine their forces and apportion the workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of cost and a minimum of inconvenience to all concerned.

In re Baldwin-United Corp. Litig., 581 F. Supp. 739, 740-41 (J.P.M.L. 1984) (citations omitted). Thus, by allowing the centralization and coordination of pretrial proceedings for these related actions, and the anticipated flood of actions in the future, current and future plaintiffs will have a single, organized, and easily accessible forum to have the bulwark of overlapping discovery adjudicated. Centralization and pretrial coordination will "eliminate duplicative discovery, prevent inconsistent pretrial rulings . . . and conserve the resources of the parties, their counsel and the judiciary." *In re Temporomandibular Joint (TMJ) Implants*, 844 F. Supp. at 1554.

II. Centralization and Pretrial Coordination in the Central District of California Is Appropriate.

The selection of an appropriate transferee court is based on a balancing test of several factors, no one of which is dispositive. *See* Manual For Complex Litigation (Fourth) § 20.131 (2004) (citing Robert A. Cahn, *A Look at the Judicial Panel on Multidistrict Litigation*, 72 F.R.D. 211, 214-15 (1977)). These factors include "where the largest number of cases is pending, where discovery has occurred, where cases have progressed furthest, the site of the occurrence of the common facts, where the cost and inconvenience will be minimized, and the experience, skill, and caseloads of available judges." *Id*. Movants submit that coordination in the Central District of California is the most logical and convenient forum.

A. The Central District Has the First-Filed, Most Procedurally Advanced, and Largest Number of Cymbalta Withdrawal Actions.

The Central District of California has the oldest, most developed, and largest number of Cymbalta Withdrawal cases. There are currently seven (7) cases pending before judges in the Central District of California, the oldest of which was filed in 2012.[6] The *Saavedra* class action, which was the first Cymbalta Withdrawal case, is pending before Judge Wilson. *See In re Chrysler LLC 2.7 Liter V-6 Engine Oil Sludge Products Liab. Litig.*, 598 F. Supp. 2d 1372, 1373 (J.P.M.L. 2009) (centralizing litigation in the District of New Jersey because pending action was "pending longer than the other actions."). In *Saavedra*, the parties have engaged in substantial litigation, including a motion to dismiss, a motion for summary judgment, a motion to compel, expert discovery on the issue of damages, and two pending (fully briefed) motions for class certification. *See, e.g., In re Enfamil Lipil Mktg. & Sales Practices Litig.*, 764 F. Supp. 2d 1356, 1357 (J.P.M.L. 2011) (centralizing litigation before district court that had engaged in significant litigation related to class certification). Judge Wilson has issued orders that address several important issues in this litigation, such as the learned intermediary doctrine and federal preemption. *See Saavedra v. Eli Lily & Co.*, 2:12-CV-9366-SVW-MAN, 2013 WL 6345442 (C.D. Cal. Feb. 26, 2013); *Saavedra v. Eli Lilly & Co.*, 2:12-CV-9366-SVW-MAN, 2013 WL 3148923 (C.D. Cal. June 13, 2013). Similarly, Judge King has three cases before him—*Carter*, *Herrera*, and *Hexum*—which is more than any other court. And, while Judge King has not yet issued any substantive orders in those cases, the parties are engaged in discovery that currently has a December 2014 deadline. Thus, "[t]he Central District of California is an appropriate transferee forum because the first-filed and most procedurally advanced actions are pending there." *In re Land Rover LR3 Tire Wear Products Liab. Litig.*, 598 F. Supp. 2d 1384, (Feb. 23, 2009).

B. The Central District of California Has the Infrastructure, Available Judges, and

[6] There are, in total, ten (10) pending cases filed in federal courts in California.

Institutional Knowledge to Efficiently Manage this MDL.

The Central District of California is uniquely qualified to handle and manage this MDL. In 2013, the Central District of California had the second highest number of civil court filings and the highest number of civil court terminations.[7] The median time from filing to disposition for all civil cases was only 5.9 months.[8] *See In re Classicstar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1347 (J.P.M.L. 2007) ("[T]he district's general docket conditions permit us to make the Section 1407 assignment knowing that the court has the resources available to manage this litigation."). In addition, there are more active MDLs in the Central District of California than in any other district, but no active MDLs before Judges Wilson or King.[9] Thus, the Central District has both the infrastructure to support the coordination of these related Cymbalta withdrawal actions and two potential judges with familiarity and availability. Moreover, *In re Paxil* (MDL No. 1574), an MDL involving nearly identical personal injuries related to withdrawal from an antidepressant, was successfully centralized and coordinated in the Central District of California before the Honorable Mariana R. Pfaelzer. Thus, the Central District of California has institutional familiarity and knowledge about how to manage this type of litigation.

C. The Central District of California Is an Accessible and Convenient Forum for an MDL that Has No Natural Geographic Nucleus.

The Central District of California is an accessible and convenient forum for all parties and witnesses. Plaintiffs in the currently pending actions—and in future cases that will be filed—are geographically dispersed across the country, making no single district *most* convenient to all plaintiffs. But the most cases currently on file—indeed, the most advanced cases—currently

[7] *See* Administrative Office of the United States Courts, *2013 Annual Report of the Director: Judicial Business of the United States Courts*, Statistical Tables C-3 and C-4A (2014), *available at* http://www.uscourts.gov/Statistics/JudicialBusiness/2013/statistical-tables-us-district-courts-civil.aspx

[8] *Id.* at Table C-5.

[9] United States Judicial Panel on Multidistrict Litigation, *MDL Statistics Report-Distribution of Pending MDL Dockets by District* (July 15, 2014), *available at* http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-July-15-2014.pdf

reside in the Central District of California. And, as demonstrated by Lilly's participation in the ongoing Cymbalta Withdrawal cases in the Central District of California for the past two years, Los Angeles and the Central District of California have proven to be a convenient and workable forum for Lilly and its attorneys. Similarly, although Plaintiffs' counsel are likely to come from various parts of the country, undersigned counsel expects to represent many plaintiffs in this litigation and is based in Los Angeles. [10]

Practically, the Central District of California, in Los Angeles, is one of the most convenient venues in the country. Los Angeles has three major airports (Los Angeles International Airport (LAX) LA/Ontario International Airport, and John Wayne Airport) and three smaller airports (Bob Hope Airport, Palm Springs International Airport, and Long Beach Airport). LAX is a hub for United Airlines and American Airlines and handles more "origin and destination" (*i.e.*, not connecting) passengers than any other airport in the world. Los Angeles is certainly one of the easiest cities to travel to, from anywhere in the United States. Coordination of proceedings in a major metropolitan venue such as the Central District of California allows for superior access and convenience.

D. Centralization and Coordination Before Judge Wilson in the Central District of California Is the Logical Choice and Would Avoid Complications Associated with the *Saavedra* Class Action.

The *Saavedra* putative class action is a mature litigation. The parties have fully briefed class certification and have conducted expert discovery on the issue of damages. In total, the parties have filed ten separate briefs related to class certification and have participated in two lengthy oral arguments. Judge Wilson took the matter under submission five months ago and it is ripe for disposition. Due to Judge Wilson's familiarity with the litigation and the advanced

[10] Baum, Hedlund, Aristei & Goldman, P.C. ("Baum Hedlund"), one of the law firms representing the Movants here, was lead counsel for the MDL plaintiffs in a similar MDL proceeding, *In re Paxil* in the Central District of California, and is headquartered in Los Angeles.

posture of the *Saavedra* class action, centralization before Judge Wilson is the logical choice. Indeed, Judge Wilson is not a stranger to MDL proceedings. *See, e.g.*, *In re Live Concert Antitrust Litig.*, 429 F. Supp. 2d 1363, 1364 (J.P.M.L. 2006) (centralizing MDL before Judge Wilson). And, should Judge Wilson certify a class in *Saavedra*, centralization before him would allow coordination between class claimants and personal injury suits. *See In re Enfamil.*, 764 F. Supp. 2d at 1357 (district court overseeing class actions in unique position to administer parallel personal injury claims); *In re Qwest Commc'ns Int'l, Inc., Sec. & "Erisa" Litig. (No. II)*, 444 F. Supp. 2d 1343, 1345 (J.P.M.L. 2006) (centralizing cases before district court because the court was also presiding over similar class action).

Of course, should the Panel select a different judge to oversee this MDL, the *Saavedra* class action would need to remain with Judge Wilson. It would be unrealistic and impractical to re-brief and re-litigate the class certification issues and attempt to get another judge up-to-speed, especially in light of the time Judge Wilson has already committed to the case. This is why *Saavedra* is not listed on the Schedule of Actions—although the advanced posture of *Saavedra* makes Judge Wilson the ideal transferee court to oversee this MDL, it also makes *Saavedra* ill suited for consolidation before an MDL that is not before Judge Wilson.

E. Alternatively, Centralization and Coordination before Judge King in the Central District of California Would Be Viable Option.

Judge King presides over three Cymbalta Withdrawal personal injury cases—*Carter*, *Herrera*, and *Hexum*. These lawsuits were filed in 2013 and are scheduled to complete discovery in December 2014. As it stands, Judge King presides over more cases than any other judge and is fatherest along discovery-wise. Although Judge King has not issued any substantive rulings in *Carter*, *Herrera*, or *Hexum*, he has the requisite familiarity with these cases such that he would be an excellent candidate to oversee an MDL proceeding. And, since Judge King is in

the same district as Judge Wilson, they would be able to coordinate the *Saavedra* class action with the Cymbalta Withdrawal personal injury MDL to ensure orderly pretrial litigation. Thus, should the Panel decide to select someone other than Judge Wilson to oversee the Cymbalta Withdrawal MDL, Judge King would be an excellent candidate.

CONCLUSION

Based on the foregoing, Movants respectfully request that the Panel order coordinated pretrial proceedings for Cymbalta withdrawal injury cases and transfer all such pending and future cases to the Central District of California, with either the Honorable Stephen V. Wilson or the Honorable George H. King presiding.

DATED: August 15, 2014
Los Angeles, California

Respectfully submitted,

BAUM, HEDLUND, ARISTEI & GOLDMAN, P.C.

/s/ R. Brent Wisner
Michael L. Baum, Esq.
CA Bar No. 119511
mbaum@baumhedlundlaw.com
R. Brent Wisner, Esq.
CA Bar No. 276023
rbwisner@baumhedlundlaw.com
12100 Wilshire Blvd., Suite 950
Los Angeles, CA 90025
Tel: (310) 207-3233
Fax: (310) 820-7444

Harris L. Pogust
T. Matthew Leckman
POGUST BRASLOW & MILLROOD, LLC
Eight Tower Bridge, Suite 1520
161 Washington Street
Conshohocken, PA 19428
hpogust@pbmattorneys.com
mleckman@pbmattorneys.com

Attorney for Plaintiffs

Thomas Seagroves and Ute Seagroves
Sidney Carter
Erin Hexum and Nick Hexum
Claudia Herrera and Peter Lowry
Jesse McDowell
Veronica Lister
Peggy Barrett and Roger Barrett
Deborah Caporale and George Caporale
Anita Hollowell and Edward Hollowell
Kerry O'Shea and Sharlene O'Shea
Deanna Cheshier
Carl Woodruff and Penny Woodruff
Elisa Wheeler and James Wheeler
Kelly Cheney
Heather Laica-Bhoge and Alberto Bhoge
Douglas Gollin and Lynn Gollin
Sandra Couch
Johnson Fairbanks
Karen Boling and Joseph Boling
Eric McCabe
Shelly Harris
Elizabeth Whitworth
Mark Williams
Gregory Mayes
Donna Loux
Melissa Rossero
Karen Wagner
Adam Streeter