BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: SEAWORLD SALES AND MARKETING LITIGATION	:	**MDL NO. _____**

BRIEF IN SUPPORT OF MOTION OF PLAINTIFFS HALL AND GAAB FOR TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF CALIFORNIA FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

I. INTRODUCTION

Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Holly Hall, plaintiff in *Hall v. SeaWorld Entertainment, Inc.*, S.D. Cal. No. 3:15-cv-00660, and Jessica Gaab, Roci Bollmann, and Paul Danner, plaintiffs in *Gaab v. SeaWorld Entertainment, Inc.*, S.D. Cal. No. 3:15-cv-00842, respectfully move this honorable panel for an order transferring two nearly identical matters, and any similar matters that might follow, to the Southern District of California, where their two actions are pending, for consolidated or coordinated pretrial proceedings. The two, nearly identical matters to be transferred are pending in the Middle District of Florida and the Western District of Texas. Each is based on the same nucleus of facts and law as *Hall* and *Gaab*, and each was filed after *Hall*.

As plaintiffs demonstrate below, these matters are all amenable to MDL treatment. There are manifest common questions of fact and law among them; in fact, the Middle District of Florida ("M.D. Fla.") and Western District of Texas ("W.D. Tex.") matters are subsets of *Hall* and *Gaab*. Thus, the efficiencies to be gained through centralized discovery and motion practice, and the alleviation of the risk of inconsistent pretrial rules, favor the result requested.

Furthermore, the Southern District of California ("S.D. Cal.") is the right judicial district to conduct coordinated or consolidated pretrial proceedings. It is home to the first and best known of defendant's parks, and therefore to a critical mass of important witnesses and documentary and other evidence; it is located in a major metropolitan area with ready access from every region of the country; and its judges are more experienced in MDL litigation than judges in M.D. Fla. and W.D. Tex., which are among the other districts to which the Panel might look in designating an MDL court. And, while its judges are amply experienced in MDL litigation, they are not overwhelmed with such matters. For these reasons, the Panel should order

transfer or consolidation in San Diego.

II. BACKGROUND OF THE LITIGATION

A. The cases

On March 25, 2015, plaintiff Holly Hall filed *Hall v. SeaWorld Entertainment, Inc.*, S.D. Cal. No. 3:15-cv-00660, which concerns defendant SeaWorld Entertainment, Inc.'s ("SeaWorld") sales and marketing of admission, memberships, and orca experiences at its marine life theme parks featuring orcas in San Diego, California; Orlando, Florida; and San Antonio, Texas. *Hall* is a nationwide class action. So is *Gaab*, which plaintiff Hall's lawyers filed in S.D. Cal. on April 16, 2015. In each case, the named plaintiffs seek relief for a nationwide class of consumers who purchased admission, memberships, or orca experiences at SeaWorld's theme parks in San Diego, Orlando, and San Antonio.

On April 9, 2015, Joyce Kuhl filed *Kuhl v. Sea World LLC*, M.D. Fla. No. 6:15-cv-00574, and on April 17, 2015, Elaine Salazar Browne filed *Browne v. SeaWorld of Texas, LLC*, W.D. Tex. No. 5:15-cv-00301. Plaintiffs Kuhl and Browne are represented by the same counsel (different counsel from the movants' counsel). *Kuhl* names several evidently SeaWorld-related defendants; so does *Browne*, the latter including SeaWorld Entertainment, Inc., the defendant in *Hall* and *Gaab*. Whereas *Hall* and *Gaab* concern visitors to all three of SeaWorld's U.S. marine life theme parks featuring orcas, *Kuhl* and *Browne* are restricted to visitors to SeaWorld's Orlando and San Antonio parks, respectively.

B. Allegations of the complaints

The factual allegations of all the complaints at issue are largely the same, and so are the legal claims. In fact, *Kuhl* and *Browne* are basically carbon copies—literally—of *Hall* and *Gaab*, with the exception of the former cases' smaller classes.

To summarize, each complaint alleges:

SeaWorld is the leading marine life theme park in the world. Each SeaWorld theme park showcases killer whales—*Ornicus orca*, the mighty and iconic apex predators of the sea—in special amphitheaters called Shamu Stadium that seat thousands. During its signature "Shamu Show" and in its massive and ubiquitous global marketing campaign, SeaWorld states that it "cares for," "protects," and even "nurtures" its captive orcas.

SeaWorld purports to create a "fun, interesting, and stimulating" environment for these animals. SeaWorld tells the public that its orcas enjoy their lives performing in captivity.

Recently, SeaWorld's Chief Veterinarian, Christopher Dold, told the media in an interview with BBC that at SeaWorld, "we aren't taking anything away from them [orcas] by having them in this habitat—it's just different." As SeaWorld's curator of trainers told *The New York Times*, referring to the emergent controversy over its treatment of captive orcas: "[w]e sleep and breathe care of animals."

SeaWorld attracts crowds of children and adults to its orca shows. SeaWorld makes hundreds of millions of dollars as a direct result of the illusion created by these shows and its massive public marketing campaign: *Orcinus orca* and *Homo sapiens* living in harmony and playing together for public entertainment—killer whales "in the care of man," as SeaWorld's mantra tells it.

But this illusion masks the ugly truth about the unhealthy and despairing lives of these whales. This is a truth that, if known to the purchasing public at the time families make the decision to visit SeaWorld, buy a membership, or pay for an "exclusive park experience," would lead them to seek entertainment elsewhere.

Orcas are uncommonly complex and special animals of singular beauty and might in the

wild. These whales are larger than any land predator, and they have existed for millions of years. They are highly intelligent and family-orientated. They are long-lived and self-aware. They are socially complex, with distinct cultural traditions among varied ecotypes.

For the past several decades, dozens of orcas have lived in captivity for public entertainment and corporate profit at each of the SeaWorld parks, either captured or bred for that exclusive purpose. By contrast, orcas in the wild are highly social animals which live within long-established matriarchal societies and rely on sound for communication and to maintain group cohesion. They typically live in stable, kin-based social groups that range in size from 2 to 15 (or more) orcas. Orcas of different matrilines have distinct calls and whistles. Interbreeding between populations and ecotypes does not occur in the wild. Because of their size, morphology, and endurance, in nature orcas can roam a hundred miles a day.

The deceptive and false illusion carefully scripted by SeaWorld and created for the public has concealed not only the mistreatment of these animals, but also concealed orca behavior that evidences how their captivity at SeaWorld is harmful to their welfare. Concealed from the public is the impact on these animals of captivity in a tiny confined space, the forced separation of young whales from their mothers, the unnatural mixing of whales that do not have the same culture in small spaces, the forced breeding and inbreeding of young female whales, the routine use of pharmaceutical products to unnaturally drug the orcas, the psychological manipulation and at times food deprivation to which they are subjected, the deep rake marks on their bodies that result from incompatibility and cramped conditions, and many other life-shortening and painful experiences from which they have no escape.

As a result of these and other conditions kept from public view, and as described further in the movants' complaints—and the *Kuhl* and *Browne* copies—SeaWorld whales die many

years before they would in the wild, wear down and break their teeth on concrete and metal, and bang their heads into the walls of their pools from (what humans can only describe as) fear, anxiety, sadness, and a forced resignation to an unnatural and unreasonably monotonous, empty, and dangerous life of captivity.

SeaWorld conceals the truth about the conditions and treatment of its captive orcas and attacks without restraint those who question the continuing business decision to keep and breed captive orcas. To question the propriety of harboring and profiting from captive orcas triggers a sadly predictable, desperate, and diversionary response from SeaWorld, by which it accuses the questioners of "radicalism," "extremism," or worse.

SeaWorld furthers its cynical aims by deliberate misrepresentations about providing for the "health" and enrichment of its captive orcas, even giving them "fun" lives in captivity. The suits at issue are about redressing SeaWorld's misrepresentations and omissions. The movants and the class they seek to represent, which subsumes the *Kuhl* and *Browne* classes and includes potentially hundreds of thousands of consumers, would not have paid for admission to SeaWorld, for SeaWorld memberships, or for SeaWorld animal "experiences" for children or adults (or would have paid far less for the same) if the truth about the treatment and behavior of SeaWorld's orcas in captivity was known. Consumers subjected to SeaWorld's misrepresentations and material omissions who unwittingly and regrettably paid money to SeaWorld based upon a false understanding of whale conditions and treatment caused by SeaWorld's misinformation campaign are entitled to have their funds returned to them.

Accordingly, the movants have alleged in their suits that SeaWorld's conduct violates (i) California's Business & Professions Code § 17200, *et seq*. (the Unfair Competition Laws or "UCL"); (ii) California Civil Code § 1750, *et seq*. (the Consumers Legal Remedies Act or

"CLRA"); (iii) California's Business & Professions Code § 17500, *et seq*. (the False Advertising Laws or "FAL"); (iv) California Civil Code §§ 1709-1710 (Deceit); (v) Florida Statute § 501.201, *et seq*. (Florida Unfair and Deceptive Trade Practices Act); (vi) Texas Business & Commercial Code § 17.41, *et seq*. (Texas Deceptive Trade Practices–Consumer Protection Act); and (vii) triggers claims for restitution because of its Unjust Enrichment. The *Kuhl* and *Browne* plaintiffs allege violations of the same Florida and Texas laws, respectively.[1] And the *Hall*, *Gaab*, *Kuhl*, and *Browne* plaintiffs seek the return of money that they and others similarly situated paid to SeaWorld as a result of SeaWorld's concealment of the truth regarding the condition and treatment of its captive orcas.

III. TRANSFER AND COORDINATION OF ALL ACTIONS IS APPROPRIATE

A. All Actions Involve Common Questions of Fact and Law and Should be Centralized and Consolidated in a Single Forum.

The threshold requirement for transfer and coordination pursuant to § 1407 is the presence of common questions of fact.[2] Although common questions must predominate, there is no need for absolute uniformity among claims.[3] Similarly, there is no need for the presence of identical defendants.[4] In similar situations where there is a common factual core involving

[1] Furthermore, on April 13, 2015, Marc Anderson and Ellexa Conway filed *Anderson v. SeaWorld Parks and Entertainment, Inc.*, San Francisco County Superior Ct. No. CGC-15-545292, in California state court. These individuals seek to represent a California-residents-only class of visitors to SeaWorld's San Diego park based on misrepresentation and omission theories under California's FAL and UCL. Movants presently do not know if SeaWorld will seek to remove this case to federal court. If it does, and if it succeeds, *Anderson* would be another case subject to referral to the MDL transferee court whose appointment movants seek.

[2] *In re Fed. Election Campaign Act Litig.*, 511 F. Supp. 821, 823 (J.P.M.L. 1979).

[3] *See In re Antibiotic Drugs*, 309 F. Supp. 155, 156 (J.P.M.L. 1970) ("applicability of different legal principles will not prevent the transfer of an action under section 1407 if the requisite common questions of fact exist").

[4] *See In re Refined Petroleum Prods. Antitrust Litig.*, 528 F. Supp. 2d 1365, 1367 (J.P.M.L. 2007) (finding that where numerous entities named as defendants in or more actions that

numerous defendants, including even distinct defendants, the Panel has consolidated *all* cases into a single MDL.[5] Here, common questions plainly predominate over individual questions of fact in each of the cases, notwithstanding the presence of additional SeaWorld-related defendants in *Kuhl* and *Browne*. But even were significant differences among the cases to exist, a transferee judge has broad discretion to employ any number of pretrial techniques, such as establishing separate discovery and/or motion tracks, to address any such differences and efficiently manage the various aspects of the litigation.[6]

"[c]entralization will help ameliorate some of the practical difficulties that may arise regarding these intermingled parties"); *In re "Fine Paper" Antitrust Litig.*, 453 F. Supp. 118, 121 (J.P.M.L. 1978) ("And although we recognize that the actions now before the Panel and the actions in the transferee district involve some different defendants and some dissimilar factual issues, we are convinced that all claims in all actions in this litigation share numerous substantial questions of fact[.]"); *In re Zyprexa Prods. Liab. Litig.*, 314 F. Supp. 2d 1380, 1382 (J.P.M.L. 2004) ("[t]ransfer under Section 1407 will offer the benefit of placing all actions in this docket before a single judge who can structure pretrial proceedings to consider all parties' legitimate discovery needs while ensuring that common parties and witnesses are not subjected to discovery demands that duplicate activity that will occur or has already occurred in other actions").

[5] *See, e.g.*, *In re Auto. Wire Harness Sys. Antitrust Litig.*, 867 F. Supp. 2d 1349 (J.P.M.L. 2012) (centralizing three separate MDL dockets finding that the actions in each MDL shared factual issues and stemmed from the same government investigation and that centralization would eliminate duplicative discovery, prevent inconsistent pretrial rulings, including with respect to class certification, and conserve the resources of the parties, their counsel and the judiciary); *In re Humana Inc. Managed Care Litig.*, 2000 WL 1925080, at *3 (J.P.M.L. Oct. 23, 2000) (centralizing actions pending in four separate MDL's against four different defendants and finding that centralization: "(1) allows pretrial proceedings with respect to any non-common issues to proceed concurrently with pretrial proceedings on common issues …; and (2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties."); *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prods. Liab. Litig.*, 2000 WL 33919140 (J.P.M.L. Nov. 2, 2000) (centralizing over 2,000 actions against various defendants in a single court); *In re Oil Spill by the Oil Rig "DeepWater Horizon" in the Gulf of Mexico, on April 20, 2010*, 731 F. Supp. 2d 1352, 1354 (J.P.M.L. 2010) (centralizing approximately 77 actions against various defendants and finding that the cases shared factual issues and the role, if any, that each defendant played in the oil spill).

[6] *See, e.g.*, *In re Lehman Bros. Holdings, Inc., Secs. & Emp. Retirement Income Sec. Act (ERISA) Litig.*, 598 F. Supp. 2d 1362, 1364 (J.P.M.L. 2009).

Because the cases here at issue share overwhelmingly common elements, consolidation is appropriate. Each such case is about SeaWorld's deceptive acts and practices in attracting paying customers to its three U.S. marine life theme parks featuring orcas.[7]

B. Consolidation is Necessary to Prevent Needless Duplication and Contradictory Pretrial and Class Certification Rulings.

The risk of inconsistent rulings and needless duplication of resources and efforts exists if the cases continue on in separate judicial districts, given the common claims among the cases arising from the same factual core. For example, if the cases proceed on separate tracks, there is a risk of three inconsistent rulings regarding the elemental question of whether SeaWorld's omissions were violative of the consumer protection acts of California, Florida, and Texas.

Centralization in one district, with coordinated discovery, including the discovery of the defendant's representatives and third parties, will minimize duplication—or more aptly, triplication—of effort, expense, and burden on all involved. Also, the resources to be expended by all plaintiffs and the defendant to hire experts likely would be multiplied if the instant motion is not granted, and for no good reason.

Moreover, all of the matters at issue are proposed class actions. Minimizing the risk of inconsistent rulings on class certification is an important element for this Panel to consider.[8] This Panel has "consistently held that transfer of actions under Section 1407 is appropriate, if not

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[7] *See In re Bridgestone/Firestone, Inc., ATX, ATX II, & Wilderness Tires Prods. Liab. Litig.*, 2000 U.S. Dist. LEXIS 15926, at *7 (J.P.M.L. Oct. 24, 2000) (finding consolidation appropriate even in "the presence of additional or differing legal theories [ ] when the underlying actions still arise from a common factual core").

[8] *See In re Portfolio Recovery Assocs., LLC*, 846 F. Supp. 2d 1380, 1381 (J.P.M.L. 2011) ("Centralization therefore will eliminate the risk of inconsistent rulings on class certification."); *In re H&R Block Mortg. Corp. Prescreening Litig.*, 435 F. Supp. 2d 1347, 1349 (J.P.M.L. 2006) (finding consolidation appropriate when there were "three actions contain[ing] competing class allegations and involve facts of sufficient intricacy that could spawn challenging procedural questions and pose the risk of inconsistent and/or conflicting judgments").

necessary, where the possibility of inconsistent class determination exists."[9] Here, the central issue of whether the defendant violated the law with respect to its sales and marketing practices should be decided in one forum.

C. The Southern District of California is the Most Appropriate Forum for Coordinated or Consolidated Pre-Trial Proceedings.

Given the factors for siting that regularly are considered by the Panel, the Southern District of California is the most appropriate forum for an MDL referral.

First, *Hall* was the first-filed action, and it was filed in S.D. Cal. Movants' counsel filed the first action following several months of research and analysis. The Panel has given weight to the choice of venue of the first-filing plaintiffs, and it ought to do so here, where plaintiff Hall selected the judicial district encompassing SeaWorld's oldest, and flagship, park, and the district where key witnesses and documentary and other evidence can be found, as further explained below.

The Panel's history of giving weight to the venue of the first-filed suit[10] comports with the well-established rule of federal comity whereby a district court may stay or transfer an action

[9] *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) ("There is another highly persuasive reason for transferring all these actions to one district for pretrial proceedings. We have consistently held that transfer of actions under Section 1407 is appropriate, if not necessary, where the possibility of inconsistent class determination exists.").

[10] *See, e.g.*, *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, 763 F. Supp. 2d 1374, 1375 (J.P.M.L. 2011); *In re Mattel, Inc.*, 528 F. Supp. 2d 1367, 1369 (J.P.M.L. 2007); *see also In re iPhone/iPad Application Consumer Privacy Litig.*, 2011 U.S. Dist. LEXIS 95969, at *3-4 (J.P.M.L. Aug. 25, 2011) (transferring all actions to first-filed jurisdiction); *In re Bank of Am. Credit Prot. Mktg. & Sales Practices Litig.*, 2011 U.S. Dist. LEXIS 92696, at *3-4 (J.P.M.L. Aug. 16, 2011) (same); *In re Prograf Antitrust Litig.*, 2011 U.S. Dist. LEXIS 59448, at *2-3 (J.P.M.L. June 3, 2011) (same); *In re AutoZone, Inc. Wage & Hour Empl. Practices Litig.*, 717 F. Supp. 2d 1380, 1381 (J.P.M.L. 2010) (same); *In re Webkinz Antitrust Litig.*, 582 F. Supp. 2d 1380, 1381 (J.P.M.L. 2008) (same).

when a similar complaint was previously filed in another federal court.[11] The first-to-file rule encourages comity among federal courts of equal rank: "'where there are two competing lawsuits, the first suit should have priority, absent the showing of balance of convenience . . . or . . . special circumstances . . . giving priority to the second.'" *First City Nat'l Bank & Trust Co. v. Simmons*, 878 F.2d 76, 79 (2d Cir. 1989) (quoting *Motion Picture Lab. Technicians Loc. 780 v. McGregor & Werner, Inc.*, 804 F.2d 16, 19 (2d Cir. 1986)) (citations omitted). Here, Ms. Kuhl and Ms. Browne, plaintiffs in the other pending matters, simply copied the hard work of counsel for the movants and filed their own actions in different judicial districts.

Second, the location of witnesses and evidence favors consolidation in the Southern District of California.[12] SeaWorld's original theme park is located in San Diego, so a large number of witnesses and pertinent documents are located within the Southern District of California. Specific facts underscoring the location of witnesses and evidence, and thus favoring S.D. Cal. as the transferee venue, include:

- The largest Shamu Stadium is at SeaWorld's San Diego park;
- Dr. Todd Robeck, DVM/Ph.D., SeaWorld's Vice President of Theriogenology, is based at SeaWorld's park in San Diego. Dr. Robeck "is responsible for the development and application of assisted reproductive technology (ART) to the animal collection at SeaWorld" including its orcas. *See* http://seaworld.org/en/conservation-and-research/reproductive-research-center/research-team/;
- SeaWorld's Reproductive Research Center is based at SeaWorld San Diego;

[11] *See, e.g., Marietta Drapery & Window Coverings Co., Inc. v. North River Ins. Co.*, 486 F. Supp. 2d 1366, 1368-70 (N.D. Ga. 2007) (citing, *inter alia*, *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005); *Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 604 (5th Cir. 1999)); *see also Heilman v. Cherniss*, 2011 U.S. Dist. LEXIS 17168, at *2-3 (E.D. Cal. Feb. 22, 2011) (quoting *Barapind v. Reno*, 72 F. Supp. 2d 1132, 1144 (E.D. Cal. 1999), *aff'd*, 225 F.3d 1100 (9th Cir. 2000)).

[12] The Panel recognizes that witness proximity is an important factor. *In re Nickelodeon Consumer Privacy Litig.*, 949 F. Supp. 2d 1377 (J.P.M.L. 2013).

- SeaWorld San Diego has more orcas than the other parks, almost twice as many (11-12 at the San Diego park, versus 5-6 at the San Antonio and Orlando parks);

- SeaWorld San Diego has the largest orca tanks (over six million gallons);

- Mike Scarpuzzi, SeaWorld's Vice President of Zoological Operations, is based at SeaWorld's San Diego park. Mr. Scarpuzzi will be a critical witness. For example, he has given many of the media statements about incidents of orca aggression, and he briefed SeaWorld trainers following the orca trainer death in Europe;

- Advancements in orca behavioral training are developed primarily at SeaWorld San Diego; and

- SeaWorld's (purported) scientific endeavors are centered at Hubbs-SeaWorld Research Institute, which is based at SeaWorld San Diego http://hswri.org/; thus, SeaWorld's claims to being a "scientific" conservation organization are based in San Diego.

Third, there are several distinguished jurists with MDL experience in the Southern District of California, all of whom—in addition to the experienced trial judge assigned to the moving parties' cases[13]—could accommodate this important nationwide litigation. Therefore, the Southern District of California "is in a better position to process the pretrial proceedings in this litigation toward their most expeditious termination."[14]

By contrast, M.D. Fla. and S.D. Tex., which might be considered alternatives to S.D. Cal., do not best S.D. Cal. as the right venue for an MDL transfer. First, defendant SeaWorld, which the movants presently believe to be the sole, correct defendant in these actions, is not a resident of S.D. Tex., and SeaWorld's San Antonio Shamu Stadium is the smallest of the three at issue, and the park that attracts the least visitors. It is likely that as the least-attended park, and

[13] The Hon. Cathy Ann Bencivengo presides over movants' cases. She has been a federal magistrate judge since 2005, and she was confirmed as a federal district judge in February 2012. (*See, e.g.*, http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=e2c352b0-df4e-40a9-8e94-335a3b43cff6 (last accessed Apr. 23, 2015).)

[14] *In re Falstaff Brewing Corp. Antitrust Litig.*, 434 F. Supp. 1225, 1231 (J.P.M.L. 1977).

one whose founding followed the park in San Diego, the San Antonio park will give rise to the smallest number of important witnesses and documentary and other evidence. As for M.D. Fla., given the primacy of SeaWorld San Diego as illustrated above, the existence of some relevant information and witnesses in that district is not a fact sufficient to displace S.D. Cal. as the proper venue.

Second, while M.D. Fla. (two pending MDLs) and W.D. Tex. (one pending MDL) have fewer pending MDLs than the Southern District of California (seven pending MDLs),[15] this also means that there fewer jurists with considerable experience in handling a complex MDL proceeding with nationwide class certification issues and the laws of three states at issue.[16]

IV. CONCLUSION

Based on the foregoing reasons, plaintiffs Hall, Gaab, Bollmann, and Danner respectfully request that all the referenced cases, and any similar actions yet to be filed, or potential tag-along actions, be transferred for coordinated or consolidated pretrial proceedings to an MDL court in the Southern District of California.

[15] *See* http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-April-15-2015.pdf (last accessed April 22, 2015).

[16] The Panel has expressed its preference for transferring actions to courts with experience handling complex cases. *See, e.g.*, *In re Ampicillin Antitrust Litig.*, 315 F. Supp. 317, 319 (J.P.M.L. 1970) ("[I]t is true that the availability of an experienced and capable judge familiar with the litigation is one of the more important factors in selecting a transferee forum.").

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Respectfully submitted,

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