BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE LINEAR GADOLINIUM-BASED CONTRAST AGENTS PRODUCTS LIABILITY LITIGATION	MDL No. 2868

DEFENDANTS GUERBET LLC AND LIEBEL-FLARSHEIM COMPANY, LLC'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TRANSFER AND CENTRALIZATION PURSUANT TO 28 U.S.C. § 1407

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Defendants Guerbet LLC and Liebel-Flarsheim Company, LLC (collectively, the "Guerbet Defendants") submit this Memorandum in Opposition to the Motion for Transfer and Centralization Pursuant to 28 U.S.C. § 1407 filed by plaintiffs Kathleen Geisse, Curtis Ulleseit, Lisa Wehlmann, Patricia Young, Beth Winkler, Stephen Goodell, Nikki Esserman, Gail Montani, Denise McGrath, Hilary Davis, Srihari Munnuru, Susan Fischer, Marcia Sabol, Marcin Zelazny, Lori Combs, Sean Miller, Dawn Walton, Debra Javens, Gena Norris and Chuck Norris (collectively, the "Plaintiffs") on July 31, 2018 (the "MDL Transfer Motion"). The Guerbet Defendants respectfully request that the panel deny the MDL Transfer Motion.

I. Introduction

Plaintiffs seek centralization and consolidation of 21 personal injury actions (only 5 of which involve the Guerbet Defendants) involving the alleged use of at least four different U.S. Food and Drug Administration ("FDA") approved prescription drug products (each manufactured by a different entity/entities) and involving a constellation of distinct and ever-changing purported injuries. The products at issue are gadolinium-based contrast agents ("GBCAs") which are used to enhance image quality as part of magnetic resonance imaging ("MRI") or magnetic resonance angiogram ("MRA").

A single law firm, Cutter Law, PC ("Cutter Law") is lead counsel in 18 of the 21 actions identified by the Schedule of Actions[1] (Dkt. 1-4); *see also* Proof of Service (Dkt. 1-5); Updated Proof of Service (Dkt. 2). Some of these cases have been pending for over 18 months, *see Geisse, et al. v Bayer Healthcare Pharmaceuticals, et al.*, No. 3:17-CV-07026 (N.D. Cal. Oct. 17, 2016), while others have been filed as recently as the date of the MDL Transfer Motion, *see*

[1] Notably, there is significant overlap in counsel in the remaining actions (1) *Lewis v. Bayer Healthcare Pharmaceuticals, et al.*, No. 3:18-CV-04146 (N.D. Cal.) involves Gomez Trial Lawyers who serve as co-counsel with Cutter Law in *Geisse, et al. v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No 3:17-CV-07026 (N.D. Cal) ; and (2) *Viruet v. Bayer Healthcare Pharmaceuticals Inc, et al.*, No. 1:18-CV-11611 (D. Mass) involves Andrus Wagstaff PC who serve as co-counsel with Cutter Law in *Goodell v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 1:18-CV-10694 (D. Mass); and (3) *White v. GE Healthcare Inc., et al.*, No. 1:17-CV-00212 (S.D. Ohio) involves a pro se plaintiff and is a case that is not properly related to the others because, *inter alia*, it alleges a distinct injury, specifically, the medical condition Nephrogenic Systemic Fibrosis (NSF) which is not alleged in any of the 20 other actions at issue. Unsurprisingly, a review of the *Lewis* and *Viruet* complaints strongly indicates that all Plaintiffs' counsel involved are coordinating amongst themselves as each of these complaints are substantially similar and contain near identical allegations.

Viruet v. Bayer Healthcare Pharmaceuticals, Inc. et al., No. 1:18-CV-11611 (D. Mass. July 31, 2018). Over this timeframe, Plaintiffs' alleged injuries have continuously morphed and Plaintiffs' counsel has even admitted that pending complaints will need to be amended yet again to articulate injuries that might withstand *Daubert* scrutiny. *See Davis v. McKesson Corporation, et al.*, No. 2:18-CV-01157-DGC (D. Ariz.), Dkt. 110 (Joint Memorandum Outlining the Parties' Proposal for Discovery) at n. 3. Centralizing these actions would be a boon to Plaintiffs, as their attempt to articulate common injuries in the MDL Transfer Motion by asserting generic "related injuries" glosses over the fact that all Plaintiffs allegedly suffer from differing combinations of unique symptoms. *Compare, e.g., Fischer v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 2:18-CV-01778-DGC (D. Ariz.), Dkt. 1 at ¶ 16 (Complaint) (alleging a laundry list of specific symptoms), *to id.*, Dkt. 10 at ¶ 19 (First Amended Complaint) (removing all description of symptoms and asserting vague generalizations); *see also* Exhibit 1 to Bayer Parties' Opposition to MDL Transfer Motion (chart of movants' disparate alleged injuries).

Consolidation would be very inconvenient and prejudicial to the Guerbet Defendants. Three of the five actions naming the Guerbet Defendants are pending before Judge David Campbell in the District of Arizona (the "Arizona Actions").[2] The Arizona Actions are progressing along a coordinated phased-discovery pathway, with the first phase of discovery focused on Plaintiffs' tenuous theories of general causation. *See Davis*, No. 2:18-CV-01157-DGC, Dkt. 115 (Joint Case Management Order). A *Daubert* hearing is scheduled for March 15, 2019, following expert and fact discovery.[3] The Guerbet Defendants anticipate that the outcome of this procedure will be dispositive in the Arizona Actions and will serve to streamline issues in the two remaining actions involving the Guerbet Defendants. These two actions – *Miller v. GE*

[2] *Davis v. McKesson Corporation, et al.*, No. 2:18-CV-01157-DGC (D. Ariz.); *Munnuru v. Guerbet LLC, et al*, No. 2:18-CV-01159-DGC (D. Ariz.); and *Fischer v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 2:18-CV-01778-DGC (D. Ariz.).

[3] Notably, in response to the plaintiffs' attempts to delay the Arizona Actions by invoking this JPML petition, Judge Campbell firmly indicated that "[t]he Court will not stay [these] case[s] pending a ruling by the Judicial Panel on Multidistrict Litigation." *Davis*, No. 2:18-CV-01157-DGC, Dkt. 115 (Joint Case Management Order).

Healthcare Inc., et al., No. 3:18-CV-00113 (S.D. Ohio) and *Esserman v. Bracco Diagnostics Inc., et al.*, No. 1:18-CV-21396 (S.D. Fla.) – have lingered in the pleadings stage for months due to those plaintiffs' failure to cure deficiencies in their respective complaints.[4] The Guerbet Defendants anticipate that the Arizona Actions will provide an effective roadmap for resolving these two actions, if they ever proceed past the pleading stage. Accordingly, the convenience of the Guerbet Defendants and efficient resolution of claims against them would be frustrated by consolidation and centralization at this time.

The overwhelming weight of scientific and regulatory findings demonstrate that there is no sound scientific or medical basis on which to conclude that GBCAs cause any adverse health effects in patients, such as Plaintiffs, with normal kidney function. Not one regulatory agency, professional association, or medical organization has ever endorsed Plaintiffs' theory that GBCA exposure may result in any proven health consequences for patients with normal renal function, much less the cornucopia of amorphous symptoms proffered by the various Plaintiffs. In fact, FDA has not linked gadolinium to any adverse health effect in patients with normal kidney function.[5] After considering this exact issue, FDA very recently reaffirmed its conclusion that "the benefit of all approved [GBCAs] continues to outweigh any potential risks."[6]

In sum, this matter is not suitable for a § 1407 transfer. **First**, consolidation and centralization would not further the convenience of the parties. All defendants oppose transfer and the convenience of Plaintiffs' law firm is not a dispositive factor. **Second**, centralization will not promote a just and efficient resolution of the litigation. Most of the actions involving the

[4] On August 10, 2018, and prior to the plaintiff's deadline to cure, the *Esserman* court ordered a stay of proceedings pending this Panel's decision.

[5] *See, e.g.*, FDA Drug Safety Communication, Dec. 19, 2017, *available at*: https://www.fda.gov/Drugs/DrugSafety/ucm589213.htm.

[6] Update to FDA Drug Safety Communication, May 16, 2018, *available at*: https://www.fda.gov/Drugs/DrugSafety/ucm589213.htm. Plaintiffs suggest that the Important Drug Warning – mandated by FDA and issued by various manufacturers in May of 2018 – supports their allegations. Brief ISO MDL at 6-7. But Plaintiffs omit significant passages from the FDA-approved warning. For example, the warning states that while adverse events have been reported in individuals with normal renal function, these reports have been made "without an established causal link to gadolinium retention." Brief ISO MDL at Exhibit B. Moreover, the warning reiterates that "clinical consequences of gadolinium retention have not been established in patients with normal renal function." *Id.*

Guerbet Defendants are already in a consolidated phased discovery process that will resolve the pivotal issue of general causation; and the Panel has wisely exercised caution when considering whether to centralize actions that involve numerous competing manufacturers of similar products. **Third**, informal cooperation and coordination mechanisms have and will continue to provide the same efficiencies that may be gained via § 1407 centralization without the unwanted burdens and delays. **Finally**, the underlying actions lack sufficiently numerous or complex common questions of fact. The 21 complaints target at least four distinct products manufactured and distributed by various combinations of defendants; the timing, frequency, location and circumstances of each plaintiff's alleged administration of GBCAs will be different in each case, as will their prior medical histories and alleged resulting injuries; and the product-specific alleged warnings or failures to warn will also vary from case to case (based on the specific iteration of product labeling in effect at the relevant time).

II. Legal Standard

The Judicial Panel on Multidistrict Litigation ("Panel") may transfer and centralize civil cases only upon a demonstration by the moving party that such a transfer "will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of [the] actions" and when "common questions of fact" are raised by the underlying cases. 28 U.S.C. § 1407(a). The moving party carries the burden to demonstrate that transfer and centralization are warranted. *See In re Fout & Wuerdeman Litig.*, 657 F. Supp. 2d 1371, 1371 (J.P.M.L. 2009). "[W]here only a minimal number of actions are involved, the moving party generally bears a heavier burden of demonstrating the need for centralization." *In re Transocean Ltd. Sec. Litig.*, 753 F. Supp. 2d 1373, 1374 (J.P.M.L. 2010); *In re Corvette Z06 Mktg. and Sales Practices Litig.*, 289 F. Supp. 3d 1348, 1349 (J.P.M.L. 2018).

The Panel has emphasized that "centralization under Section 1407 should be the last solution after considered review of all other options." *In re Six Flags Fair and Accurate Credit Transactions Act (FACTA) Litig.*, 289 F. Supp. 3d 1343 (J.P.M.L. 2018); *In re Best Buy Co., Inc., California Song-Beverly Credit Card Act Litig.*, 804 F. Supp. 2d 1376 (J.P.M.L. 2011). Where, as here, there are suitable alternatives to § 1407 that would effectively minimize

duplicative discovery and pre-trial litigation, those alternatives should be taken. *See In re Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litig.*, 446 F. Supp. 242, 244 (J.P.M.L. 1978).

III. Transfer and Consolidation Pursuant to § 1407 Is Unwarranted

A. Consolidation and Centralization Would Not Promote the Convenience of the Parties

1. All Defendants Oppose Transfer

Plaintiffs cannot, as they must, establish that this transfer is necessary for the convenience of the parties and witnesses. *See* 15 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Proc.* § 3863 (4th ed. 2016) ("[T]he crucial issue in determining whether to order MDL treatment is . . . whether the economies of transfer outweigh the resulting inconvenience to the parties."). By uniformly opposing the MDL Transfer Motion, all defendants contest that consolidation and centralization would further their convenience. The Panel has historically viewed uniform opposition to centralization as "a factor which is quite influential where other factors do not strongly favor centralization." *In re Skinnygirl Margarita Beverage Mktg. & Sales Practices Litig.*, 829 F. Supp. 2d 1380, 1381 (J.P.M.L. 2011). Given this uniform opposition, the Panel should deny the MDL Transfer Motion.

Plaintiffs attempt to speak on the defendants' behalf about purported conveniences that would result for them. But, the Guerbet Defendants strongly prefer that the Panel deny the MDL Transfer Motion. The Schedule of Actions includes only five actions involving the Guerbet Defendants; three are already proceeding via a coordinated discovery schedule before a single district court judge. Coordinating discovery or *Daubert* litigation in three districts is hardly extraordinary, especially where all of the plaintiffs share the same counsel. *See In re Townsend Farms Organic Anti-Oxidant Blend Prod. Liab. Litig.*, 24 F. Supp. 3d 1372 (J.P.M.L. 2014) (finding transfer unwarranted when "[p]laintiffs are represented by common counsel, and counsel for defendants appear to have a good working relationship").

2. The Interest of Plaintiffs Is Not Controlling

It is not enough to invoke the convenience that will inure to Plaintiffs, or their counsel, from litigating these cases in a single district. *See In re Antibiotic Drugs*, 299 F. Supp. 1403,

1405 (J.P.M.L. 1969) ("Of course, it is to the interest of each plaintiff to have all of the proceedings in his suit handled in his district. But the Panel must weigh the interests of all the plaintiffs and all the defendants, and must consider multiple litigation as a whole in the light of the purposes of the law."); *In re CVS Caremark Corp. Wage and Hour Employment Practices Litig.*, 684 F. Supp. 2d 1377, 1379 (J.P.M.L. 2010) ("Where a Section 1407 motion appears intended to further the interests of particular counsel more than those of the statute, [the Panel] would certainly find less favor with it."); David F. Herr, Multidistrict Lt. Man. § 5:5 (May 2018).

Here, the vast majority of plaintiffs advocating for consolidation share the same counsel, Cutter Law.[7] That firm is listed as counsel in 18 of 21 actions that appear in the "Updated Proof of Service" filed by Plaintiffs on August 1, 2018 (attached hereto as Exhibit A). There are ties among counsel in the remaining actions.[8]

3. Transfer Will Not Promote the Convenience of Anticipated Witnesses

Plaintiffs incorrectly assert that these actions will share a "core of lay … witnesses." Brief ISO MDL at 8. While a particular defendant's fact witnesses may have some overlap in more than one case involving that specific defendant's product, it is certainly not true in the Plaintiffs' context. The individualized nature of each plaintiff's exposure, symptomology (as alleged in each complaint), and medical history will necessitate distinct fact witnesses in each action. Moreover, because each plaintiff alleges a different constellation of symptoms, expert discovery and testimony in each action will vary across the cases (expert opinion will need to be elicited with respect to each unique symptom alleged by each plaintiff).

[7] Cutter Law seeks transfer of all cases to the Northern District of California, where its offices are located. Plaintiffs originally filed many of these actions in that district, before stipulating to transfer the actions to their respective districts of residency when challenged with personal jurisdiction motions to dismiss. The Panel has denied transfer in these circumstances. *See In re Highway Acc. Near Rockville, Connecticut, on Dec. 30, 1972*, 388 F. Supp. 574, 576 (J.P.M.L. 1975) (denying transfer where movants were attempting to use 1407 transfer as an end-around on personal jurisdiction and finding that the "particular litigation plaintiff's ulterior motive for seeking transfer amounts to an attempted misuse of the statute").

[8] *See, supra* at fn. 1 (discussing the relationship of the various plaintiffs' counsels).

B. Transfer Will Not Create Efficiencies or Promote Fair Resolution of These Actions

1. Transfer Will Impede the Guerbet Defendants' Litigation

Transfer and centralization will not promote the just and efficient conduct and resolution of these actions – and particularly not the actions involving the Guerbet Defendants.

The Arizona Actions are subject to court ordered phased discovery with efficient timelines to evaluate the pivotal issue of general causation. Specifically, the court ordered:

- Fact Discovery to be completed by November 2, 2018;
- Expert Discovery to be completed by January 18, 2019;
- *Daubert* motions and hearing by March 15, 2019.

See Davis, No. 2:18-CV-01157-DGC, Dkt. 115. The Guerbet Defendants favor the approach taken by Judge Campbell as it is the most likely to result in an efficient and expedient resolution of the Arizona Actions. Indeed, the parties have already served fact discovery and the Guerbet Defendants have already begun the process of responding and producing responsive documents.

Rather than allow the general causation discovery to unfold, Plaintiffs hastily filed this MDL Transfer Motion – perhaps realizing the Arizona *Daubert* process may doom their claims. Judge Campbell denied the Arizona plaintiffs' effort to stay those actions pending a ruling by this Panel. *Id.* The Guerbet Defendants are actively complying with the timelines set. Transfer of these actions in the midst of this process will negate the progress already made on the threshold question of whether OptiMark® (the Guerbet Defendants' GBCA) can, in patients with normal renal function, even cause the symptoms alleged by these plaintiffs.

Because the Guerbet Defendants anticipate that the General Causation Discovery will be dispositive of all of the Arizona plaintiffs' claims and significantly streamline the scope of disputed issues in other cases involving the Guerbet Defendants, the schedule established in the three Arizona Actions is the most efficient manner in which to proceed. Centralization pursuant to § 1407 will not promote any additional efficiencies for the Guerbet Defendants and will, quite the opposite, only mire them in extended unnecessary litigation.

The Guerbet Defendants oppose transfer of the other two actions naming them. In *Miller*, the Guerbet Defendants anticipate, based on the plaintiff's social media activity, that this action

will be time barred under relevant Ohio law. *See* Ohio Rev. Code Ann. § 2305.10 (West) (two-year statute of limitations). The *Miller* plaintiff has not addressed this potentially fatal deficiency. The *Miller* plaintiff has, instead, delayed for months the filing of an amended complaint that, according to counsel, will cure various other pleading deficiencies highlighted by defendants' in their motion to dismiss. Likewise, the *Esserman* plaintiff was ordered to file an amended complaint comporting with the parties' stipulation dismissing certain claims in May of 2018, but has not. *See Esserman*, No. 1:18-CV-21396, Dkt. 52. A motion to dismiss all remaining claims was before the court when it stayed the action pending a decision by this Panel. *See id.*, Dkt. 73.

2. The Panel Has Consistently Recognized the Inefficiencies Resulting from Centralizing Actions Involving Multiple Competing Manufacturers

Historically, the Panel has wisely exercised caution when considering whether to centralize actions involving numerous competing manufacturers of similar products, as is the case here. *See, e.g., In re Yellow Brass Plumbing Component Prods. Liab. Litig.*, 844 F. Supp. 2d 1377, 1378 (J.P.M.L. 2012) (noting that the Panel is "typically hesitant to centralize litigation against multiple, competing defendants which marketed, manufactured and sold similar products"). The Panel has acknowledged the very real risk that multi-defendant MDLs may not result in gained efficiencies. *See In re Invokana (Canagliflozin) Prods. Liab. Litig.*, 223 F. Supp. 3d 1345, 1348 (J.P.M.L. 2016) (noting that multi-defendant MDLs "may prolong pretrial proceedings, because of, *inter alia*, the possible need for separate discovery and motion tracks, as well as the need for additional bellwether trials").

These considerations militate against transfer to MDL here: the individual plaintiffs allege injuries arising from administration of at least three other GBCAs not manufactured by the Guerbet Defendants; the actions involve various combinations of defendants with potentially competing interests; and the timing, frequency, location and circumstances of each plaintiff's alleged administration of GBCAs will be different in each case, as will the product-specific alleged warnings or failures to warn (based on the iteration of product label in effect at the relevant time). Any arguable efficiencies gained by MDL status will be thoroughly outweighed

by the procedural complications arising from inserting the Guerbet Defendants into centralized litigation involving products with which, and plaintiffs with whom, they have no involvement.

3. Consolidating Potential Tag-Along or Yet-to-be-Filed Hypothetical Actions Will Not Yield Any Efficiencies

All potential "tag-along" actions identified by Plaintiffs have been filed by Cutter Law and their related sets of counsel[9] and accordingly will not yield any additional efficiencies. The only potential "tag-along" action naming the Guerbet Defendants was filed by Cutter Law one day after this MDL Transfer Motion. *See Klein v. Bayer Healthcare Pharmaceuticals, Inc et al.*, 2:18-CV-01424-APG-GWF (D. Nev. Aug. 1, 2018). The Panel has expressed skepticism that this self-serving practice is indicative of the potential volume of "tag-along" actions. *See In re California Wine Inorganic Arsenic Levels Prod. Liab. Litig.*, 109 F. Supp. 3d 1362, 1363 (J.P.M.L. 2015) (noting that allegations "indicating that movant's counsel caused the filing of the related actions before the Panel for the sole purpose of bolstering his motion" would be suspect).

Plaintiffs' assertions regarding potential, yet-to-be-filed tag-along actions should be given no weight as they are irrelevant to this Panel's analysis. The Panel has been "disinclined to take into account the mere possibility of future filings in our centralization calculus." *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prods. Liab. Litig.*, 959 F. Supp. 2d 1375, 1376 (J.P.M.L. 2013); *see also In re Qualitest Birth Control Prod. Liab. Litig.*, 38 F. Supp. 3d 1388, 1389 (J.P.M.L. 2014); *In re Proton-Pump Inhibitor Prod. Liab. Litig. (No. I)*, 273 F. Supp. 3d 1360, 1363 (J.P.M.L. 2017); *In re California Wine Product Liab. Litig.*, 109 F. Supp. 3d at 1363. Speculation regarding supposed yet-to-be-filed actions is irrelevant to the Panel's consideration of this MDL Transfer Motion.

[9] *See* Dkt. 14 identifying 5 potential "tag-along" actions. *Doe v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 3:18-CV-04568 and *Klein v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 2:18-CV-01424 (filed by Cutter Law). *Hollifield v. GE Healthcare Inc., et al.*, No. 1:18-CV-11626; and *Pierik v. GE Healthcare Inc., et al.*, No. 1:18-CV-11709 (filed by Andrus Wagstaff, PC) (see *supra* n.1 for discussion of relationship of Andrus Wagstaff to Cutter Law). *Wely v. Braco Diagnostics, Inc., et al.*, No. 3:18-CV-01460 (filed by Wexler Wallace who is co-counsel with Gomez Trial Lawyers in *Lewis v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 3:18-CV-03077) (see *supra* n.1 for discussion of relationship of Gomez Trial Lawyers to Cutter Law).

C. Informal Coordination and Cooperation Is the Superior and Viable Alternative

Formal consolidation is unnecessary and unwarranted when informal coordination efforts will result in the same efficiencies. As noted above, a single law firm (Cutter Law) represents 18 of 21 actions cited in Plaintiffs' Schedule of Actions[10] and there is overlap of counsel in all remaining actions. When such limited numbers of counsel are involved, "[v]arious mechanisms are available to minimize or eliminate the possibility of duplicative discovery in the absence of an MDL. Notices of deposition can be filed in all related actions; the parties can stipulate that any discovery relevant to more than one action can be used in all those actions; or the involved courts may direct the parties to coordinate their pretrial activities." *In re Colgate Optic White Toothpaste Mktg. & Sales Practices Litig.*, 232 F. Supp. 3d 1346, 1347 (J.P.M.L. 2016). Here, for example, all Arizona defendants have informally coordinated by serving consolidated written discovery to plaintiffs in the Arizona Actions. Additionally, the Arizona defendants are negotiating a uniform ESI protocol with plaintiffs' counsel. Defendants will continue to seek and utilize informal mechanisms to promote the efficient resolution of this litigation.

The Panel has recognized that informal cooperation is the preferable alternative to centralization. *See, e.g., In re Corvette Z06 Mktg. and Sales Practices Litig.*, 289 F. Supp. 3d at 1349 (denying centralization and recognizing that where litigation involved actions with plaintiffs and defendants represented by common counsel, "[c]ooperation among the few involved courts and these two groups of counsel appears to be a workable alternative to centralization in these circumstances"); *In re Rite Aid Corp. Wage and Hour Employment Practices Litig.*, 655 F. Supp. 2d 1376, 1377 (J.P.M.L. 2009) (denying centralization and noting "[c]ooperation among counsel and the parties is particularly appropriate" where majority of plaintiffs share the same counsel); *In re MonaVie Juice Prod. Mktg. & Sales Practices Litig.*, 279 F. Supp. 3d 1380, 1381 (J.P.M.L. 2017) (denying centralization and stating "[w]e often have held that cooperation among a few involved courts and counsel regarding discovery … is a

[10] If the identified "tag-along" actions are considered, Cutter Law is counsel in 20 of the 26 actions and firms who serve as co-counsel to Cutter Law in other actions are responsible for all other actions. Cutter Law is counsel in all of the cases against the Guerbet Defendants. *See supra* at n. 1 and n. 10 for discussion of relationship of various plaintiffs' counsel.

preferable alternative to centralization"); *In re Starbucks Corp. Access for Individuals with Disabilities Litig.*, 2018 WL 3737988, at *1 (J.P.M.L. Aug. 1, 2018) (finding cooperation and informal coordination preferable to transfer when 21 actions involved the same counsel). The Panel should do the same here.

D. Highly Individualized Issues Predominate any Common Issues of Fact

1. Individualized Issues of Liability and Damages Pertaining to Each Plaintiff Will Predominate

The presence of some common issues of fact is not, alone, sufficient to justify transfer. *See, e.g., In re G. D. Searle & Co. "Copper 7" IUD Prod. Liab. Litig*., 483 F. Supp. 1343, 1345 (J.P.M.L. 1980) (denying transfer despite recognizing the existence of common issues of fact). The purpose of the MDL model is to create efficiency. The Panel has consistently denied transfer where common questions of fact are outweighed by individualized issues. *See, e.g., In re LVNV Funding, LLC, Time-Barred Proof of Claim Fair Debt Collection Practices Act (FDCPA) Litig.*, 96 F. Supp. 3d 1376, 1377 (J.P.M.L. 2015) (denying transfer where "common questions … are not sufficiently complex or numerous to warrant the creation of an MDL"); *In re Kohl's Tel. Consumer Prot. Act (TCPA) Litig.*, 220 F. Supp. 3d 1363, 1364 (J.P.M.L. 2016) (denying centralization despite common factual issues where individualized discovery was "likely to be quite significant"); *In re Florida Dep't of Corr. Sexual Harassment by Inmates Litig.*, 657 F. Supp. 2d 1369, 1370 (J.P.M.L. 2009) (denying transfer when "individualized inquiries regarding, *inter alia* . . . the measure of each plaintiff's alleged damages" would be necessary).

In particular, the Panel has denied transfer when, as here, the individualized nature of the following factual inquiries predominate any common questions of fact: "(1) the particular product each plaintiff [was administered], (2) any injuries that consumption of the product caused, (3) whether the product [was defective] or (4) what advertising or other representations were made to each particular plaintiff (and, relatedly, whether the plaintiff [or their healthcare provider] relied upon those representations)." *In re Abbott Labs., Inc., Similac Prod. Liab. Litig.*, 763 F. Supp. 2d 1376, 1377 (J.P.M.L. 2011).

Plaintiffs cite purported "common questions of fact" which they allege are shared by all actions. Brief ISO MDL at 9-10. They claim that "[t]he nature and extent of damages suffered by Plaintiffs" will be a common issue of fact between all actions. *Id.* This is nonsense. Unlike many product liability cases, each Plaintiff alleges that his or her GBCA injection resulted in a different constellation of symptoms and injuries.[11] Each action will require a separate analysis of whether exposure to the specific GBCA at issue can cause (in anyone) the specific symptoms asserted by each plaintiff (which lack any recognized support in the medical or scientific literature). Some plaintiffs allege that they suffer from "Gadolinium Deposition Disease,"[12] while others do not mention this alleged "disease."[13] Some Plaintiffs assert a laundry list of symptoms while others simply assert they suffer from "related injuries" and "symptoms" but do not describe in any manner what those injuries or symptoms may be.[14]

In addition, each Plaintiff will have an individualized medical history, course of treatment, and treating and diagnosing physicians. Factual questions will arise as to which GBCA(s) each Plaintiff was exposed, when, and how often. Moreover, because these actions involve a variety of products, an examination of each product's label – which are not identical and have been updated at different intervals – at different points in time will be necessary to

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[11] *See* Exhibit 1 to Bayer Parties' Opposition to MDL Transfer Motion (chart of disparate alleged symptoms).

[12] *See Davis*, No. 2:18-CV-01157-DGC (D. Ariz.); *Munnuru*, No. 2:18-CV-01159-DGC (D. Ariz.); *Geisse*, No. 3:17-CV-07026 (N.D. Cal.); *Young v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 3:18-CV-00811 (N.D. Cal.); *Winkler v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 3:18-CV-03077 (N.D. Cal.); *Norris v. McKesson Corporation, et al.*, No. 3:18-CV-04314 (N.D. Cal.); *Javens v. GE Healthcare, et al.*, No. 1:18-CV-01030 (D. Del.); *Esserman v. Bracco Diagnostics, Inc., et al.*, No. 1:18-21396 (S.D. Fla.); *Montani v. Bracco Diagnostics, Inc., et al.*, No. 4:18-CV-10054 (S.D. Fla.); *Zelazny v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 1:18-CV-03246 (S.D.N.Y.); *Combs v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 1:18-CV-00802 (N.D. Ohio); *Miller v. GE Healthcare, Inc., et al.*, No. 3:18-CV-00113 (S.D. Ohio); *Walton v. GE Healthcare Inc., et al.*, No. 2:18-CV-00605 (D. Ore.).

[13] *See Fischer*, No. 2:18-CV-01778 (D. Ariz.); *Lewis v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 3:18-CV-04146 (N.D. Cal.); *Sabol v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 8:18-CV-00850 (M.D. Fla.); *Gerrity v. McKesson Corporation, et al.*, No. 2:18-CV-02245 (D. Kan.); *Goodell*, No. 1:18-CV-10694 (D. Mass.); *Viruet v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 1:18-CV-11611 (D. Mass.); *McGrath v. Bayer Healthcare Pharmaceuticals, Inc., et al.*, No. 1:18-CV-02134 (E.Ds.N.Y.).

[14] *Compare, Davis*, Dkt. 4, ¶ 43 (alleging plaintiff suffers from "Gadolinium Deposition Disease" and a specific list of individualized symptoms) with *Fischer*, Dkt. 10, ¶ 19 (alleging plaintiff suffers from retained gadolinium and "related symptoms" but providing no description of what such symptoms may be).

understand what warnings were provided to treating physicians and whether any alleged additional warnings would have (i) been reasonably knowable at that time or (ii) altered the treating physician's decision. Individualized inquiries into statements made by any of the defendants to the treating physicians will also be necessary. None of these individualized issues – whether of general or specific causation or damages – will be subject to common evidence. These individualized issues vastly outweigh any common issues of fact that may exist. *See In re Shoulder Pain Pump-Chondrolysis Prod. Liab. Litig.*, 571 F. Supp. 2d 1367, 1368 (J.P.M.L. 2008) ("[Any] efficiencies that might be gained by centralization [are] overwhelmed by multiple individualized issues (including ones of liability and causation) that these actions appear to present.").

Moreover, all of Plaintiffs' claims are premised on the defendants' alleged failure to provide adequate warnings (either via strict liability or negligence mechanisms). Consequently, the core inquiry these actions share is an analysis of an understanding of the state of scientific and medical knowledge at various points in time. The Panel has found centralization inappropriate when "the only questions of fact common to all actions related to the state of scientific and medical knowledge at different points in time concerning the risk of exposure to [certain substances]." *In re Asbestos & Asbestos Insulation Material Prod. Liab. Litig.*, 431 F. Supp. 906 (J.P.M.L. 1977). That conclusion is relevant and appropriate here.[15]

2. Plaintiffs' Analogy to the NSF Multidistrict Litigation Is Inapposite

Plaintiffs discuss at length *In re Gadolinium Contrast Dyes Prod. Liab. Litig*, MDL 1909, 1:08-gd-50000 ("MDL 1909"), an MDL involving a narrow and specific subset of patients who were administered GBCAs, and to which neither of the Guerbet Defendants were parties. Plaintiffs' analogy to MDL 1909 lacks merit. It involved allegations that GBCAs could, in a very small subset of patients with renal impairment, cause Nephrogenic Systemic Fibrosis ("NSF"). NSF was a scientifically-recognized disease process with well-documented

[15] Notably, none of the actions Plaintiffs seek to centralize contain sufficient detail to allow Defendants to understand when or even how often the complainant was allegedly administered the relevant product(s). That said, given Plaintiffs' inclusion of estimates of gadolinium product usage on a year-by-year basis over the past decade defendants assume that the complained of conduct will extend at least over that time window. *See* Brief ISO MDL at Ex. C.

symptomology and diagnostic criteria. *See, e.g.*, Girardi et al., Nephrogenic systemic fibrosis: Clinicopathological definition and workup recommendations, 65 J. Am. Academy of Dermatology 6, 1095 (2011). Plaintiffs do not allege that they suffer from NSF and they admit to having normal kidney function at the time of their purported exposure to GBCAs.

In comparison to MDL 1909, the Plaintiffs here allege various combinations of symptoms and have revised the descriptions of their purported injuries as the litigation unfolds. *See, e.g., Davis*, Dkt. 110, at n. 3 (admitting that all Plaintiffs are yet still unable to describe their purported injuries and that Plaintiffs' counsel in all pending actions will require the ability to amend their complaints to clarify). By way of example, the plaintiff in *Fischer* originally alleged that she suffers from burning sensation; violent shaking; tremors; clouded mentation; confusion; weakness; fatigue; hypoglycemia; difficult painful movement; low body temperature; inflammation, especially throughout her lymphatic system; muscle cramps; numbness; tingling sensation; aching joints; weight loss; hair loss; lumps and rashes on body; kidney damage; and osteoporosis. *See Fischer*, Dkt. 1 at ¶ 16. But the *Fischer* plaintiff recently amended her complaint to omit all of the previously alleged symptoms, and now complains only of "fibrosis in her organs, skin and bones"[16] and injuries "related" to retained gadolinium. She fails to articulate what those "related" injuries are. *Id.*, Dkt. 10 at ¶ 19.

Plaintiffs have not asserted common injuries and they should not be permitted to shape their claims after determining which injuries might hold water in uniform litigation.[17] This is in stark contrast to MDL 1909 where plaintiffs complained of the same disease process and

[16] Notably, the Fischer plaintiff did not allege that she suffered from "fibrosis" in her original complaint notwithstanding detailed allegations about "fibrosis" in the context of explaining the NSF disease process. The Plaintiffs have established a track record of creating facts to fit the science as opposed to applying the science to fit purported facts.

[17] Tellingly, subsequent to the filing of this JPML petition, Cutter Law filed amended complaints in various actions which remove all discussions of symptomology and instead uses identical vague language asserting that plaintiffs "develop persistent symptoms" but failing to describe any specific symptom(s) allegedly suffered by the specific plaintiff. *See, Sabol*, Dkt. 52, ¶ 43 (filed August 10, 2018); *Goodell*, Dkt. 49, ¶ 25 (filed August 8, 2018); and *McGrath*, Dkt. 67 ¶ 25 (filed August 10, 2018). The Panel should see through this attempt to manufacture a uniform injury. Each case will still necessarily involve the same individualized symptoms previously asserted by the respective plaintiffs.

resulting injury: NSF. A focused review of the individualized issues presented in each case is warranted and is consistent with the Panel's philosophy of not merely "rubber stamping" MDL status on the basis of purported similarities to past MDLs. *In re CVS Caremark Corp. Wage & Hour Employment Practices Litig.*, 684 F. Supp. 2d 1377, 1379 (J.P.M.L. 2010).

IV. Alternative Arguments if the Panel Does Not Reject § 1407 Transfer

A. The Panel Should Stay Any Decision Until General Causation Discovery Is Completed in the Arizona Actions

If, despite the foregoing and the defendants' uniform opposition, the Panel is not persuaded it must deny § 1407 transfer, the Guerbet Defendants respectfully request that the Panel defer its ruling until the conclusion of General Causation Discovery and *Daubert* ruling in the Arizona Actions. The Guerbet Defendants anticipate that the outcome of General Causation Discovery will dispose of key disputed issues in the Arizona Actions and will guide efficient resolution of the remaining claims against the Guerbet Defendants, if they survive the pleadings.

The Panel has delayed its decision in similar circumstances, and should do so here. *See In re Copper Antitrust Litig.*, 269 F. Supp. 2d 1365 (J.P.M.L. 2003) (discussing Panel's deferred decision on § 1407 transfer in light of pending dispositive motions and ultimately denying motion to transfer as moot).

B. If Over Defendants' Objections, the Panel Grants MDL Status, the District of Arizona (Judge Campbell) is Best Suited to Serve as the Transferee Court

If, despite the foregoing and over all defendants' objections, the Panel grants the MDL Transfer Motion, the Guerbet Defendants request that the MDL be transferred and assigned to the Honorable David G. Campbell in the District of Arizona. Judge Campbell currently presides over three pending actions and has already devised a discovery schedule aimed at efficient and effective management of these cases. The District of Arizona is easily accessible and has an existing MDL caseload that makes it conducive to serving as the transferee district.

The Guerbet Defendants will be prejudiced by the creation of any MDL at this time. *See* Section III, *supra*. The Arizona Actions are further along than any other and the General Causation Discovery is poised to expediently resolve dispositive issues. The Panel has recognized that transfer to the judge managing the most developed docket is preferable and often

necessary to ensure appropriate integration of all transferred actions. *See In re Hyundai & Kia Fuel Econ. Litig.*, 923 F. Supp. 2d 1364, 1365 (J.P.M.L. 2013) (court presiding over most advanced action "is in the best position to incorporate [the actions] in a manner that accommodates the progress already made in that action while also addressing the issues raised in the more recently filed actions"); *In re NuvaRing Prod. Liab. Litig.*, 572 F. Supp. 2d 1382, 1383 (J.P.M.L. 2008) (granting transfer to court that "presided over the most procedurally advanced action"). Transfer to Judge Campbell is sensible and warranted in these circumstances, if the Panel overrules all defendants' objections to transfer. Indeed, the Panel has recognized Judge Campbell's ability to steer complex litigation to efficient resolution. *See In re Bard IVC Filters Prod. Liab. Litig.*, 122 F. Supp. 3d 1375, 1377 (J.P.M.L. 2015) (Judge David G. Campbell "is an experienced transferee judge who can prudently steer the litigation").

The relative docket conditions of proposed transferee courts also favor the District of Arizona over Plaintiffs' proposal of the Northern District of California. The Panel favors assignment to districts that are not "overtaxed with other multidistrict litigations." *In re Serzone Prod. Liab. Litig.*, 217 F. Supp. 2d 1372, 1374 (J.P.M.L. 2002); *In re Baycol Prod. Liab. Litig.*, 180 F. Supp. 2d 1378, 1380 (J.P.M.L. 2001) (same); *see also In re NuvaRing Prod. Liab. Litig.*, 572 F. Supp. 2d at 1383 (referencing the Panel's preference to transfer to a district with a "relatively low number of pending MDL dockets"). Currently, only two MDLs are pending in the District of Arizona, whereas 20 MDLs are pending in the Northern District of California.[18] In addition to MDL case load, the Panel often evaluates relevant statistics that provide insight on which "district is in the best position to process this litigation toward its most expeditious conclusion." *In re Corn Derivatives Antitrust Litig.*, 486 F. Supp. 929, 932 (J.P.M.L. 1980). Here the percentage of civil cases remaining unresolved beyond three years favors the District of Arizona (1.9% for the District of Arizona compared to 6.3% in Northern District of California).[19]

[18] *See*, MDL Statistics Report - Distribution of Pending MDL Dockets by District (August 15, 2018), available at: http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-August-15-2018.pdf.

[19] United States District Courts – National Judicial Caseload Profile (June 2018), available at: http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0630.2018.pdf.

Finally, Arizona is no less convenient for the defendants than Northern California. Phoenix is served by an international airport providing hundreds of flights per day and making it easily accessible from throughout the United States. Plaintiffs' assertion that some of the distributor defendants are headquartered in the Northern District of California should be given no weight. Plaintiffs appear poised to abandon their claims against these distributors, as none of the recently amended complaints contain any allegations aimed at distributors. *See, e.g.*, *Fischer* (naming only manufacturing defendants); *Viruet* (same); *Lewis* (same); *Javens* (same). Tellingly, the distributor entities are mentioned only once in the MDL Transfer Motion: as an attempt to justify the convenience of the Northern District of California.

Accordingly, if the Panel elects to create an MDL, the Panel should order transfer to Judge David G. Campbell in the District of Arizona.[20]

V. Conclusion

For the foregoing reasons, the Guerbet Defendants respectfully request that the Panel deny the MDL Transfer Motion. In the alternative, the Panel should defer its ruling until the General Causation Discovery in the Arizona Cases has concluded and a *Daubert* ruling entered. Finally, if the Panel decides over all defendants' objections to create an MDL, transfer to Judge David G. Campbell in the District of Arizona would be the least prejudicial to the Guerbet Defendants.

[20] The Guerbet Defendants also object to the recommendation by plaintiffs Joseph Lewis and Toby Welty that an MDL be consolidated in the Southern District of Illinois. See Dkt. 41 at 3-5. None of the pending or prospective actions against the Guerbet Defendants are located in Illinois and that location would yield no meaningful efficiencies for the defendants in these cases. The recommendation of the *Welty* plaintiffs should be given no weight as it is the only case pending in the Southern District of Illinois, and the suit was filed by Cutter Law's co-counsel, Wexler Wallace LLP, one day after the MDL Transfer Motion. *See Welty v. Bracco Diagnostics Inc., et al.*, No. 3:18-cv-01460 (S.D. Ill. Aug. 1, 2018).

Dated: August 23, 2018

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By */s/ Jamie L. Kendall*

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BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTI DISTRICT LITIGATION

IN RE LINEAR GADOLINIUM-BASED CONTRAST AGENTS PRODUCTS LIABILITY LITIGATION	MDL DOCKET NO. 2868

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2018, I electronically filed this Opposition to Plaintiffs' Motion for Transfer and Centralization with the Clerk of the Judicial Panel on Multidistrict Litigation pursuant to its electronic case filing system (ECF). The ECF sent a "Notice of Electronic Filing" to the attorney of records who have consented to accepting service via this method.

	Case Caption	Plaintiff Counsel	Defense Counsel
1.	Hilary Davis v. McKesson Corporation; McKesson Medical-Surgical Inc.; Guerbet, LLC; Mallkinckrodt, Inc.; Mallinckrodt LLC; Enterprise Holdings, Inc. Which Will Do Business In California As Mallinckrodt Pharmaceuticals; Mallinckrodt Manufacturing LLC; Liebel-Flarsheim Company LLC; Curascript, Inc.; Amerisourcebergen Corporation; Amerisourcebergen Drug Corporation; and Does 1 through 20 **D. Arizona 2:18-01157**	**C. Brooks Cutter** **Margot P. Cutter** **Todd A. Walburg** Cutter Law, P.C. 401 Watt Avenue Sacramento, CA 95864 916-290-9400 Fax: 916-588-9330 bcutter@cutterlaw.com mcutter@cutterlaw.com twalburg@cutterlaw.com **Curt William Clausen** Clausen & Williamson PLLC 2999 N. 44th St., Ste. 318 Phoenix, AZ 85018-7520 602-285-4450 Fax: 602-285-4483 curt@cwazlaw.com	**Habib Nasrullah** Wheeler Trigg O'Donnell, LLP 370 17th St., Ste. 4300 Denver, CO 80202 303-244-1800 Fax: 303-244-1879 nasrullah@wtotrial.com *Representing McKesson Corporation and McKesson Medical Surgical Incorporated* **Patrick Xavier Fowler** Snell & Wilmer LLP One Arizona Center 400 E. Van Buren St., Ste. 1900 Phoenix, AZ 85004-001 602-382-6000 Fax: 602-382-6070 pfowler@slaw.com *Representing Mallinckrodt Inc., Mallincrkrodt LLC, Mallinckrodt Manufacturing, Inc., Enterprise Holdings, Inc., AmerisourceBergen Corporation, AmerisourceBergen Drug Corporation* **Devin Kyle Ross** **Robert Thomas Adams** Shook, Hardy & Bacon L.L.P. 2555 Grand Boulevard Kansas City, MO 64108 816-474-6550 Fax: 816-421-5547 dkross@shb.com rtadams@shb.com

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2.	Srihari Munnuru v. Guerbet, LLC; Mallinckrodt Inc.; Mallinckrodt LLC; Liebel-Flarsheim Company LLC; McKesson Corporation; McKesson Medical-Surgical, Inc.; Merry X-Ray Chemical Corporation; and Does 1 through 50 **D. Arizona 2:18-01159**	**Curt William Clausen** Clausen & Williamson PLLC 2999 N 44th St., Ste. 318 Phoenix, AZ 85018-7520 602-285-4450 Fax: 602-285-4483 curt@cwazlaw.com **Todd A. Walburg** Cutter Law, P.C. 401 Watt Avenue Sacramento, CA 95864 916-290-9400 Fax: 916-588-9330 twalburg@cutterlaw.com	**Devin Kyle Ross** **Robert Thomas Adams** Shook, Hardy & Bacon L.L.P. 2555 Grand Boulevard Kansas City, MO 64108 816-474-6550 Fax: 816-421-5547 dkross@shb.com rtadams@shb.com *Representing Mallinckrodt Incorporated and Mallinckrodt LLC* **Patrick Xavier Fowler** Snell & Wilmer LLP One Arizona Center 400 E. Van Buren St., Ste. 1900 Phoenix, AZ 85004-001

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3.	Susan Fischer v. Bayer Healthcare Pharmaceuticals Inc.; Bayer Corporation; Bayer Healthcare LLC; Bracco Diagnostics, Inc.; Guerbet LLC; Mallinckrodt Inc.; Mallinckrodt LLC; and Liebel-Flarsheim Company LLC **D. Arizona 2:18-01778**	**Curt William Clausen** Clausen & Williamson PLLC 2999 N 44th St., Ste. 318 Phoenix, AZ 85018-7520 602-285-4450 Fax: 602-285-4483 **Todd A. Walburg** Cutter Law, P.C. 401 Watt Avenue Sacramento, CA 95864 916-290-9400 Fax: 916-588-9330 twalburg@cutterlaw.com	**Brian Mooney** **James Reginald Reilly** **Kevin Liu** **Peter J Turcotte** Gordon & Rees, LLP 275 Battery St. – Ste. 2000 San Francisco, CA 94111 *Representing Bracco Diagnostics, Inc.* **Jordon Scott Cohen** Wicker Smith Tutan O'Hara McCoy Graham & Ford 515 E Las Olas Blvd. Ste. 1400 Fort Lauderdale, FL 33301 954-467-6405 Fax 760-93533 jcohen@wickersmith.com *Representing Bracco Diagnostics, Inc.* **Paul Scott Penticuff** **Thomas N. Sterchi** Baker Sterchi Cowden and Rice, LLC 2400 Pershing Rd., Ste. 500 Kansas City, MO 64108 penticuff@bscr-law.com sterchi@bscr-law.com *Representing Bracco Diagnostics, Inc.* **Habib Nasrullah** Wheeler Trigg O'Donnell, LLP 370 17th St., Ste. 4300 Denver, CO 80202

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4.	Nikki Esserman v. Bracco Diagnostics, Inc.; Bracco Research USA, Inc.; Bipso GMBH; Bracco Imaging, S.P.A.; Bracco Group; Bracco Imaging Group; Takeda GMBH; Acist Medical Systems, Inc., dba Acist Silicon Valley; Guerbet LLC; Mallinckrodt Inc.; Mallinckrodt LLC; Enterprise Holdings, Inc. dba Mallinckrodt Pharmaceuticals; Mallinckrodt Manufacturing LLC; Liebel-Flarsheim Company LLC; McKesson Corporation; McKesson Medical-Surgical, Inc.; Merry X-Ray Chemical Corporation; and Does 1 through 50, inclusive **S.D. Florida No. 1:18-21396**	**C. Brooks Cutter** **Margot P. Cutter** **Todd A. Walburg** Cutter Law, P.C. 401 Watt Avenue Sacramento, CA 95864 916-290-9400 Fax: 916-588-9330 bcutter@cutterlaw.com mcutter@cutterlaw.com twalburg@cutterlaw.com **R. Jason Richards** Aylstock, Witkin, Kreis & Overholtz, PLLC 17 E. Main St. – Ste. 200 Pensacola, FL 32502-5998 850-916-7450 Fax: 850-916-7449 jrichards@awkolaw.com	**Brian Mooney** **James Reginald Reilly** **Kevin Liu** **Peter J Turcotte** Gordon & Rees, LLP 275 Battery St. – Ste. 2000 San Francisco, CA 94111 *Representing Bracco Diagnostics, Inc.* **Jordon Scott Cohen** Wicker Smith Tutan O'Hara McCoy Graham & Ford 515 E Las Olas Blvd. Ste. 1400 Fort Lauderdale, FL 33301 954-467-6405 Fax 760-93533 jcohen@wickersmith.com *Representing Bracco Diagnostics, Inc.* **Paul Scott Penticuff** **Thomas N. Sterchi** Baker Sterchi Cowden and Rice, LLC 2400 Pershing Rd., Ste. 500 Kansas City, MO 64108 penticuff@bscr-law.com sterchi@bscr-law.com *Representing Bracco Diagnostics, Inc.* **Devin Kyle Ross** **Devin Arnold Moss** Shook, Hardy & Bacon L.L.P. 2555 Grand Boulevard Kansas City, MO 64108 816-474-6550 Fax: 816-421-5547 dkross@shb.com

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5.	Captain Sean Miller (Ret.) v. GE Healthcare Inc.; GE Healthcare AS; General Electric Company; Guerbet LLC; Mallinckrodt Inc.; Mallinckrodt LLC; Enterprise Holdings, Inc. dba Mallinckrodt Pharmaceuticals; Mallinckrodt Manufacturing LLC; Liebel-Flarsheim Company LLC; McKesson Corporation; McKesson Medical-Surgical, Inc.; Merry X-Ray Chemical Corporation; and Does 1 through 50, inclusive **S.D. Ohio No. 3:18-00113**	**Anne M. Valentine** Leeseberg & Valentine 175 S Third Street, PH-1 Columbus, OH 43215 614-221-2223 Fax: 614-221-3106 avalentine@leesebergvalentine.com **C. Brooks Cutter** **Margot P. Cutter** **Todd A. Walburg** Cutter Law, P.C. 401 Watt Avenue Sacramento, CA 95864 916-290-9400 Fax: 916-588-9330 bcutter@cutterlaw.com mcutter@cutterlaw.com twalburg@cutterlaw.com	**J Phillip Calabrese** **Justin James Joyce** Porter Wright Morris & Arthur LLP 950 Main Ave. Cleveland, OH 44113 216-443-2504 Fax: 216-443-9001 pcalabrese@porterwright.com jjoyce@porterwright.com *Representing GE Healthcare Inc.; GE Healthcare AS; General Electric Company* **Jeremy A. Moseley** **Michael L. O'Donnell** Wheeler Trigg O'Donnell LLP 370 17th Street, Ste. 4500 Denver, CO 80202 303-244-1800 Fax: 303-244-1879 moseley@wtotrial.com odonnell@wtotrial.com *Representing GE Healthcare Inc.; GE Healthcare AS; General Electric Company* **Frederick Michael Erny** Ulmer & Berne LLP 600 Vine Street, Ste. 2800 Cincinnati, OH 45202 513-698-5144 Fax: 513-698-5145 ferny@ulmer.com *Representing Mallinckrodt Inc.* **Devin Kyle Ross** Shook, Hardy & Bacon L.L.P. 2555 Grand Boulevard Kansas City, MO 64108 816-474-6550 Fax: 816-421-5547 dkross@shb.com *Representing Mallinckrodt Inc.* **McKesson Corporation** **McKesson Medical-Surgical, Inc.** CSC Lawyers, Inc. 2710 Gateway Oaks Dr., #150N Sacramento, Ca 95833

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