

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

**IN RE: SERESTO FLEA AND TICK
COLLAR MARKETING, SALES
PRACTICES AND PRODUCTS
LIABILITY LITIGATION**

MDL No. 3009

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR
TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407**

TABLE OF CONTENTS

I.	BACKGROUND	1
A.	Cases Subject to the Motion for Transfer	1
B.	Location of Parties, Witnesses, and Documents	2
1.	Elanco's 70-Year History with Indiana	2
2.	Elanco Acquired Bayer's Animal Health Division and Bayer No Longer Manufactures or Sells Seresto®	4
C.	Informal Coordination Discussions	4
II.	ARGUMENT	5
A.	Transfer of These Actions Pursuant to 28 U.S.C. § 1407 is Premature Because Informal Coordination Remains a Practicable Alternative	5
B.	If Centralization is Ordered, the Subject Actions Should be Transferred to the Southern District of Indiana or the Northern District of Illinois	5
1.	The Southern District of Indiana is the Most Appropriate Transferee Forum	6
2.	Alternatively, the Subject Actions Should be Transferred to Judge John Robert Blakey in the Northern District of Illinois	8
C.	The Western District of Missouri is an Inconvenient Forum with Minimal Connections to this Litigation	10
III.	CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<i>In re Aimster Copyright Litig.</i> , 177 F. Supp. 2d 1380 (J.P.M.L. 2001).....	9
<i>In re Cook Med., Inc., IVC Filters Mktg., Sales Pracs. & Prods. Liab. Litig.</i> , 53 F. Supp. 3d 1379 (J.P.M.L. 2014).....	6
<i>In re Gerber Probiotic Prods. Mktg. & Sales Pracs. Litig.</i> , 899 F. Supp. 2d 1378 (J.P.M.L. 2012).....	5
<i>In re Giant Eagle, Inc., Fair Lab. Standards Act (FLSA) Litig.</i> , 330 F. Supp. 3d 1376 (J.P.M.L. 2018).....	5
<i>In re Joel Snider Litig.</i> , 437 F. Supp. 3d 1371 (J.P.M.L. 2020).....	10
<i>In re Loc. TV Advert. Antitrust Litig.</i> , 338 F. Supp. 3d 1341 (J.P.M.L. 2018).....	9
<i>In re Med. Informatics Eng’g, Inc., Customer Data Sec. Breach Litig.</i> , 148 F. Supp. 3d 1381 (J.P.M.L. 2015).....	6, 7, 8, 11
<i>In re Nat’l Collegiate Athletic Ass’n Student-Athlete Concussion Inj. Litig.</i> , 988 F. Supp. 2d 1373 (J.P.M.L. 2013).....	8
<i>In re Novartis Wage & Hour Litig.</i> , 460 F. Supp. 2d 1382 (J.P.M.L. 2006).....	11
<i>In re Sulfuric Acid Antitrust Litig.</i> , 270 F. Supp. 2d 1379 (J.P.M.L. 2003).....	9, 10
<i>In re Swine Flu Immunization Prods. Liab. Litig.</i> , 446 F. Supp. 244 (J.P.M.L. 1978).....	6
<i>Kirk v. Clark Equip. Co.</i> , 2020 WL 5593750 (N.D. Ill. Sept. 18, 2020), <i>aff’d</i> , 991 F.3d 865 (7th Cir. 2021).....	9

Statutes

7 U.S.C. § 136a.....	2
----------------------	---

Defendants respectfully oppose Plaintiff Laura Revolinsky's Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 (the "Motion for Transfer" or "Motion"). While Defendants support global coordination of this litigation, formal centralization in an MDL would be premature at this time. Most of the parties to the actions subject to the Motion for Transfer (the "Subject Actions") have demonstrated interest in informal coordination, and the relatively small number of actions makes alternatives to formal centralization worthy of further discussion. Plaintiff's request for formal centralization should be denied, or at least deferred until the parties can determine if informal coordination can be achieved.

If this Panel determines that formal centralization is appropriate, the Southern District of Indiana is the most appropriate transferee forum. Elanco, the primary defendant, is headquartered in Indiana and has had strong ties to the state for 70 years, and likely witnesses are based there. Alternatively, the Northern District of Illinois is a convenient forum because it is close to Elanco's headquarters, is home to Defendants' lead counsel, and is in a major city with substantial resources and easy access. In contrast, certain plaintiffs' request to transfer this case to the Western District of Missouri should be rejected. The Western District of Missouri is five hundred miles away from Elanco's headquarters and is not a convenient venue for this matter.

I. BACKGROUND

A. Cases Subject to the Motion for Transfer

The Motion for Transfer seeks to centralize twelve actions pending in seven different district courts to the District of New Jersey. (*See* Mot. to Transfer (Corrected), Dkt. No. 2.) Since the Motion for Transfer was filed, three additional actions have been tagged as related. (*See* Dkt. Nos. 14, 15, 19.)

All of the Subject Actions are putative class actions asserting claims sounding in consumer fraud, breach of warranty, and unjust enrichment related to Defendants' sale of Seresto[®] Flea and

Tick Collar (“Seresto[®]”), a collar that protects dogs and cats from fleas and ticks. Plaintiffs’ theory in these cases is based on a newspaper article reporting customer complaints related to Seresto[®]. Relying on these unscientific anecdotal reports, Plaintiffs claim a variety of unrelated and unverified health problems supposedly caused by Seresto[®], ranging from heart problems, to gastrointestinal problems, to cancer. (*See, e.g.,* Ex. A, Compl., *Gjelland, et al. v. Elanco Animal Health, Inc.*, No. 1:21-cv-01178-RLY-DML (S.D. Ind. May 11, 2021), Dkt. No. 1.) Contrary to Plaintiff’s unfounded allegations, the U.S. Environmental Protection Agency (“EPA”) has already determined that Seresto[®] does not cause unreasonable adverse effects, and that additional warnings are unnecessary. *See* 7 U.S.C. § 136a(c)(5)(C) (products like Seresto[®] cannot be approved without such findings). Accordingly, Defendants expect the litigation to focus on EPA’s scientific evaluation of Seresto[®], EPA’s repeated approvals of Seresto[®] labeling, and the extensive scientific evidence demonstrating the strong safety profile of Seresto[®].

All of the Subject Actions were filed between March 22 and May 14, 2021, and are all in approximately the same procedural posture. (*See* Ismail Decl. ¶¶ 2, 4.) Defendants have yet to respond to any of the complaints, and no discovery has yet begun. (*See id.* ¶ 4.) By agreement of the parties, the vast majority of the Subject Actions have been stayed or are expected to be stayed pending this Panel’s decision regarding centralization. (*See id.* ¶ 3.)

B. Location of Parties, Witnesses, and Documents

1. Elanco’s 70-Year History with Indiana

The primary defendant in this case is Elanco Animal Health Inc., a pharmaceutical and animal health company with a “70-year history in Indiana.” (Ex. B, 12/4/20 *Businesswire*, Elanco Animal Health Selects Indiana as Home for Global HQ and Future Footprint Consolidation, <https://www.businesswire.com/news/home/20201204005084/en/Elanco-Animal-Health-Selects-Indiana-as-Home-for-Global-HQ-and-Future-Footprint-Consolidation>.) Elanco manufactures and

sells Seresto® and has control over the vast majority of relevant witnesses and documents. (Bireley Decl. ¶¶ 8, 9.) The global corporate headquarters for Elanco Animal Health Inc. (and its wholly owned subsidiary Elanco U.S. Inc.) is currently located in Greenfield, Indiana, which is approximately 25 miles east of Indianapolis. (See Ex. C, Elanco Website, <https://www.elanco.us/contact>; Bireley Decl. ¶ 2.) Elanco also has two manufacturing facilities in Indiana: one in Terre Haute, and one in Clinton. (See Bireley Decl. ¶ 3.) Elanco employs approximately 1,600 people between its three locations in Indiana. (See *id.*)

Further deepening its longstanding ties to Indiana, Elanco is building a new global headquarters in downtown Indianapolis to replace the current headquarters in Greenfield. (See Ex. B.) The new headquarters will retain over 1,600 existing jobs in Indiana and add hundreds more in coming years. (*Id.*) As part of the transition to its new headquarters, Elanco has announced plans to relocate jobs to Indiana, continue supporting existing manufacturing centers in Indiana, and centralize its research and development activity in Indiana. (See Ex. D, 12/7/20 *Area Development*, Elanco Animal Health Plans Global Headquarters in Indianapolis, Indiana, <https://www.areadevelopment.com/newsItems/12-7-2020/elanco-animal-health-headquarters-indianapolis-indiana.shtml>.) In short, Elanco has “anchor[ed] its corporate headquarters and base of operations in Indiana.” (*Id.*) And “the Hoosier state” is also “at the center of [Elanco’s] future growth and future consolidation.” (Ex. E, 12/11/20 *AgriNews*, Elanco Animal Health Plans New Indianapolis HQ, <https://www.agrinews-pubs.com/2020/12/10/elanco-animal-health-plans-new-indianapolis-hq/a8eaavp/>.)

Elanco’s current headquarters in Greenfield is home to Elanco’s U.S.-based executives and management-level employees, including many of Elanco’s regulatory and pharmacovigilance employees. (See Bireley Decl. ¶¶ 4, 5.) Given Plaintiffs’ allegations, pharmacovigilance and

regulatory issues will likely be key in this litigation. Based on an initial review, the bulk of Elanco's documents likely to be relevant to this litigation are maintained electronically on servers or on the cloud. (*See id.* ¶ 13.)

2. Elanco Acquired Bayer's Animal Health Division and Bayer No Longer Manufactures or Sells Seresto®

Bayer HealthCare LLC ("Bayer") is also named as a defendant, along with various subsidiaries and affiliates of Bayer and Elanco. Bayer previously manufactured Seresto®, but its Animal Health Division was acquired by Elanco and Bayer no longer manufactures or sells Seresto®. Bayer's U.S. headquarters is in Whippany, New Jersey. (*See* Ex. F, Bayer Corp. Website, <https://www.bayer.com/en/us/contact-us>.) When Elanco acquired Bayer's Animal Health business Bayer's documents related to Seresto® were transferred to Elanco as part of the sale. (*See* Bireley Decl. ¶ 9.) Elanco is the primary defendant in these cases.

C. Informal Coordination Discussions

Defendants' counsel has been engaged in discussions with counsel for the plaintiffs in four Subject Actions: *Vargas*, *Merriman*, *Czerniak*, and *Dahlgren* (hereafter referred to as "Vargas-Merriman Counsel"). (*See* Ismail Decl. ¶ 6.) Vargas-Merriman Counsel have asserted that they are liaising on behalf of plaintiffs' counsel in the majority of the remaining Subject Actions: *Maiorino*, *Schneider*, *Dphrepaulezz*, *Walsh*, *Borchek*, *McDermott*, *Gjelland*, and *Boulware-Jones*. (*See id.* ¶ 7.) Defendants' counsel and Vargas-Merriman Counsel have been discussing potential informal coordination in at least twelve of the fifteen Subject Actions. (*See id.* ¶ 5.) In addition, Defendants' counsel has engaged in discussions with counsel for plaintiffs in two additional Subject Actions, *Revolinsky* and *Bomwell*, about the possibility of coordinating or consolidating cases. (*See id.* ¶ 8.)

II. ARGUMENT

A. Transfer of These Actions Pursuant to 28 U.S.C. § 1407 is Premature Because Informal Coordination Remains a Practicable Alternative

Defendants support global coordination but oppose transfer of the Subject Actions pursuant to 28 U.S.C. § 1407 because formal centralization is premature, and the relatively small number of Subject Actions makes informal coordination potentially feasible and worthy of further discussion. “The Panel has often stated that centralization under Section 1407 should be the last solution after considered review of all other options.” *In re Gerber Probiotic Prods. Mktg. & Sales Pracs. Litig.*, 899 F. Supp. 2d 1378, 1379 (J.P.M.L. 2012) (internal quotation marks omitted). Where informal coordination is “a practicable alternative to centralization,” transfer under Section 1407 is inappropriate. *In re Giant Eagle, Inc., Fair Lab. Standards Act (FLSA) Litig.*, 330 F. Supp. 3d 1376, 1377 (J.P.M.L. 2018).

Defendants and a significant contingent of Plaintiffs have been discussing possibilities for informal coordination. (See Ismail Decl. ¶¶ 5–8.) The parties have discussed several coordination mechanisms that would make formal centralization unnecessary, including consolidated discovery and transfers via 28 U.S.C. § 1404. (See *id.* ¶ 9.) The discussions regarding informal coordination are ongoing (*see id.*), and, while the parties have not yet reached an agreement, formal centralization is premature until these discussions have run their course. Where, as here, a “practicable alternative to centralization” exists, transfer pursuant to 28 U.S.C. § 1407 is inappropriate. *In re Giant Eagle*, 330 F. Supp. 3d at 1377.

B. If Centralization is Ordered, the Subject Actions Should be Transferred to the Southern District of Indiana or the Northern District of Illinois

If the Panel decides to centralize the Subject Actions, the Southern District of Indiana is the most appropriate transferee forum because Elanco, the primary defendant in these actions, is headquartered in that district. Thus, the “center of gravity of this litigation” is in the Southern

District of Indiana. *In re Med. Informatics Eng'g, Inc., Customer Data Sec. Breach Litig.*, 148 F. Supp. 3d 1381, 1382 (J.P.M.L. 2015). As an alternative, the Northern District of Illinois is also an appropriate transferee forum that is close to Elanco's headquarters and a convenient, central, and easily accessible location for this litigation involving counsel located in many cities across the nation.

1. The Southern District of Indiana is the Most Appropriate Transferee Forum

The Southern District of Indiana is the most appropriate forum for this MDL because it has a “greater nexus to the principal issues involved in this litigation than any other federal district.” *In re Swine Flu Immunization Prods. Liab. Litig.*, 446 F. Supp. 244, 247 (J.P.M.L. 1978). One Subject Action is already pending in the Southern District of Indiana. *See Gjelland, et al. v. Elanco Animal Health, Inc.*, No. 1:21-cv-01178-RLY-DML (tag-along action). Elanco, the primary defendant in the Subject Actions, is headquartered in the district, and likely witnesses and evidence reside there. The district is also centrally located and easily accessible for all counsel and parties. Finally, the entire Southern District of Indiana has only two MDLs—one of which is effectively resolved—so the district has the capacity for a new MDL.

The JPML has repeatedly found that the district in which a key defendant is headquartered is a proper transferee forum for an MDL. *See, e.g., In re Cook Med., Inc., IVC Filters Mktg., Sales Pracs. & Prods. Liab. Litig.*, 53 F. Supp. 3d 1379, 1381 (J.P.M.L. 2014) (selecting Southern District of Indiana as transferee forum because defendant was headquartered in southern Indiana); *In re Med. Informatics Eng'g*, 148 F. Supp. 3d at 1382 (selecting Northern District of Indiana as transferee forum because defendant was headquartered there). Here, the Southern District of Indiana has the most connections to this litigation because Elanco, the manufacturer of Seresto[®] and the primary defendant in the Subject Actions, is headquartered within that district. As noted

above, Elanco has a “70-year history in Indiana” and has “anchor[ed] its corporate headquarters and base of operations in Indiana.” (*See* Exs. D, E.) Because its headquarters are and will remain in the Indianapolis area, Elanco expects that likely witnesses for this litigation are located there. (*See* Bireley Decl. ¶¶ 4–6.) In particular, the bulk of Elanco’s executive and management teams reside in southern Indiana, along with the majority of Elanco’s pharmacovigilance and regulatory departments. (*See id.* ¶¶ 4, 5.) Elanco is also in the process of transitioning additional operations to Indianapolis, relocating jobs to Indianapolis, and centralizing even more of its U.S. operations within the Indianapolis area. (*See id.* ¶ 6.)

Aside from Elanco entities, the only other Defendant is Bayer (along with various of its subsidiaries and affiliates). After Elanco acquired Bayer’s Animal Health business unit, Elanco became the sole manufacturer of Seresto® collars, and Bayer’s Animal Health employees and documents—both physical and electronic—were transferred to Elanco as part of the sale. (*See* Bireley Decl. ¶ 9.) Thus, Indiana-based Elanco will be the primary defendant in all Subject Actions.

The Southern District of Indiana is also centrally located and easily accessible for all counsel, parties, and witnesses. “[G]iven this [litigation’s] Midwestern tilt, the [Southern] District of Indiana presents a convenient and accessible forum[.]” *In re Med. Informatics Eng’g*, 148 F. Supp. 3d at 1382. Indianapolis has an international airport with direct flights to and from most of the key locations in this litigation, including: Chicago (*location of lead defense counsel*); Florida, New Jersey, New York, and Philadelphia (*Bayer’s headquarters and location of several plaintiffs’ counsel*); and California (*location of several plaintiffs’ counsel*). (*See* Ex. G, Indianapolis Airport Nonstop Destinations.) The drive between Indianapolis and Chicago is also under three hours. (*See* Ex. H.)

The Southern District of Indiana also has the requisite capacity for an MDL. As of December 2020, the median time from filing to disposition for civil cases filed in the district was eight months—below the national average. (Ex. I at 2, United States District Courts–Judicial Caseload Profile.) The Southern District of Indiana has only two MDLs as of May 17, 2021. (*See* Ex. J at 2, MDL Statistics Report – Distribution of Pending MDL Dockets by District.) One of the district’s two MDLs no longer has any pending actions and remains active solely to resolve various parties’ requests for attorneys’ fees. (*Id.*; *In Re Method of Processing Ethanol Byproducts and Related Subsystems* (’858) *Pat. Litig.*, MDL No. 2181 (S.D. Ind.).)

In short, the “center of gravity” of this litigation is in the Southern District of Indiana. *In re Med. Informatics Eng’g*, 148 F. Supp. 3d at 1382. Elanco is headquartered in the district and is expanding its presence there, and the district offers a convenient, central location for both defense and plaintiffs’ counsel, who are spread across the country. The district has MDL experience and currently has the capacity for a new MDL, given that it effectively has only one active MDL. If the Subject Actions are centralized, they should be transferred to the Southern District of Indiana.

2. Alternatively, the Subject Actions Should be Transferred to Judge John Robert Blakey in the Northern District of Illinois

The Northern District of Illinois is an appropriate alternative to the Southern District of Indiana for several reasons. First, the Northern District of Illinois is “reasonably close to [Elanco’s] headquarters in Indiana, where relevant documents and witnesses will be located.” *In re Nat’l Collegiate Athletic Ass’n Student-Athlete Concussion Inj. Litig.*, 988 F. Supp. 2d 1373, 1375 (J.P.M.L. 2013). Second, the Northern District of Illinois is centrally located and easily accessible for all parties. Third, one of the Subject Actions is currently pending in the Northern District of

Illinois before Judge John Robert Blakey¹, who has the necessary experience to handle a case of this type and complexity. Finally, the docket conditions in the district will support an MDL.

The Northern District of Illinois is located close to the primary defendant's headquarters in Indiana, and is convenient for counsel and any parties or witnesses who would be involved in court proceedings. This Panel has previously recognized the geographic convenience of the Northern District of Illinois, which is centrally located in Chicago and easily accessible from anywhere in the United States. *See In re Sulfuric Acid Antitrust Litig.*, 270 F. Supp. 2d 1379, 1380 (J.P.M.L. 2003); *In re Loc. TV Advert. Antitrust Litig.*, 338 F. Supp. 3d 1341, 1343 (J.P.M.L. 2018) (concluding that the Northern District of Illinois was an appropriate transferee district because the "district provides a geographically central and convenient location for the parties and witnesses"). Plaintiffs' counsel in the Subject Actions are scattered across the country, making a centrally located and easily accessible forum necessary to ensure orderly proceedings. Defendants' lead counsel for all Subject Actions is located in Chicago, adding to the convenience of the Northern District of Illinois.

Judge Blakey is an appropriate transferee judge because he has considerable experience handling cases involving experts and complex scientific evidence. *See, e.g., Kirk v. Clark Equip. Co.*, No. 3:17-cv-50144, 2020 WL 5593750, at *1 (N.D. Ill. Sept. 18, 2020), *aff'd*, 991 F.3d 865 (7th Cir. 2021) (Blakey J.) (assessing admissibility of expert opinion by engineer); *Engelhard v. Wyeth Consumer Healthcare Ltd.*, No. 1:11-cv-05162 (N.D. Ill.) (Blakey, J.) (product liability action involving pharmaceutical product). Judge Blakey also has the capacity to take on an MDL, as he is not currently handling an active MDL docket. (*See* Ex. J at 2); *see also In re Aimster Copyright Litig.*, 177 F. Supp. 2d 1380, 1382 (J.P.M.L. 2001) (selecting transferee judge who was

¹ *Borchek, et al. v. Bayer Healthcare LLC, et al.*, No. 1:21-cv-02099-JRB.

“highly experienced in complex litigation and whose caseload burden [was] favorable to accepting” an MDL).

Finally, the Northern District of Illinois is a well-resourced, metropolitan district with docket conditions favorable to an MDL. This Panel has previously recognized that the Northern District of Illinois is a forum that is well-equipped to handle complex MDLs. *See In re Sulfuric Acid Antitrust Litig.*, 270 F. Supp. 2d at 1380 (noting that the Northern District of Illinois “is equipped with the resources” that complex MDLs require). The caseload statistics for the Northern District of Illinois also make it a favorable transferee district. The percentage of cases pending for over three years in the Northern District of Illinois is 14.9 percent (Ex. I at 1), which is comparable to other large districts, including the District of New Jersey, where the percentage is 13.7 percent (*id.* at 3). That percentage is a considerable decrease from previous years, suggesting that the Northern District of Illinois has recently cleared several complex cases from its docket and has the capacity for a new MDL. (*See id.* at 1.) Given the district’s overall capacity, the experience and availability of Judge Blakey, and the convenient location for both the parties and access to evidence, the Northern District of Illinois is an appropriate alternative transferee forum.

C. The Western District of Missouri is an Inconvenient Forum with Minimal Connections to this Litigation

Certain plaintiffs have proposed the Western District of Missouri as a potential transferee forum for this MDL.² The Western District of Missouri is not a convenient forum: it is far from

² This proposal appears to be based purely on those plaintiffs’ preference for that forum. Most Plaintiffs’ counsel agreed to stay nearly every Subject Action pending this Panel’s decision, while inexplicably refusing to agree to a stay in the Western District of Missouri and urging the Court to push that case forward. Forum shopping is “not [an] appropriate grounds for centralization under Section 1407.” *In re Joel Snider Litig.*, 437 F. Supp. 3d 1371, 1372 (J.P.M.L. 2020). In any event, any initial proceedings that may occur in the Western District of Missouri case would not outweigh the myriad of other factors detailed above that make Indiana and Illinois far more convenient and appropriate venues for an MDL, should one be formed.

the true “center of gravity” of this litigation in Indiana and is not easily accessible from either Defendant’s headquarters. *In re Med. Informatics Eng’g*, 148 F. Supp. 3d at 1382. Indianapolis, where Elanco is headquartered and where likely witnesses are based, is a seven-and-a-half-hour drive from Kansas City, *see* Ex. K, and there are no direct flights between the two cities. (*See* Ex. L, Kansas City International Airport – Nonstop Destinations.) In addition, the Subject Action currently pending in the Western District of Missouri alleges only Missouri-law claims on behalf of a putative class of Missouri purchasers, whereas the Subject Action pending in the Southern District of Indiana alleges a nationwide class and three state subclasses. *Compare* Ex. M, Compl. at 7, *Knudson v. Bayer Healthcare LLC, et al.*, No. 6:21-cv-03108-SRB (W.D. Mo. May 3, 2021), Dkt. No. 1 *with* Ex. A at 4; *see also In re Novartis Wage & Hour Litig.*, 460 F. Supp. 2d 1382, 1383 (J.P.M.L. 2006) (selecting transferee forum where pending action “potentially encompassed a broader group of” plaintiffs than actions pending in other districts).

In informal discussions, Plaintiffs have tried to manufacture a convenience argument for the Western District of Missouri by pointing to the existence of a legacy Bayer manufacturing facility in Shawnee, Kansas. However, that facility does not manufacture Seresto[®] or either of its active ingredients, and is just one of 20 similar facilities operated by Elanco.³ (*See* Bireley Decl. ¶ 10.) The vast majority of Elanco employees based out of the Shawnee facility are involved in the manufacture of products unrelated to Seresto[®]. (*See id.* ¶ 11.) Elanco has identified only a few employees who were previously based out of the Shawnee facility who may have knowledge

³ Elanco also has a manufacturing site in Kansas City, Kansas, which solely manufactures farm animal products like cattle implants. (*See* Bireley Decl. ¶ 12.) That Kansas site’s limited operations have nothing to do with Seresto[®]. (*See id.*)

related to this litigation, and those employees—who have been working remotely for over a year—are now all permanently remote and will not be returning to the Shawnee facility.⁴ (*See id.*)

Furthermore, docket conditions in the Western District of Missouri do not support a new MDL. Six MDLs are already pending in the Western District of Missouri, which has only twelve district judges, six of whom are on senior status. (Ex. J at 3; Ex. N, U.S. Dist. Courts, W.D. Mo. – Judges.) Judge Stephen R. Bough, who is presiding over the tag-along action in the Western District of Missouri, was assigned an MDL less than a year ago. (*See* Ex. O, Transfer Order, *In re Smitty's/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Pracs. & Prods. Liab. Litig.* (J.P.M.L. June 2, 2020), Dkt. No. 32.) Conversely, the MDL can be assigned to the Southern District of Indiana, where no judge has been assigned an MDL in several years, or to Judge Blakey in the Northern District of Illinois, who does not currently preside over an MDL, *see* Section II.B, *supra*.

III. CONCLUSION

Based on the foregoing, Defendants respectfully ask the Panel to deny Plaintiff's Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 to the District of New Jersey. If the Panel determines that centralization is appropriate, Defendants respectfully request in the alternative that the Subject Actions be transferred to the Southern District of Indiana or the Northern District of Illinois for centralized proceedings.

Date: June 3, 2021

/s/ Tarek Ismail
Tarek Ismail
tismail@goldmanismail.com
GOLDMAN ISMAIL TOMASELLI
BRENNAN & BAUM LLP
200 South Wacker Drive

⁴ Certain plaintiffs have identified, solely via LinkedIn searches, various lower-level and former Elanco employees who were, at some time, based in Kansas. Plaintiffs have no basis for their speculation that these arbitrarily selected individuals will be witnesses in this litigation.

22nd Floor
Chicago, IL 60606
Telephone: (312) 681-6000
Facsimile: (312) 881-5191

*Counsel for Defendants Bayer Corporation,
Bayer HealthCare LLC, Bayer HealthCare
Animal Health Inc., Bayer U.S. LLC, Elanco
Animal Health Inc., and Elanco U.S. Inc.*