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A TRUE COPY ATTEST: ROBIN L. BLUME, CLERK

UNITED STATES JUDICIAL PANEL

BY: Sandra S Shealy

MULTIDISTRICT LITIGATION

DEPUTY CLERK

IN RE: LIPITOR (ATORVASTATIN CALCIUM) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION (NO. II)

MDL No. 2502

TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, plaintiffs in 81 actions move to vacate our orders conditionally transferring the actions to the District of South Carolina for inclusion in MDL No. 2502. Defendants Pfizer Inc. and McKesson Corporation oppose the motions. The actions, which are listed on the attached Schedule A, are pending in the Central District of California (76 actions), the Eastern District of California (one action), and the Northern District of California (four actions).

In their motions to vacate, plaintiffs principally argue that the actions were improperly removed from California state court. As we frequently have held, however, the pendency of jurisdictional objections is not, as a general matter, a sufficient reason to delay or deny transfer. Under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date the Panel finalizes transfer of the action to the MDL, a court wishing to rule upon that motion generally has adequate time to do so.

These actions all were removed on Class Action Fairness Act (CAFA) "mass action" grounds, as well as diversity grounds. CAFA prohibits transfer, under 28 U.S.C. § 1407, of an action removed on mass action grounds, absent a request by a majority of the plaintiffs therein. We have held, however, that this prohibition is not an impediment to transfer where other grounds for federal jurisdiction also are asserted. *See In re: Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 939 F. Supp. 2d 1376, 1381 (J.P.M.L. 2013). Plaintiffs suggest, however, that in such a situation (*i.e.*, one in which an action has been removed on CAFA mass action and other grounds), we should assess the reasonableness of those other grounds. We lack such authority, and thus reject this suggestion. *See In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990) ("Section 1407 does not empower the MDL Panel to decide . . . issues relating to a motion to remand").

Plaintiffs also suggest that we revisit our April 2013 *Darvocet* decision, questioning whether it was correctly decided. They argue that Congress must have intended to preclude Section 1407 transfer of any action removed on CAFA mass action grounds because (1) it excluded from the definition of a removable "mass action" state court cases in which the claims are "consolidated or

¹ See 28 U.S.C. § 1332(d)(11)(C)(i).

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coordinated solely for pretrial proceedings"²; (2) Section 1407(a) authorizes the Panel to transfer related federal actions only for "coordinated or consolidated pretrial proceedings"³; and (3) CAFA prohibits Section 1407 transfer of an action removed on CAFA mass action grounds, absent a request by a majority of the plaintiffs. We have reviewed our decision in *Darvocet* and believe that it represents the most reasonable interpretation of the involved statutes. Under CAFA, a state court action "in which the claims have been consolidated or coordinated solely for pretrial proceedings" is not a mass action to begin with. The fact that this exclusionary language is similar, but not identical, to the "coordinated or consolidated pretrial proceedings" language in Section 1407(a) is not persuasive.

Moreover, plaintiffs' arguments do not undermine our basic reasoning in *Darvocet*. As we explained in that decision, nothing in CAFA or its legislative history suggests that Congress "intended the mass action provision to render a case that otherwise would have been within the Panel's purview -e.g., a case removed on diversity or federal question grounds - not transferrable merely because the defendant has cited the mass action provision as an additional ground in its notice of removal." *See* 939 F. Supp. 2d at 1380. Indeed, reading the provision in such a manner "would effect a partial repeal of the authority conferred by Section 1407 without any clear indication of legislative intent to do so." *Id.*

After considering all argument of counsel, we find that these actions involve common questions of fact with actions previously transferred to MDL No. 2502, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for the reasons set out in our original order directing centralization. In that order, we held that the District of South Carolina was an appropriate Section 1407 forum for actions "shar[ing] factual issues arising from common allegations that taking Lipitor can cause women to develop type 2 diabetes." *See In re: Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prods. Liab. Litig.*, — F. Supp. 2d —, 2014 WL 661589, at *2 (J.P.M.L. Feb. 18, 2014). Plaintiffs do not dispute that their actions share multiple factual issues with those already in the MDL.

² See 28 U.S.C. § 1332(d)(11)(B)(ii)(IV).

³ See 28 U.S.C. § 1407(a).

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IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, these actions are transferred to the District of South Carolina, and, with the consent of that court, assigned to the Honorable Richard M. Gergel for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

Chairman

Marjorie O. Rendell Lewis A. Kaplan Ellen Segal Huvelle Charles R. Breyer Sarah S. Vance R. David Proctor

IN RE: LIPITOR (ATORVASTATIN CALCIUM) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION (NO. II) MDL No. 2502

SCHEDULE A

Central District of California

PAMELA MCKENZIE, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01800 HETTIE BRADLEY, ET AL. v. PFIZER, INC., C.A. No. 2:14-01803 JUANA GARCIA, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01804 BERNADETTE FERNANDEZ, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01806 SEGALILT SIEGEL, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01807 BONNIE KESSNER, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01811 DEBERAH RIVINGTON, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01814 PHYLLIS BEIMA, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01815 NINA OBUCH, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01816 ALIDA ADAMYAN, ET AL. v. PFIZER, INC., C.A. No. 2:14-01818 MARIA CARBAJAL, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01819 DOROTHY M. ANDRES, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01820 DONNA KRUENEGEL, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01822 MATTIE KING, ET AL. v. PFIZER, INC., C.A. No. 2:14-01823 MARY STANTON, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01827 ROSE A. WILLIAMS, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01828 VICKY AVILA, ET AL. v. PFIZER, INC., C.A. No. 2:14-01829 MAIZY BENONS, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01831 LINDA ROY, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01832 BRENDA JOHNSON, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01836 BLANCA MEJIA, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01837 LORI ANN WEISMAN, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01841 SYLVIA ALVARDO v. PFIZER, INC., ET AL., C.A. No. 2:14-01843 LENA WHITAKER, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01844 MARTHA BOWSER v. PFIZER, INC., ET AL., C.A. No. 2:14-01846 PATRICIA LEWIS, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01848 EMMA FRIELDS, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01850 FIETTE WILLIAMS, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01853 PALLAVI MEHTA, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01854 THERESA MEDINA, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01857 DEBORAH MCCLAIN, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01858 VALERIE DAVIS v. PFIZER, INC., ET AL., C.A. No. 2:14-01860 TONISHA POWELL, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01861 ZURITA GRAY, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01862 CLARA BAGDASARIAN, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01863 CLARA OWENS v. PFIZER, INC., ET AL., C.A. No. 2:14-01865

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MDL No. 2502 Schedule A (Continued)

C.A. No. 2:14-01997

Central District of California (continued)

DELORIS ANN RICHARD, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01866 MAZAL AZZAM, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01867 IMELDA DIAZ, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01869 SHAHLA OWHADY, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01872 OUIDA VALENTINE, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01874 LORETTA CURLEY, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01876 REGINA FEBERDINO, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01889 RUTH ENGLISH, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01892 CHERI LUBENKO v. PFIZER, INC., ET AL., C.A. No. 2:14-01894 JESSIE HILL, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01895 DORIS CHOATE, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01896 SUSAN KELLEY, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01897 CHARLENE TATE, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01898 MARY ADAMIAN, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01899 CANDACY ROBERTS-ANDERSON, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01904 LOUISE HARRIS, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01906 SHIRLEY REYNOLDS, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01907 JUANITA BANKS, ET AL. v. PFIZER, INC., C.A. No. 2:14-01908 RUBY HARE, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01910 MARION CONSTANT v. PFIZER, INC., ET AL., C.A. No. 2:14-01911 JANICE S. ROBINSON, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01912 JOY ZULLO, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01914 DONNA WILLIS v. PFIZER, INC., ET AL., C.A. No. 2:14-01916 FRANKIE BROWN, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01921 JOCELYN CLEMENTE SALVO, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01924 GLADYS ANDERSON, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01925 DARLENE JORDAN, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01928 DEANN PIERCE v. PFIZER, INC., ET AL., C.A. No. 2:14-01929 DENELLE BAILEY, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01930 EDITH WAKABAYASHI v. PFIZER, INC., ET AL., C.A. No. 2:14-01931 MAYE ALBERSTONE, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01932 ROSE HODGES v. PFIZER, INC., ET AL., C.A. No. 2:14-01936 MARILYN WILLIAMS, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01937 LINDA FRANZONE, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01940 JOYCE LUBNIEWSKI v. PFIZER, INC., ET AL., C.A. No. 2:14-01942 TOMIE ISREL, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-01943 ELIZABETH ANN WATTS, ET AL. v. PFIZER, INC., ET AL.,

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MDL No. 2502 Schedule A (Continued)

Central District of California (continued)

MONICA NEWMAN, ET AL. v. PFIZER, INC., ET AL., C.A. No. 2:14-02041 ALMA RICHARDS v. PFIZER, INC., ET AL., C.A. No. 5:14-00485 SHARON PARKER, ET AL. v. PFIZER, INC., ET AL., C.A. No. 5:14-00496

Eastern District of California

ALANIS, ET AL. v. PFIZER, INC., ET AL., C.A. No. 1:14-00365

Northern District of California

LITTLE, ET AL. v. PFIZER, INC., C.A. No. 3:14-01177 ROUDA v. PFIZER, INC., ET AL., C.A. No. 3:14-01195 PETERS v. PFIZER, INC., ET AL., C.A. No. 3:14-01196 KATHLEEN DAVIS v. PFIZER, INC., C.A. No. 3:14-01204