

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CITY OF SEATTLE, a municipal corporation,)
)
 Plaintiff,)
)
 v.)
)
 PURDUE PHARMA, L.P.; PURDUE)
)
 PHARMA, INC.; THE PURDUE FREDERICK)
)
 COMPANY, INC.; TEVA PHARMACEUTICALS)
)
 INDUSTRIES, LTD.; TEVA)
)
 PHARMACEUTICALS USA, INC.; CEPHALON,)
)
 INC.; JOHNSON& JOHNSON; JANSSEN)
)
 PHARMACEUTICALS, INC.; ORTHO-MCNEIL-)
)
 JANSSEN PHARMACEUTICALS, INC. n/k/a)
)
 JANSSEN PHARMACEUTICALS, INC.;)
)
 JANSSEN PHARMACEUTICA, INC. n/k/a)
)
 JANSSEN PHARMACEUTICALS, INC.; ENDO)
)
 HEALTH SOLUTIONS INC.; ENDO)
)
 PHARMACEUTICALS, INC.; ALLERGAN PLC)
)
 f/k/a ACTAVIS PLC; WATSON)
)
 PHARMACEUTICALS, INC. n/k/a ACTAVIS)
)
 PHARMA, INC. f/k/a WATSON PHARMA, INC.;)
)
 SEATTLE MAIN CENTER MEDICAL)
)
 CORPORATION d/b/a SEATTLE PAIN CENTER;)
)
 FRANK D. LI; and DOES 1 THROUGH 100,)
)
 INCLUSIVE,)
)
 Defendants.)

CASE NO. 2:17-cv-01577-TSZ

**MANUFACTURER
DEFENDANTS’ MOTION TO
STAY AND FOR RELIEF FROM
DEADLINES**

Noting Date: November 17, 2017

Pursuant to Local Court Rules (“LCR”) 7(d)(2), Defendants Purdue Pharma L.P.; Purdue

1 Pharma Inc.; The Purdue Frederick Company Inc.; Endo Health Solutions Inc.; Endo
2 Pharmaceuticals, Inc.; Teva Pharmaceuticals Industries, Ltd., Teva Pharmaceuticals USA, Inc.;
3 Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen
4 Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a
5 Janssen Pharmaceuticals, Inc.; Allergan plc f/k/a Actavis plc; Allergan Finance, LLC f/k/a
6 Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.; and, Watson Pharmaceuticals, Inc. n/k/a
7 Actavis Pharma, Inc. f/k/a Watson Pharma, Inc. (collectively, the “Manufacturer Defendants”)
8 respectfully request that the Court stay this action pending a decision by the Judicial Panel on
9 Multidistrict Litigation (“JPML”) on a motion to transfer this case and others like it to a single
10 district court for coordinated or consolidated proceedings (the “MDL Motion”). While the MDL
11 Motion is pending, Manufacturer Defendants request that the Court suspend all deadlines that
12 would otherwise arise.¹
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14

15 INTRODUCTION

16 This lawsuit is one of at least 75 federal actions pending nationwide (the “MDL Actions”)
17 in which government entities and/or others assert claims against pharmaceutical manufacturers,
18 including Manufacturer Defendants here, distributors, and/or physicians relating to the sale,
19 marketing, and distribution of FDA-approved prescription opioid medications. Plaintiffs in
20 dozens of these opioids-related actions, many of which make nearly identical claims against the
21 same Manufacturer Defendants in this case, have moved to transfer this case and others like it to
22 a single venue, forming a MDL.
23

24 Manufacturer Defendants in this case support the creation of an MDL and agree that this
25 case should be transferred to an MDL in the likely event that one is formed. To conserve the
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27 ¹ Manufacturer Defendants conferred with Plaintiff, and Plaintiff does not consent to this
28 Motion.

1 resources of the Court and the parties, this action should be stayed pending the resolution of the
2 MDL Motion. Indeed, in an analogous case involving an anticipated decision from the JPML
3 regarding whether a case would be transferred for coordinated proceedings, Judge Martinez of
4 this district court determined that “a short stay,” including a stay of plaintiff’s motion to remand,
5 “would promote judicial efficiency, avoid the potential for inconsistent rulings and would not
6 prejudice plaintiff.” *Pope v. Volkswagen Grp. of Am., Inc.*, No. 2:16-cv-00146-RSM, slip op. at
7 2 (W.D. Wash. Feb. 29, 2016) (Martinez, J.). The same reasoning is applicable here. If the JPML
8 transfers all of the pending cases, including this one, for pretrial coordination, a brief stay will
9 conserve this Court’s and the parties’ resources and avoid duplicative, costly briefing for
10 Plaintiff and Manufacturer Defendants.

11 FACTUAL BACKGROUND

12
13 On September 25, 2017, plaintiffs in a number of similar actions commenced proceedings
14 before the JPML to form a MDL and transfer the dozens of opioids-related actions to a single
15 district court for coordinated or consolidated proceedings pursuant to 28 U.S.C. § 1407. *See In re*
16 *National Prescription Opiate Litig.*, MDL No. 2804 (J.P.M.L. Sept. 25, 2017), Dkt. #1. Shortly
17 thereafter, Plaintiff filed this case in the Superior Court of the State of Washington in and for the
18 County of King, *see* Dkt. #1, Ex. 1, and Manufacturer Defendants timely removed the case to
19 this Court and identified this case as related to the other MDL Actions. Dkt. #1; *In re National*
20 *Prescription Opiate Litig.*, MDL No. 2804 (J.P.M.L. Sept. 25, 2017), Dkt. #119, 186. All
21 scheduled briefing on the MDL Motion was completed on October 27, 2017, *see id.* Dkt. #4, and
22 a hearing on the motion is set for November 30, 2017. *See id.*, Dkt. #102.

23
24 All Manufacturer Defendants in this action support or do not oppose the creation of a
25 MDL, *id.* Dkt. #158, as do the principal distributor defendants involved in related actions, *id.* Dkt.
26 #148, individual doctor defendants in related actions, *id.* Dkt. #131, 142, and a majority of
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1 plaintiffs in related actions, *id.* Dkt. #1, 24, 160. Manufacturer Defendants anticipate a ruling on
2 the MDL Motion shortly after the November 30, 2017 hearing.

3 ARGUMENT

4 A district court's authority "to stay proceedings is incidental to the power inherent in
5 every court to control the disposition of the causes on its docket with economy of time and effort
6 for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). In
7 deciding whether to grant a stay pending the JPML decision, courts consider: (1) whether
8 judicial economy favors a stay; and (2) the potential hardship to the moving party from
9 continued proceedings as compared to the potential prejudice to the non-moving party from a
10 potential stay. *See CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *Mailblocks, Inc. v.*
11 *Spam Arrest, LLC*, No. CV03-0077, 2003 WL 23325432, at *2 (W.D. Wash. June 9, 2003).

12 These factors favor a stay here.

13
14
15 "Courts frequently grant stays pending a decision by the [JPML] regarding whether to
16 transfer a case. Whether to grant a temporary stay pending a ruling on the transfer of the matter
17 to a multi-district litigation court lies within the Court's discretion." *Good v. Altria Grp., Inc.*,
18 624 F. Supp. 2d 132, 134 (D. Me. 2009) (internal quotation marks and citation omitted). "When
19 faced with both a motion to stay and a motion to remand, most often deference to the MDL court
20 for resolution of a motion to remand provides the opportunity for the uniformity, consistency,
21 and predictability in litigation that underlies the MDL system." *D'Amico v. Guidant Sales Corp.*,
22 No. 07-3015, 2007 WL 3003181, at *2 (D.R.I. Oct. 11, 2007) (internal quotation marks and
23 citations omitted). In addition, "[i]t is considered a general rule by some courts that federal
24 courts should defer ruling on pending motions to remand in MDL litigation until after the [JPML]
25 has transferred the case to the MDL panel." *Id.* (internal quotation marks and citation omitted);
26 *accord North v. Merck & Co.*, No. 05-CV-6475L, 2005 WL 2921638, at *1 (W.D.N.Y. Nov. 4,
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1 2005). “[H]aving [all] jurisdictional issues decided in one proceeding will promote judicial
 2 economy and conserve judicial resources.” *Floyd v. Merck & Co.*, No. 05-1332-T/AN, 2005 WL
 3 3008641, at *2 (W.D. Tenn. Nov. 9, 2005); *accord In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990).²

4 Although a stay is not mandatory, “a majority of courts”—including courts in this
 5 district—“have concluded that it is often appropriate to stay preliminary pretrial proceedings
 6 while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial
 7 resources that are conserved.”³ *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal.
 8 1997).

9
 10 **I. A BRIEF STAY WILL PROMOTE JUDICIAL ECONOMY BY PRESERVING**
 11 **THE RESOURCES OF THIS COURT, ANY POTENTIAL TRANSFEREE**
 12 **COURT, AND THE PARTIES.**

13 At least two federal district courts presiding over similar opioids-related actions
 14 identified in connection with the MDL Motion have already *sua sponte* stayed proceedings,
 15 including one case where, as here, a motion to remand was pending. *City of Lorain v. Purdue*
 16 *Pharma L.P.*, No. 1:17-CV-01639-DAP, slip op. at 1 (N.D. Ohio Oct. 27, 2017) (holding remand

17 ² “Although some courts have opted to rule on pending motions to remand prior to the
 18 MDL Panel’s decision on transfer ... many more”—including courts within the Ninth Circuit—
 19 “have chosen to grant a stay, even if a motion to remand has been filed.” *Floyd*, 2005 WL
 20 3008641, at *1 (citing cases); *see also Pope*, No. 2:16-cv-00146-RSM, slip op. at 2 (granting
 21 stay, including with respect to motion to remand, pending MDL panel’s decision on motion to
 22 transfer because “a short stay would promote judicial efficiency” and “would not prejudice
 23 plaintiff”); *McClelland v. Merck & Co.*, No. 06-00543-JMS/BMK, 2007 WL 178293, at *3 (D.
 24 Haw. Jan. 19, 2007) (“The uniform treatment of remand motions avoids inconsistent rulings,
 25 promotes respect for the law, and conserves judicial resources.”).

26 ³ *See, e.g., Call v. Volkswagen Grp. of Am., Inc.*, No. C16-0158-JCC, 2016 WL 9224045, at *4
 27 (W.D. Wash. Mar. 31, 2016) (holding a stay “pending [] transfer is appropriate as it will save the
 28 resources of the Court and the parties and will not prejudice Plaintiff”); *Cairone v. Prospect*
Mortg., LLC, No. C13-722 RAJ, 2014 WL 989246, at *2 (W.D. Wash. Mar. 12, 2014) (granting
 stay pending JPML determination of motion for transfer); *Amadeck v. Capital One Fin. Corp.*,
 No. C12-0244RSL, 2012 WL 5472173, at *2 (W.D. Wash. Nov. 9, 2012) (same); *Mailblocks,*
Inc., 2003 WL 23325432, at *8 (same); *Bernstine v. Merck & Co.*, Nos. Civ. S-07-0034 WBS
 KSM, S-07-0057 WBS KJM, S-07-0073 WBS, KJM, 2007 WL 1217589, at *1 (E.D. Cal. Apr.
 24, 2007) (same); *Fuller v. Amerigas Propane, Inc.*, Nos. C 09-2493 TEH, 09-2616 TEH, 2009
 WL 2390358, at *1-2 (N.D. Cal. Aug. 3, 2009) (same).

1 motion ruling in abeyance pending the JPML’s decision); *see also Lewis v. Purdue Pharma L.P.*,
 2 No. 5:17-CV-5118-TLB, slip op. at 1 (W.D. Ark. Oct. 25, 2017) (staying action, including
 3 briefing and a hearing on a motion to dismiss, “in the interest of judicial economy” for 90 days
 4 pending further rulings from the JPML). Courts in at least 22 other federal cases also have stayed
 5 proceedings in light of the MDL Motion. *See e.g., Anderson Cnty. v. AmerisourceBergen Drug*
 6 *Corp.*, No. 17-cv-00070, slip op. at 1 (E.D. Ky. Nov. 3, 2017) (staying action pending a
 7 determination of the JPML); *Boone Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00157,
 8 slip op. at 1 (E.D. Ky. Nov. 3, 2017); *Bell Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-
 9 00246, slip op. at 1 (E.D. Ky. Oct. 27, 2017) (same).⁴

11 Judicial economy also favors staying this case. The essential purpose of 28 U.S.C. § 1407
 12 is to avoid “piecemeal litigation.” *In re Food Lion, Inc., Fair Lab. Standards Act Effective Sched.*
 13 *Litig.*, 73 F.3d 528, 532 (4th Cir. 1996). A stay pending the JPML’s decision fosters the purpose
 14

15 ⁴ *See also Boyd Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00104, slip op. at 1 (E.D.
 16 Ky. Oct. 27, 2017); *Boyle Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00367, slip op. at
 17 1 (E.D. Ky. Nov. 3, 2017); *Campbell Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00167,
 18 slip op. at 1 (E.D. Ky. Nov. 3, 2017); *Clay Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-
 19 00255, slip op. at 1 (E.D. Ky. Oct. 27, 2017); *Fleming Cnty. v. AmerisourceBergen Drug Corp.*,
 20 No. 17-cv-00368, slip op. at 1 (E.D. Ky. Nov. 3, 2017); *Franklin County v. AmerisourceBergen*
 21 *Drug Corp.*, No. 17-cv-00071, slip op. at 1 (E.D. Ky. Nov. 2, 2017); *Garrard Cnty. v.*
 22 *AmerisourceBergen Drug Corp.*, No. 17-cv-00369, slip op. at 1 (E.D. Ky. Nov. 3, 2017);
 23 *Greenup Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00105, slip op. at 1 (E.D. Ky. Oct.
 24 27, 2017); *Harlan Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00247, slip op. at 1 (E.D.
 25 Ky. Nov. 3, 2017); *Henry Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00073, slip op. at
 26 1 (E.D. Ky. Nov. 2, 2017); *Kenton Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00182,
 27 slip op. at 1 (E.D. Ky. Nov. 2, 2017); *Knox Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-
 28 00248, slip op. at 1 (E.D. Ky. Nov. 3, 2017); *Leslie Cnty. v. AmerisourceBergen Drug Corp.*, No.
 17-cv-00249, slip op. at 1 (E.D. Ky. Nov. 3, 2017); *Lincoln Cnty. v. AmerisourceBergen Drug*
Corp., No. 17-cv-00370, slip op. at 1 (E.D. Ky. Nov. 3, 2017); *Madison Cnty. v.*
AmerisourceBergen Drug Corp., No. 17-cv-00371, slip op. at 1 (E.D. Ky. Nov. 2, 2017);
Nicholas Cnty. v. AmerisourceBergen Drug Corp., No. 17-cv-00373, slip op. at 1 (E.D. Ky. Nov.
 2, 2017); *Pendleton Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00070, slip op. at 1
 (E.D. Ky. Oct. 27, 2017); *Shelby Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-00072, slip
 op. at 1 (E.D. Ky. Nov. 2, 2017); *Whitley Cnty. v. AmerisourceBergen Drug Corp.*, No. 17-cv-
 00250, slip op. at 1 (E.D. Ky. Oct. 27, 2017).

1 of the MDL statute to coordinate related litigation. *Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, No.
 2 90-4378, 1991 WL 13725, at *1 (D.N.J. Feb. 1, 1991). If no stay were to issue and this action
 3 were transferred to a different court for coordinated proceedings, this Court “will have needlessly
 4 expended its energies familiarizing itself with the intricacies of a case that would be heard by
 5 another judge.” *Rivers*, 980 F. Supp. at 1360; *see also Lyman v. Asbestos Defendants (B*P)*, No.
 6 07-4240 SBA, 2007 WL 2972926, at *3 (N.D. Cal. Oct. 10, 2007) (granting motion to stay
 7 because it “will likely preserve judicial resources by preventing a duplication of proceedings
 8 before this court and the MDL court”). In addition, granting a stay will avoid the potential for
 9 inconsistent rulings on pretrial motions. Numerous courts have recognized that allowing multiple
 10 courts to hear the same or similar pretrial motions would “subvert[] the interest in judicial
 11 economy which is typically furthered by a stay.” *Gallo v. E.I. DuPont De Nemours & Co.*, No.
 12 2:11-cv-680, 2011 U.S. Dist. LEXIS 99470, at *13 (S.D. Ohio Sept. 2, 2011).⁵

15 As one court observed, for instance, “[b]ecause the motion currently pending before the
 16 [JPML] would, if granted, coordinate all federal cases concerning the allegedly defective
 17 [products] at issue in this action, a temporary stay would serve judicial economy, promote the
 18 efficient resolution of this case, and avoid the possibility of conflicting judicial determinations.”
 19 *Hawley v. Johnson & Johnson*, No. 3:11CV195-HEH, 2011 WL 7946243, at *1 (E.D. Va. Apr.
 20 29, 2011). “Requiring the parties to engage in duplicative litigation before a determination is
 21

23 ⁵ *See also, e.g., Am. Seafood, Inc. v. Magnolia Processing, Inc.*, Nos. 92-1030, 92-1086, 1992
 24 WL 102762, at *2 (E.D. Pa. May 7, 1992) (granting stay based, in part, on potential for
 25 inconsistent rulings); *Litchfield Co., LLC v. BP, P.L.C.*, No. 2:10-cv-01462, 2010 U.S. Dist.
 26 LEXIS 70513, at *6 (D.S.C. July 14, 2010) (same); *Duke v. Rolls-Royce Corp.*, No. 3:05CV538-
 27 W, 2007 U.S. Dist. LEXIS 18930, at *5-6 (W.D.N.C. Feb. 28, 2007) (same); *Krejce v. Merck &*
 28 *Co.*, No. 4:08-CV-295 CAS, 2008 U.S. Dist. LEXIS 23509, at *2 (E.D. Mo. Mar. 25, 2008)
 (same); *Allen v. Wyeth*, No. 08-4827, 2008 U.S. Dist. LEXIS 102135, at *3-4 (D. Minn. Dec. 17,
 2008) (same).

1 made by the [JPML] would be an inefficient use of the time and resources of the parties and this
2 Court.” *Id.* So, too, here.

3 Likewise, in *Jackson ex rel. Jackson v. Johnson & Johnson, Inc.*, the court “defer[red]
4 making a decision on Plaintiffs’ motion to remand” because “this case may join many others” in
5 an MDL, and therefore “the considerations of judicial efficiency and uniformity of result warrant
6 a deferral of Plaintiffs’ Motion to Remand to allow” the MDL transferee court “to determine
7 whether this case should become an MDL case.” No. 01-2113 DA, 2001 WL 34048067, at *3,
8 *6 (W.D. Tenn. Apr. 3, 2001); accord *Moore v. Wyeth-Ayerst Labs.*, 236 F. Supp. 2d 509, 512
9 (D. Md. 2002).

11 An MDL court would have lawful jurisdiction to remand the action, if such relief is
12 appropriate, *In re Bayer Corp. Combination Aspirin Prod. Mktg. & Sales Practices Litig.*, 609 F.
13 Supp. 2d 1379, 1380 (J.P.M.L. 2009), and “the MDL panel will be considering one or more
14 motions to remand filed by Plaintiff’s counsel in a companion case, which may be pertinent to
15 Plaintiff’s pending motion in this Court.” *Pope*, No. 2:16-cv-00146-RSM, slip op. at 2; *see also*
16 *Walker v. Merck & Co.*, No. 05-CV-360-DRH, 2005 WL 1565839, at *2 (S.D. Ill. 2005) (staying
17 case where “it is almost certain that the transferee court will hear and decide many of the same
18 issues Plaintiffs ask this Court to tackle in ruling on their motion to remand”). Since several
19 other pending federal cases subject to the MDL Motion present removal and “remand issues”⁶—
20 including in the *City of Lorain* action that the district court stayed *sua sponte*, *City of Lorain*, No.
21 1:17-CV-01639-DAP, Dkt. #66—those jurisdictional issues “would be best decided by [an]

24 ⁶ *See, e.g.*, Notice of Removal, *Richland Cnty. Children’s Services v. Purdue Pharma L.P.*, No.
25 1:17-cv-02185 (N.D. Ohio Oct. 16, 2017), Dkt. 1; Notice of Removal, *Cnty. of Mora v. Purdue*
26 *Pharma L.P.*, No. 1:17-cv-01044 (D.N.M. Oct. 16, 2017), Dkt. 1; Notice of Removal, *Scott*
27 *Cnty., Ind. v. Purdue Pharma L.P.*, No. 4:17-CV-00193-RLY-DML (S.D. Ind. Oct. 11, 2017),
Dkt. 1; Defs’ Opp. to Pls’ Remand Mot., *City of Lorain v. Purdue Pharma L.P.*, No. 1:17-CV-
01639-DAP (N.D. Ohio Sept. 14, 2017), Dkt. 34.

1 MDL Court.” *Fitzgerald v. Merck & Co., Inc.*, No. 2:06-CV-1324-RCF-LRL, 2007 WL 203952,
2 at *1 (D. Nev. Jan. 24, 2007); *see also Beatty v. Merck & Co., Inc.*, No. S-06-1845 LKK/GGH,
3 2006 WL 2943090, at *1 (E.D. Cal. Oct. 13, 2006). As such, deference to the MDL transferee
4 court regarding the resolution of such jurisdictional issues is appropriate in the interests of
5 efficiency:
6

7 The jurisdictional issue in question is easily capable of arising in hundreds or
8 even thousands of cases in district courts throughout the nation. . . . Once
9 transferred, the jurisdictional objections can be heard and resolved by a single
10 court and reviewed at the appellate level in due course. Consistency as well as
11 economy is thus served.

12 *Ivy*, 901 F.2d at 9; *North*, 2005 WL 2921638, at *1 (observing that the “general rule is for federal
13 courts to defer ruling on pending motions to remand in MDL litigation until after the [JPML] has
14 transferred the case to the MDL [court]”) (citation omitted).

15 Indeed, in the likely event that an opioids-related MDL is created, it is far more efficient
16 to have any jurisdictional challenge evaluated by one court, considering similar cases together,
17 than to risk divergent precedents from multiple courts, each of which will have to expend judicial
18 resources to consider any jurisdictional issue afresh. *See Beatty*, 2006 WL 2943090, at *1
19 (“Given the number of cases that present this exact jurisdictional question[,] . . . the interest of
20 judicial economy favors staying this action pending its transfer to the MDL proceeding.”). And
21 apart from these questions of efficiency, the Manufacturer Defendants may suffer prejudice if
22 this Court denies this motion to stay, forcing the parties to litigate the remand issue both in this
23 Court and in the MDL transferee court. *See Stempien v. Eli Lilly & Co.*, No. C06-1811 TEH,
24 2006 WL1214836, at *2 (N.D. Cal. May 4, 2006).

1 **II. PLAINTIFF WOULD NOT BE PREJUDICED BY A STAY WHEREAS**
 2 **MANUFACTURER DEFENDANTS WILL BE PREJUDICED ABSENT A STAY**
 3 **WHILE THE MDL MOTION IS PENDING.**

4 Fairness considerations also weigh in favor of staying this action while the MDL Motion
 5 is pending. Manufacturer Defendants ultimately will need to negotiate and navigate how best to
 6 respond to the various jurisdictional issues presented not just in this case but other MDL Actions
 7 where similar motions to remand are pending. It would be unfair and burdensome to require
 8 Manufacturer Defendants to do that here when they may have to repeat the process in any
 9 coordinated proceeding. As such, courts generally recognize that “considerations of judicial
 10 economy and hardship to defendants . . . are compelling enough to warrant such a delay.”

11 *Arthur-Magna, Inc.*, 1991 WL 13725, at *1. These courts typically conclude that “the risk of
 12 hardship to [the defendant] of engaging in duplicative motion practice and discovery proceedings
 13 outweighs any prejudice that could potentially inure to [the plaintiff].” *Krieger v. Merck & Co.*,
 14 No. 05-cv-6338L, 2005 WL 2921640, at *2 (W.D.N.Y. Nov. 4, 2005). As one district court
 15 observed:

16
 17 If this Court denies the stay, it would “potentially subject Defendant[s] to the
 18 significant burden of duplicative litigation.” Defendants would be prejudiced by
 19 “additional discovery or motion practice” that could “create duplicative and
 20 potentially inconsistent obligations.” Requiring Defendants to litigate the same
 issues in this Court that will likely be litigated in MDL 2244 clearly creates a
 burden outweighing the brief delay that Plaintiffs potentially face.

21 *Yearwood v. Johnson & Johnson*, No. RDB-12-1374, 2012 WL 2520865, at *4 (D. Md. June 27,
 22 2012) (citations omitted); *see also Bd. of Trustees of Teachers' Ret. Sys. of State of Ill. v.*
 23 *Worldcom, Inc.*, 244 F. Supp. 2d 900, 905 (N.D. Ill. 2002) (noting that “litigating essentially the
 24 same claims in courts all over the country is no doubt burdensome”).

25 Plaintiff on the other hand will not suffer prejudice from a brief delay in the prosecution
 26 of this case. Scheduled briefing on the MDL Motion was completed on October 27, 2017, and a
 27

1 hearing on the petition is three weeks away on November 30, 2017, with a decision from the
2 JPML expected soon thereafter. Consequently, any stay will be short and should not significantly
3 impact the progress of these proceedings. *See Fuller*, 2009 WL 2390358, at *1-2 (finding no
4 meaningful prejudice considering that cases to be stayed were in “very early procedural stages”);
5 *Lewis v. Cottrell, Inc.*, No. WMN-11-2632, 2012 WL 12252554, at *1 (D. Md. Feb. 14, 2012)
6 (“[T]he Court expects that the JPML will make a decision on the motion to transfer in the next
7 few months, so any delay to Plaintiffs’ case should be minimal.”).

9 **CONCLUSION**

10 WHEREFORE, the Manufacturer Defendants respectfully request that this Court stay all
11 proceedings in this matter pending a final decision on the MDL Motion.

12 Dated: November 9, 2017

Respectfully submitted,

13
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15 *By: s/ Thomas D. Adams*

Thomas D. Adams, WSBA #18470
Ronald J. Friedman, WSBA #41629
Stephanie R. Lakinski, WSBA #46391
Andrew W. Durland, WSBA #49747
KARR TUTTLE CAMPBELL
701 Fifth Avenue, Suite 3300
Seattle, WA 98104
Telephone: 206-223-1313
Facsimile: 206-682-7100
Email: tadams@karrtuttle.com
Email: rfriedman@karrtuttle.com
Email: slakinski@karrtuttle.com
Email: adurland@karrtuttle.com

Attorneys for Defendants PURDUE PHARMA
L.P., PURDUE PHARMA INC., and THE
PURDUE FREDERICK COMPANY INC.

21
22
23
24 *By: s/ Curt Roy Hinline*

Curt Roy Hinline, WSBA #16317
BAKER & HOSTETLER LLP
999 Third Ave., Ste. 3600
Seattle, WA 98104
Telephone: 206-332-1101
Facsimile: 206-624-7317

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26
27
28

Email: chineline@bakerlaw.com

John Lombardo*
Sean Morris*
S. Albert Wang*
Tiffany Ikeda*

ARNOLD & PORTER KAYE SCHOLER LLP
777 S. Figueroa St., 44th Floor
Los Angeles, CA 90017
Telephone: 213-243-4000
Facsimile: 231-243-4199

Email: John.Lombardo@apks.com

Email: Sean.Morris@apks.com

Email: S.Albert.Wang@apks.com

Email: Tiffany.Ikeda@apks.com

** denotes national counsel who will seek pro hac vice admission*

Attorneys for Defendants ENDO HEALTH SOLUTIONS INC. and ENDO PHARMACEUTICALS INC.

By: s/Angelo J. Calfo

Angelo J. Calfo, WSBA #27079

CALFO EAKES & OSTROVSKY PLLC

1301 2nd Ave., Ste. 2800

Seattle, WA 98101

Telephone: 206-407-2200

Email: angeloc@calfoeakes.com

Charles C. Lifland*
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071
Telephone: 213-430-6000
Email: clifland@omm.com

** denotes national counsel who will seek pro hac vice admission*

Attorneys for Defendants JOHNSON & JOHNSON; JANSSEN PHARMACEUTICALS INC.; ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.; and JANSSEN PHARMACEUTICALS, INC. n/k/a JANSSEN PHARMACEUTICALS, INC.

By: s/Steven A. Reed*

Steven A. Reed*

MORGAN, LEWIS & BOCKIUS LLP

1701 Market St.

1 Philadelphia, PA 19103-2921
2 Telephone: 215-963-5603
3 Facsimile: 215-963-5001
4 Email: steven.reed@morganlewis.com
5 **Denotes national counsel who will seek pro hac vice admission*

6 *By: s/ Tinos Diamantatos**

7 Tinos Diamantatos*
8 **MORGAN, LEWIS & BOCKIUS LLP**
9 77 West Wacker Drive
10 Chicago, IL 60601-5094
11 Telephone: 312-324-1000
12 Facsimile: 312-324-1001
13 Email: tinos.diamantatos@morganlewis.com
14 **denotes national counsel who will seek pro hac vice admission*

15 Attorneys for Defendants TEVA
16 PHARMACEUTICALS USA, INC.;
17 CEPHALON, INC.; WATSON
18 LABORATORIES, INC.; ACTAVIS LLC; and
19 ACTAVIS PHARMA, INC. f/k/a WATSON
20 PHARMA, INC.

21 *By: s/ Michael Fandel*

22 Michael Fandel, WSBA #16281
23 **MILLER NASH GRAHAM & DUNN LLP**
24 Pier 70
25 2801 Alaskan Way, Ste. 300
26 Seattle, WA 98121
27 Telephone: 206-777-7472
28 Facsimile: 206-340-9599
Email: Michael.Fandel@millernash.com

By: s/ Jennifer G. Levy

Jennifer G. Levy, P.C.
KIRKLAND & ELLIS LLP
655 15th St. NW
Washington, D.C. 20005
Telephone: 202-879-5000
Facsimile: 202-879-5200
Email: jennifer.levy@kirkland.com

By: s/ Donna Welch

Donna Welch, P.C.
Martin L. Roth
Timothy W. Knapp
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Telephone: 312-862-2000
Facsimile: 312-862-2200

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15
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21
22
23
24
25
26
27
28

Email: donna.welch@kirkland.com
Email: rothm@kirkland.com
Email: tknapp@kirkland.com

Attorneys for Defendants ALLERGAN PLC
f/k/a ACTAVIS PLC; ACTAVIS, INC., f/k/a
WATSON PHARMACEUTICALS, INC. n/k/a
ALLERGAN FINANCE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

Peter S. Holmes
Seattle City Attorney
701 5th Ave., Ste. 2050
Seattle, WA 98104
Peter.holmes@seattle.gov
Attorneys for Plaintiff

Curt Roy Hinline
Baker & Hostetler LLP
999 Third Ave., Ste. 3600
Seattle, WA 98104
chinline@bakerlaw.com
Attorneys for Defendants Endo Health Solutions Inc.; and Endo Pharmaceuticals Inc.

Angelo J. Calfo
Calfo Eakes & Ostrovsky PLLC
1301 Second Ave., Ste. 2800
Seattle, WA 98101
angelic@calfoeakes.com
Attorneys for Defendants Johnson & Johnson; Janssen Pharmaceuticals Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; and Janssen Pharmaceutica, Inc. d/k/a Janssen Pharmaceuticals, Inc.

KARR TUTTLE CAMPBELL

By: /s/ Thomas D. Adams
Thomas D. Adams