BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE PLAVIX® MARKETING, SALES PRACTICES AND PRODUCT LIABILITY LITIGATION (NO. II)	**MDL DOCKET NO. 2418**

CONSOLIDATED REPLY IN SUPPORT OF BRISTOL-MYERS SQUIBB COMPANY, SANOFI-AVENTIS U.S. LLC, SANOFI US SERVICES INC., AND SANOFI-SYNTHELABO INC.'S RENEWED MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

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Those Plaintiffs who oppose transfer cannot dispute that the Plavix® litigation has expanded rapidly.[1] Plaintiffs have filed thousands of new personal injury cases. State governments have filed lawsuits attacking Defendants' Plavix® sales and marketing practices. The Southern District of Illinois recently unsealed a *qui tam* case targeting Defendants' marketing of Plavix®.

These developments have produced a substantial core of federal cases that each stand at the very beginning of the discovery process. Recurring pretrial issues such as remand motions, motions to dismiss and discovery motions are—in the absence of centralization—being addressed separately by multiple federal districts with no coordination. Thousands of pending state Plavix® cases have no federal center with which to coordinate. In short, the Plavix® litigation is precisely the sort of litigation for which the multidistrict litigation proceedings were designed.

[1] Four Plaintiffs (Snyder, Touriac, Mattson, and Kennovin, Schedule of Actions Nos. 16, 17, 22, and 27) did not oppose Defendants' motion to transfer. According to Panel Rule 6.1(c) "[f]ailure to respond to a motion shall be treated as that party's acquiescence to it." Defendant McKesson Corporation affirmatively supports centralization in the Districts of New Jersey or New York. *See* Joinder of McKesson Corporation in Renewed Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings (Docket #26) (filed Nov. 8, 2012).

Unable to rebut these tangible facts, the opposing Plaintiffs assert a series of arguments that are either inaccurate portrayals of the litigation landscape or are contradicted by their own conduct in this litigation.

A. Plaintiffs Are Wrong That the Scope of Plavix® Litigation Has Not Changed Since 2011

Plaintiffs' argument that the scope of the Plavix® litigation remains the same as when this Panel denied centralization ignores the changed reality. In early 2011, no state governments had filed consumer fraud cases, no third party payors had filed cases, and there were no unsealed *qui tam* suits. There were only three groups of federal cases: the procedurally advanced New Jersey cases, one case pending in the Eastern District of New York, and four consolidated cases pending in the Southern District of New York. *See In re Plavix Prods. Liab. Litig.*, 829 F. Supp. 2d 1378, 1379 (J.P.M.L. 2011). The state court litigation involved a limited number of cases in only a few jurisdictions. While Defendants believed that the litigation surely would grow, it had not done so at that time.

The contrast with today's landscape is striking: considering only cases where federal jurisdiction is undisputed or has been confirmed by the District Court, there are fifteen federal cases[2] in ***eight*** different judicial districts being prosecuted by ***eight*** different sets of plaintiffs' attorneys.[3] The number rises to twenty-eight federal cases when those with remand motions pending are taken into account. There are also significant numbers of state court cases in Illinois, New York, California, and Louisiana.

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[2] This count of fifteen cases in which federal jurisdiction is undisputed or has been confirmed treats the four Southern District of New York cases (*Petit, Santana, Burrow, and McAleese*), which have been coordinated for pre-trial purposes, as counting for one case.

[3] *See* Memorandum Of Law In Support Of Bristol-Myers Squibb Company, Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., And Sanofi-Synthelabo Inc.'s Renewed Motion For Transfer Of Actions Pursuant To 28 U.S.C. § 1407 For Coordinated Or Consolidated Pretrial Proceedings (Docket # 1), at 9-10 (filed Oct. 15. 2012) ("Transfer Motion").

Plaintiffs argue that there are really only twelve Plavix® cases "assured of progressing in federal court."[4] But their figure relies on misleading math: it assumes that Defendants will ***win*** every pending motion to dismiss and ***lose*** every motion to remand.[5] But that is not how this Panel examines the litigation landscape: it routinely rejects arguments that transfer should be delayed or denied because of pending motions to dismiss or remand.[6] Even if opposing

[4] Mem. in Opp. [to] Bristol-Myers Squibb Co., Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., and Sanofi-Synthelabo, Inc.'s Renewed Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings (Docket #30), at 6 (filed Nov. 9, 2012) ("Cueto Opp."); *see* Mem. in Opp. [to] Bristol-Myers Squibb Co., Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., and Sanofi-Synthelabo, Inc.'s Renewed Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings (Docket #31), at 12 (filed Nov. 9, 2012) ("W.Va. Opp."); Mem. in Opp. [to] Bristol-Myers Squibb Co., Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., and Sanofi-Synthelabo, Inc.'s Renewed Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings (Docket #32), at 7 (filed Nov. 9, 2012) ("Napoli. Opp.").

Other plaintiffs total up only the pending *products* cases, ignoring the factually closely-related *qui tam* action in the Southern District of Illinois and the Third Party Payor's suit in the Southern District of West Virginia, both of which have undisputed federal jurisdiction. *See* Plaintiffs' Opp. to Def'ts Motion to Transfer Related Actions for Coordinated Pretrial Proceedings and Mem. of Law (Docket # 27), at 2-3 (filed Nov. 9, 2012) ("Hersh Opp."); Plaintiffs' Opposition to Defendants' Motion to Transfer Related Actions for Coordinated Pretrial Proceedings and Mem. of Law (Docket #29), at 2-3 (filed Nov. 9, 2012) ("Miller Opp."); Plaintiffs' Mem. of Law in Opp. to Defendants' Renewed Motion for Transfer of Actions (Docket #34), at 2 (filed Nov. 9, 2012) ("Parker Waichman Opp.").

After Defendants filed their initial motion to transfer, one case (*Crowe*) was dismissed, in one case (*Newell*) Plaintiff indicated she will not continue to pursue her claims, and one case (*Evans*) has been remanded to state court. On November 8, 2012 Defendants removed *Vanny et al. v. Bristol-Myers Squibb Company et al.* (No. 3:12-cv-05752-MEJ) to the Northern District of California.

[5] *See* Cueto Opp. at 5-6; W.Va. Opp at 10-12; Parker Waichman Opp. at 1-3.

[6] *See, e.g., In re Oil Spill by the "Amoco Cadiz" Off the Coast of Fr. on March 16, 1978*, 471 F. Supp. 473, 478 (J.P.M.L. 1979); *In re Bank of N.Y. Mellon Corp. Foreign Exch. Transactions Litig.*, 857 F. Supp. 2d 1371, 1373 (J.P.M.L. 2012). Even if Defendants *did* win every pending motion to dismiss, it would not dispose of those federal cases completely. Defendants' motions to dismiss in the New York federal cases, for example, only request partial dismissal. The Panel has likewise repeatedly rejected the argument that pending motions to remand are a basis to deny or delay transfer. *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347 (J.P.M.L. 2001) ("[R]emand motions can be presented to and decided by the transferee judge."); *In re Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005) ("The pendency of a motion to remand to state court is not a sufficient basis to avoid inclusion in Section 1407 proceedings."). Indeed, centralizing the cases with pending motions to dismiss will serve §1407's goal of "prevent[ing] inconsistent pretrial rulings." *In re Accutane Prods. Liab.*

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Plaintiffs were correct that there are only twelve assured federal cases, moreover, that would be more than sufficient to justify coordination.[7]

B. The Six More-Advanced New Jersey Cases Are No Impediment to Centralization

The opposing Plaintiffs next argue that centralization is inappropriate because six federal cases pending in the District of New Jersey are substantially further advanced than the others. But Plaintiffs offer no meaningful response to Defendants' suggestion that the Panel can always carve those cases out of a centralization order[8] or suggest that the MDL court should impose separate tracks for differently situated cases.[9]

Far from being an impediment, an MDL judge will be able to rely upon the discovery and pretrial rulings that have already occurred in New Jersey for guidance to help manage future litigation. If centralization is granted and the panel assigns the case to Judge Wolfson, for example, she will undoubtedly use the insights gained in those cases to manage the new ones, as she will no doubt do with the recently filed *Kennovin* case in the District of New Jersey.

Nor can Plaintiffs credibly dispute that—unlike in 2011—the vast majority of cases currently pending in both federal and state court are in their infancy with little to no discovery having been conducted. The assertion by some opposing Plaintiffs that "discovery in the four consolidated Southern District of New York cases is well underway" and that "significant

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Litig., 343 F. Supp. 2d 1382, 1383 (J.P.M.L. 2004). *See, e.g., In re MI Windows & Doors, Inc., Prods. Liab. Litig.*, 857 F. Supp. 2d 1374, 1375 (J.P.M.L. 2012) (centralization supported, in part, by "Rule 12 issues that are common to all actions").

7 *See* Transfer Motion at 9-10 & n.6.

8 *See* Transfer Motion at 11 (citing *In re the Upjohn Co. Antibiotic "Cleocin" Prods. Liab. Litig.*, 450 F. Supp. 1168, 1170 (J.P.M.L. 1978) and *In re Aviation Prods. Liab. Litig.*, 347 F. Supp. 1401, 1407 (J.P.M.L. 1972) (both ordering centralization but not including more advanced cases in the order)).

9 *See* Transfer Motion at 11 (citing *In re Cyclobenzaprine Hyrdochloride Extended-Release Capsule Patent Litig.*, 657 F. Supp. 2d 1375, 1376 (J.P.M.L. 2009)).

discovery has taken place" in those cases is simply wrong. *See, e.g.*, Cueto Opp. at 9-10. Plaintiffs in those cases have served no discovery requests, no depositions have occurred, and no trial date is set.

C. The Federal Plavix® Cases Share Sufficient Common Factual Issues

The opposing Plaintiffs next argue that certain cases do not share sufficient common issues with the "products" Plavix® cases.[10] Their argument, devoid of case law, contradicts the express language of Section 1407, which requires only "one or more common questions of fact." *See* 28 U.S.C. § 1407(a). *See also In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 780 F. Supp. 2d 1379, 1381 (J.P.M.L. 2011) (Section 1407 "does not require a complete identity or even a majority of common factual issues as a prerequisite to centralization") (citations omitted); *In re Zimmer Durom Hip Cup Prods. Liab. Litig.*, 717 F. Supp. 2d 1376, 1378 (J.P.M.L. 2010) (same).

In any event, the "economic cases"—those filed by the state attorneys general, *qui tam* relators and third party payors, involve the same basic set of facts as the product liability cases. The same lawyers are prosecuting both sets of cases, both sets of cases attack the marketing and promotion of Plavix® and this Panel routinely has centralized "economic" cases with product liability cases. *See* Transfer Motion at 15-16 (collecting Panel decisions centralizing "economic" and product liability cases).

The opposing Plaintiffs are also wrong in asserting that the *Snyder* case is inappropriate for centralization because the complaint in that case alleges that Plavix® caused Mr. Snyder to

[10] *See* Cueto Opp. at 10-12; W.Va. Opp. at 9-10; Napoli Opp. at 11-12; Mem. by the State of Mississippi in Opposition to Bristol-Myers Squibb Co., Sanofi-Aventis U.S. LLC, Sanofi US Services Inc., and Sanofi-Synthelabo, Inc.'s Renewed Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings (Docket #33), at 3-5 (filed Nov. 9, 2012) ("Miss. Opp.").

suffer "certain cardiac conditions" rather than explicitly alleging bleeding injuries.[11] Plaintiff Snyder has ***not*** opposed centralization. In any event, the *Snyder* case alleges that Plavix® is "defective in design and formulation and safer alternatives are and have been available,"[12] thus raising factual issues common to other pending federal Plavix® cases.[13]

D. Promises of Voluntary Cooperation Are No Substitute for Voluntary Cooperation

Finally, opposing Plaintiffs urge the Court not to centralize the cases because they will work together to cooperate in discovery without court intervention. Their promises of cooperation have been belied by their conduct and should be rejected by this Panel.

Defendants' initial motion explained, for example, that one Plaintiffs' firm—counsel in the Southern District of Illinois *qui tam* suit as well as in state court Plavix® cases in Illinois and California—had refused to work toward coordination of a single, national document production for all pending Plavix® cases and had instead moved on one week's notice to compel discovery on ***his*** plaintiffs' individual discovery requests.[14] Just last week, similarly, Plaintiffs' counsel in the *Bryan* case, which is pending in California state court but shares counsel with federal actions,

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[11] Snyder Compl. at ¶ 8; *see* Hersh Opp. at 2; Miller Opp. at 2.

[12] Snyder Compl. at ¶ 7.

[13] Opposing Plaintiffs' argument that even the "personal injury/ product liability cases . . . involve factual issues that must be examined with reference to individual states' torts laws" is frivolous. *See* Cueto Opp. at 12; W.Va. Opp. at 10; Napoli Opp. at 12. The Panel has repeatedly found that pharmaceutical product liability cases—which ***always*** involve the tort laws of various states as well as individualized causation inquiries —are particularly well-suited for coordination, because they involve common questions of fact concerning the "development, testing, manufacturing and marketing" of the products. *See In re Accutane Prods. Liab. Litig.*, 343 F. Supp. 2d 1382, 1383 (J.P.M.L. 2004); *see also In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (common questions regarding the safety profile of a drug and the manufacturer's warnings); *In re Vytorin/Zetia Mktg., Sales Practices & Prods. Liab. Litig.*, 543 F. Supp. 2d 1378, 1380 (J.P.M.L. 2008) (common questions regarding the use and/or marketing of two pharmaceutical drugs).

[14] *See* Transfer Motion at 12.

insisted on pursuing case-specific discovery requests instead of a nationally-coordinated approach.[15]

Plaintiffs' only response is that the refusal to coordinate took place in the context of a state court Plavix® case and, in Plaintiffs' view, thus "has no bearing on voluntarily cooperation in the federal Plavix® cases Defendants now seek to consolidate."[16] But Plaintiffs do not explain why the same attorneys who refuse to coordinate at the state court level would genuinely be willing to coordinate at the federal level. Nor do they consider that one benefit of centralization is to permit coordination between ***both*** the federal and state court litigation. *See, e.g., In re Bank of N.Y. Mellon Corp. Foreign Exch. Transactions Litig.*, 857 F. Supp. 2d 1371, 1373 (J.P.M.L. 2012) ("transferee judges routinely coordinate their MDLs with related state court proceedings"). In this litigation already, one state court panel has ordered the state court coordinating judge to coordinate with federal proceedings. *See* Decision and Order, *Luciere v. Bristol-Myers Squibb*, Panel Case No. 0012/2011, 2 (N.Y. Litig. Coordinating Panel Feb. 1, 2012) (submitted as Exhibit B to this Reply) (coordinating pending New York State Plavix® cases, and ordering that "the Justice to whom this [state] multi-district litigation is assigned should consult with Justice Freda L. Wolfson . . . and Justice Victor Marrero . . . as both Justices are currently presiding over multiple Plavix[®] actions").

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[15] *See* Letter from Joshua C. Ezrin to Steven G. Reade (Nov. 7, 2012) (submitted as Exhibit A to this Reply). Mr. Ezrin's co-counsel in the *Bryan* case, the Napoli firm, is also counsel for both federal Plavix® cases in the Eastern District of Pennsylvania, as well as three of the federal Plavix® cases in California.

[16] Cueto Opp. at 13.

E. Centralization Would Be Most Appropriate in a District Court in New Jersey or in New York

Opposing Plaintiffs argue that if the Panel centralizes these cases, it should do so in the Northern District of California,[17] the Southern District of Illinois[18] or the Southern District of West Virginia.[19] Defendants believe the cases would benefit from centralization, in whatever District Court the Panel deems most appropriate. Nevertheless, Defendants submit that centralization in New Jersey or New York is the most appropriate choice, for several reasons.

First, the District of New Jersey in particular has already expended significant time and resources becoming familiar with the issues related to Plavix®'s development, marketing, and efficacy. *See In re NuvaRing Prods. Liab. Litig.*, 572 F. Supp. 2d 1382, 1383 (J.P.M.L. 2008) ("We are assigning this litigation to an experienced jurist who is familiar with the contours of this litigation by virtue of having presided over the most procedurally advanced action."); *In re Levaquin Prods. Liab. Litig.*, 560 F. Supp. 2d 1384, 1385 (J.P.M.L. 2008) (assigning to transferee judge "who has familiarized himself with the litigation" and where "discovery is already underway"); *In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1386 (J.P.M.L. 2009) ("[S]ubstantial benefits arise by assigning this litigation to Judge Guilford, who has gained familiarity with this litigation by presiding over some of the actions since 2007.")

Plaintiffs do not dispute that Judge Wolfson in the District of New Jersey has supervised Plavix® litigation since 2006 and has already established a successful framework for managing discovery. Specifically, the District of New Jersey has already overseen significant discovery

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17 Hersh Opp. at 8-9; Miller Opp. at 9; Napoli Opp. at 14-15.

18 Cueto Opp. at 15-18; W.Va. Opp. at 17-22.

19 W.Va. Opp. at 17-22.

including the production of 3.5 million pages of documents and the depositions of Plaintiffs' prescribing physicians. As such, Judge Wolfson will be in a far better position to resolve potential new disputes between the parties over how Defendants' prior production (pre-2006) should overlap with new production (post-2007). Likewise, she is well qualified to resolve any potential disputes over the adequacy of Defendants' prior production as applied to the new cases.

In contrast, the alternative districts proposed by Plaintiffs' counsel lag significantly behind the New Jersey court. In the Southern District of Illinois, the Court only unsealed the Complaint on October 1, 2012. No motions have been filed and no discovery has occurred.[20] Likewise, in the Northern District of California, the Court has only heard jurisdictional arguments. No substantive motions have been filed nor has any discovery started. While a motion to dismiss is pending in the Southern District of West Virginia, no discovery has occurred.

Second, the New Jersey and New York area is the primary location of the company documents and witnesses that are relevant to these lawsuits. Plaintiffs do not contest that New Jersey is where Defendants developed Plavix®, secured regulatory approve to sell it, and developed the labeling, warnings, packaging, and other promotions materials needed to sell the drug. Nor do Plaintiffs challenge that the vast majority of Defendants' witnesses and documents are located in New Jersey. These uncontested facts weigh heavily in favor of centralization in the New Jersey or New York area. *See In re Avandia Mktg. Sales Practices & Prods. Liab.*

[20] Plaintiffs also asserts that the Panel considers the location of a *qui tam* in evaluating the proper transfer forum. Cueto Opp. at 15. That may be true in cases where a *qui tam* action was pending *prior* to the development of other litigation. For example, in *In re Neurontin Marketing & Sales Practices Litigation*, 342 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2004) (cited by Plaintiff's counsel), the Panel found that the District of Massachusetts was the appropriate forum because new cases were "predicated on the same facts," the *qui tam* had been "pending for eight years" in Massachusetts courts, and thus the judge "familiar with the issues of fact and law" was selected. *Id.* In this case, the District of New Jersey fits that criteria.

Litig., 528 F. Supp. 2d 1339, 1341 (J.P.M.L. 2007) (selecting transferee district because "GSK's principal place of business is located in that district, and thus many of the witnesses and documents relevant to the litigation are likely to be found there"); *In re Kugel Mesh Hernia Patch Prods. Liab. Litig.*, 493 F. Supp. 2d 1371, 1374 (J.P.M.L 2007) (selecting transferee district where defendant's "headquarters are located" because "witnesses and relevant documents will likely be found there").

Third, the New Jersey and New York courts are in a better logistical position to handle the transfer of a new MDL. The majority of Plaintiffs in these cases propose two alternative districts: (1) the Southern District of Illinois; or (2) the Northern District of California.[21] But in both of these districts, the Judges assigned to Plavix® cases already have pending MDLs before them.

While Judge Herndon does have experience with MDL litigation, he currently presides over two MDLs, the latter of which was just transferred on August 8, 2012: *In re Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Prods. Liab. Litig.*, 655 F. Supp. 2d 1343 (J.P.M.L. 2009); *In re Pradaxa (dabigatran etexilate) Prods. Liab. Litig.*, MDL No. 2385, 2012 WL 3244242 (J.P.M.L. Aug. 8, 2012). Likewise, Judge Chen of the Northern District of California was also recently assigned an MDL: *In re Carrier IQ, Inc., Consumer Privacy Litig.*, 856 F. Supp. 2d 1332 (J.P.M.L. 2012). These factors weigh against the Southern District of Illinois and Northern District of California. *See In re Serzone Prods. Liab. Litig.*, 217 F. Supp. 2d 1372, 1374 (J.P.M.L. 2002) (selecting forum "that is not currently overtaxed with other multidistrict dockets").

[21] Defendants recognize that there are a significant number of Plaintiffs in both California and Illinois state court. But, the same could be said of the New York state court system where over 300 individual suits have been filed by Plaintiffs from across the country. Two of the law firms that represent plaintiffs in pending federal cases represent these New York Plaintiffs.

In contrast, Judge Wolfson is an experienced MDL judge not currently assigned to any pending MDL.[22] The District of New Jersey is more than capable of taking on another MDL. Judges in the District of New Jersey presided in 2011 over an average of 419 cases, fewer than the nation average of 494 cases.[23] Judge Abrams also has no current MDL. Although judges in the Southern District of New York generally preside over more cases than the national average, Judge Abrams is new to the bench and the cases assigned to her will fall below the national average this year.[24] Finally, Judge Matsumoto is also an experienced MDL transfer judge, with a product liability MDL that recently ended.[25] Since taking the bench, from 2009 to 2011, Judge Matsumoto has presided over an average of 362 dockets, a lower caseload than both the national and Eastern District of New York average.[26]

Plaintiffs argue that Judge Herndon has a less crowded docket than those in the Districts of New Jersey or New York,[27] but actual docket statistics show the opposite. According to the Administrative Office of United States Courts, the per-judge pending caseload in the Southern District of Illinois is currently 2,204.[28] By way of comparison, the pending per-judge caseloads

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[22] Judge Wolfson was previously assigned to *In re Vonage Marketing & Sales Practices Litigation*, 505 F. Supp. 2d 1375 (J.P.M.L. 2007) and *In re Verizon Wireless Data Charges Litigation*, 701 F. Supp. 2d 1380 (J.P.M.L. 2010).

[23] *See* U.S. District Court--Judicial Caseload Profile, Federal Court Management Statistics, Sept. 2011, U.S. COURTS, http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/DistrictCourtsSep2011.aspx (last visited Nov. 15, 2012) [hereinafter Judicial Caseload Profile].

[24] *See* Litigation History Report: Judge Ronnie Abrams, www.westlaw.com (search the PROFILER - WLD database for search terms "Ronnie Abrams") (last visited Nov. 15, 2012) [hereinafter Abrams Litigation History Report].

[25] *See In re Pamidronate Prods. Liab. Litig.*, 657 F. Supp. 2d 1368 (J.P.M.L. 2009). It appears from the docket that this MDL was terminated in January 2012.

[26] *See* Litigation History Report: Judge Kiyo A. Matsumoto, www.westlaw.com (search the PROFILER - WLD database for search terms "Kiyo A. Matsumo") (last visited Nov. 15, 2012) [hereinafter Matsumoto Litigation History Report].

[27] Cueto Opp. at 17.

[28] *See* Judicial Caseload Profile.

in New Jersey (419), the Southern District of New York (637) and the Eastern District of New York (645) are much lower.[29] Judge Herndon's pending MDL proceedings alone involve some 9,322 pending cases in the *Yasmin* matter and 138 cases in the *Pradaxa* proceeding.[30] So far this year, Judge Herndon has been assigned 2,133 new cases.[31] The judges in New York and New Jersey have been assigned significantly fewer: Judge Wolfson (485)[32], Judge Matsumoto (267)[33], and Judge Abrams (128).[34]

CONCLUSION

For all the foregoing reasons, Defendants respectfully move for an Order transferring existing and future Plavix® product liability and government enforcement suits to a District Court in New Jersey or New York for consolidated or coordinated pretrial proceedings.

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[29] *Id.*

[30] Pending MDLs as of Nov. 14, 2012, U.S. J.P.M.L., http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets-By-District-November-2012.pdf.

[31] Litigation History Report: Chief Judge David R. Herndon, www.westlaw.com (search the PROFILER - WLD database for search terms "David R. Herndon") (last visited Nov. 15, 2012).

[32] Litigation History Report: Judge Freda L. Wolfson, www.westlaw.com (search the PROFILER - WLD database for search terms "Freda L. Wolfson") (last visited Nov. 15, 2012).

[33] Matsumoto Litigation History Report.

[34] Abrams Litigation History Report.

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