

IN THE SUPREME COURT OF THE UNITED STATES

No. __

PFIZER INC.,

Applicant,

vs.

ALIDA ADAMYAN, *et al.*,

Respondents.

APPLICATION TO THE HON. ELENA KAGAN FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Pursuant to Supreme Court Rule 13(5), Pfizer Inc. (“Pfizer” or “Applicant”) respectfully requests an extension of time of 60 days, to and including June 21, 2019, for the filing of a petition for a writ of certiorari. Respondents do not oppose this request.

1. On August 22, 2018, a two-judge panel of the United States Court of Appeals for the Ninth Circuit denied Pfizer’s Petition for Permission to Appeal the district court’s Remand Order pursuant to 28 U.S.C. § 1453(c). *See Adamyan v. Pfizer Inc.*, No. 18-80059 (9th Cir. Aug. 22, 2018) (attached as **Exhibit 1**). On January 22, 2019, the Ninth Circuit denied Pfizer’s Petition for Rehearing *En Banc*. *See Adamyan v. Pfizer Inc.*, No. 18-80059 (9th Cir. Jan. 22, 2019) (attached as **Exhibit 2**). This

Court has jurisdiction under 28 U.S.C. § 1254(1). *See Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 555 (2014).

2. Absent an extension of time, Pfizer’s certiorari petition would be due on April 22, 2019.

3. This case involves a critically important question under the Class Action Fairness Act (“CAFA”) that has divided the lower courts—namely, whether a state court’s *sua sponte* proposal that claims brought by thousands of plaintiffs from around the country be “tried jointly” qualifies for “mass action” removal under CAFA. 28 U.S.C. § 1332(d)(11). As a general matter, CAFA permits removal of a “mass action” that meets the requirements for the removal of a class action. *Id.* § 1332(d)(11)(A). And the statute defines a “mass action” as any civil action “in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs’ claims involve common questions of law or fact.” *Id.* § 1332(d)(11)(B)(i). While it is widely recognized that this definition is satisfied any time plaintiffs propose that the claims of 100 or more persons be tried jointly, the circuits are divided over whether a state court’s *sua sponte* proposal can satisfy the statute’s requirements.

4. Approximately 4,300 plaintiffs brought these products liability actions against Pfizer, alleging that Lipitor—a prescription medication manufactured by Pfizer and approved by the FDA to lower the risk of cardiovascular disease and stroke—caused them to develop Type II diabetes. Plaintiffs requested that California’s Judicial Council on Coordinated Proceedings (“JCCP”) coordinate the

California cases before “[o]ne judge . . . for all purposes” to “avoid duplicative and inconsistent rulings, orders, and judgments” on a variety of issues. *In re Pfizer*, No. 17-5, 2017 WL 2257635, at *1 (C.D. Cal. May 23, 2017). Plaintiffs identified nearly 2,000 claims to the coordination judge, submitted a proposed order to join “[a]ll cases,” and identified the JCCP proceeding in their captions, Civil Cover Sheets, and Notices of Related Cases. *Id.* at *2–3, 7.

5. Based on that request, Pfizer removed these actions to federal court under CAFA’s mass action provisions, arguing that the claims of more than 100 persons were “proposed to be tried jointly.” 28 U.S.C. § 1332(d)(11). The district court agreed with Pfizer that the plaintiffs’ proposals to join the JCCP proceedings were proposals for a joint trial, but held that CAFA’s 100-plaintiff numerosity requirement was not met because “[o]nly the sixty-five plaintiffs who were named in the amended coordination petition or add-on petitions” had proposed a joint trial. *In re Pfizer*, 2017 WL 2257635, at *5–6. The Ninth Circuit denied Pfizer’s Petition for Permission to Appeal. *Abrams v. Pfizer Inc.*, No. 17-80094 (9th Cir. Nov. 17, 2017).

6. Following remand, the cases were assigned to over thirty different state-court judges. Because of the federal district court’s holding that a petition to join the JCCP proceedings would constitute a proposal for the claims to be tried jointly, Plaintiffs sought to achieve coordination by other means. First, Plaintiffs unsuccessfully attempted to characterize any additional petitions to join the JCCP proceedings as coordinated for pretrial purposes only (because CAFA exempts such proceedings from mass action removal). Second, Plaintiffs asked the coordination

judge to mark as “related” sixty-two cases in which a Notice of Related Case had been filed. The coordination judge denied the request because the related-cases procedure was “inapplicable.” *See* Minute Order at 2, *Lipitor Cases*, JCCP 4761 (Cal. Super. Ct. Nov. 21, 2017).

7. After Plaintiffs’ unsuccessful efforts to achieve backdoor coordination, the Supervising Judge of the Civil Department of the Los Angeles County Superior Court issued a “Request” proposing that sixty-two additional cases, which included the claims of well over 100 plaintiffs, be added to the JCCP proceedings. Request, *Lipitor Cases*, JCCP 4761 (Cal. Sup. Ct. Nov. 17, 2017) (attached as **Exhibit 3**). Three days later, the coordination trial judge ordered the Parties to “serve and submit a notice of opposition to [the] Request” within ten days. Order, *Lipitor Cases*, JCCP 4761 (Cal. Super. Ct. Nov. 20, 2017). Plaintiffs responded that they did not oppose the Request, but that the Request “included only a partial list of all pending California state court Lipitor cases,” and attached a list of eighty-one additional cases involving thousands of additional plaintiffs that shared “common questions of fact and law with the cases identified in” the Request. Pls.’ Notice, *Lipitor Cases*, JCCP 4761 (Cal. Super. Ct. Nov. 29, 2017). The coordination trial judge granted the Request, Order, *Lipitor Cases*, JCCP 4761 (Cal. Super. Ct. Dec. 15, 2017) (attached as **Exhibit 4**), and found that the coordination trial judge “*sua sponte*, may add on th[e] coordinated proceeding cases that raise similar issues involving the drug Lipitor.” Order, *Lipitor Cases*, JCCP 4761 (Cal. Super. Ct. Jan. 30, 2018) (attached as **Exhibit 5**). Then, the coordination trial judge signed the Parties’ Proposed Order

adding another eighty-eight cases involving thousands of plaintiffs to the JCCP proceedings. Order, *Lipitor Cases*, JCCP 4761 (Cal. Super. Ct. Jan. 30, 2018) (attached as **Exhibit 6**).

8. Based on these developments, Pfizer removed the coordinated actions to federal court, asserting that these actions now satisfied CAFA's numerosity requirement because of the state court's expanded coordination orders. Notice of Removal ¶¶ 9–14, *In re Lipitor*, No. 18-1725 (C.D. Cal. Mar. 1, 2018) (No. 1). But the district court again remanded, holding that, although a request by the plaintiffs to coordinate cases for all purposes would constitute a proposal to be tried jointly, a state court's proposal to do the same thing does not. Remand Order at 8–10, *In re Lipitor*, No. 18-1725 (C.D. Cal. May 10, 2018) (No. 60) (attached as **Exhibit 7**).

9. The Ninth Circuit denied Pfizer's Petition for Permission to Appeal the Remand Order and Pfizer's Petition for Rehearing *En Banc*. The parties' briefing on the Petition for Permission to Appeal focused on whether the district court was correct to conclude, as a matter of law, that a court's *sua sponte* coordination order does not qualify as a proposal for the claims of 100 or more persons to be tried jointly under CAFA's mass action removal provision. And there was no discernible reason for the Ninth Circuit to deny review other than agreement with the district court's legal holding. Thus, under *Dart Cherokee Basin*, the Ninth Circuit's denial of the Petition was necessarily based on its agreement with the district court's legal conclusion. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 555 (2014).

10. That conclusion directly implicates an issue that has divided the lower courts. Three other courts of appeals have also identified or addressed the question, and with conflicting reasoning. *Compare Scimone v. Carnival Corp.*, 720 F.3d 876, 881 (11th Cir. 2013) (suggesting that a court’s *sua sponte* proposal qualifies), *Anderson v. Bayer Corp.*, 610 F.3d 390, 394 (7th Cir. 2010), and *Parson v. Johnson & Johnson*, 749 F.3d 879, 887 (10th Cir. 2014), with *Koral v. Boeing Co.*, 628 F.3d 945, 946 (7th Cir. 2011) (stating that court’s *sua sponte* proposal does not qualify). Moreover, the Ninth Circuit itself has repeatedly identified the question as important. *See, e.g., Tanoh v. Dow Chem. Co.*, 561 F.3d 945, 956 (9th Cir. 2009); *Briggs v. Merck Sharp & Dohme*, 796 F.3d 1038, 1048 (9th Cir. 2015). In fact, it recently granted review in a different case to decide the question, but the appeal was later voluntarily dismissed. *See Alexander v. Bayer*, No. 17-55828 (9th Cir. 2017). Thus, as in *Dart Cherokee Basin*, the Ninth Circuit should have granted review because this case presents a CAFA question that is “important, unsettled, and recurrent,” and will otherwise escape review, 135 S. Ct. at 555, and its refusal to do so was legal error.

11. The question is also critically important. Each time this issue arises, it impacts no fewer than 100, and, in cases like this one, thousands of claims. Moreover, while all removal questions implicate federalism and comity concerns, this Court’s review is particularly important here because state courts deserve clear guidance on how their own orders will affect the CAFA removability of the cases over which they preside. And the Court’s decision in *Dart Cherokee Basin* confirms that the

procedural posture of this case is not an obstacle to granting certiorari and deciding this important and recurring question.

12. The requested extension would provide Pfizer's counsel the time needed to prepare thoroughly a certiorari petition. The procedural history of this matter is complex, and counsel must distill numerous relevant submissions to the dozens of federal and state courts that have presided over these actions. In addition, while preparing a certiorari petition, Pfizer must also continue to defend the ongoing state-court proceedings in this matter, including through state-court appellate proceedings on separate issues. Finally, because the state-court proceedings will continue while this Court considers any certiorari petition, no prejudice to plaintiffs would result from the extension.

For the forgoing reasons, Pfizer respectfully requests that the time to file a Petition for Writ of Certiorari be extended to and including June 21, 2019. As noted above, Respondents do not oppose this request.

Dated: March 26, 2019

Respectfully Submitted,



Michael H. McGinley
Counsel of Record
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
Tel: (215) 994-4000
Fax: (215) 994-2222
michael.mcginley@dechert.com

Mark S. Cheffo
Rachel B. Passaretti-Wu
Lincoln Davis Wilson
DECHERT LLP
Three Bryant Park
1095 Sixth Avenue
New York, NY 10036
Tel: (212) 698-3500
Fax: (212) 698-3599
mark.cheffo@dechert.com
rachel.passaretti-wu@dechert.com
lincoln.wilson@dechert.com

*Attorneys for Applicant
Pfizer Inc.*

IN THE SUPREME COURT OF THE UNITED STATES

No. __

PFIZER INC.,

Applicant,

vs.

ALIDA ADAMYAN, *et al.*,

Respondents.

CERTIFICATE OF SERVICE

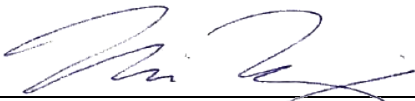
I, Michael H. McGinley, a member of the Supreme Court Bar, hereby certify that an original and two copies of the attached Application for an Extension of Time Within which to File a Petition for Writ of Certiorari to the United States Court of Appeals for The Ninth Circuit in *Pfizer Inc. v. Alida Adamyan* were served by Next Day Service to the U.S. Supreme Court, and one copy via e-mail and the United States Postal Service, first-class postage prepaid, were served on the parties listed below.

Patrick J. Mulligan
Charles G. Orr
The Mulligan Law Firm
3710 Rawlins Street, #901
Dallas, TX 75219
pmulligan@mulliganlaw.com
corr@mulliganlaw.com

Bill Robins III
Robins Cloud LLP
808 Wilshire Blvd #450
Santa Monica, CA 90401
robins@robinscloud.com

Attorneys for Respondents

Dated: March 26, 2019

By:  _____

Michael H. McGinley
Counsel of Record
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
Tel: (215) 994-4000
Fax: (215) 994-2222
michael.mcginley@dechert.com

*Attorneys for Applicant
Pfizer Inc*

EXHIBIT 1

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

AUG 22 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALIDA ADAMYAN; et al.,

Plaintiffs-Respondents,

v.

PFIZER, INC.,

Defendant-Petitioner.

No. 18-80059

D.C. No.

2:18-cv-01725-CJC-JPR

Central District of California,

Los Angeles

ORDER

Before: SCHROEDER and SILVERMAN, Circuit Judges.

The petition for permission to appeal pursuant to 28 U.S.C. § 1453(c) is denied. *See Coleman v. Estes Express Lines, Inc.*, 627 F.3d 1096, 1100 (9th Cir. 2010).

EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 22 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALIDA ADAMYAN; et al.,

Plaintiffs-Respondents,

v.

PFIZER, INC.,

Defendant-Petitioner.

No. 18-80059

D.C. No.

2:18-cv-01725-CJC-JPR

Central District of California,
Los Angeles

ORDER

Before: SCHROEDER and SILVERMAN, Circuit Judges.

The motion for clarification of docket entry is denied as unnecessary (Docket Entry No. 8). *See* 9th Cir. Gen. Ord. 6.11.

The motion of the Chamber of Commerce of the United States of America and the Pharmaceutical Research and Manufacturers of America for leave to file a brief in support of the petition for rehearing en banc is granted (Docket Entry No. 11). The brief has been filed.

The petition for rehearing en banc is denied on behalf of the court (Docket Entry No. 7). *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

EXHIBIT 3

FILED
Superior Court of California
County of Los Angeles

9 NOV 17 2017

Sherri R. Carter, Executive Officer/Clerk

By Jan Josef Manrique Deputy
Jan Josef Manrique

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Coordinated Proceeding
Special Title (Rule 3.550)

) CASE NO. JCCP 4761

LIPITOR CASES

) REQUEST THAT COORDINATION
) TRIAL JUDGE INCLUDE IN THIS
) COORDINATED PROCEEDING CERTAIN
) CASES SHARING COMMON QUESTIONS
) OF FACT AND LAW

Whereas California Code of Civil Procedure section 404.4 provides that: "The presiding judge of any court in which there is pending an action sharing a common question of fact or law with actions coordinated pursuant to Section 404, on the court's own motion . . . may request the judge assigned to hear the coordinated actions for an order coordinating the action."

Whereas the Presiding Judge of the Los Angeles Superior Court has delegated his authority to the Supervising Judge of the Civil Departments with respect to assignment of all civil matters throughout the Superior Court of the State of California for the County of Los Angeles.

Whereas JCCP 4761, **Lipitor Cases** (hereinafter "Lipitor JCCP"), was created by order of the Honorable Emilie Elias on November 19, 2013. On formation, the coordinated proceeding included three cases. Each of these cases involved plaintiffs who brought claims

1 against Pfizer, Inc., et al. (hereinafter "Pfizer Defendants"). All coordinated cases alleged that
2 the Plaintiffs took the drug Lipitor, and that in consequence they developed Type II diabetes.

3 Whereas, prior to March 2014, add-on requests were filed in three additional cases
4 against the Pfizer Defendants. Subsequently, these cases were removed to federal court before
5 the coordination trial judge acted on the add-on requests.

6 Whereas this Court is informed that, starting in early 2014, approximately 1800
7 additional Plaintiffs filed cases in California against the Pfizer Defendants contending that
8 Lipitor caused their Type II diabetes. Beginning in March 2014, the Lipitor Defendants
9 removed all cases in the Lipitor JCCP and all other similar California cases to federal court.
10 Such cases were further transferred to a Multidistrict Litigation ("MDL") proceeding in South
11 Carolina. These cases eventually were returned from the MDL to the Central District of
12 California. On May 23, 2017 the federal district court remanded all cases in the Lipitor JCCP
13 and all other California cases against the Pfizer Defendants involving the drug Lipitor to the
14 California state courts in which Plaintiffs had filed them.

15 Whereas the cases listed on Attachment A hereto are currently pending in the Los
16 Angeles Superior Court after remand from the Federal District Court for the Central District of
17 California. In each case Plaintiffs brought suit against the Pfizer Defendants alleging that the
18 drug Lipitor caused their Type II diabetes. Such cases currently are assigned to the Honorable
19 Carolyn B. Kuhl, but they have not been added on to the Lipitor JCCP because no party has
20 requested that they be classified as add-on cases pursuant to California Rules of Court, rule
21 3.544.

22 Whereas, following briefing from all sides, Judge Kuhl issued an Order prescribing a
23 procedure the parties should follow in requesting that cases be added-on to the Lipitor JCCP.
24 A copy of Judge Kuhl's Order is Attachment B hereto, and a copy of the minute order of
25 August 4, 2017 referenced therein is Attachment C hereto.


26 Whereas subsequent to the issuance of Judge Kuhl's August 4 and October 13, 2017
27 Orders, it continues to be the case that no party has requested that the cases listed in
28 Attachment A be added on to the Lipitor JCCP.

1 Whereas each of the cases listed in Attachment A is a complex case as defined in
2 California Rules of Court, rule 3.400. Moreover, each case listed in Attachment A is brought
3 by a Plaintiff or Plaintiffs against the Pfizer Defendants alleging that the drug Lipitor caused
4 them to develop Type II diabetes. In order meet the goals of California Rules of Court, rule
5 3.400(a) – avoiding unnecessary burdens on the Court, reducing litigation costs, moving the
6 cases toward resolution expeditiously, and improving the quality of decision making for the
7 parties, counsel and the Court – these cases, which share common facts and issues of law,
8 should be joined to the Lipitor JCCP.

9 Whereas it would be extremely burdensome for the Los Angeles Superior Court to
10 handle the cases listed in Attachment A individually and outside of a coordinated proceeding.

11 Now therefore, on behalf of the Presiding Judge and acting as the Supervising Judge of
12 the Civil Departments, pursuant to Code of Civil Procedure section 404.4, I hereby request
13 that Judge Kuhl, as coordination trial judge assigned to the Lipitor JCCP, should exercise the
14 authority granted by California Rules of Court, rule 3.544 and add the cases listed in
15 Attachment A to the Lipitor JCCP, after notice and hearing pursuant to the procedures set
16 forth in California Rules of Court, rule 3.554.

17
18 Dated: November 17, 2017


Honorable Debra K. Weintraub
Supervising Judge of the Civil Departments

Candacy Roberts-Anderson, et al. v. Pfizer Inc., et al.	BC536941
Darlene Jordan, et al. v. Pfizer Inc., et al.	BC536930
Deberah Rivington, et al. v. Pfizer Inc., et al.	BC536942
Emma Frields, et al. v. Pfizer Inc., et al.	BC536932
Fiette Williams, et al. v. Pfizer Inc., et al.	BC536934
Juanita Banks, et al. v. Pfizer Inc., et al.	BC536936
Linda Roy, et al. v. Pfizer Inc., et al.	BC536940
Loretta Curley, et al. v. Pfizer Inc., et al.	BC536939
Marilyn Williams, et al. v. Pfizer Inc., et al.	BC536935
Ouida Valentine, et al. v. Pfizer Inc., et al.	BC537052
Ruth English, et al. v. Pfizer Inc., et al.	BC536937
Segalilt Siegel, et al. v. Pfizer Inc., et al.	BC536933
Tomie Isrel, et al. v. Pfizer Inc., et al.	BC536931

- ATTACHMENT A -

Zurita Gray, et al. v. Pfizer Inc., et al	BC536938
Denelle Bailey, et al v. Pfizer Inc., et al	BC537407
Blanca Mejia, et al. v. Pfizer Inc., et al.	BC537851
Lena Whitaker, et al. v. Pfizer Inc., et al.	BC537924
Maria Carbajal, et al v. Pfizer Inc., et al.	BC538103
Rose A. Williams, et al. v. Pfizer Inc., et al.	BC537852
Tonisha Powell, et al. v. Pfizer Inc., et al.	BC537850
Afida Adamyan, et al. v. Pfizer Inc., et al	BC538067
Linda Franzone, et al v. Pfizer Inc., et al.	BC538104
Regina Ferberdino, et al. v. Pfizer Inc., et al.	BC538066
Ruby Hare, et al. v. Pfizer Inc., et al.	BC537836
Shirley Reynolds, et al. v. Pfizer Inc., et al	BC537946
Elizabeth Ann Watts, et al v. Pfizer Inc., et al.	BC538131
Williams, Jewel, et al v. Pfizer Inc., et al	BC539180

Helen Elliott, et al. v. Pfizer, Inc., et al.	BC554988
Bessie Barringer, et al. v. Pfizer, Inc., et al.	BC640576
Elizabeth Debay et al. v. Pfizer, Inc. et al.	BC620597
Genevieve Monreal, et al. v. Pfizer, Inc., et al.	BC620308
Gloria Ashley, et al. v. Pfizer, Inc. et al.	BC597288
Joni Boles, et al. v. Pfizer, Inc., et al.	BC632342
Jonna Roberts, et al. v. Pfizer, Inc. et al.	BC609198
Josefina Allison, et al. v. Pfizer, Inc., et al.	BC638755
Judith Smalley, et al. v. Pfizer, Inc., et al.	BC571105
Mary Baker, et al. v. Pfizer, Inc., et al.	BC642382
Mildred Lois Brown, et al. v. Pfizer, Inc., et al.	BC627217
Mixdalia Taime, et al. v. Pfizer, Inc., et al.	BC595160
Myrle Jackson, et al. v. Pfizer, Inc., et al.	BC622449
Lawana Smith, et al. v. Pfizer, Inc. et al.	BC617993
Robyn Whitney, et al. v. Pfizer Inc., et al.	BC573889
Rose Carpenter, et al. v. Pfizer, Inc., et al.	BC631286

Ruth Yaker, et al. v. Pfizer, Inc. et al.	BC593129
Sharal Scully, et al. v. Pfizer, Inc., et al.	BC625835
Shari Beneda, et al. v. Pfizer, Inc., et al.	BC583448
Joan Alston, et al. v. Pfizer, Inc., et al.	BC630499
Cynthia Davis, et al. v. Pfizer, Inc., et al.	BC631285
Sharon Campbell, et al. v. Pfizer, Inc., et al.	BC623414
Shary Stegall, et al. v. Pfizer, Inc., et al.	BC585392
Theresa Bagliere, et al. v. Pfizer, Inc., et al.	BC615371
Norma Adatan, et al. v. Pfizer, Inc., et al.	BC637353
Vivia Artz, et al. v. Pfizer, Inc., et al.	BC635793
Dena Blackmore, et al. v. Pfizer, Inc. et al.	BC643523
Sylvia Alvarado, et al. v. Pfizer Inc., et al	BC645073
Amal Jones, et al. v. Pfizer, Inc.	BC645186
Marline Tillery, et al. v. Pfizer, Inc.	BC645478
Maria Xochrhua, et al. v. Pfizer, Inc.	BC647065
Patsy Wood, et al. v. Pfizer, Inc., et al.	BC652781
Patricia Alexander, et al. v. Pfizer Inc., et al	BC659589

Venicia Avila, et al. v. Pfizer Inc., et al.	BC664367
Carolyn Davis, et al. v. Pfizer, Inc., et al.	BC648688

FILED
Superior Court of California
County of Los Angeles

9 OCT 13 2017

Sherri R. Carter, Executive Officer/Clerk
By Jan Josef Manrique Deputy
Jan Josef Manrique

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 3.550]

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4761

LIPITOR CASES

**AMENDED ORDER RE ADD-ON
PROCEDURES**

THIS DOCUMENT RELATES TO:

ALL CASES

The order of November 19, 2013 coordinating this case pursuant to California Code of Civil Procedure sections 404 *et seq.* and California Rules of Court 3.501 *et seq.* coordinates only three cases, each of which involved a single plaintiff. Thereafter, three cases involving a total of seven plaintiffs were added on to this coordinated proceeding. Although add-on requests have been filed in multiple additional cases, and other cases involving Lipitor personal injury claims have been filed in California, those cases have not been added to this coordinated proceeding because the cases were quickly removed to federal court. Moreover, the cases that were coordinated also were removed to federal court in early 2014 and were remanded only relatively recently (May 23, 2017). Hence, this coordinated proceeding has been quiescent for over three years.

It is now time to resume management of this coordinated proceeding. To do so, this court must establish an expeditious procedure to handle petitions to add additional cases onto this proceeding.

AMENDED ORDER RE ADD-ON PROCEDURES

10202017

1 The Honorable Jane Johnson, who previously served as coordination trial judge (see CRC
2 3.540), entered an Order to govern add-on procedures on March 4, 2014 (hereinafter "2014 Add-on
3 Order"). Plaintiffs' counsel recently sought to amend the 2014 Add-on Order to address the scope of
4 this coordinated proceeding, and the parties submitted substantial briefs concerning the amendments
5 sought by Plaintiffs. This court's discussion of the differences between the parties with respect to
6 the scope of the coordinated proceeding and the court's resolution of this matter are reflected in a
7 Minute Order dated August 4, 2017.

8 Pursuant to Rule 3.531 of the California Rules of Court, and good cause appearing:

9 IT IS HEREBY ORDERED:

10 **I. FILING OF COMPLAINTS**

11 **A. Coordinated Proceeding:** This coordinated proceeding is intended to encompass
12 cases filed in California state court against Pfizer, Inc. or McKesson Corporation, alleging injuries
13 related to the development of Type II diabetes, and seeking damages, injunctive relief, or
14 restitution arising from the ingestion of Lipitor®. The parties to such actions, however, are still
15 required to comply with the stipulation or notice add-on procedures set forth in this Order.

16 **B. Plaintiffs' Complex Case Fees:** The fees required by California Government
17 Code section 70616 apply to each case within a complex coordinated proceeding, and, as such, the
18 fees required by that section are required to be paid at the time of filing each case as to which there
19 will be an add-on petition or stipulation subject to this Order.

20 **C. Venue:** Complaints in actions that potentially qualify for coordination in *Lipitor*
21 *Cases*, JCCP 4761, shall be filed in accordance with the venue requirements of the California
22 Code of Civil Procedure.

23 **D. Cases Filed in Los Angeles County:** Complaints in actions that potentially
24 qualify for coordination in *Lipitor Cases*, JCCP No. 4761, and that are properly venued in Los
25 Angeles County, shall be filed in the Stanley Mosk Courthouse of the Superior Court of California
26 for the County of Los Angeles, at the following address:

27 Stanley Mosk Courthouse
28 111 North Hill St.
Los Angeles, CA 90012

1 Direct filing in Department 309 will not be accepted.

2 **II. ADD-ON PROCEDURES**

3 **A. Add-on Procedures in General.** The stipulated add-on procedure in Section
4 II(A)(1) hereof is intended to expedite the identification of actions that potentially qualify for
5 coordination and the determination of whether those actions should be coordinated. The notice
6 procedure set forth in Section II(A)(2) shall apply in cases where one party believes a case should
7 be coordinated, but the parties fail to reach a stipulation.
8

9 1. **By Stipulation.** Wherever practicable, the parties should identify potential add-on
10 cases by filing in *Lipitor Cases*, JCCP No. 4761, a document titled "Stipulation and
11 [Proposed] Order to Add-On and Transfer Related Case to Coordinated Proceeding,"
12 attached hereto as Exhibit 1. This Stipulation shall be signed by Defendants' Liaison
13 Counsel and counsel for the plaintiff in each identified case. This court orders that
14 when the parties have stipulated to coordination and have filed in the originating
15 court a Notice of Submission of Stipulation and a Notice of Stay attaching this Order,
16 all proceedings in the originating court are stayed pursuant to Code of Civil
17 Procedure section 404.5.

18 2. **By Notice.** Where stipulation is impracticable, any party may identify a potential
19 add-on case by filing in *Lipitor Cases*, JCCP No. 4761, a document titled "Notice of
20 Potential Add-On Cases and Request for Coordination; Notice of Stay." Such Notice
21 shall also be filed in the originating court for such case together with a copy of this
22 Order. The Notice shall include the complete caption of each potential add-on case
23 that the party is requesting be transferred into *Lipitor Cases*, JCCP No. 4761; the
24 California state court in which each case was originally filed; the initial case number;
25 a copy of the complaint in such case if the case is filed in a County other than Los
26 Angeles County; and the following two notices:

27 NOTICE IS HEREBY GIVEN that plaintiff is asserting a claim or
28 claims for damages that generally involved Lipitor® and that,

71020201

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

accordingly, this case is eligible for statewide coordination pursuant to Sections 404 et seq. of the California Code of Civil Procedure and for inclusion in *Lipitor Cases*, Judicial Council Coordinated Proceeding No. 4761, now pending before the Honorable Carolyn B. Kuhl, Judge of the Superior Court of the State of California for the County of Los Angeles.

NOTICE IS ALSO GIVEN that pursuant to Section 404.5 of the California Code of Civil Procedure, and by order of the Coordination Trial Judge, upon submission of this case to the Coordination Trial Judge as a potential add-on case and upon filing of this Notice, this action is ordered stayed until such time as the Coordination Trial Judge orders otherwise.

a. Opposition to Coordination. After a Notice of Potential Add-On Cases is filed and served, any party named in any action identified in the Notice shall have a period of ten (10) calendar days from the date of service to file and serve a Notice of Opposition to Coordination, including points and authorities and other relevant materials with respect to that party's action. The Court may, but need not, set a hearing for determination whether the case should be coordinated and, if so, will provide notice of the hearing, including a date for responsive briefs, to all Liaison Counsel. A party's failure to file and serve a Notice of Opposition within the ten-day period of time will be deemed a statement of non-opposition to coordination as to that action.

B. Service of Add-On Notification Documents. All Stipulations and [Proposed] Orders to Add-On and Transfer Related Case to Coordinated Proceeding and Notices of Potential Add-On Cases shall be filed and served in accordance with the requirements for filing and service in place in this coordinated proceeding. The party filing the Stipulation or Notice shall submit a copy of same to the Judicial Council at the following address:

210202017

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Chair, Judicial Council of California
Administrative Offices of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

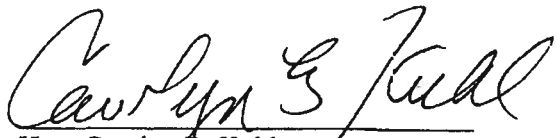
The party filing the Stipulation and [Proposed] Order to Add-On and Transfer Related Case to Coordination Proceeding or Notice of Potential Add-On Cases shall also file a Notice of Submission and a Notice of Stay of Case in each court in which the actions sought to be added were initially filed. The party filing the Stipulation and [Proposed] Order to Add-On and Transfer Related Case to Coordination Proceeding or Notice of Potential Add-On Cases shall serve all parties to the add-on actions with a copy of the Stipulation or Notice; a copy of all Case Management Orders entered in *Lipitor Cases*, JCCP No. 4761; and the Notice of Stay of Case.

C. Effect of Stay of Add-on Case: Notwithstanding any stay, upon coordination, any case that this court has ordered added-on to this coordinated proceeding shall be subject to all Case Management Orders entered in *Lipitor Cases*, JCCP No. 4761, including any deadlines and obligations included in those CMOs.

D. Scope of Order. To the extent permitted under California law, the procedures and protocols contained in this Order shall supersede any conflicting provisions in the California Code of Civil Procedure, the Rules of Court, the local rules of the various counties, and any other conflicting statutory, judicial, or regulatory provisions.

IT IS SO ORDERED.

Dated: Oct. 13, 2017


Hon. Carolyn B. Kuhl
Judge of the Superior Court

710702017

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 3.550]

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4761

LIPITOR CASES

**STIPULATION AND [PROPOSED]
ORDER TO ADD-ON AND TRANSFER
RELATED CASE TO COORDINATED
PROCEEDING**

THIS DOCUMENT RELATES TO:

ALL CASES

Pursuant to Section II(A)(1) of the Amended Order re Add-On Procedures, counsel for Plaintiff(s) _____, and Defendants' Liaison Counsel, hereby enter into and submit the following stipulation to add-on and transfer a Lipitor case to Judicial Council Coordinated Proceeding No. 4761.

1. Judicial Council Coordinated Proceeding No. 4761, *Lipitor Cases*, now pending before the Honorable Carolyn B. Kuhl, involves California state court actions brought by or on behalf of persons alleging injuries and seeking damages, injunctive relief, or restitution, relating to Lipitor®.
2. The signatories to this Stipulation agree that [CASE NAME], which is now pending in the California Superior Court for the County of _____ (Case No. _____), meets the requirements of California Code of Civil Procedure Section 404.1 and Rule 3.544, and should be added-on and transferred to this Coordinated Proceeding.

STIPULATION AND [PROPOSED] ORDER TO ADD-ON AND TRANSFER RELATED CASE TO
COORDINATED PROCEEDING

10202017

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Plaintiff(s) in the above-captioned case allege(s) personal injuries related to the use of Lipitor that are the subject of this coordinated proceeding, and allege(s) similar causes of action and theories of liability.

4. The above captioned case meets the standards for coordination as it is a complex case and shares common questions of law and fact with actions included in the Coordinated Proceeding. The convenience of plaintiff, witnesses, and counsel, the efficient use of judicial resources, the advantages of comprehensive and consistent rulings, and the interests of justice are best served if this case is transferred to this Coordinated Proceeding. The signatories to this Stipulation believe that, in the interests of judicial efficiency, the above captioned case should be added on and transferred to the Coordinated Proceeding.

5. Based on these considerations, the parties hereby stipulate that the above captioned case should be added on to JCCP 4761 and transferred to this Court.

IT IS SO STIPULATED.

Dated: _____

[Plaintiff's Counsel]

By: _____
Attorney Name

Dated: _____

[Defense Counsel]

By: _____
Attorney Name

IT IS SO ORDERED.

Dated: _____

Hon. Carolyn B. Kuhl
Judge of the Superior Court

10202017

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
#5

JUDGE PRO TEM

TIMOTHY J. MCCOY, CSR# 4745

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

PRO TEMPORE

Reporter

2:15 pm

JCCP4761

Plaintiff

Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant

Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

FURTHER STATUS CONFERENCE

ARGUMENT RE COURT'S ADD-ON ORDER

The Court issues its tentative ruling.

The matters are called for hearing.

The Order Appointing Court Approved Reporter as Official Reporter Pro Tempore is signed and filed this date (Timothy J. McCoy, CSR# 4745).

The Court, having read and considered the documents submitted and having heard oral argument, adopts its tentative ruling as the final order of the court as follows:

RULING ON PLAINTIFFS' SUBMISSION OF PROPOSED AMENDED ORDER RE ADD-ON PROCEDURES

The order of November 19, 2013 coordinating this case pursuant to California Code of Civil Procedure sections 404 et seq. and California Rules of Court 3.501 et seq. coordinates only three cases, each of which involved a single plaintiff. Thereafter, three cases involving a total of seven plaintiffs were added on to this coordinated proceeding. Although add-on requests have been filed in multiple

<p align="center">MINUTES ENTERED 08/04/17 COUNTY CLERK</p>
--

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE

DEPUTY CLERK

E. MUNOZ, C.A.

HONORABLE #5

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

TIMOTHY J. MCCOY, CSR# 4745

PRO TEMPORE

Reporter

2:15 pm JCCP4761

Plaintiff

Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant

Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

additional cases, and other cases involving Lipitor personal injury claims have been filed in California, those cases have not been added to this coordinated proceeding because the cases were quickly removed to federal court. Moreover, the cases that were coordinated also were removed to federal court in early 2014 and were remanded only relatively recently (May 23, 2017). Hence, this coordinated proceeding has been quiescent for over three years.

It is now time to resume management of this coordinated proceeding. To do so, this court must establish an expeditious procedure to handle petitions to add additional cases onto this proceeding.

The Honorable Jane Johnson, who previously served as coordination trial judge (see CRC 3.540), entered an Order to govern add-on procedures on March 4, 2014 (hereinafter "2014 Add-on Order"). Plaintiffs' counsel now seek to amend the 2014 Add-on Order primarily in order to position this proceeding so as to avoid removal based on the Class Action Fairness Act's ("CAFA's") creation of federal jurisdiction for actions in which "monetary relief claims of 100 or more persons are proposed to be tried jointly" (28 U.S.C. section 1332(d)(11)(B)(i).) Both sides in this litigation have been transparent regarding their respective concerns that the

<p align="center">MINUTES ENTERED 08/04/17 COUNTY CLERK</p>
--

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
#5

JUDGE PRO TEM

TIMOTHY J. MCCOY, CSR# 4745
PRO TEMPORE

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

Reporter

2:15 pm

JCCP4761

Plaintiff

Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant

Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

coordination proceeding should be able to be removed to federal court (Defendant's desire) or should be able to be remanded to state court even if removed (Plaintiff's desire).

Initially, Plaintiffs sought to amend the 2014 Add-on Order to include language stating that the cases were to be coordinated "for pretrial proceedings." Defendants strongly objected to this amendment, and the parties have submitted substantial briefs concerning the amendments sought by Plaintiffs. In their Reply Brief, Plaintiffs stated that they no longer seek to add language stating that coordination was only for purposes of pretrial proceedings, but rather seek to add the following language to the 2014 Add-on Order: "This Order does not constitute a determination that these cases should be tried jointly or otherwise consolidated for trial. In addition, for purposes of assignment, reassignment, and/or trial venue, the parties expressly reserve their rights to petition the Court to determine the appropriate venue for transfer of any and all coordinated actions."

This court does not have, and the Complex Litigation Program never has had, a stake in how the federal courts interpret CAFA. It is emphatically the province of the federal courts to interpret Congress' meaning in creating federal jurisdiction when the monetary relief claims of 100 or more

<p align="center">MINUTES ENTERED 08/04/17 COUNTY CLERK</p>
--

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
#5

JUDGE PRO TEM

TIMOTHY J. MCCOY, CSR# 4745
PRO TEMPORE

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

Reporter

2:15 pm

JCCP4761

Plaintiff

Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant

Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

persons are "proposed to be tried jointly" However, insofar as the federal courts seek to understand California state court coordination procedures in order to apply federal law (see, e.g., Corber v. Xanodyne Pharms., Inc. (9th Cir. 2014) 771 F.3d 1218, 1222) it is appropriate for this court to explain its understanding of California coordination procedures generally, and in the context of this coordinated proceeding.

The shape of a coordinated proceeding is set when the coordination motion judge determines that cases should be coordinated pursuant to the California rules for coordination of individual complex cases. That is, the coordination motion judge determines the types of cases that should be brought together in a coordinated proceeding. (See generally Ford Motor Warranty Cases (11 Cal.App.5th 626.)

California law contemplates that cases will be coordinated for all purposes, not merely for pretrial proceedings. (Code of Civil Procedure section 404.1.) California procedure for coordinated cases differs in this respect from federal multidistrict litigation procedures. In MDL proceedings, cases must be returned to the federal district where they were originally filed when the case is ready to begin trial. (28 U.S.C. section 1407.) This restriction has created some difficulty in MDL proceedings where the MDL judge has found it

<p align="center">MINUTES ENTERED 08/04/17 COUNTY CLERK</p>
--

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
#5

JUDGE PRO TEM

TIMOTHY J. MCCOY, CSR# 4745
PRO TEMPORE

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

Reporter

2:15 pm JCCP4761

Plaintiff

Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant

Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

important to conduct early bellwether trials. Indeed, some federal MDL judges have endured the inconvenience of relocating temporarily to other federal districts so as to ensure consistent rulings in the trials of bellwether cases.

Nevertheless, the fact that the coordination trial judge has the authority to try coordinated cases herself does not mean that the coordination trial judge will conduct the trial in all (or even some) of the coordinated cases, and assuredly does not mean that the coordinated cases will be tried together, either at the same time or before one jury. Coordination is a very flexible structure for case management. The ultimate goal for the coordination trial judge is to manage the coordinated complex cases in accordance with the complex case management rules so as to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties and counsel. (CRC 3.400(a).) In order to accomplish these goals, the coordination trial judge attempts to direct the litigation toward early resolution of key issues of law and toward discovery of central issues of fact. Thus the coordination trial judge, for example, may decide early motions that eliminate claims, that define the law that will apply to the claims, that determine whether expert witnesses will or will not be permitted to testify at trial and that direct discovery.

MINUTES ENTERED 08/04/17 COUNTY CLERK
--

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
#5

JUDGE PRO TEM

TIMOTHY J. MCCOY, CSR# 4745
PRO TEMPORE

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

Reporter

2:15 pm

JCCP4761

Plaintiff
Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant
Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

The coordination trial judge has significant flexibility to decide whether or not she will try individual cases. In the Asbestos Coordinated Proceedings for Los Angeles, Orange and San Diego Counties, the coordination trial judge does not conduct any trials. Under California Rule of Court 3.542, the coordination trial judge may remand a coordinated action to the court in which the action was pending at the time coordination of that action was ordered. The ultimate determination of which cases in a coordinated proceeding will be tried by the coordination trial judge is dictated by promotion of the ends of justice. (California Rule of Court 3.542, referencing Code of Civil Procedure section 404.1.) In the Asbestos Coordinated Proceeding, trial of bellwether cases does not lead to overall settlements of an inventory of cases. The current number of asbestos cases in the coordinated proceeding is over 500. In order to allow cases to proceed promptly to trial when they are trial-ready, the parties do not object to remand of asbestos cases for trial. In the Asbestos Coordinated Proceeding, the ends of justice and the goals of case management for complex cases are promoted by streamlining pretrial processes. Indeed, it has been estimated that the number of motions filed and heard in asbestos cases has decreased by two-thirds since asbestos cases in Southern California were coordinated.

<p align="center">MINUTES ENTERED 08/04/17 COUNTY CLERK</p>

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE

DEPUTY CLERK

E. MUNOZ, C.A.

HONORABLE
#5

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

TIMOTHY J. MCCOY, CSR# 4745

PRO TEMPORE

Reporter

2:15 pm

JCCP4761

Plaintiff

Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant

Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

In coordinated proceedings involving claimed defective pharmaceuticals or failure to adequately warn of a pharmaceutical product's side effects, the coordination trial judge typically has handled one or more bellwether trials. In the 17 years since the Complex Litigation Program has been in place in California, this court is unaware of any instance in which the claims of more than one party allegedly injured by taking a pharmaceutical product have been tried at the same time or to the same jury, except in wrongful death cases where the claims of the survivors of one injured person have been tried together.

Coordinated proceedings involving cases against pharmaceutical manufacturers have included more than 10,000 plaintiffs in some instances. If bellwether trials (as well as pretrial definition of issues) are unsuccessful in guiding the parties to inventory settlements, it has always been clear to the judges of the Complex Litigation Program that the coordination trial judge will have to remand cases for trial by the court in which the action was pending at the time of coordination. No single judge can conduct so many trials, and to attempt to do so would deprive plaintiffs of timely adjudication of their claims. The coordination trial judge will strive to establish a set of jury instructions and rulings on motions in limine that can serve to guide

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
#5

JUDGE PRO TEM

TIMOTHY J. MCCOY, CSR# 4745
PRO TEMPORE

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

Reporter

2:15 pm

JCCP4761

Plaintiff

Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant

Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

the trial of the cases after they are remanded, but no one (parties, counsel or the court) anticipates that every case can be tried by the coordination trial judge if the cases in a coordinated proceeding against a pharmaceutical manufacturer do not settle in large numbers.

It bears mention that a plaintiff does not control the conduct of proceedings once a coordination motion has been granted. The coordination trial judge conducts the proceedings and makes case management decisions after hearing from all counsel and in accordance with Code of Civil Procedure sections 404 et seq. and the Rules of Court governing complex cases and coordinated proceedings.

Having outlined the parameters within which complex cases are litigated in coordinated proceedings, this court feels no need to indicate in amendments to the 2014 Add-on Order how case management will move forward in this particular coordinated proceeding. However, amendments to the 2014 Add-on Order are necessary for other administrative purposes that this court will discuss with the parties.

Counsel shall provide to the Court a Word version of the operative Add-On Order and an Excel version of the Table of California Lipitor Cases attached as Exhibit A to the July 31, 2017, Joint Status Report.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
#5

JUDGE PRO TEM

TIMOTHY J. MCCOY, CSR# 4745
PRO TEMPORE

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

Reporter

2:15 pm

JCCP4761

Plaintiff

Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant

Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

The parties shall file any objections or propose alternative language within five (5) days of the Court issuing a Revised Proposed Add-on Order.

The Court has read and considered the Joint Status Report Filed on July 31, 2017.

A Further Status Conference is held.

The parties shall meet and confer with regard to a briefing schedule for the motion for personal jurisdiction remembering to allow three (3) weeks from the filing of the reply to the hearing date.

Within twenty (20) days, the parties shall meet and confer with regard to a stipulated protective order. If the parties cannot agree, a JOINT request for Court guidance may be posted on the electronic service message board.

A Non-Appearance Case Review re Filing of a Stipulated Protective Order is set for August 29, 2017, at 4:30 p.m. in Department 309.

Within thirty (30) days, the parties shall inform the the Court by joint posting on the electronic service message board of:

1. Their progress with regard to a case management

<p align="center">MINUTES ENTERED 08/04/17 COUNTY CLERK</p>
--

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/04/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
#5

JUDGE PRO TEM

TIMOTHY J. MCCOY, CSR# 4745
PRO TEMPORE

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

Reporter

2:15 pm

JCCP4761

Plaintiff

Counsel

COORDINATION PROCEEDING SPECIAL
TITLE RULE (3.550)

SEE APPEARANCES
ON PAGE 10

Defendant

Counsel

LIPITOR CASES

NATURE OF PROCEEDINGS:

order for factual developement; and,

2. When the next status conference should be.

A Non-Appearance Case Review re Progress of Case Management Conference is set for September 11, 2017, at 4:30 p.m. in Department 309.

Counsel for the Plaintiff shall give notice.

APPEARANCES

FOR PLAINTIFFS

CHARLES G. "CHIP" ORR
DONALD S. EDGAR
BILL ROBINS
CHERISSE H. CLEOFE

FOR DEFENDANTS

MARK CHEFFO
J.D. HORTON

via CourtCall

THOMAS SIMS

SALLY HOSN
EMMA GARRISON
AMORINA P. LOPEZ
RACHEL PASSARETTI-WU

EXHIBIT 4

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/15/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE

DEPUTY CLERK

E. MUNOZ, C.A.

HONORABLE
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

JCCP4761

Plaintiff

Counsel

Coordination Proceeding Special
Title Rule (3.550)

NO APPEARANCES

Defendant

Counsel

Lipitor Cases

NATURE OF PROCEEDINGS:

COURT ORDER RE ADD-ON CASES

On November 20, 2017, the Supervising Judge of the Civil Departments, on behalf of the Presiding Judge, requested that certain cases sharing common questions of fact and law with cases coordinated in JCCP4761 be coordinated as "add-on cases."

On November 20, 2017, by minute order, this Court ordered that any party who objected to including such cases in the coordinated proceeding serve an opposition to the Supervising Judge's Request within 10 days of service of the Request.

This Court has received no such opposition.

This Court, as coordination trial judge, hereby grants the Request of the Supervising Judge of the Civil Departments to add on the cases listed in Attachment A to the Supervising Judge's Request to this coordinated proceeding. The Request of the Supervising Judge sets forth the reasons why the cases are appropriate add-on proceedings for JCCP 4761. The list of add-on cases subject to this order is also appended to this minute order.

The clerk shall serve this minute order on the Supervising Judge of the Civil Departments and on counsel for the Defendants. Defendants are ordered

MINUTES ENTERED
12/15/17
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/15/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

JCCP4761

Plaintiff

Counsel

Coordination Proceeding Special
Title Rule (3.550)

NO APPEARANCES

Defendant

Counsel

Lipitor Cases

NATURE OF PROCEEDINGS:

to comply with CRC 3.529(a) by filing the order in each included action, serving the order on each party appearing in an included action, and submitting it to the Chair of the Judicial Council.

A Status Conference in the JCCP proceeding is set for January 30, 2018, at 2:30 p.m. in Department 309. Five court days before the status conference, counsel shall file a joint status report addressing a discovery plan for this phase of the litigation and any legal issues that should be determined by motion early in the litigation.

The Court further notes that counsel for Plaintiffs in the JCCP proceeding has filed a Notice on November 29, 2017, listing additional cases (from Los Angeles Superior Court and from other counties) that share common questions of fact and law with the cases identified in the Nov. 17, 2017 Request of the Supervising Judge of the Civil Departments. The joint status report shall address the parties' respective positions as to whether it will be necessary for Judge Weintraub and the Presiding Judges of the other Superior Courts with pending Lipitor cases to file requests with this court to have the cases added-on to the proceeding, or whether this court by issuance of an order to show cause may solicit objections from the parties sufficient to allow the court to determine whether there is objection and, if none, to add on

<p align="center">MINUTES ENTERED 12/15/17 COUNTY CLERK</p>

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/15/17

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE
E. MUNOZ, C.A.

DEPUTY CLERK

HONORABLE
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

JCCP4761

Plaintiff

Counsel

Coordination Proceeding Special
Title Rule (3.550)

NO APPEARANCES

Defendant

Counsel

Lipitor Cases

NATURE OF PROCEEDINGS:

additional cases as this court deems appropriate

**CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6**

I, the below named Executive Officer/Clerk of the above entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the 12/15/17 Minute Order entered herein, on 12/15/17, upon each party or counsel of record in the above entitled action, by electronically serving the document on Case Anywhere at www.CaseAnywhere.com on 12/15/17 from my place of business, Central Civil West Courthouse, 600 South Commonwealth Avenue, Los Angeles, California 90005 in accordance with standard court practices.

Dated: December 15, 2017

Sherrri R. Carter, Executive Officer/Clerk

By: _____, Deputy Clerk

J. Manrique

Candacy Roberts-Anderson, et al. v. Pfizer Inc., et al.	BC536941
Darlene Jordan, et al. v. Pfizer Inc., et al	BC536930
Deberah Rivington, et al. v. Pfizer Inc., et al	BC536942
Emma Frields, et al. v. Pfizer Inc., et al.	BC536932
Fiette Williams, et al. v. Pfizer Inc., et al.	BC536934
Juanita Banks, et al. v. Pfizer Inc., et al	BC536936
Linda Roy, et al. v. Pfizer Inc., et al.	BC536940
Loretta Curley, et al. v. Pfizer Inc., et al.	BC536939
Marilyn Williams, et al. v. Pfizer Inc., et al.	BC536935
Ouida Valentine, et al. v. Pfizer Inc., et al.	BC537052
Ruth English, et al. v. Pfizer Inc., et al.	BC536937
Segalilt Siegel, et al. v. Pfizer Inc., et al.	BC536933
Tomie Isrel, et al. v. Pfizer Inc., et al.	BC536931

Zurita Gray, et al. v. Pfizer Inc., et al	BC536938
Denelle Bailey, et. al v. Pfizer Inc., et al	BC537407
Blanca Mejia, et al. v. Pfizer Inc., et al.	BC537851
Lena Whitaker, et al. v. Pfizer Inc., et al.	BC537924
Maria Carbajal, et al v. Pfizer Inc., et al.	BC538103
Rose A. Williams, et al. v. Pfizer Inc., et al.	BC537852
Tonisha Powell, et al. v. Pfizer Inc., et al.	BC537850
Alida Adamyan, et al. v. Pfizer Inc., et al.	BC538067
Linda Franzone, et al v. Pfizer Inc., et al.	BC538104
Regina Ferberdino, et al. v. Pfizer Inc., et al.	BC538066
Ruby Hare, et al. v. Pfizer Inc., et al.	BC537836
Shirley Reynolds, et al. v. Pfizer Inc., et al	BC537946
Elizabeth Ann Watts, et al v. Pfizer Inc., et al.	BC538131
Williams, Jewel, et al v. Pfizer Inc., et al	BC539180

Helen Elliott, et al. v. Pfizer, Inc., et al.	BC554988
Bessie Barringer, et al. v. Pfizer, Inc., et al.	BC640576
Elizabeth Debay et al. v. Pfizer, Inc. et al.	BC620597
Genevieve Monreal, et al. v. Pfizer, Inc., et al.	BC620308
Gloria Ashley, et al. v. Pfizer, Inc. et al.	BC597288
Joni Boles, et al. v. Pfizer, Inc., et al.	BC632342
Jonna Roberts, et al. v. Pfizer, Inc. et al.	BC609198
Josefina Allison, et al. v. Pfizer, Inc., et al.	BC638755
Judith Smalley, et al. v. Pfizer, Inc., et al.	BC571105
Mary Baker, et al. v. Pfizer, Inc., et al.	BC642382
Mildred Lois Brown, et al. v. Pfizer, Inc., et al.	BC627217
Mixdalia Taime, et al. v. Pfizer, Inc., et al.	BC595160
Myrle Jackson, et al. v. Pfizer, Inc., et al.	BC622449
Lawana Smith, et al. v. Pfizer, Inc. et al.	BC617993
Robyn Whitney, et al. v. Pfizer Inc., et al.	BC573889
Rose Carpenter, et al. v. Pfizer, Inc., et al.	BC631286

Ruth Yaker, et al. v. Pfizer, Inc. et al.	BC593129
Sharal Scully, et al. v. Pfizer, Inc., et al.	BC625835
Shari Beneda, et al. v. Pfizer, Inc., et al.	BC583448
Joan Alston, et al. v. Pfizer, Inc., et al.	BC630499
Cynthia Davis, et al. v. Pfizer, Inc., et al.	BC631285
Sharon Campbell, et al. v. Pfizer, Inc., et al.	BC623414
Shary Stegall, et al. v. Pfizer, Inc., et al.	BC585392
Theresa Bagliere, et al. v. Pfizer, Inc., et al.	BC615571
Norma Adatan, et al. v. Pfizer, Inc., et al.	BC637353
Vivia Artz, et al. v. Pfizer, Inc., et al.	BC635793
Dena Blackmore, et al. v. Pfizer, Inc. et al.	BC643523
Sylvia Alvarado, et al. v. Pfizer Inc., et al	BC645073
Amal Jones, et al. v. Pfizer, Inc.	BC645186
Marline Tillery, et al. v. Pfizer, Inc.	BC645478
Maria Xochrhua, et al. v. Pfizer, Inc.	BC647065
Patsy Wood, et al. v. Pfizer, Inc., et al.	BC652781
Patricia Alexander, et al. v. Pfizer Inc., et al	BC659589

Venicia Avila, et al. v. Pfizer Inc., et al.	BC664367
Carolyn Davis, et al. v. Pfizer, Inc., et al.	BC648688

EXHIBIT 5

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/30/18

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE

DEPUTY CLERK

E. MUNOZ, C.A.

HONORABLE
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

JCCP4761

Plaintiff

Counsel

Coordination Proceeding Special
Title Rule (3.550)

NO APPEARANCES

Defendant

Counsel

Lipitor Cases

NATURE OF PROCEEDINGS:

COURT ORDER RE ADD-ON CASES AND JOINT MOTION TO STAY
THE COLLECTION OF ADDITIONAL COMPLEX CASE FILING FEES

On December 15, 2017, the Court ordered cases listed in Attachment A to the Nov. 20, 2017 Supervising Judge's Request to be added on to this coordinated proceeding. In that minute order the court also asked the parties to address whether additional pending Lipitor cases could be added on without a request from the relevant Supervising Judge or Presiding Judge where the case was pending. In response, the parties have agreed that this Court, sua sponte, may add on to this coordinated proceeding cases that raise similar issues involving the drug Lipitor. The parties prepared a Proposed Order listing additional cases of which they are aware. The court has signed the Proposed Order and it is ordered filed this date.

The clerk shall serve the Order on counsel for the Defendants. Counsel for the Defendants, pursuant to CRC 3.544(d) and 3.529, shall file the Order in each action listed in Exhibit A to the Order, serve it on each party appearing in each such action and submit the Order to the Chair of the Judicial Council.

The parties also have filed a Joint Motion to Stay the Collection of Additional Complex Case Filing Fees, asking for collection of fees to cease in

MINUTES ENTERED
01/30/18
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/30/18

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE

DEPUTY CLERK

E. MUNOZ, C.A.

HONORABLE
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

JCCP4761

Plaintiff

Counsel

Coordination Proceeding Special
Title Rule (3.550)

NO APPEARANCES

Defendant

Counsel

Lipitor Cases

NATURE OF PROCEEDINGS:

light of Defendants' anticipated action of removing the cases to federal court. The Court declines to grant that relief. It has been a burdensome task for the court staff to find the files of cases that were "in limbo" during the pendency of the Lipitor cases in federal court once the cases were remanded back to state court. A significant number of cases that involve Lipitor were filed but were not added on to the coordinated proceeding prior to the previous removal. Locating and organizing these files after remand and reassignment to a new coordination trial judge involved substantial court time and staff overtime. Since January 1 of this year, over 80 dismissals of individual plaintiffs in the Lipitor cases have been filed and approximately 20 notices of lien have been filed. Because multiple plaintiffs are named in each case, the entry of individual dismissals is a time-consuming process. Moreover, the court must maintain the files after the cases have been removed (assuming Defendants do so) so that litigation may move forward in the event of remand. As counsel are aware, the Complex Litigation courts will be moving to a new location in a few months. Even though the Lipitor cases may be pending in federal court, their files need to be transported to a new location in state court. Given the court time expended and to be expended on these coordinated cases, it would not be equitable to the court system to stay collection of complex fees as to the complex cases coordinated in this JCCP

<p align="center">MINUTES ENTERED 01/30/18 COUNTY CLERK</p>

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/30/18

DEPT. 309

HONORABLE CAROLYN B. KUHL

JUDGE

J. MANRIQUE

DEPUTY CLERK

E. MUNOZ, C.A.

HONORABLE
ADD-ON

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NOT REPORTED

Reporter

JCCP4761

Plaintiff

Counsel

Coordination Proceeding Special
Title Rule (3.550)

NO APPEARANCES

Defendant

Counsel

Lipitor Cases

NATURE OF PROCEEDINGS:

proceeding.

Counsel for the Defendants shall give notice.

**CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6**

I, the below named Executive Officer/Clerk of the above entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the 01/30/18 Minute Order entered herein, on 01/30/18, upon each party or counsel of record in the above entitled action, by electronically serving the document on Case Anywhere at www.CaseAnywhere.com on 1/30/18 from my place of business, Central Civil West Courthouse, 600 South Commonwealth Avenue, Los Angeles, California 90005 in accordance with standard court practices.

Dated: January 30, 2018

Sherrri R. Carter, Executive Officer/Clerk

By: _____, Deputy Clerk

J. Manrique

**MINUTES ENTERED
01/30/18
COUNTY CLERK**

EXHIBIT 6

FILED
Superior Court of California
County of Los Angeles

JAN 30 2018

Sherri R. Carter, Executive Officer/Clerk

By Jan Josef Manrique, Deputy
Jan Josef Manrique

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST

COORDINATION PROCEEDING
SPECIAL TITLE (RULE 3.550)

Case No. JCCP 4761

LIPITOR CASES

~~PROPOSED~~ ORDER RE ADD-ON
CASES

This document relates to:

Judge: Carolyn B. Kuhl
Dept: 309

ALL CASES

RECEIVED
Central Civil West
JAN 24 2018
Date Processed
By: _____

NATURE OF PROCEEDINGS:
COURT ORDER RE ADD-ON CASES

After consideration of the record and the pleadings, this Court, as coordination trial judge, adds-on to this coordinated proceeding, JCCP 4761, the list of cases appended to this minute order in Attachment A.

The clerk shall serve this minute order on ~~the Supervising Judge of the Civil Departments~~ and on counsel for the Defendants. Defendants are ordered to comply with CRC 3.529(a) by filing the order in each included action, serving the order on each party appearing in an included action, and submitting it to the Chair of the Judicial Council.

CMK

~~PROPOSED~~] ORDER RE ADD-ON CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SO ORDERED.

DATED: Jan. 30, 2018



Hon. Carolyn B. Kuhl
Judge of the Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Certificate of Electronic Service
Code of Civil Procedure 1010.6

I, the below named Executive Officer/Clerk of the above entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order RE Add-on Cases ~~Minute Order~~ entered herein, on 01/30/18, upon each party or counsel of record in the above entitled action, by electronically serving the document on Case Anywhere at www.CaseAnywhere.com on 01/30/18 from my place of business, Central Civil West Courthouse, 600 South Commonwealth Avenue, Los Angeles, California 90005 in accordance with standard court practices.

Dated: January 30, 2018
Sherri R. Carter, Executive Officer/Clerk
By: [Signature], Deputy Clerk
J. Manrique

EXHIBIT A

Adamian, Mary et al v. Pfizer Inc, et al.	BC537296
Alanis, Maria et al v. Pfizer Inc, et al.	13-CE-CG02977
Alberstone, Maye et al v. Pfizer Inc, et al.	BC537393
Alexander-Jackson, Luretta et al v. Pfizer Inc, et al.	BC537893
Anderson, Gladys et al v. Pfizer Inc, et al.	BC538088
Andres, Dorothy et al v. Pfizer Inc, et al.	BC537635
Antonelli, Carole, et al. v. Pfizer	BC655821
Avila, Vicky et al v. Pfizer Inc, et al.	BC537532
Azzam, Mazal et al v. Pfizer Inc, et al.	BC537600
Bagdasarian, Clara et al v. Pfizer Inc, et al.	BC537311
Baker, Tonya et al v. Pfizer Inc, et al.	BC635991
Banks, Patricia et al v. Pfizer Inc, et al.	BC537645
Batista, Antonia v. Pfizer Inc, et al.	BC669583

Beima, Phyllis et al v. Pfizer Inc, et al.	BC537770
Benons, Maizy et al v. Pfizer Inc, et al.	BC537848
Bowser, Martha v. Pfizer Inc, et al.	BC537143
Bradley, Michelle et al v. Pfizer Inc, et al.	BC558396
Brooks, Teresa et al v. Pfizer Inc, et al.	BC619090
Brown, Angela et al v. Pfizer Inc, et al.	BC667266
Brown, Frankie et al v. Pfizer Inc, et al.	BC536012
Harris, Dorthy-Byrd et al. v. Pfizer	BC674644
Calabretta, Adelle et al v. Pfizer Inc, et al.	BC537652
Caro, Amy et al v. Pfizer Inc, et al.	BC582062
Chaffee, Vicky et al v. Pfizer Inc, et al.	BC629051
Choate, Doris et al v. Pfizer Inc, et al.	BC537844
Clemente Salvo, Jocelyn et al v. Pfizer Inc, et al.	BC536162

Collins, Kim et al v. Pfizer Inc, et al.	BC552092
Constant, Marion v. Pfizer Inc, et al.	BC537142
Davis, Kathleen v. Pfizer Inc, et al.	CGC4-537611
Davis, Michelle et al v. Pfizer Inc, et al.	BC586171
Dearmore, Wanda et al v. Pfizer Inc, et al.	BC536754
Diaz, Imelda et al v. Pfizer Inc, et al.	BC537248
Dow, Ravyne et al v. Pfizer Inc, et al.	BC533634
Fernandez, Bernadette et al v. Pfizer Inc, et al.	BC537531
Garcia, Juana et al v. Pfizer Inc, et al.	BC537846
Garcia, Priscilla et al v. Pfizer Inc, et al.	BC593065
Gibson, Barbara et al v. Pfizer Inc, et al.	BC627824
Harris, Louise et al v. Pfizer Inc, et al.	BC537346
Hill, Jessie et al v. Pfizer Inc, et al.	BC537845

Hodges, Rose et al v. Pfizer Inc, et al.	BC537348
Jamshidi, Pari et al v. Pfizer Inc, et al.	BC605794
Johnson, Brenda et al v. Pfizer Inc, et al.	BC537046
Wilson, Gloria et al v. Pfizer Inc, et al.	BC580553
Johnson-Wilson, Granieta et al v. Pfizer Inc, et al.	BC560896
Kelley, Susan et al v. Pfizer Inc, et al.	BC537297
Kessler, Jeri et al v. Pfizer Inc, et al.	BC537074
Kessner, Bonnie et al v. Pfizer Inc, et al.	BC537298
King, Mattie et al v. Pfizer Inc, et al.	BC537847
Kloss, Judy et al v. Pfizer Inc, et al.	BC564968
Kruenegel, Donna et al v. Pfizer Inc, et al.	BC537292
Lessem, Rachel et al v. Pfizer Inc, et al.	BC652140
Little, Loretta et al v. Pfizer Inc, et al.	HG14-714753

Lorentzen, Susan et al v. Pfizer Inc, et al.	BC677995
Lubniewski, Joyce v. Pfizer Inc, et al.	BC537410
McClain, Deborah et al v. Pfizer Inc, et al.	BC537313
McKenzie, Pamela et al v. Pfizer Inc, et al.	BC537271
Medina, Theresa et al v. Pfizer Inc, et al.	BC537314
Mehta, Pallavi et al v. Pfizer Inc, et al.	BC537045
Miller, Judy et al v. Pfizer Inc, et al.	BC536855
Obuch, Nina et al v. Pfizer Inc, et al.	BC536974
Owens, Clara et al v. Pfizer Inc, et al.	BC537002
Owhady, Shahla et al v. Pfizer Inc, et al.	BC535854
Parker, Sharon et al v. Pfizer Inc, et al.	1311371
Perlhefter, Anita et al v. Pfizer Inc, et al.	BC592059
Peters, Annette v. Pfizer Inc, et al.	CGC4-537609

Pierce, DeAnn v. Pfizer Inc, et al.	BC537141
Queen, Aleene et al v. Pfizer Inc, et al.	BC611182
Quillin, Kay et al v. Pfizer Inc, et al.	BC666508
Richard, Deloris Ann et al v. Pfizer Inc, et al.	BC535893
Robinson, Janice et al v. Pfizer Inc, et al.	BC536358
Rouda, Marilyn v. Pfizer Inc, et al.	CGC4-537608
Sanchez, Ann et al v. Pfizer Inc, et al.	BC568284
Santiago, Magda et al v. Pfizer Inc, et al.	BC576975
Scott, Elaine et al v. Pfizer Inc, et al.	BC556545
Sims-Lewis, Willie et al v. Pfizer Inc, et al.	BC537470
Smith, Nadine et al v. Pfizer Inc, et al.	BC594196
St. Jean, Pauline et al v. Pfizer Inc, et al.	BC589684
Stark, Patricia v. Pfizer Inc, et al.	RG14719217

Stevens, Betty et al v. Pfizer Inc, et al.	BC599866
Watson, Linda et al v. Pfizer Inc, et al.	BC553501
Weaver, Sylvia v. Pfizer Inc, et al.	43259
Weisman, Lori Ann et al v. Pfizer Inc, et al.	BC536163
Williams, Chasa v. Pfizer Inc, et al.	CIVDS1312865
Williams, Julie et al v. Pfizer Inc, et al.	BC573918
Williams, Patricia et al v. Pfizer Inc, et al.	BC627979
Willis, Donna v. Pfizer Inc, et al.	BC537140
Yudson, Emilyya et al v. Pfizer Inc, et al.	BC604980
Zullo, Joy et al v. Pfizer Inc, et al.	BC537849

EXHIBIT 7

JS-6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

IN RE LIPITOR

Case No.: CV 18-01725-CJC(JPRx)

**ORDER GRANTING PLAINTIFFS’
MOTION TO REMAND**

I. INTRODUCTION

This action involves 156 lawsuits filed in California state court by more than 4,300 Plaintiffs who allege that use of the drug Lipitor caused them to suffer from Type II diabetes. On March 1, 2018, Defendant Pfizer, Inc. (“Pfizer”), removed the lawsuits to this Court based on “mass action” jurisdiction pursuant to the Class Action Fairness Act (“CAFA”). This was Pfizer’s second removal of many of the lawsuits to federal court. Pfizer first removed the cases beginning on March 12, 2014, but on May 23, 2017, the Court found that removal was improper under CAFA and remanded the cases back to

1 state court. Specifically, the Court found that 100 or more Plaintiffs had not proposed
2 that their cases be tried jointly as is required for mass action jurisdiction. (*See In re:*
3 *Pfizer*, Case No. SAMC 17-00005-CJC-JPRx at Dkt. 20 [hereinafter, “May 23, 2017
4 Order”].)

5
6 Pfizer claims that since the Court remanded the lawsuits, new developments have
7 occurred that justify another removal of the cases to federal court based on mass action
8 jurisdiction. (Dkt. 1 [Notice of Removal] at 2.) Plaintiffs disagree and have filed a
9 motion to remand. (Dkt. 56 [hereinafter, “Mot.”].) After considering the record and
10 arguments presented by the parties, the Court GRANTS Plaintiffs’ motion to remand.
11 Again, there has been no proposal for a joint trial involving 100 or more plaintiffs as
12 required under CAFA.¹

13 14 **II. BACKGROUND**

15 16 **A. Original Remand**

17
18 Plaintiffs are 4,321 individuals who are party to 156 separate lawsuits filed in
19 California state court. (Dkts. 1 at 1, 1-2 at Ex. A.) Plaintiffs allege that Lipitor, a
20 prescription drug developed and manufactured by Pfizer, and marketed and distributed by
21 McKesson Corporation, caused them to suffer from Type II diabetes. (*See* Dkt. 1-2 at
22 Ex. B-1.)

23
24 Beginning in March 2014, Pfizer removed the lawsuits to this Court, invoking the
25 mass action provision of CAFA. (Mot. at 2.) The mass action provision extends federal
26

27
28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for May 21, 2018, at 1:30 p.m. is hereby vacated and off calendar.

1 removal jurisdiction to civil cases where the claims of 100 or more plaintiffs “are
2 proposed to be tried jointly.” 28 U.S.C. § 1332(d)(11)(B)(i). On May 23, 2017, the
3 Court found that removal under the mass action provision was improper, and granted
4 Plaintiffs’ motion to remand. (May 23, 2017 Order.) The Court explained that only 65
5 Plaintiffs had proposed a joint trial by joining or seeking to join a petition to coordinate
6 their cases in a Joint Council Coordinated Proceeding (“JCCP”) pursuant to California
7 Code of Civil Procedure section 404. (*Id.* at 11.) The Court held that the 65 Plaintiffs
8 who voluntarily sought to join the JCCP had proposed a joint trial, but because 100
9 Plaintiffs had not done so, the requirements of mass action jurisdiction were not met. (*Id.*
10 at 10–11.) Pfizer appealed this order, but the Ninth Circuit denied review.

11 12 **B. Plaintiffs Attempt to Amend the JCCP Procedure**

13
14 On June 27, 2017, back in California state court, Plaintiffs made a request to
15 amend the procedure by which Plaintiffs could join the JCCP. (Mot. at 3.) Plaintiffs
16 wanted to clarify that by joining the JCCP, they sought to coordinate pretrial proceedings
17 but were not proposing a joint trial. (*Id.*) Pfizer opposed this request and argued that it
18 conflicted with California’s coordination statute, California Code of Civil Procedure
19 section 404. (Dkt. 56-5.) On August 4, 2017, the JCCP court, Judge Carolyn Kuhl,
20 issued an order declining to implement Plaintiffs’ requests. (*See* Dkt. 56-11.) In her
21 order, Judge Kuhl explained that she “does not have . . . a stake in how the federal courts
22 interpret CAFA.” (*Id.* at 3.) Nevertheless, she noted that it was appropriate to explain
23 the coordination procedures of her court to aid federal courts “seek[ing] to understand
24 California state court coordination procedures in order to apply federal law.” (*Id.* at 3–4.)
25 Judge Kuhl then proceeded to explain the following procedures:

26
27 California law contemplates that cases will be coordinated for all purposes,
28 not merely for pretrial proceedings. (Code of Civil Procedure section 404.1.) California procedure for coordinated cases differs in this respect

1 from federal multidistrict litigation procedures. In MDL proceedings, cases
2 must be returned to the federal district where they were originally filed when
3 the case is ready to begin trial. (28 U.S.C. section 1407.) [. . .]
4 Nevertheless, the fact that the [state court] coordination trial judge has the
5 authority to try coordinated cases herself does not mean that the coordination
6 trial judge will conduct the trial in all (or even some) of the coordinated
7 cases, and assuredly does not mean that the coordinated cases will be tried
8 together, either at the same time or before one jury. Coordination is a very
9 flexible structure for case management. The ultimate goal for the
10 coordination trial judge is to manage the coordinated complex cases in
11 accordance with the complex case management rules so as to expedite the
12 case, keep costs reasonable, and promote effective decision making by the
13 court, the parties and counsel. (CRC 3.400(a).) [. . .] The ultimate
14 determination of which cases in a coordinated proceeding will be tried by
15 the coordination trial judge is dictated by promotion of the ends of justice.

16
17
18
19
20
21
22
23
24
25
26
27
28

(*Id.* at 3–5.) Judge Kuhl then explained that where, as here, the cases involved thousands of plaintiffs alleging injuries against pharmaceutical manufacturers, coordinated proceedings have never led to joint trials:

In the 17 years since the Complex Litigation Program has been in place in California, this court is unaware of any instance in which the claims of more than one party allegedly injured by taking a pharmaceutical product have been tried at the same time or to the same jury, except in wrongful death cases where the claims of the survivors of one injured person have been tried together. Coordinated proceedings involving cases against pharmaceutical manufacturers have included more than 10,000 plaintiffs in some instances. If bellwether trials (as well as pretrial definition of issues) are unsuccessful in guiding the parties to inventory settlements, it has always been clear to the judges of the Complex Litigation Program that the coordination trial judge will have to remand cases for trial by the court in which the action was pending at the time of coordination. No single judge can conduct so many trials, and to attempt to do so would deprive plaintiffs of timely adjudication of their claims.

(*Id.* at 7–8.)

C. Plaintiffs Attempt to Relate Cases

After Judge Kuhl declined to amend the procedure for Plaintiffs to join the JCCP, Plaintiffs tried a different approach to coordinate the cases. On October 25, 2017, Plaintiffs filed a motion to relate 62 of the cases in which a Notice of Related Case had been filed. (Dkt. 56-13.) Plaintiffs argued that relating the cases would allow Judge Kuhl to coordinate the cases without formally adding them to the JCCP. (*Id.* at 3.) Plaintiffs also requested that Judge Kuhl decline to order *sua sponte* that the cases be coordinated, as doing so would cause Pfizer to remove the cases to federal court. (*Id.* at 3 n.5.) On November 21, 2017, Judge Kuhl denied Plaintiffs' motion, in part because a JCCP had already been established for the cases. (Dkt. 58-1.)

D. The JCCP Court *Sua Sponte* Adds Cases to the JCCP

A few days before Judge Kuhl denied Plaintiffs' motion, on November 17, 2017, Judge Debra Weintraub, the Supervising Judge of the Civil Department of the Los Angeles County Superior Court, entered an order requesting that Judge Kuhl add 62 of the cases—the same 62 that Plaintiff wanted to relate—to the JCCP. (Dkt. 56-15.) Judge Weintraub noted that no party has requested the cases be added to the JCCP, but recommended coordination because it would be “extremely burdensome” for the state court to handle the cases outside of a coordinated proceeding. (*Id.* at 3.)

On November 20, 2017, following Judge Weintraub's order, Judge Kuhl directed the parties, pursuant to California Rule of Court 3.544, to serve any opposition to Judge Weintraub's request within 10 days. (Dkt. 56-17.) On November 29, 2017, Plaintiffs filed a response. (Dkt. 56-19.) Plaintiffs did not indicate whether they objected to Judge Weintraub's request. (*Id.*) Instead, Plaintiffs informed Judge Kuhl that “Judge Weintraub's request included only a partial list of all pending California state court

1 Lipitor cases,” and attached a list of 81 additional cases. (*Id.*) Plaintiffs claim that they
2 did not expressly oppose Judge Weintraub’s order because they considered the order a
3 “de facto denial” of their request to refrain from *sua sponte* coordination. (Mot. at 12–
4 13.) Pfizer did not file any response.

5
6 On December 15, 2017, Judge Kuhl issued an order granting Judge Weintraub’s
7 request, noting no opposition had been filed, and adding the 62 cases to the JCCP. (Dkt.
8 56-20.) Judge Kuhl also directed the parties to address whether the additional cases
9 Plaintiffs had identified could be added to the JCCP. (*Id.* at 2.) On January 16, 2018, the
10 parties filed a joint status report stating that they do not oppose adding the cases Plaintiffs
11 identified to the JCCP. (Dkt. 56-21.) The parties clarified, however, that “[n]othing in
12 this agreement shall be construed as a waiver of a party’s right to remove under CAFA’s
13 mass action provision, nor shall this filing in and of itself be construed as a triggering
14 event for CAFA mass action jurisdiction or otherwise as a ‘proposal’ for a ‘joint trial.’”
15 (*Id.* at 2.) On January 30, 2018, Judge Kuhl issued an order *sua sponte* adding an
16 additional 88 cases to the JCCP. (Dkt. 58-3.)

17
18 Based on these *sua sponte* orders, Pfizer re-removed the JCCP to this Court on
19 March 1, 2018. (Dkt. 1.) Pfizer’s position is that the state court orders, which joined the
20 cases of more than 4,000 Plaintiffs to the JCCP, resulted in a proposal for a joint trial and
21 triggered mass action removal under CAFA. (*See generally* Dkt. 58 [Opposition,
22 hereinafter “Opp.”].) Plaintiffs contend that re-removal of the cases was improper
23 because a judge’s *sua sponte* order can never constitute a proposal for a joint trial, and
24 even if a *sua sponte* order could constitute a proposal for a joint trial, the orders at issue
25 here did not make such a proposal.² (*See generally* Mot.)

26
27 ² Plaintiffs also attempt to invoke 28 U.S.C. § 1332(d)(11)(B)(ii)(II), which excludes defendant-
28 initiated proposals for joint trials from “mass actions.” Plaintiffs contend that Pfizer, the defendant,
proposed the coordination of the lawsuits here because it failed to object to Judge Kuhl’s orders. (Mot.
at 27–30.) This argument is without merit. A “proposal” is a “voluntary and affirmative act.” *Briggs v.*

III. ANALYSIS

CAFA confers federal subject matter jurisdiction over “mass actions,” which are defined as “any civil action . . . in which monetary relief claims of *100 or more persons are proposed to be tried jointly* on the ground that the plaintiffs’ claims involve common questions of law or fact.” 28 U.S.C. § 1332(d) (emphasis added). “The statute excludes from the ‘mass action’ definition actions in which ‘the claims are joined upon motion of a defendant,’ or in which ‘the claims have been consolidated or coordinated solely for pretrial proceedings.’” *Briggs*, 796 F.3d at 1042 (citing 28 U.S.C. § 1332(d)(11)(B)(ii)).

Plaintiffs in a mass action, unlike in a class action, do not seek to represent the interests of parties not before the court. *Tanoh v. Dow Chem. Co.*, 561 F.3d 945, 953 (9th Cir. 2009). However, a mass action “shall be deemed to be a class action” removable to federal court, as long as the rest of CAFA’s jurisdictional requirements, including an aggregate amount in controversy above \$5 million and minimal diversity, are met. *Id.* “Although CAFA[] extends federal diversity jurisdiction to both class actions and certain mass actions, the latter provision is fairly narrow. As noted above, CAFA’s ‘mass action’ provision applies only to civil actions in which the ‘monetary relief claims of 100 or more persons are proposed to be tried jointly.’” *Id.*

A. A Court’s *Sua Sponte* Order is Not a Proposal for a Joint Trial

The parties dispute *who* must propose a joint trial so as to trigger mass action jurisdiction. Specifically, the parties dispute whether a judge, who acts *sua sponte* to coordinate cases, can trigger the jurisdictional requirement. Plaintiffs contend that only a proposal by *the plaintiffs*, and not a judge’s *sua sponte* order, can trigger the jurisdictional

Merck Sharp & Dohme, 796 F.3d 1038, 1048 (9th Cir. 2015). Pfizer’s mere failure to object does not constitute an “affirmative” act.

1 requirement. On the other hand, Pfizer argues that a judge’s *sua sponte* order can trigger
2 mass action jurisdiction. The Ninth Circuit has so far declined to resolve this question.
3 *Tanoh*, 561 F.3d at 956 (“We express no opinion as to whether a state court’s *sua sponte*
4 joinder of claims might allow a defendant to remove separately filed actions to federal
5 court as a single ‘mass action’ under CAFA.”); *see also Briggs*, 796 F.3d at 1048
6 (declining to decide whether “a proposal by a state court for a joint trial would qualify as
7 a ‘proposal’ under [CAFA]”).

8
9 The Court finds that a state court’s *sua sponte* order cannot “propose” a joint trial
10 to trigger mass action jurisdiction. The Court’s interpretation of a statute starts with the
11 text. *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (“The starting point in discerning
12 congressional intent is the existing statutory text.”). “[B]y its plain language, CAFA’s
13 ‘mass action’ provisions apply only to civil actions in which ‘monetary relief claims of
14 100 or more persons are *proposed* to be tried jointly.’” *Tanoh*, 561 F.3d at 956 (quoting
15 28 U.S.C. § 1332(d)(11)(B)(i))(emphasis added). To “propose,” in its ordinary sense,
16 means “to offer for consideration, discussion, acceptance, or adoption.” *Briggs*, 796 F.3d
17 at 1048 (quoting Webster’s Third New International Dictionary 1819 (2002)). A judge’s
18 *sua sponte* order does not make a proposal—it does not make an offer to be accepted or
19 rejected. Instead, an “order” is “a command or direction authoritatively given.” Black’s
20 Law Dictionary online (2nd ed.). To say that a court order constitutes a “proposal”
21 distorts and unjustifiably broadens the straightforward meaning of that word.

22
23 The Court’s interpretation is also supported by the cases that have addressed this
24 issue. For example, in *Koral v. Boeing Co.*, 628 F.3d 945, 946–47 (7th Cir. 2011), the
25 Seventh Circuit indicated that a “state court’s deciding on its own initiative to conduct a
26 joint trial would not enable removal” under CAFA, because “[t]hat would not be a
27 proposal.” The Seventh Circuit expressly acknowledged that it was answering the
28 question left open by the Ninth Circuit of who could make a “proposal” for a joint trial to

1 confer mass action jurisdiction. *Id.* (citing *Tanoh*, 561 F.3d at 956). At least one district
2 court in this District, relying on the Seventh Circuit’s opinion in *Koral* and the plain
3 language of the statute, has reached the same result. *Alexander v. Bayer Corp.*, No. CV-
4 16-6822-MWF (MRW), 2016 WL 6678917, at *3 (C.D. Cal. Nov. 14, 2016), *appeal*
5 *dismissed*, No. 17-55828, 2017 WL 6345791 (9th Cir. July 10, 2017) (“[T]he Court
6 agrees with Plaintiffs that a state court’s *sua sponte* consolidation of cases should not
7 automatically entitle Defendants to federal jurisdiction notwithstanding Plaintiffs’
8 attempts to remain in state court.”).

9
10 Pfizer points to the Tenth Circuit decision in *Parson v. Johnson & Johnson*, 749
11 F.3d 879 (10th Cir. 2014), and the Eleventh Circuit decision in *Scimone v. Carnival*
12 *Corp.*, 720 F.3d 876, 881 (11th Cir. 2013), to support its contrary interpretation. (Opp. at
13 10.) But those cases are inapposite. The Tenth Circuit and the Eleventh Circuit merely
14 indicate, like the Ninth Circuit has, that the issue remains an open question. *Parson*, 749
15 F.3d at 887 (“CAFA . . . does not specify who can make such a proposal—the plaintiffs
16 only, or the district court through an order of consolidation or coordination.”); *Scimone*,
17 720 F.3d at 881 (“We leave open the possibility that the state trial judge’s *sua sponte*
18 consolidation of 100 or more persons’ claims could satisfy the jurisdictional requirements
19 of [CAFA].”). The Court does not construe these cases, which expressly decline to
20 decide the issue, as supporting Pfizer’s position.

21 22 **B. The Coordinated Proceeding is Not a Proposal for a Joint Trial**

23
24 Plaintiffs argue that the state court’s *sua sponte* orders here cannot confer mass
25 action jurisdiction for a separate reason—they do not contemplate a joint trial. (Mot. at
26 20–27.) Plaintiffs claim that, in light of Judge Kuhl’s prior orders and statements
27 describing how the coordinated cases would proceed, she clearly was not contemplating a
28 joint trial. (*Id.*) The Court agrees.

1 The sequence of events that occurred prior to Pfizer’s re-removal of the cases
2 demonstrates that the state court’s orders to coordinate the cases are not orders for a joint
3 trial. Shortly after this Court remanded the cases to state court on May 23, 2017,
4 Plaintiffs repeatedly attempted to clarify that their desire to coordinate their cases was for
5 pretrial purposes only and not a request for a joint trial. Plaintiffs tried to amend the
6 procedure for joining the JCCP and when they failed on that front, Plaintiffs tried to
7 coordinate the cases through notices of related cases. All along, Plaintiffs represented to
8 Judge Kuhl that they wanted to avoid taking any action that could be construed as a
9 proposal for a joint trial. Although Judge Kuhl did not grant Plaintiffs’ requests to amend
10 the JCCP procedure or to relate the cases, she indicated in her orders deep skepticism that
11 the cases here would be jointly tried. She explained that “the fact that the coordination
12 trial judge has the authority to try coordinated cases herself does not mean that the
13 coordination trial judge will conduct the trial in all (or even some) of the coordinated
14 cases, and assuredly does not mean that the coordinated cases will be tried together,
15 either at the same time or before one jury.” She stated that where, as here, the claims
16 arise out of injuries from pharmaceutical products, there has never been “any instance in
17 which the claims of more than one party . . . have been tried at the same time or to the
18 same jury.” And, she noted that in coordinated proceedings involving thousands of
19 plaintiffs, “[n]o single judge can conduct so many trials, and to attempt to do so would
20 deprive plaintiffs of timely adjudication of their claims.”

21
22 Given this backdrop, it defies common sense to suggest that Judge Kuhl’s
23 subsequent coordination of the cases constituted a proposal for a joint trial. “A proposal
24 for purposes of CAFA’s mass action jurisdiction, even an implicit proposal, is a
25 voluntary and affirmative act, and an intentional act. It is not a mere suggestion, and it is
26 not a mere prediction.” *Briggs*, 796 F.3d at 1048 (citations and quotations omitted).
27 When Judge Kuhl *sua sponte* ordered the cases be coordinated, she gave no indication
28 that the coordination would be for purposes of a joint trial. In other words, there was no

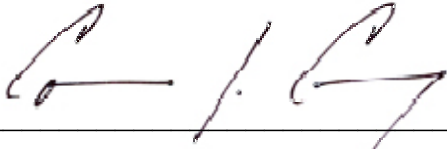
1 “voluntary and affirmative act” demonstrating that she was now deciding to rule against
2 Plaintiffs and to deviate from her own prior statements expressing doubt that a joint trial
3 of these cases would, or could, be held.

4
5 Pfizer claims that, because Judge Kuhl granted coordination of the cases pursuant
6 to California Code of Civil Procedure section 404.1, which provides that actions can be
7 coordinated “for all purposes,” the cases were coordinated for purposes of trial. (Opp. at
8 16.) But this argument invokes the California procedural rule in a vacuum and ignores
9 the series of events that occurred before the state court. The mere presence of the phrase
10 “for all purposes” in the rule providing for coordination does not mean Judge Kuhl was
11 reversing her prior position that a joint trial of these coordinated cases was unlikely, and
12 does not constitute a “voluntary and affirmative” act necessary to make a “proposal.”

13
14 **IV. CONCLUSION**

15
16 Because the state court’s orders coordinating the cases in this action are not a
17 proposal for a joint trial, the Court does not have subject matter jurisdiction under CAFA.
18 Accordingly, Plaintiffs’ motion to remand is GRANTED.

19
20
21
22 DATED: May 10, 2018

23
24 
25 _____
26 CORMAC J. CARNEY
27 UNITED STATES DISTRICT JUDGE
28