

No. _____

In the
Supreme Court of the United States

PFIZER, INC.,

Petitioner,

v.

ALIDA ADAMYAN, *et al.*,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Petition presents an important, unsettled, and recurring question concerning the “mass action” provisions of the Class Action Fairness Act (CAFA). Under CAFA, a removable “mass action” is a minimally diverse civil action in which the monetary 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)(11). The courts of appeals are divided as to whether a *sua sponte* proposal by a state court—as opposed to a proposal by plaintiffs—can trigger mass action removal. Here, Pfizer removed these cases involving more than 4,200 products liability plaintiffs following a California state court’s “Request” to coordinate them all before a single trial judge. But the district court remanded the litigation to state court based on its view that a state court’s proposal for joint trial cannot trigger removal under CAFA, and the Ninth Circuit declined to correct the district court’s misreading of the statute.

The question presented is whether a state court’s proposal to try jointly the claims of more than 100 plaintiffs can qualify for “mass action” removal under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(11).

PARTIES TO THE PROCEEDING

Petitioner Pfizer Inc. was defendant in the district court and petitioner before the Ninth Circuit. The 4,287 Respondents (set forth by name in the Addendum of Parties) were plaintiffs in the district court and respondents before the Ninth Circuit.

CORPORATE DISCLOSURE STATEMENT

Pfizer Inc. is a publicly traded company. No publicly held corporation owns 10% or more of its stock.

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PETITION FOR WRIT OF CERTIORARI

The Class Action Fairness Act (CAFA) permits defendants to remove “mass actions” where “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)(11)(B)(i). Although the statutory text does not specify who must “propose” the claims to be tried jointly—other than to exclude proposals by the defendant—the decisions below and an earlier decision by the Seventh Circuit have held that proposals by a state court cannot qualify for mass action removal. That conclusion squarely conflicts with CAFA’s text and purpose, as well as with the reasoning of the Tenth and Eleventh Circuits.

Congress’ phrasing of CAFA’s mass action provision in the passive voice and its specific exclusion of proposals from defendants are clear textual indications that *sua sponte* proposals by state courts can trigger removal. That plain reading of the text is consistent with the statute’s purpose of permitting defendants to remove significant actions of national importance to federal court. Nothing in law or logic supports the lower courts’ contrary conclusion. And this Court clearly has jurisdiction to review and reverse the erroneous legal conclusion embedded in the Ninth Circuit’s summary denial of permission to appeal on this important and recurring CAFA question. That is precisely what this Court did in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554-58 (2014), and *Standard Fire Insurance Co. v. Knowles*, 568 U.S. 588, 591, 595 (2013), and it is precisely what the Court should do here.

Indeed, because the Ninth Circuit has adopted procedures that are squarely at odds with CAFA's goal of promoting the development of case law through interlocutory review, this is an ideal case for this Court to exercise its jurisdiction. Thus, in order to bring the lower courts in line with CAFA's text and purpose, this Court should grant certiorari and reverse.

OPINIONS BELOW

The order of the Ninth Circuit denying rehearing *en banc* is unreported and reproduced at App.16-17. The order of the Ninth Circuit summarily denying permission to appeal is unreported and reproduced at App.1. The district court's order granting the Plaintiffs' motion to remand is unreported and reproduced at App.2-15.

JURISDICTION

On August 22, 2018, a two-judge panel of 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). App.1. On January 22, 2019, the Ninth Circuit denied Pfizer's petition for rehearing *en banc*. App.16-17. On April 2, 2019, Justice Kagan granted an extension to June 21, 2019 to file this petition for writ of certiorari. Dkt. No. 18A980. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

As enacted in Title 28 of the United States Code, CAFA provides, in pertinent part:

(A) For purposes of [28 U.S.C. § 1332(d)(11) and 28 U.S.C. § 1453], a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)

(i) As used in subparagraph (A), the term “mass action” means any civil action (except a civil action within the scope of section 1711(2)) 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, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term “mass action” shall not include any civil action in which—

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

28 U.S.C. § 1332(d)(11).

(c) Review of remand orders.—

(1) In general.—

Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not more than 10 days after entry of the order.

28 U.S.C. § 1453(c)(1).

STATEMENT OF THE CASE

A. CAFA's Mass Action Removal Provision

1. Congress enacted CAFA in 2005 to “ensur[e] Federal court consideration of interstate cases of national importance.” *Knowles*, 568 U.S. at 595 (quoting Pub. L. No. 109-2, § 2(b)(2), 119 Stat. 5

(2005)). It did so out of concern “that certain requirements of federal diversity jurisdiction . . . had functioned to keep cases of national importance in state courts rather than federal courts.” *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 165 (2014) (citation and quotation marks omitted). Specifically, Congress believed state courts were “acting in ways that demonstrated bias against out-of-State defendants and imposing burdens that hindered innovation and drove up consumer prices.” *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1752 (2019) (Alito, J., dissenting) (citation and quotation marks omitted). Because “our legal system takes seriously the risk that for certain cases, some neutral forums might be more neutral than others,” CAFA relaxed the jurisdictional requirements for removing class actions to federal court. *Id.* at 1751. Specifically, CAFA requires only that one plaintiff be diverse from one defendant and that the aggregate amount in controversy exceed \$5,000,000. 28 U.S.C. § 1332(d)(2); *AU Optronics*, 571 U.S. at 165-66. Whatever might be said of removal under traditional diversity theories, “no antiremoval presumption attends cases invoking CAFA,” which are to be decided in accordance with its purpose of “facilitat[ing] adjudication of certain class actions in federal court.” *Dart*, 135 S. Ct. at 550.

In addition to making most class actions removable, CAFA provides federal jurisdiction over statutorily defined “mass actions.” *AU Optronics*, 571 U.S. at 165. A mass action is “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)(11)(B)(i). Such actions are removable if they meet CAFA's relaxed diversity and amount-in-controversy requirements. *See id.* § 1332(d)(11)(A). In addition, CAFA expressly enumerates four carve-outs from mass action jurisdiction, including where claims are "consolidated or coordinated solely for pretrial proceedings" or "joined upon motion of a defendant." *Id.* § 1332(d)(11)(B)(ii). Thus, "[t]he mass action provision . . . functions largely as a backstop to ensure that CAFA's relaxed jurisdictional rules for class actions cannot be evaded by a suit that names a host of plaintiffs rather than using the class device." *AU Optronics*, 571 U.S. at 173.

2. The courts of appeals agree on the application of CAFA's mass action provision to certain circumstances. They are unanimous that a mass action results where *plaintiffs* propose that multiple actions involving more than 100 plaintiffs be joined for purposes of trial. Such proposals may be implicit—such as by invoking a coordination rule that provides for plenary trial authority, *see In re Abbott Laboratories, Inc.*, 698 F.3d 568, 572-73 (7th Cir. 2012), or by asking for joinder of more than 100 plaintiffs to avoid inconsistent judgments. *Atwell v. Bos. Sci. Corp.*, 740 F.3d 1160, 1165-66 (8th Cir. 2013). And the Ninth Circuit has held in a leading *en banc* decision that plaintiffs' proposal to join a coordinated proceeding like the one at issue here is a proposal for joint trial. *Corber v. Xanodyne Pharms., Inc.*, 771 F.3d 1218, 1223-25 (9th Cir. 2014) (*en banc*); *see also Lester v. Exxon Mobil Corp.*, 879 F.3d 582, 588 (5th Cir. 2018). In addition, based on CAFA's express language, the courts of

appeals are also unanimous that no mass action results where joinder of separate actions is solely based on the *defendant's* motion or suggestion. 28 U.S.C. § 1332(d)(11)(B)(ii); *Tanoh v. Dow Chem. Co.*, 561 F.3d 945, 953 (9th Cir. 2009); *Anderson v. Bayer Corp.*, 610 F.3d 390, 393-94 (7th Cir. 2010); *Scimone v. Carnival Corp.*, 720 F.3d 876, 882 (11th Cir. 2013); *Parson v. Johnson & Johnson*, 749 F.3d 879, 888 (10th Cir. 2014).

The courts of appeals are divided, however, on whether *sua sponte* court action may serve as a proposal for joint trial that triggers mass action removal. The Tenth and Eleventh Circuits have noted the passive construction of “proposed to be tried jointly” and suggested that a court’s *sua sponte* action qualifies for removal. *Scimone*, 720 F.3d at 882; *Parson*, 749 F.3d at 887. The Seventh Circuit, however, has announced a categorical rule that a *sua sponte* proposal from the state court cannot trigger mass action removal. *Koral v. Boeing Co.*, 628 F.3d 945, 946-47 (7th Cir. 2011) (Posner, J.). Although the Ninth Circuit had twice previously suggested that a *sua sponte* judicial proposal might trigger mass action removal, *see Tanoh*, 561 F.3d at 956; *Briggs v. Merck Sharp & Dohme*, 796 F.3d 1038, 1048 (9th Cir. 2015), here, its denial of review endorsed the view that a judicial proposal does not suffice. *See Dart*, 135 S. Ct. at 556.

B. The California Lipitor Diabetes Litigation

1. The cases subject to this Petition fall comfortably within CAFA’s jurisdictional sweep over “interstate cases of national importance.” *Knowles*, 568 U.S. at 595 (quotation omitted). The claims at issue are part of a larger, nationwide litigation that began in 2013, in

which the plaintiffs allege that they developed type 2 diabetes due to their use of Lipitor, a cholesterol-lowering medication manufactured by Pfizer. App.186. Federal actions in the Lipitor litigation were coordinated for pre-trial proceedings in a multi-district litigation in the District of South Carolina before Judge Richard Gergel (“MDL Judge”). See App.76. In late 2015, the MDL judge granted summary judgment in Pfizer’s favor as to all claims over which it had jurisdiction in the MDL—a total of more than 3,000 plaintiffs—due to lack of admissible expert testimony on causation. The Fourth Circuit affirmed those dispositions in their entirety. *In re Lipitor Mktg., Sales Practices & Prod. Liab. Litig.*, 892 F.3d 624 (4th Cir. 2018).

The more than 4,200 Plaintiffs in these actions represent the largest parallel state-court proceeding to the federal Lipitor litigation—in fact, they alone exceed the total number of plaintiffs whose claims were dismissed in the MDL. These Plaintiffs filed their claims in California state court using the same procedural structure as the cases before this Court in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1778 (2017).¹ Specifically,

¹ After the remand at issue here, Pfizer moved to dismiss the claims of the non-resident Plaintiffs for lack of personal jurisdiction, based on *Bristol-Myers*. Although Plaintiffs did not contest the application of this Court’s decision, the coordination trial judge ruled that Pfizer had forfeited its personal jurisdiction defenses as a matter of federal law because it did not file a dispositive motion on that point while it was litigating federal subject matter jurisdiction. Pfizer sought review from the California Court of Appeal, which issued a divided decision

individuals from all around the country joined their claims with individuals from California in multi-plaintiff actions against Pfizer that also named a single in-state defendant, the distributor McKesson Corp. *See* App.75. Those Plaintiffs seek to litigate in the California state courts in order to obtain a different result than the MDL on the reliability of their expert evidence.

2. Pfizer initially removed these actions to federal court based on Plaintiffs' proposals to join them to a California coordinated proceeding for Lipitor actions, known as "JCCP 4761." App.30. By its terms, that coordinated proceeding placed all cases before "one judge" and "for all purposes," including trial, in order to avoid the risk of inconsistent judgments. *See* CAL. CIV. PROC. CODE § 404.1. Following removal, these cases were transferred to the Lipitor MDL. At the hearing on Plaintiffs' remand motions, the MDL judge observed that "I think [Pfizer is] right" that these cases "appear to be a mass action," and "there is likely CAFA jurisdiction in the Federal District Courts of California." *See* App.108. However, just before granting summary judgment in the entire inventory of cases in the MDL, the MDL judge held that traditional diversity jurisdiction was lacking in these cases, and having been removed as a CAFA "mass action," they

affirming the trial court (2d Dist., Div. 5, B296917). Pfizer has filed a petition for permission to appeal to the California Supreme Court (No. S255942).

were not properly in the MDL. *See* App.82, 90-93.² The MDL judge accordingly ruled that the cases be returned to the California federal courts to determine whether mass action jurisdiction existed. App.93.

Contrary to the MDL judge's statements, the California federal courts held that the cases were not subject to mass action jurisdiction. The majority of the actions were returned from the MDL to the Central District of California. That court agreed with Pfizer that under Ninth Circuit precedent in *Corber*, 771 F.3d at 1223-25, a proposal to join a coordinated proceeding was a proposal for joint trial. App.37-41. However, the district court remanded because it held, at that time, the proposal covered "[o]nly the sixty-five plaintiffs who were named in the amended coordination petition or add-on petitions," and so CAFA's 100-plaintiff numerosity requirement was not met. App.42. Judges in the Northern and Eastern Districts of California followed suit. *See* App.18-28. Pfizer sought leave to appeal from these decisions, which the Ninth Circuit denied. *See* App.18-28, 154-84.

C. Pfizer's Second Mass Action Removal Based On The Court's Proposal to Try the Claims Jointly

1. Following remand to state court, Plaintiffs unsuccessfully took various actions to attempt to place these cases before the coordination judge without specifically proposing coordination that would render

² CAFA prohibits the transfer of cases removed as mass actions to an MDL absent the consent of a majority of the plaintiffs. *See* 28 U.S.C. § 1332(d)(11)(C)(i).

them removable. *See* App.214-15. But the coordination judge rejected Plaintiffs' attempts to achieve the equivalent of coordination without invoking the required legal procedures under California law. *Id.*

Instead, the California courts accomplished on their own initiative the massive coordinated trial proceeding that Plaintiffs wanted but had not explicitly proposed. Citing the burden of these cases having been assigned to multiple different judges, the Supervising Civil Judge of the Los Angeles County Superior Court (Weintraub, J.) entered a "Request" under California Code of Civil Procedure section 404.4 that 62 of these actions be added to the Lipitor coordinated proceeding. App.259-62. Thereafter, the coordination judge offered the parties an opportunity to respond to that request. App.216. In response, Plaintiffs identified 81 additional cases that shared "common questions of fact and law with the cases identified in [the supervising judge's] request but were not included in that request." *See id.* (citation and quotation marks omitted).

The coordination judge granted the request of the supervising judge and asked the parties to address whether the additional cases identified by Plaintiffs could also be joined. *See* App.268-71. The parties agreed that the coordination judge, "*sua sponte*, may add on th[e] coordinated proceeding cases that raise similar issues involving the drug Lipitor," and the coordination judge then added 88 cases on her initiative. *Id.* (citation and quotation marks omitted). Because these cases, together involving 4,287 Plaintiffs, were all "proposed to be tried jointly," 28 U.S.C. § 1332(d)(11)(B)(i), Pfizer again removed the

entire Lipitor coordinated proceeding to the Central District of California as a mass action. App.185.

2. Although the state courts had proposed the very sort of proceeding that the district court had previously held would give rise to mass action removal, the district court again remanded. It ruled that while a formal request by plaintiffs to join a coordinated proceeding would give rise to mass action removal, “a state court’s *sua sponte* order cannot ‘propose’ a joint trial to trigger mass action jurisdiction.” App.11. The district court did not evaluate the substance of the formal “Request” issued by the supervising judge or the coordination judge’s invitation for the parties’ views on her contemplated *sua sponte* coordination. Instead, it categorically held that a court order cannot be a proposal because it is “a command or direction authoritatively given,” not “an offer to be accepted or rejected.” *Id.* (citation and quotation marks omitted). Although the district court previously found that requests by Plaintiffs to coordinate the same cases for all purposes would be proposals for joint trial, it held that the requests by the state courts for the same thing were not. *See* App.13-15.

D. The Ninth Circuit’s Decision

Pfizer timely sought leave to appeal under 28 U.S.C. § 1453(c). The briefing addressed the question decided by the district court and presented here—whether a state court’s proposal to try cases jointly qualifies for removal under CAFA’s mass action provisions. App.218-30. Under Ninth Circuit procedures for CAFA appeals, the petition was assigned to a two-judge

screening panel, which summarily denied review. App.1.

Pfizer then filed a petition for rehearing *en banc*. App.233-58. That briefing likewise focused on the question presented here. The same two-judge panel denied rehearing *en banc* on behalf of the court. App.16-17. Under Ninth Circuit internal procedures, not only are two-judge panels empowered to summarily deny CAFA appeals, they are also empowered to deny requests for rehearing *en banc* of such orders without forwarding the petition to the full court. *See* 9th Cir. Gen. Ord. 6.3(g)(2), 6.11. The panel indicated that it had exercised its discretion not to forward the petition to the full court and to deny *en banc* review on its own initiative. App.17. Pfizer applied for an extension of its time to file a petition for certiorari, which was granted. Dkt. No. 18A980. This timely petition now follows.

REASONS FOR GRANTING THE PETITION

The Court should grant review to resolve the important, unsettled, and recurrent question of whether a state court's proposal for joint trial may trigger mass action removal under CAFA. The Petition squarely presents that question: the state court issued a "Request" that these actions be added to a proceeding that Plaintiffs conceded was a "joint trial" proceeding. Both the district court's and the Ninth Circuit's disposition of that question conflicts with CAFA's plain language, its clear purpose, and the reasoning of other Circuits' decisions. Worse yet, two circuit judges summarily rejected Pfizer's textually sound arguments through procedures that, by all measure, seem

designed to ossify rather than rectify erroneous CAFA remand orders. Not only did those procedures shield the district court's erroneous decision here, but they are inconsistent with this Court's decision in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547 (2014), which discouraged appellate courts from imposing erroneous legal rules regarding CAFA removal through summary denials of permission to appeal. The Court should therefore grant review and vacate the Ninth Circuit's decision.

I. This Court Should Grant Review To Decide Whether A State Court's Proposal To Try More Than A Hundred Claims Jointly Is A Removable Mass Action.

The lower courts are divided on whether a state court's *sua sponte* proposal to try cases jointly can qualify as a removable mass action under CAFA. Decisions of the Tenth and Eleventh Circuits have reasoned that it may, while here the Ninth Circuit's denial of review effectively endorsed the Seventh Circuit's view that it cannot. That important, recurring question—which cuts to the core purpose of CAFA's mass action provisions—calls out for this Court's review.

A. This Petition Presents An Important And Recurring Question That Has Divided The Lower Courts.

The courts of appeals have expressed different views on the important and recurring question whether *sua sponte* state-court action may constitute a proposal for joint trial for purposes of mass action removal.

Two Circuits have applied the plain text of CAFA’s removal provisions—which speak only of claims “proposed to be tried jointly,” without specifying who must make the proposal—and stated that *sua sponte* proposals by the state court may qualify for removal. In *Scimone*, the Eleventh Circuit noted that CAFA’s “passive syntax” could “be referring to a proposal made by the plaintiff, by the defendant, or perhaps by the state court acting *sua sponte*.” 720 F.3d at 881. And since CAFA specifically excludes mass actions based on a joint-trial proposal from a defendant, “it follows that the proposal must originate either with the plaintiffs or, perhaps, with the state court.” *Id.* Similarly, the Tenth Circuit has observed that CAFA “does not specify who can make such a proposal—the plaintiffs only, or the district court through an order of consolidation or coordination.” *Parson*, 749 F.3d at 887. Applying that reasoning, the court concluded that remand was appropriate, on the facts before it, because “neither the plaintiffs, nor the state court, have ‘proposed’ a ‘joint trial’ within the meaning of the statute.” *Id.*

The Seventh Circuit was the first court to rule otherwise. Notably, in an early CAFA decision, it had suggested that “perhaps the state court” could “propose to try . . . cases jointly,” and thus give rise to mass action removal. *Anderson*, 610 F.3d at 394. However, in *Koral*, the Seventh Circuit purported to answer the “question left open in the *Anderson* case” by categorically assuming “that the state court’s deciding on its own initiative to conduct a joint trial would not enable removal.” 628 F.3d at 946-47. Writing for the

court, Judge Posner reasoned that such action by a state court “would not be a proposal” and that removal would not further CAFA’s purported purpose “to prevent plaintiffs from trying to circumvent [CAFA] by bringing a class action as a mass action.” *Id.* at 947.

Like the Seventh Circuit, the Ninth Circuit previously noted the possibility that *sua sponte* judicial action could trigger mass action removal before it endorsed the opposite view here. In *Tanoh*, the Ninth Circuit observed the possibility that a “state court’s *sua sponte* joinder of claims might allow a defendant to remove separately filed actions to a federal court as a single ‘mass action’ under CAFA.” 561 F.3d at 956. Again in *Briggs*, the Ninth Circuit observed that because the mass action provision “speaks in the passive voice . . . [i]t is possible that a proposal by a state court for a joint trial would qualify as a ‘proposal’” triggering mass action removal. 796 F.3d at 1047-48. In addition, the Ninth Circuit granted CAFA review to decide this question, only to have that appeal voluntarily dismissed by the parties before the court issued a decision. *See Alexander v. Bayer*, 17-55828 (9th Cir.). However, when the issue was presented in this case, the district court relied on and adopted the Seventh Circuit’s rationale in *Koral* by categorically holding that a court cannot make a proposal. App.11.³

³ Other district courts have similarly relied on the Seventh Circuit’s reasoning to remand mass actions back to state court. *See, e.g., Ferrar v. Johnson & Johnson Consumer Cos., Inc.*, 2015 WL 5996357, at *3 (E.D. Mo. Oct. 14, 2015) (following *Koral* and rejecting jurisdiction); *J.B. ex rel. Benjamin v. Abbott Labs., Inc.*, 2012 WL 1655980, at *5 (N.D. Ill. May 9, 2012) (holding that “only a motion by the plaintiff, proposing consolidation for trial, would

Thus, as in *Dart*, the fact that the Ninth Circuit denied review of this important question here, which it had repeatedly identified for review, “strongly suggests” it was endorsing the district court’s adoption of *Koral*’s categorical rule. 135 S. Ct. at 556.

Whether *sua sponte* state court actions can trigger mass action removal is undoubtedly an important question under CAFA. This very case proves how critically important the question is: The proposal here would jointly try *thousands* of claims—a majority by out-of-state residents—involving common questions of law and fact in these “interstate cases of national importance.” *Knowles*, 568 U.S. at 595 (citations and quotation marks omitted). No one disputes that, had Plaintiffs proposed precisely what the state court proposed, the litigation would qualify for mass action removal. Nothing in CAFA’s text indicates that its protections apply only where the plaintiffs initiate coordination in a mass action. Nor are those protections any less important where a state court proposes the joint trial of thousands of claims. Yet, while these cases would indisputably be subject to federal jurisdiction if Plaintiffs had proposed their coordination, they were remanded simply because the Plaintiffs piggy-backed off the state court’s proposal to try these thousands of claims jointly. There is no justifiable reason for allowing this loophole around CAFA’s express statutory text and purpose.

establish [mass action] jurisdiction.”), *aff’d on other grounds sub nom. In re Abbott Labs., Inc.*, 698 F.3d 568 (7th Cir. 2012).

Absent review, the message to plaintiffs will be clear: to escape federal jurisdiction over large, multi-state tort proceedings, they need only overwhelm a state court with thousands of individual suits and then leave the task of proposing coordination to that court in order to avoid CAFA's mass action protections. Permitting such an exception would "exalt form over substance" and "squarely conflict with the statute's objective," *see Knowles*, 568 U.S. at 595, by opening a gaping hole for expansive tort litigation to escape CAFA's reach and nullify the federal mass action jurisdiction that the courts of appeals have acknowledged would otherwise exist over such proceedings. *See Corber*, 771 F.3d at 1223-25; *In re Abbott Labs.*, 698 F.3d at 573; *Atwell*, 740 F.3d at 1165-66; *Lester*, 879 F.3d at 588.

While this important, unsettled question is a recurring one, interlocutory review is the only pathway to reversal of an erroneous remand order. Because a remand order sends the case back to the state court, the only recourse for vindicating CAFA's mass action removal protections is to seek permission to appeal—as Pfizer did here and as the petitioner did in *Dart*. Thus, as in *Dart*, if the "remand order remains undisturbed," the case will "leave the ambit of the federal courts for good, precluding any other opportunity for [the defendant] to vindicate its claimed legal entitlement [under CAFA] . . . to have a federal tribunal adjudicate the merits." 135 S. Ct. at 555-56 (quoting *BP America, Inc. v. Oklahoma ex rel. Edmondson*, 613 F.3d 1029, 1035 (10th Cir. 2010)). At the same time, as illustrated by the Ninth Circuit's actions below, the routine summary denial of requests for permission to appeal

stifles the development of CAFA doctrine on this question and threatens to leave defendants' federal statutory rights at the mercy of a single district court judge. For the same reasons that it took up and decided important CAFA removal questions in *Dart* and *Knowles*, the Court should do so here.

B. This Court Can And Should Review Summary Denials Of CAFA Review As To Important, Unsettled, And Recurrent CAFA Questions.

In fact, this petition presents an ideal vehicle to apply this Court's framework from *Dart* for reviewing summary denials of CAFA review. *Dart*, 135 S. Ct. at 555. CAFA's provision for interlocutory review of remand orders, 28 U.S.C. § 1453(c), is an essential feature of its jurisdictional architecture. While remand orders outside of the CAFA context are barred from review in the ordinary course, *see* 28 U.S.C. § 1447(d), CAFA gives the courts of appeals discretion to accept review of such remand orders to "develop a body of appellate law interpreting the legislation." *Coll. of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33, 38 (1st Cir. 2009) (quoting S. REP. NO. 109-14, at 49 (2005)); *accord Coleman v. Estes Express Lines, Inc.*, 627 F.3d 1096, 1100 (9th Cir. 2010). This is one of the many respects in which CAFA contradicts the "purported 'presumption' against removal . . . in mine-run diversity cases" to further its express purpose of "facilitat[ing] adjudication of certain class actions in federal court." *Dart*, 135 S. Ct. at 554 (citation omitted). By developing a body of appellate case law on CAFA's terms, section 1453(c) furthers "CAFA's

primary objective: ensuring Federal court consideration of interstate cases of national importance.” *Knowles*, 568 U.S. at 595 (citation and quotation marks omitted). This Court has thus previously emphasized CAFA’s legislative dictate that its provisions “be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.” *Dart*, 135 S. Ct. at 554 (quoting S. REP. NO. 109-14, at 43 (2005)).

In *Dart*, this Court delineated the scope of its appellate jurisdiction over summary denials of CAFA review. Although discretion is inherent in review under section 1453(c), that discretion “is not rudderless.” *Dart*, 135 S. Ct. at 555. Thus, a summary denial of review under CAFA is an abuse of discretion where it is apparent that the denial is “based . . . on an erroneous view of the law.” *Id.* Citing the First Circuit’s criteria for CAFA review,⁴ this Court explained that a court of appeals should grant CAFA review “[w]hen the CAFA-related question presented . . . is ‘important, unsettled, and recurrent,’” and will otherwise escape review. *Id.* (quoting *Coll. of Dental Surgeons*, 585 F.3d at 39). Thus, if a court of appeals summarily denies review where those criteria are satisfied, it “strongly suggests that the panel thought the District Court got it right.” *Id.* at 556. In such a case, this Court has jurisdiction to determine whether the district court in fact got it wrong. *Id.* at 556-58.

⁴ Those criteria have also been adopted by the Ninth Circuit. See *Coleman*, 627 F.3d at 1100.

As set forth above, this litigation is a paradigm case for review under *Dart*. The question presented here goes to the heart of CAFA's purpose to provide federal jurisdiction over substantial interstate controversies. It has been identified and discussed by four Circuits, in six decisions over the course of a decade, and with varying rationales and results. It continues to recur in the district courts. And the question is unreviewable in these cases except by interlocutory appeal. Given the indisputable presence of all discretionary factors for CAFA review, the Ninth Circuit's denial of review necessarily rested on the merits of the district court's remand order and is thus squarely within this Court's jurisdiction under *Dart*.

The need for this Court's supervisory review is particularly important for summary denials under section 1453(c), which are prone to abuse. Cloaked in inscrutable discretion, a summary denial of CAFA review purports to leave no precedential mark, but allows even an egregious district court remand order to remain in place. And where an indisputably important, unsettled, and recurring question is presented, summary denial has the added effect of discouraging *en banc* review by the Circuit or *certiorari* review by this Court. As a result, this Court's review under *Dart* is critical to ensuring that section 1453(c) remains an important tool to develop a body of appellate case law on CAFA—not an instrument of unchecked discretion to shield erroneous decisions and prevent the development of CAFA removal doctrine. See *Coll. of Dental Surgeons*, 585 F.3d at 38; *Coleman*, 627 F.3d at 1100.

The Ninth Circuit’s misuse of summary denials in this context is particularly egregious. In the last year alone, it received more petitions under section 1453(c) than all the other courts of appeals combined.⁵ Yet while this Court has noted “caution[] against casual rulings” on petitions for review under section 1453(c), *see Dart*, 135 S. Ct. at 557, the Ninth Circuit has embraced *pro forma* disposal of such petitions as a matter of policy. Rather than treating CAFA petitions as an important congressionally mandated procedural device, the Ninth Circuit’s internal operating procedures treat these petitions as an administrative burden suitable for summary disposition by a two-judge screening panel. *See* 9th Cir. Gen. Ord. 6.3(g)(2). The Ninth Circuit also permits the same two-judge panel to deny a request for rehearing *en banc* “on behalf of the Court” without even forwarding the petition to the full court. 9th Cir. Gen. Ord. 6.11. So, while the Ninth Circuit “owe[d] a duty to the bench and bar” to correct the error of the district court on this question, its internal procedures prevented all but two of its judges from ever even reviewing a request to do so. *Dart*, 135 S. Ct. at 557 (quoting *Dart Cherokee Basin Operating Co., LLC v. Owens*, 730 F.3d 1234, 1238 (10th Cir. 2013) (Hartz, J., dissenting)). And because the Ninth Circuit is the situs of the majority of appellate litigation over CAFA jurisdiction, its errant summary denial of review should be corrected now, rather than following some hypothetical ruling it may

⁵ A PACER search for section 1453(c) petitions (docketed as 1453-c or miscellaneous matters) disposed within the calendar year ending May 29, 2019 shows seventeen such petitions in the Ninth Circuit and ten in all the other courts of appeals combined.

issue in the future on this question. This Court thus can and should grant review to decide the important, unsettled, and recurrent CAFA question that the Ninth Circuit swept under the rug.

II. This Court Should Grant Review To Vindicate CAFA's Plain Text And Purpose.

The view adopted by the lower courts here and the Seventh Circuit in *Koral* is irreconcilable with CAFA's plain text and purpose as articulated by Congress and this Court. Nothing in CAFA's text suggests that proposals from a state court to try jointly thousands of claims based on common legal and factual questions cannot qualify for treatment as a mass action. On the contrary, the statute's use of the passive voice and its express exclusion of proposals by defendants suggests that mass action removal is *not* limited to proposals by plaintiffs. Nor would that policy be consistent with CAFA's purpose of ensuring that significant litigation of nationwide importance be removable to federal court. This Court should thus grant certiorari and reverse.

CAFA's plain language and purpose indicate that Congress contemplated mass action removal based on state-court proposals for joint trial. This Court's approach to interpreting CAFA, as with any other statute, "begins with the statutory text," *AU Optronics*, 571 U.S. at 168-69, which, if unambiguous, "must be enforced according to its terms." *Home Depot*, 139 S. Ct. at 1755 (Alito, J., dissenting) (citations and quotation marks omitted). "[I]n interpreting a statute a court should turn first to one, cardinal canon before all others"—it "must presume that a legislature says in a statute what it means and means in a statute what

it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). In addition, this Court has been unmistakably clear “that no antiremoval presumption attends cases invoking CAFA,” which are instead to be decided in accordance with the statute’s purpose of “facilitat[ing] adjudication of certain class actions in federal court.” *Dart*, 135 S. Ct. at 554; *accord Knowles*, 568 U.S. at 595. Here, the lower courts turned those bedrock principles on their head.

Had the lower courts simply applied CAFA’s plain language, they would have reached a different result. CAFA defines “mass action” to include “*any*” case in which 100 or more claims “*are proposed* to be tried jointly.” 28 U.S.C. § 1332(d)(11)(B)(i) (emphasis added). The breadth of this grant of jurisdiction is apparent from the statute’s use of both the capacious label “any,” and the passive construction “are proposed to be tried jointly.” This Court has frequently emphasized that “the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (citation and quotation marks omitted). Even more important, use of the passive voice evinces an “agnosticism . . . about who does the [prescribed action].” *Watson v. United States*, 552 U.S. 74, 81 (2007). The passive voice indicates that “[i]t is whether something happened—not how or why it happened—that matters.” *Dean v. United States*, 556 U.S. 568, 572 (2009). As the Eleventh Circuit has recognized, CAFA’s use of the passive voice thus indicates that mass action removal is not limited to proposals made by plaintiffs and, instead, is available

based on *sua sponte* judicial proposals as well. *Scimone*, 720 F.3d at 881-82.

The significance of CAFA's agnosticism on the source of the mass action proposal is crystal clear in light of the one limit Congress *did* specify: the proposal cannot come from the defendant. 28 U.S.C. § 1332(d)(11)(B)(ii)(II). Because Congress specifically excluded only one source of proposal as a removal trigger, it logically left other sources available, including proposals by state courts. *See Scimone*, 720 F.3d at 881. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acted intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (citation and quotation marks omitted). "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *TRW, Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (citation and quotation marks omitted). Because "[t]he expression of one thing implies the exclusion of others (*exclusio unius est exclusio alterius*)," a statute that contains an "express exception . . . implies that there are no other" exceptions. *Jennings v. Rodriguez*, 138 S. Ct. 830, 844 (2018) (citation and quotation marks omitted). As this Court has recently explained in construing CAFA, "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Home Depot*, 139 S. Ct. at 1748 (citation and quotation marks omitted). To read in another

unwritten exception to the mass action provision would do violence to CAFA's plain language and subvert its pro-removal purpose. *See Dart*, 135 S. Ct. at 554.

Nor is there any reason to think, as the lower courts and the Seventh Circuit did, that a "state court's deciding on its own initiative to conduct a joint trial would not enable removal" under CAFA because "[t]hat would not be a proposal." *Koral*, 628 F.3d at 947. As an initial matter, Congress and this Court have directed the federal judiciary to adopt a liberal construction of CAFA's removal provisions. *See Dart*, 135 S. Ct. at 554. Thus, any distinction between a mere *proposal* for joint trial and a court's *decision* to conduct a joint trial should favor jurisdiction, not cut against it. Contrary to *Koral*'s narrow understanding of CAFA's policy, the federal interest in adjudicating large interstate proceedings is even more acute where joint trial is *compelled* by a state court than where it is merely *requested*.

But the Court need not reach that issue because there is no doubt that state courts regularly issue "proposals," just as the state court did here. State trial courts issue a plethora of judicial actions that would qualify under any definition of a "proposal"—*e.g.*, requests, invitations, and tentative rulings, among others. Here, the actual documents that precipitated removal illustrate the point: the California Superior Court made "proposals" that were specifically authorized by California law. The *sua sponte* action of the supervising judge in Los Angeles Superior Court to coordinate these cases was not an order at all, but was

in fact explicitly captioned as a “Request.” App.259-62. That “Request” was issued pursuant to a specific provision of California procedure that allows “[t]he presiding judge of any court” to “*request* the judge assigned to hear the coordinated actions for an order coordinating the action.” See App.216 (quoting CAL. CIV. PROC. CODE. § 404.4) (emphasis added). If the supervising judge’s “Request” was not a “proposal,” it is unclear what is.

The same goes for the subsequent actions by the coordination judge. Although the relevant documents were captioned as orders, it is not their mandatory provisions that matter here. Rather, those documents *suggested* it was proper to add the cases at issue to the Lipitor coordination, and then ordered the parties to respond with any opposition (which Plaintiffs did not submit). See App.268-71. An order to show cause why the court should not take some action is substantively indistinguishable from a “proposal” to take that action. Indeed, such an order satisfies the definition of “proposal” applied by the Ninth Circuit in its mass action cases—an offering “for consideration, discussion, acceptance, or adoption.” *Briggs*, 796 F.3d at 1048 (citation and quotation marks omitted). And as with the supervising judge’s “Request,” California law specifically contemplates this approach, see Cal. R. Ct. 3.544, again refuting the district court’s conclusion that courts categorically cannot make proposals.

Finally, there is no merit to any suggestion that the “master of the complaint” principle precludes removal here. Quite to the contrary, Congress has often conferred federal jurisdiction based on actions of

parties other than the plaintiff. *See, e.g.*, 28 U.S.C. § 1442 (federal officer removal); 28 U.S.C. § 2679(d) (Westfall Act removal); 28 U.S.C. § 1452 (bankruptcy removal); 28 U.S.C. § 1346(a)(2) (federal contract claims removal). Congress did so here as well when it conferred mass action jurisdiction not over cases that “plaintiffs propose to be tried jointly,” but rather cases that “are proposed to be tried jointly.” 28 U.S.C. § 1332(d)(11)(B)(i).⁶ Indeed, a major purpose of CAFA was to prevent plaintiffs from keeping important interstate cases out of federal court through artful pleading. *See Knowles*, 133 S. Ct. at 1350.

The Court thus can and should exercise its jurisdiction under *Dart* to review and reverse the Ninth Circuit’s decision to vindicate CAFA’s statutory text and purpose and to prevent abuse of summary denials of CAFA review.

⁶ This Court’s decision in *AU Optronics* is not to the contrary. Although *AU Optronics* stated that “a ‘mass action’ must involve monetary claims brought by 100 or more persons who propose to try those claims jointly,” the Court was not remotely considering the question presented here. Rather, the statement in *AU Optronics* was in the context of a *parens patriae* action where there were no individual plaintiffs—not, as here, a state-court proposal to jointly try the claims of thousands of plaintiffs. 571 U.S. at 164.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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June 21, 2019

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ADDENDUM

LIST OF PARTIES

1	Jane E. Abbey	2145	Anna LaGambina
2	Josephine Abrams	2146	Priscilla Lagoy
3	Beverly Abrolat	2147	Terri LaGrippa
4	Dovie Abshire	2148	Yolanda Lai-Fook
5	Hortense Abtiow	2149	Brenda Lainhart
6	Ada Acain	2150	April Lake
7	Louise Acheson	2151	Lovie Mae Lamar
8	Neberta Ackron	2152	Jenny Lamb
9	Deeya Adam	2153	Diana Lambert
10	Mary Adamian	2154	Julia Lamey
11	Lorita Adams	2155	Sally Lamorgese
12	Reeshemah Adams	2156	Charlotte Landers
13	Delisie Adams	2157	Shirley Mae Landers
14	Barbara J. Adams	2158	Felcia Landon
15	Deborah Adams	2159	Melvina Landry
16	Valerie Adams	2160	Judy Lane
17	Conda Adams	2161	Linda Langdon
18	Sharon Adams	2162	Carolyn Langston
19	Shirley Adams	2163	Cherline Lanning
20	Alida Adamyan	2164	Gloria Larkin
21	Norma Adatan	2165	Emma J. Larry
22	Eliza Addison	2166	Phylliss Larsen
23	Donna Addy	2167	Jo Ann Laslea

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24	Asmik Adetyan	2168	Mary Lasonde
25	Judith Adkins	2169	Cynthia Latimer
26	Myra Adkins	2170	Veronica Laurent-Callihan
27	Anita Affeldt	2171	Mary Laureson
28	Martha Aguayo	2172	Linda A. Lavin
29	Angela Aguilar	2173	Hazel Law
30	Linda Ainsworth	2174	Shirley Lawhorn
31	Ellanor Akers	2175	Vickie Lawler
32	Maria Alanis	2176	Betty Lawn
33	Maye Alberstone	2177	Sandra Lawrence
34	Bonnie Albin	2178	Debra Lawrence
35	Susie Alcoser	2179	Charlotte Lawson
36	Adelina Aleman	2180	Annie Lay
37	Trudy Alex	2181	Linda Layade
38	Patricia Alexander	2182	Leanne Layne
39	Marilyn Alexander	2183	Vicki A. Laytart
40	Yvonne Alexander	2184	Cheri L. Layton
41	Shelly Alexander	2185	Roxanne Lazore
42	Emma Alexander	2186	Aliscina Leach
43	Luretta Alexander- Jackson	2187	Mary Leach
44	Corine Alford	2188	Linda Learn
45	Jones Aline	2189	Jeanette Leary
46	Kim Allen	2190	Mardelle Leas
47	Betty Allen	2191	Shirley Leasock

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48	Patricia Allen	2192	Karen Leblanc
49	Mary Allen	2193	Debbie Leblang
50	Ruby Allen	2194	Patricia Lee
51	Karen Allen	2195	Mary Lee
52	Shirley Allen	2196	Connie Lee
53	Frances Allen	2197	Lula Ann Lee
54	Essie Allen	2198	Sheila Lee
55	Lucy Allen	2199	La'Shawnda Lee
56	Carolyn Allen	2200	Idella Lee
57	Rosemary Allen	2201	Eileen Leeth
58	Ruth Allen	2202	Beverly Legg
59	Sandra Alligood	2203	Shirley J. Leggate
60	Josefina Allison	2204	Rosemarie Lehman
61	Susan Allison	2205	Pearlie Leigh
62	Willetta Allman	2206	Charlene Lemn
63	Melba Allums	2207	Blanche Lemon
64	Virginia Almeida	2208	Bobbie Lemos
65	Terry Alsayed	2209	Elizabeth A. Leonard
66	Joan Alston	2210	Josephine Leonard
67	Barbara Alston	2211	Bertha Leonetti
68	Sylvia Alvarado	2212	Teresita Leonguerrero
69	Sylvia Alvarado	2213	Sharon Leopold
70	Norma Alvarado	2214	Brenda Leopold
71	Mary Alvarez	2215	Rachel Lessem
72	Maria Alvino	2216	Tina Lester
73	Loretta Amanners	2217	Mattie Letsinger

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74	Linda Jackson Ambrose	2218	Jeffrey Letsinger
75	Terry M. Anders	2219	Rosalind Levelino
76	Myrna Anderson	2220	Arlene Levenson
77	Gladys Anderson	2221	Caren Levine-Prince
78	Cathy Anderson	2222	Clara M. Lewis
79	Marcia Anderson	2223	Denise Lewis
80	Rosalind Anderson	2224	Diana Lewis
81	Michelle Anderson	2225	Linda Lewis
82	Ethel Anderson	2226	Angela Lewis
83	Pearline Anderson	2227	Sonya Lewis
84	Kassandra Anderson	2228	Brenda Lewis
85	Darlene Anderson	2229	Patricia Lewis
86	Brenda Anderson	2230	Lark Lewis
87	Kim Anderson	2231	Donna Lewis
88	Beryl Anderson	2232	Dorothy Lewis
89	Regina Anderson	2233	Terrell Lewis-Bey
90	Cathie Anderson	2234	Betty Leyba
91	Brenda Anderson	2235	Gertrude Lias
92	Judy Anderson	2236	Frances Licata
93	Cathie Anderson	2237	Angela Licavoli
94	Janet Anderson	2238	Kathleen Lickiss
95	Maggie Anderson- Yoakum	2239	Debra Ligon
96	Dorothy Andres	2240	Leslie Lill
97	Julia Andrews	2241	Bobbi Limburg

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98	Louella Andrews	2242	Linda Linan
99	Barbara Andrews	2243	Terri Lindholm
100	Zimely Andrus	2244	Maggie Lingston
101	April Angle	2245	Joyce Linnville
102	Mary Ann	2246	Stella Lipori
103	Jae Anna	2247	Debra Lise
104	Joan Anteau	2248	Nancy Lisitza
105	Maria Guerrero Anthony	2249	Patricia Little
106	Loretta Anthony	2250	Peggy Little
107	Delores Antoine	2251	Mitchelle Little
108	Carole Antonelli	2252	Loretta Little
109	Joyce Apodaca	2253	Robbie Littleberry
110	Laura Aponte	2254	Cerenia Littles
111	Norma Aponte	2255	Nancy Littleton
112	Ramona Applegate	2256	Judith Litton
113	Rosemarie Arbolino	2257	Maggie Livingston
114	Sarah Arft	2258	Candace Lizana
115	Donna Armitage	2259	Angeline Lizarrago
116	Phyllis Armstrong	2260	Charlene Lloyd
117	Mary Armstrong	2261	Keith L. Lloyd
118	Helen Arnett	2262	Jennifer Lockett
119	Dorothy Arney	2263	Loretta M. Locklear
120	Wilihmena Arnold	2264	Jennevie Lofton
121	Wilma Arnold	2265	Violet Lofton
122	Constance Aroma	2266	Barbara Logan

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123	Shirley Arrington	2267	Susan Lomax
124	Vivia Artz	2268	Kelly Lee Long
125	Linda Asberry	2269	Linda Long
126	Girtha Ashford	2270	Kathy Long
127	Gloria Ashley	2271	Debra Looker
128	Sue Ashley	2272	Sharon Lopes
129	Nina Astashinsky	2273	Antonia Lopez
130	Kathleen Athey	2274	Elizabeth Loredó
131	Betty Atkins	2275	Susan Lorentzen
132	Reva Atkins	2276	Irma Losey
133	Martha Atkinson	2277	Anita Losoya
134	Kreda Atoyán	2278	Mary Lott
135	Diana Auger	2279	Carolyn Lott
136	Karla D. Auld	2280	Mary Lott
137	Bunnie Ault	2281	Brenda Lotts
138	Sarah Austin	2282	Sharon Love
139	Jarrica Austin	2283	Penny Love
140	Dorothy Autry	2284	Trina Love
141	Roseann Avena	2285	Toni Love
142	Rosalina Avenido	2286	Celestine Loveless
143	Gloria Averett	2287	Graciela Lovera
144	Venicia Avila	2288	Rhonda Lovett
145	Vicky Avila	2289	Dawn Lowdseth-Dana
146	Linda Avila	2290	Patsy Lowery
147	Beatrice Aviles	2291	Janet Lowery
148	Shirley Ayers	2292	Mary Lowman

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149	Beverly Ayers	2293	Jeanise Lowrey
150	Hillary Aylward	2294	June Lowrimore
151	Soraya Azzad	2295	Cheri Lubenko
152	Mazal Azzam	2296	Joyce Lubniewski
153	Arpik Babakhani	2297	Marilyn Lucas
154	Diane Babcock	2298	Mary Ann Lucas
155	Rosie Babikian	2299	Juliet Lucas
156	Martha Bachtel	2300	Linda Lucier
157	Debbie Bacote	2301	Janet Luckett
158	Christine Baczynski	2302	Yolanda Luckett
159	Martha Baez	2303	Irene Lugenbeel
160	Clara Bagdasarian	2304	Donna Lugg
161	Dora Bagdasaryan	2305	Barbara Luke
162	Lottie Bagley	2306	Kathy Lynn Lukenbill
163	Theresa Bagliere	2307	Helen Lumbo
164	Annie Bah	2308	Vivian Lumpkin
165	Norma Bahr	2309	Marianela Luna
166	Deborah Bailey	2310	Alice Lundstrom
167	Steven M. Bailey	2311	Elda Lunsford
168	Denelle Bailey	2312	Gisela Lusa
169	Elizabeth Bailey	2313	Cynthia Lutin
170	Amira Bajric	2314	Mary Lyles
171	Joan Baker	2315	Jeanette Lymas
172	Mary Baker	2316	Wendy Lynch
173	Tonya Baker	2317	Ethel Lynch

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174	Cheryl Baker	2318	Susan Lyndsley
175	Shelia Baker	2319	Patricia Mabey
176	Velma Baker	2320	Maria MacArthur
177	Shirley Baker	2321	Bessie MacConnell
178	Voncile Baker	2322	Mary P. MacDowell
179	Rebecca Baker	2323	Wanda Machalek
180	Janice Baker- Dibella	2324	Judy Mackey
181	Joy Balderrama	2325	Deborah Maclin
182	Carmoletta Baldock	2326	Daisy Macon
183	Cynthia Baldwin	2327	Patricia Madden
184	Margaret Baldwin	2328	Mildred Ann Maddron
185	Sarah Bales	2329	Regina Madison
186	Suzanne Balknight	2330	Yvette Madsen
187	Eliza Ballard	2331	Jeannine Maggio
188	Debbie Ballinger	2332	Sheila Maginskay
189	Idndir Balraj	2333	Donna Mahanna
190	Nancy Banks	2334	Lenora Mairidith
191	Shirley Banks	2335	Brenda Maise
192	Juanita Banks	2336	Sylvia Majanja
193	Patricia Banks	2337	Roberta Major
194	Carla Banks	2338	Patricia Maldonado
195	Betty Banks	2339	Tammi Mangan
196	Elizabeth Banks	2340	Sonya Manigo
197	Kathy Banks	2341	Linda Manley

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198	Jamara Bankston	2342	Princess Mannie
199	Linda Baraz	2343	Denise Manning
200	Patricia Barbeau	2344	Betty Manns
201	Jonelle Barbee	2345	Mary Manson
202	Erma Audrey Barco	2346	Reta Manthe
203	Sandra Barker	2347	Patricia Marburger
204	Hiawatha Barksdale	2348	Dessie March
205	Linda Barnes	2349	Carmen Marchese
206	Norberdina Barnes	2350	Ollia Marcum
207	Toby Barnes	2351	Bernice Marcus
208	Lori Barnett	2352	Ethel Marcus
209	Lynda D. Barnett	2353	Rosalyn Mardis
210	Barbara Barnett	2354	Yolanda Mares
211	Deniece Barrett	2355	Lynda Marie
212	Bessie Barringer	2356	Marie Marino
213	Frances Barrows	2357	Patricia Marion
214	Irene Bartley	2358	Kathryn Marion
215	Deborah Bartley	2359	Vernell Marisett
216	Katherine Barzar	2360	Sharon Markham
217	Jacqueline Bass	2361	Shirley Markstaller
218	Norma Batastini	2362	Alice Marrone
219	Lillie Bates	2363	Alice Marrone
220	Antonia Batista	2364	Tina Marie Marsh
221	Stella Batten	2365	Bertha Marshall
222	Arlene Beard	2366	Pamela Marshall

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223	Helen Beatty	2367	Natasha Marshall
224	Margaret Beaty	2368	Barbara Marshall
225	Mitt Beavers	2369	Sheila Martin
226	Tina Beavers	2370	Patricia Martin
227	Victoria Beck	2371	Lorraine Martin
228	Linda Beck	2372	Cathy Martin
229	Margaret Beck	2373	Wanda Martin
230	Joanne Beck	2374	Debra Martin
231	Betty Becker	2375	Evelyn Martin
232	Ramona J. Beckett	2376	Rosetta Martin-Baker
233	Barbara Beckett	2377	Jeri Martinez
234	Mary Beckett	2378	Elizabeth Martinez
235	Vicki Beckett	2379	Merlinda Martinez
236	Mary Dellise Beckham	2380	Marie Martinez
237	Arlene Beckwith	2381	Guillermina Martinez
238	Shirley Bedwell	2382	Alicia Martinez
239	Margaret Beech	2383	Janet Mason
240	Sharon Beerbower	2384	Linda Massarelli
241	Corrinne Behrenbrinker	2385	Shirley Massop
242	Phyllis Beima	2386	Marieta Matevosyan
243	June Beldaio	2387	Linda Mathena
244	Mary Belden	2388	Gladys Mathews
245	Bertha Belding	2389	Dorothy Mathis

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246	Ripple Belk	2390	Brenda Mathis
247	Alice Bell	2391	Annette Matney
248	Omega Bell	2392	Diana Matte
249	Diane Bell	2393	Lee Mattern
250	Nina Bell	2394	Emily Matthews
251	Lucile Bell	2395	Lynda Matthys
252	Judy Bellamy	2396	Karen Mattingly
253	Nandini Bellara	2397	Claire Mattison
254	Eva Belle	2398	Camila Matyas
255	Sandra Benham	2399	Donna Maxwell
256	Theresa Benjamin	2400	Mary Maxwell
257	Marilyn Beth Benjamin	2401	Mary Ann Maxwell
258	Arthuree Bennett	2402	Minnie May
259	Hattie Bennett	2403	Pamela May
260	Denise Bennett	2404	Katie Maye
261	Ira Bennett	2405	Myrtle Mayes
262	Frances Bennett	2406	Carol Mayfield
263	Maizy Benons	2407	Marian Jo Mayle
264	Barbara Benson	2408	Patricia Mays
265	Esperanza Benson	2409	Evelyn Mcabee
266	Linda Bentley	2410	Irene McAlister
267	Gayle Bergeron	2411	Debbie McAllister
268	Celia Berglund	2412	Alice McAloon
269	Diane Beringer	2413	Mary McBride
270	Colleen Berke	2414	Josephine McCall
271	Violeta Bermudez	2415	Bonnie McCallum

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272	Beverly Bernard	2416	Elaine Mccann
273	Brenda Bernier	2417	Janet McCantis
274	Pamela Berry	2418	Margaret McCants
275	Betty Berry	2419	Angela McCarthy
276	Diana Berry	2420	Nancy McCarthy
277	Hertha Berry	2421	Cherian McCartney
278	Marita Berry	2422	Madelene McCaul
279	Josephine Berry	2423	Joann McCauley
280	Margaret Berry	2424	Sylvia McCauley
281	Pamela Berryhill	2425	Mary McCawley
282	Sandra Bertini	2426	Deborah McClain
283	Peggy Best	2427	Annette McClaren
284	Mary Bethel	2428	Eugenia McClay
285	Maria Bickford	2429	Jamie McClenan
286	Ozzie Bidar	2430	Yurris McClendon
287	Adline Biel	2431	Brenda McClinton
288	Cynthia Bienemy	2432	Deborah McCloud
289	Suzanne Bieniewicz	2433	Rhonda McConnell
290	Shirl Bietry	2434	Renice McCowan
291	Retha Biggs	2435	Susan McCoy
292	Patricia Bilbrey	2436	Evelyn McCoy
293	Bea Bilek	2437	Bernice McCray
294	Wanda Bingham	2438	Demetria McCuiston
295	Marion Binion	2439	Alberta McCullough
296	Gerladine Birch	2440	Marcia McCullough
297	Dawn Birkinbine	2441	Jennette McDonald

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298	Ida Birmingham	2442	Rachel McDonald
299	Teresa Bishop	2443	Cynthia McDonald
300	Mary Bishop	2444	Jeanette McDonald
301	Barbara Bishop	2445	Arthleen McDowell
302	Diane Black	2446	Linda McDowell
303	Marilyn Black	2447	Deborah Mcelwain
304	Patricia Black	2448	Jamesie McEntyre
305	Roberta Black	2449	Joyce McEwen
306	Linda Black	2450	Dena McFall
307	Dena Blackmore	2451	Addie McFarland
308	Ryndall Blackshire	2452	Susan McFarland
309	Carnettia Blackwell	2453	Charleeta McFarland-Pate
310	Brenda Blackwell	2454	Kathleen McFarlin
311	Patricia Blackwell	2455	Paula McGee
312	Sandra Blackwell	2456	Delores McGee
313	Marsha Blair	2457	Nettrea McGee
314	Teresa A. Blair	2458	Cathy McGhee
315	Barbara Blair	2459	Regina McGill
316	May Blake	2460	Shirley McGinnis
317	Pamela Blalock- Carter	2461	Lois McGinty
318	Gail Blanchard	2462	Maria McGlothin
319	Rita Blanchard	2463	Josephine McGowan
320	Carolyn Blanchard	2464	Cynthia McGraw
321	Jeanette Bland	2465	Stephanie McGrew

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322	Delina Blankenship	2466	Myra McGriff
323	Virginia Blanton	2467	Maureen McGuire
324	Mary Bledsaw	2468	Leslie McHenry
325	Virtis Blevins	2469	Hattie McIntosh
326	Vertis Blevins	2470	Clara McIntosh
327	Crystal Block	2471	Queen McIntyre
328	Patricia Blockus	2472	Linda McKannan
329	Pauline Bloodworth	2473	Andrea McKee
330	Paula Blue	2474	Kathy Mckee-Minard
331	Carolyn Elaine Bluitt	2475	Lillie McKellar
332	Catherine Bodley	2476	Judy McKenna
333	Karen Boggs	2477	Pamela McKenzie
334	Mary Bohannon	2478	Karen Sue McKernan
335	Gloria Bolden	2479	Cappie McKinest
336	Joni Boles	2480	Wamda McKinney
337	Effat Bolourchi	2481	Audrey McKinney
338	Linda Bond	2482	Lillie McKinney
339	Mary Boone	2483	Pamella McKinnon
340	Toni Boone	2484	Vivian McKinsey
341	Francis Boose	2485	Judy McKnight
342	Minzetta Borden	2486	Barbara McKoy
343	Kathleen Bornemann	2487	Valerie McLaughlin

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344	Kathy Borton	2488	Rosa McLean
345	Karen Bosch	2489	Wanda McLendon
346	Lorene Boswell	2490	Belinda McLeod
347	Nancy Botner	2491	Rosemarie McMaster
348	Mary Botteron	2492	Karen McMillian
349	Brenda Bottorf	2493	Linda McMurray
350	Denise Boucher	2494	Dorothy McMurray
351	Frances Boula	2495	Judy McNeese
352	Phyllis Bouldin	2496	Barbara McNeil
353	Marily Bounds	2497	Janice McNeil
354	Rachel Bouret	2498	Cheryl McPherson
355	Susan Bouwens	2499	Louise McQueen
356	Cecelia Bowden	2500	Rhonda McQueen
357	Charlotte Bowen	2501	Gayle Cherry Meadors
358	Leora Bowers	2502	Martha Meadows
359	Linda Bowman	2503	Esther Medina
360	Margene Bowman	2504	Theresa Medina
361	Julia Bowman	2505	Brenda Medley
362	Martha Bowser	2506	Judy Meeks
363	Rosa Boyd	2507	Denise Meeks
364	Penny Boyd	2508	Michelle Meggie
365	Clara Boyd	2509	Pallavi Mehta
366	Joyce Boyd	2510	Blanca Mejia
367	Katherine Boyer	2511	Sandra Mekus
368	Dorothy Boykins	2512	Mary Melching
369	Prudence Boyland	2513	Anna Melendez

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370	Janice Boyle-Coulter	2514	Joy Mello
371	Gloria Bozeman	2515	Margaret Ann Melton
372	Mary Ann Bracey	2516	Inell Melton
373	Louise Braddock	2517	Rosario Mendez-Meza
374	Linda Bradford	2518	Irma Mendoza
375	Connie Bradley	2519	Joan Menna
376	Michelle Bradley	2520	Patricia Mercer
377	Sharon Bradley	2521	Anna Mergaugey
378	Eddie Jean Bradley	2522	Barbro Merikan
379	Katherine Bradley	2523	Edna Merrill
380	Bettye Bradley	2524	Mary Merriman
381	Mary Bradley	2525	Linda Merritt
382	Mary Bradshaw	2526	Sheila Merritt
383	Courtney Bragg	2527	Amanda Metcalf
384	Helen Bragg	2528	Mary Metcalf
385	Pamela Brakhage	2529	Marjorie Metcalf
386	Consuella Branch	2530	Georgina Mettler
387	Linda Brandau	2531	Linda Meyer
388	Francelle Brandon	2532	Karen Meyer
389	Gertrude Brandon	2533	Georgia Michael
390	Waynette Brandon	2534	Janice Michalowski
391	Judy Brandy	2535	Connie Michels
392	Carmen Brantley	2536	Grace Mick

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393	Pearl Brantley	2537	Connie Mickens
394	Pennie Branz	2538	Annie Middleton
395	Mary Brattain	2539	Susan Mika
396	Leone Bravard	2540	Miriam Mikolajewski
397	Patricia Bravo	2541	Cynthia Milam
398	Arlene Braxton	2542	Patsy Miles
399	Barbara Bray	2543	Rita Miley
400	Kathy Breaux	2544	Carol Miller
401	Rita Bredice	2545	Mary Miller
402	Gail Breedlove	2546	Shirley Ann Miller
403	Lisa Brei	2547	Sally Miller
404	Jerry Brelish	2548	Barbara Miller
405	Phyllis Brent	2549	Linda Miller
406	Mary Brewer	2550	Verda Miller
407	Linda Brewer	2551	Peggy Miller
408	Clara Brewington	2552	Loretta Miller
409	Barbara Brice	2553	Teresa Miller
410	Deloris Bridges	2554	Jewel Miller
411	Joyce Brideschge	2555	Grace Miller
412	Inez Briggs	2556	Tannis Miller
413	Annette Briggs- Whitsett	2557	Gussie Miller
414	Arleta Bright	2558	Karen Miller
415	Glee Bright	2559	Dianna Miller
416	Delia Briseno	2560	Patricia Miller
417	Josephine Bristow	2561	Linda Miller
418	Linda Britton	2562	Janet Miller

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419	Bernice Broadnax- Jolly	2563	Jane Miller
420	Evelyn Broadrick	2564	Judy Miller
421	Loretta Broderick	2565	Easter Miller
422	Diana Brodie	2566	Delaphine Miller
423	Genre Brogue	2567	Lola Miller
424	Deborah Broich	2568	Patricia Miller
425	Rosa Brooker	2569	Nadine Miller
426	Teresa Brooks	2570	Linda Miller
427	Ada Brooks	2571	Elizabeth Miller
428	Tammy Brooks	2572	Anita Miller-Maxwell
429	Trudea Brooks	2573	Brigitte Milligan
430	Judith Brooks- Ware	2574	Janet Milliron
431	Ritz Brosz	2575	Joyce Mills
432	Darlein Brothers	2576	Laura Millwood
433	Carol Broussard	2577	Lusin Minasian
434	Willie Browder	2578	Tammy Minor
435	Frances Gilbreth Brown	2579	Colleen Mitchell
436	Martha P. Brown	2580	Betty Mitchell
437	Barbara J Brown	2581	Iola Mitchell
438	Josephinie Brown	2582	Yvonne Mitchell
439	Vange Brown	2583	Gloria Mitchell
440	Saundra Brown	2584	Toni Mitchell
441	Jimella Brown	2585	Theresa Mitchell
442	Verlean Brown	2586	Cnythia Mitchell

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443	Rosa Brown	2587	Sherry Mitchell
444	Angela Brown	2588	Odessa Mitchell
445	Frankie Brown	2589	Mary Mitchell
446	Mildred Brown	2590	Dannie Mitchell
447	Nemesia Pascual Brown	2591	Dorothy Mitchell
448	Virginia Brown	2592	Kim Mitchell
449	Chantia Brown	2593	Karen Mize
450	Elizabeth Brown	2594	Joyce Mock
451	Ina Brown	2595	Lucy Modery
452	Mildred Ann Brown	2596	Ada Modica
453	Patricia Brown	2597	Lula Moffett
454	Sondra Brown	2598	Johnny L. Moffett
455	Marie Brown	2599	Mary Mohammad
456	Karen Brown	2600	Khatereh Moldovan
457	Doris Brown	2601	Delia Molina
458	Beulah Brown	2602	Yolanda Monday
459	Vana Brown	2603	Genevieve Monreal
460	Sheila Brown	2604	Margie Montgomery
461	Linda Brown	2605	Joann Montgomery
462	Mary Brown	2606	Linda Montgomery
463	Sharon Brown	2607	Jovita Montoya
464	Cora Brown	2608	Rachel Montoya
465	Lavetta Brown	2609	Patty Montpetit
466	Iris Brown	2610	Janet Moody
467	Mildred Brown	2611	Saverna Moody

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468	Marga Brown- Champion	2612	Saverna Moody
469	Juan Brown- Harris	2613	Phyllis Moody
470	Mary Browning	2614	Janet Moody
471	Rochelle Brown- Malone	2615	Sarah Moody
472	Mary Brue	2616	Diane Moon
473	Shirley Brumfield	2617	Mary Ann Moore
474	Annie Brumfield	2618	Gloria Moore
475	Carolyn Bruner	2619	Estelle Moore
476	Palma Bruno	2620	Janice Moore
477	Margaret Bruno	2621	Ellie Moore
478	Martha Brunson	2622	Vianna Moore
479	Jill Brunswon	2623	Susan Moore
480	Earnestine Bryant	2624	Rosemary Moore
481	Jacqueline Bryant	2625	Andrea Moore
482	Joyce Bryant	2626	Patricia Ann Moore
483	Delores Bryant	2627	Tona Moore
484	Brenda Bryant	2628	Gracie Moore
485	Phyllis Bryer	2629	Mary Moore
486	Linda Bubert	2630	Irma Moore
487	Flora Buckingham	2631	Florence Moore
488	Linda Buckley	2632	Warrine Moore
489	Lorraine Buckley	2633	Gloria Moore
490	Linda Buckley	2634	Margaret M Moore
491	Kathryn Buckner	2635	Diann Moore
492	Andrea Buckner	2636	Marietta Moore

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493	Evelyn Buffins	2637	Allie Moore
494	Opal Buford	2638	Patricia Ann Moore
495	Blenda Buie	2639	Judy Moore
496	Ada Builes	2640	Rebecca Moore
497	Sandra Bulbes	2641	Patricia Moore
498	Debora Bullington	2642	Juanita L Moore
499	Marilynn Bunnell	2643	Barbara Moorehead
500	Sally Bunton	2644	Ella Mops
501	Tuanchai Buntyn	2645	Deana Moran
502	Elma Burbridge	2646	Clifford Moran
503	Minnie Burcham	2647	Ronda L. Morez
504	Patricia Burdiss	2648	Sharon Morgan
505	Annie Burgess	2649	Debra Morgan
506	Carol Burghardt	2650	Derri Morgan
507	Marcella Burke	2651	Virgie Morgan
508	Flora Burnett	2652	Kathleen Morgan
509	Sandra Burnett	2653	Golden Morgan
510	Eva Burney	2654	Vira Morgan
511	LaTanya Burns	2655	Judith Morgan
512	Catherine Burns	2656	Karen Morgan
513	Bonnie Burns	2657	Sonia Morgan
514	Eddie Burr	2658	Vicki Earl Morris
515	Rose Mary Burroughs	2659	Julia Morris
516	Sherry Burton	2660	Catherine Morris
517	Loretta Bush	2661	Donna Morris
518	Brigitte Bush	2662	Cynthia Morris

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519	Sandra Bush	2663	Carolyn Morris
520	Brenda Buss	2664	Claudette Morris
521	Joan Butcher	2665	Deetta Morrison
522	Victoria Butenhoff	2666	Debra Morrison-Hackman
523	Barbara Butler	2667	Dorris Morrow
524	Kris Renee Butler	2668	Twinkle Morrozoff
525	Trina Butler	2669	Linda Morton
526	Mary Butler	2670	Cherry Morton
527	Cynthia Buxie	2671	Patricia Moseley
528	Clarissa Byrd	2672	Gwendolyn Mosely
529	Angela Byrd	2673	Barbara Mosley
530	Dorothy Byrd- Harris	2674	Joanne Mosley
531	Susan Byrne	2675	Mary Kay Moss
532	Amarilys Caballero	2676	Betty Moss
533	May Cabil	2677	Hannah Mossberg
534	Janet Cable	2678	Mary Moten
535	Everlean Cage	2679	Ruth Mothershed
536	Grace Caiazza	2680	Frances Mott
537	Lee Cain	2681	Mable Moyer
538	Alice Cain	2682	Lagha Mozoon
539	Adelle Calabretta	2683	Ruby Muench
540	Blanca Calderon	2684	Mary Mugan
541	Jackie Caldwell	2685	Adrena Muhammad
542	Dorothy Caldwell	2686	Angela Mulichak
543	Josie Calhoun	2687	Sara Mullens

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544	Bertha Calhoun	2688	Jacqueline Mullkin
545	Michelle Calhoun	2689	Catherine Muna
546	Ethel Calhoun	2690	Laura Mundigler
547	Donna Callaghan	2691	Norma Muraviov
548	Mignon Callaway	2692	Patricia Murphee
549	Christine Calloway	2693	Jacquelynn Murphy
550	Belinda Calton	2694	Brenda Lee Murphy
551	Pearle Cameron	2695	Patrice Murphy
552	Sharon Lee Camp	2696	Loreli Thagon Murray
553	Helen Campbell	2697	Janet Murray
554	Charlene Campbell	2698	Dixie Murray
555	Sharon Campbell	2699	Dianne Murray
556	Yvonne Campbell	2700	Sarah Murray
557	Pamela Campbell	2701	Tammy Ann Muscarella
558	Jamie Campbell	2702	Mary Muse
559	Margaret Campbell	2703	Paula Mushol
560	Eleanor Campbell	2704	Katherine Musolf
561	Margaret Campbell	2705	Gloria Myers
562	Barbara Campbell	2706	Miriam M Myers
563	Dorothy Campbell	2707	Jean Myrup
564	Annie Campbell	2708	Joanne Nacoste
565	Marianne Campbell	2709	Barbara Nadolski

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566	Maria Campos	2710	Donna Nahra
567	Kymerly Cancilla	2711	Jeffrey Nahra
568	Gloria Candido	2712	Karine Nalbandyan
569	Lori Canorro	2713	Lora Napier
570	Diane Cantone	2714	Lillie Napier
571	Ann Cantone	2715	Gabrielle Nardone
572	Lorraine/Willie Cantrell	2716	Carolyn Nash
573	Julia Canty	2717	Annie Nash
574	Carolyn Capaniro	2718	Clarice Nash
575	Regina Caparros	2719	Verna Lea Nash
576	Maria Carbajal	2720	Mary Helen Navarro
577	Tammie Carden	2721	Raana Nawaz
578	Teresa Carden	2722	Masooda Naz
579	Ana Cardillo	2723	Thelma Neal
580	Sandra Cardinal	2724	Wille Neal
581	Carolyn Cardwell	2725	Mary Neal
582	Susan Carey	2726	Rose Neilson
583	Vicki Carey	2727	Bertha Nelams
584	Marjorie Carey	2728	Artha Nelson
585	Rosemary Caringella	2729	Royalette Nelson
586	Vickie Carl	2730	Gladys Nelson
587	Alberta Carleton	2731	Carol Nelson
588	Linda Carlson	2732	Lisa Nethery
589	Gertrude Carlson	2733	Vivian Nettles
590	Evelyn Carlson	2734	Diane Neville

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591	Ardis Carmichael	2735	Althea Newbern
592	Bennie Carmon	2736	Loretta Newby
593	Amy Caro	2737	Mildred Newby
594	Wittman Carol	2738	Terry Newcomb
595	Ardena Carpenter	2739	Sandra Newell
596	Rose A. Carpenter	2740	Monica Newman
597	Cynthia Carpenter	2741	Debra Newman
598	Diane Carr	2742	Jewel Newman
599	Frances Carr	2743	Teresa Newman
600	Paula Carrick	2744	Delphine Newsome
601	Maria Carroll	2745	Andrea Newton
602	Bette J. Carroll	2746	Mattie Newton
603	Clementine Carson	2747	Uyen Nguyen
604	Una Mae Carson	2748	Carol Nichols
605	Linda Carter	2749	Nechelle Nichols
606	Ruth Carter	2750	Marion Nicholson
607	Beulah Carter	2751	Diantha Nicholson
608	Annie Carter	2752	Karen Nicholson
609	Joanne Carter	2753	Susan Nielsen
610	Lucy Carter	2754	Elaine Nienaber
611	Tanya Carter	2755	Dwayne W. Nienaber
612	Delores Caruthers	2756	Lyzette M. Colon Nieves
613	Ramona Casarez	2757	Avis Nix
614	Katrenna Casey	2758	Dana Nixon

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615	Jean Casey	2759	Annie Nixon
616	Judith Caskey	2760	Bertha Noble
617	Jean Casper	2761	Marsha Nolan
618	Linda Cassaro	2762	Joanne Nordenstrom-Buck
619	Margaret Cassidy	2763	Tabatha Norman
620	Bernice Cassidy	2764	Cherl Normandin-Hill
621	Emma Castle	2765	Ruth Norris
622	Lucila Castro	2766	Kathryn North
623	Randa Catchings	2767	Laura Northrup
624	Bety Catchings	2768	Gail Novak
625	Doris Cater	2769	Marisol Nunez
626	Litton Cathy	2770	Mary Nye-Matthews
627	Sharon Cauchy	2771	Linda Nyman
628	Patti Lee Caudle	2772	Virgina Oakley
629	Molli Caulder	2773	Gloria Oakwood
630	Norma Cauthen	2774	Delber Oates
631	Sandra Cavey	2775	Virginia O'Banion
632	Mamie Cayson	2776	Doris Oberhardt
633	Janell Cech	2777	Nina Obuch
634	Ema Cerda	2778	Mabel Ocana
635	Macy Chaeng	2779	Joan O'Connor-Braun
636	Vicky Chaffee	2780	Patricia O'Dell
637	Rhonda Chafin	2781	Margie Oden

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638	Ovsanna Chalaganyan	2782	Glenda Oden
639	Deloris Chalmers	2783	Naomi Oden
640	Mildred Chamberlain	2784	Jane Oden
641	Dawn Chamberlin	2785	Charmaine Odom
642	Ruby Chambers	2786	Lela Odom
643	Mildred Champion	2787	Janet Odom
644	Maria Champion	2788	Kate Odunze
645	Helen Chandler	2789	Patricia Oglesby
646	Sharlene Chapman	2790	Nara Ohanyan
647	Lurena Charelston	2791	Sharon Olivarez
648	Aline Chatman	2792	Edna Olivas
649	Dora Sabedra Chavira	2793	Christine Oliver
650	Pamela Cheek	2794	Regina Oliver
651	Doris Cheek	2795	Martha Ollison
652	Sandra Cheeseboro	2796	Sylvia Olmstead
653	Susan Chenault	2797	Margarette Olsen
654	Sharon Cheney	2798	Nancy Olsen
655	Elizabeth Chepkauskas	2799	Deanna Olsen
656	Javonne Childs	2800	Sharon Olson
657	Ann Childs	2801	Elnar Olson
658	Margaret Childs	2802	Helen Olson

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659	Marilyn Chisholm	2803	Tillie Olson
660	Shirley Chisler	2804	Corina Olvera
661	Ethel Chisum	2805	Uwaiye Omorogieva
662	Darlene Chittick	2806	Betty Omspaush
663	Rosie Chittom	2807	Dustin Jefferson East On Behalf of Gena Cranford
664	Doris Choate	2808	Belinda O'Neal
665	Barbara Chrismer	2809	Katie O'Neal
666	Marie Christian	2810	Marilyn O'neal
667	Brenda Christian	2811	Quintana Onubogu
668	Margaret Christison	2812	Carolyn Organ
669	Dessie Christopherson	2813	Gertrude Orlando
670	Charlene Christy	2814	Patricia Orr
671	Marian Chromcak	2815	Betty Orris
672	Peony Chua	2816	Elisa Orta
673	Sonja Chupik	2817	Lauren Ortega
674	Carmela Ciampa	2818	Thelma Osborn
675	Linnea Cihura	2819	Innis Osborne
676	Dawn Cirrito	2820	Ethel Osby
677	Carlyn Claibourn	2821	Stella Oullette
678	Lisa Clark	2822	Priscilla Overbey
679	Jan Clark	2823	Linda Owens
680	Kathleen Clark	2824	Helenore Owens
681	Helen Clark	2825	Doris Owens
682	Gloria Clark	2826	Yvonne Owens

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683	Sharon Clark	2827	Clara Owens
684	Mattie Clark	2828	Rosie Owens
685	Abisac Clark	2829	Cathy Owens
686	Joyce Clark	2830	Shahla Owhady
687	Linda Clark	2831	Marilyn Oyler
688	Laveria Clark	2832	Rowena Ozanne
689	Oristine Clark	2833	Nancy Ozuna
690	Jaleen Clark	2834	Eida Pack
691	Marie Annette Clark	2835	Rhoda Padilla
692	Joyce Clark	2836	Flora Padilla
693	Peggy Clark	2837	Nicki Padilla
694	Helen Clark	2838	Marilyn Paduamo
695	Lillian Clark	2839	Maxzima Pagan
696	Crystal Clark	2840	Evan Pagan
697	Rosalind Clarke	2841	Betty Page
698	Jacki Claus	2842	Jane Ann Paige
699	Betty Clay	2843	Marti Palmer
700	Glenda Clayton	2844	Alecia Palmer
701	Anette Clayton	2845	Brenda Palmer
702	Tammy Clayton	2846	Ida Pancioli
703	Nona Cleaver	2847	Janice Pankratz
704	Valerie Clem	2848	Angelea Panos
705	Linda Clemons	2849	Judy Pantall
706	Gwendolyn Clemons	2850	Artinia Pappineau
707	Vivian Cleveland	2851	Edith Parcell
708	Lynda Cleveland	2852	Barbara Pargament

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709	Sharon Cleveland	2853	Beverley Parie
710	Velma Clevelle	2854	Marilyn Parker
711	Barbara Clifton	2855	Gwendolyn Parker
712	Melinda Clinard	2856	Shirley Parker
713	Judy Cline	2857	Sharon Parker
714	Mary Clinton	2858	Patricia Parker
715	Brenda Clontz	2859	Michelena Parker
716	Christine Close	2860	Tammy Parker
717	Darla Cloud	2861	Shirley Parker
718	Sheila Clouser	2862	Inez Parker
719	Lorie Ann Coates	2863	Dorothy Parks
720	Clara Cobb	2864	Alice Parks
721	Roslalind Coble	2865	Sharon Parmenter
722	Mae Cochran	2866	Chansonnette Parnell
723	Bonnie Cochran	2867	Virginia Parra
724	Essie Cochran	2868	Adaline Parrish
725	Ezraline Cochran	2869	Elizabeth Louise Parrish
726	Eva Coddington	2870	Myra Parsons
727	Mary Coe	2871	Cindy Parsons
728	Velma Coffman	2872	Judy Partee
729	Pamela Cogar	2873	Myra Partee
730	Deborah Cokely	2874	Celia Pasqua
731	Lana Coker	2875	Janine Patat
732	Judith Colbert	2876	Donna Patch
733	Felicia Colbert	2877	Pushpa Patel
734	Caroline Cole	2878	Anita Patel

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735	Patience Cole	2879	Kasum Patel
736	Melody Cole	2880	Anita Paterra
737	Barbara Cole	2881	Mary Patterson
738	Sally Diane Cole	2882	Dorothy Patterson
739	Linda Cole	2883	Saundra Patterson
740	Dorothy Cole	2884	Donna Patterson
741	Mary Coleman	2885	Joan Patti
742	Florida Coleman	2886	Andrea Paul
743	Mary Coleman	2887	Bonnie Paul
744	Jeanette Coleman	2888	Jeanette Paulin
745	Debra Shay Coleman	2889	Lois Pauly
746	Clarissa Coleman	2890	Theresa Pavis
747	Mamie Coleman	2891	Kathleen Pavlosky
748	Jean Colletti	2892	Elizabeth Paxton
749	Linda Collie	2893	Pamela Payne
750	Maggie R. Collier	2894	Nicole Payne
751	Opal Collier	2895	Wanda Paynter
752	Debra Collins	2896	Magdeline Payton
753	Fleta Collins	2897	Pattie Pearce
754	Janet Collins	2898	Saralee Pearl
755	Edna Collins	2899	Mary Pearson
756	Yvonne Collins	2900	Gloria Pease
757	Lella Collins	2901	Linda Pechan-Lake
758	Sylvia Collins	2902	Charlene Peden
759	Judy Collins	2903	Carol Peebles
760	Cathy Collins	2904	Rachel Peeples

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761	Ethel Collins	2905	Fannie Peeples
762	Doris Collins	2906	Becky Pekar
763	Inish Collins	2907	Dolores Pekar
764	Willie Collins	2908	Gayle Pelella
765	Kim Collins	2909	Tonia Pelletier
766	Sandra Colombo	2910	Theodora Pellini
767	Maria Colon	2911	Deborah Pena
768	Angel Colon	2912	Vivian Penaflor
769	Maritza Colon	2913	Jamie Pendergraft
770	Billie Combs	2914	Jacqueline Pendleton
771	Maggie Combs	2915	Marceita Penick
772	Pamela Combs	2916	Debera Penman
773	Sheila Comegys	2917	Harriet Penney
774	Anna Commiskey	2918	Gwen Penson
775	Carla Como	2919	Debra Peoples
776	Tammy Conley	2920	Francine Peregoy
777	Christine Conner	2921	Janice Pereira
778	Gail Conner	2922	Carmen Perez
779	Dorothy Connolley	2923	Margaret Perez
780	Kathy Connolly	2924	Beatrice Perez
781	Marion Constant	2925	Maria Perez
782	Gabriela Constantino	2926	Rita Perkins
783	Patricia Conyers	2927	Margaret Perkins
784	Jacquelyn Coogler	2928	Alberta Perkins
785	Marguerite Cook	2929	Karen Perkins
786	Patricia Cook	2930	Brenda Perkins

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787	Pariscilla Cook	2931	Deborah Perkins
788	Erma Cook	2932	Phyllis Perkins
789	Consuela Cooke	2933	Anita Maria Perlhefter
790	Linda Coombs	2934	Doris Perry
791	Carolyn Coon	2935	Linda Perry
792	Betty Coon	2936	Debra Perry
793	Patricia Cooper	2937	Laura Peters
794	Gladys Cooper	2938	Ollie Peters
795	Gloria Cooper	2939	Dale Peters
796	Kathryn Loy Cooper Shorter	2940	Annette Peters
797	Rose Coots	2941	Carol Peters
798	Beverly Copeland	2942	Susan Peterson
799	Vera Copeland	2943	Lujuana Peterson
800	Felicitas Corbell	2944	Eddie Peterson
801	Divinia Cordero	2945	Robin Petit
802	Tracey Corley	2946	Glenda Pettigrew
803	Yolanda Cornelious	2947	Brenda Pettigrew
804	Betty Cornin	2948	Kristin Petzold
805	Gertrude Cornish	2949	Lennie Pfaffenhauser
806	Debra Cornish	2950	Joan Pfeffer
807	Carmen Correa	2951	Donna Pharo
808	Wanda Correia	2952	Carolyn Phelps-Munson
809	Amy Cortes	2953	Cindy Phetteplace

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810	Peggy Cosby	2954	Annie Phillips
811	Elizabeth Costlow	2955	Lillie Phillips
812	Josett Cottman	2956	Patricia Phillips
813	Nancy Cotton	2957	Joyce Phillips
814	Rhonda Couch	2958	Patricia Phillips
815	Pamela Couch	2959	Antoinette Phillips
816	Gearldean Couch	2960	Sue Phillips
817	Avis Courteaux	2961	Alvera Phillips
818	Linda Courtney	2962	Joan Picha
819	Marion Cousin	2963	James Pickens
820	Mary Covault	2964	Ronda Pickney
821	Dorothy Marie Crabtree	2965	Rosalyn Pierce
822	Hope S. Crabtree	2966	Deann Pierce
823	Lynn Craig	2967	Cristina Pimental
824	Carie Craigen	2968	Michelle Pine
825	Pauline Crawford	2969	Trina Pinegar
826	Carolyn Crawford	2970	Rose Pinkney
827	Paulette Crawford	2971	Kathy Pinnell
828	Christi Crawford	2972	Patricia Pinyan
829	Susan Craycraft	2973	Elzie Pipkins
830	Ramona Darice Craycraft	2974	Catherine Pippel
831	Jane Craze	2975	Christine Pittman
832	Kimberly Cremeans	2976	Vanetta Pittman
833	Anna Cresko	2977	Angle Pitts
834	Tammy Crews	2978	Joan A Pitts

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835	Earlene Crews	2979	Mary Pizana
836	Myrtie Crews	2980	Ida Pizzi
837	Kimberly Crider	2981	Kathleen Planitzer
838	Eva Crocker	2982	Emma Jean Player
839	Edna Crook	2983	Sonya Plessinger
840	Carri Cross	2984	Ann Poague
841	Deborah Ann Cross	2985	Tanya Poe
842	Rosemary Crouse	2986	Nancy Poisson
843	Mary Crowe	2987	Charlotte Poley
844	Deborah Croy	2988	Evelyn Polite
845	Donna Cruera	2989	Thelma Polite
846	Vivian Crum	2990	Jacqueline Polonio
847	Maria Cruz	2991	Maribel Ponce
848	Rosalind Cruz	2992	Effie Ponce
849	Ada Cruz	2993	Marguerite Poole
850	Elaine Crysler	2994	Evelena Poole-Johnson
851	Charlene Culbreath	2995	Mary Poppell
852	Charlene Culbreath	2996	Patricia Ann Poppinger
853	Myrtle Culpepper	2997	Catherine Porter
854	Sheryl Cummings	2998	Linda Porter
855	Carolyn Cummins	2999	Peggy Porter
856	Donna Cunningham	3000	Nina Porter
857	Loretta Curley	3001	Kathleen Porter

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858	Mary Curley	3002	Carla Porterfield
859	Arnetta Curry	3003	Teresa Portlock
860	Linda Curry	3004	Leslie Post
861	Patrcia Curtis	3005	Virginia Postle
862	Nancy Curtis	3006	Raelene Postma
863	Barbara Cutcher	3007	Norma Potter
864	Celia Cuyler	3008	Debbra Powell
865	Cheryl A Dafford	3009	Anne Powell
866	Charlotte Dailey	3010	Taryn Powell
867	Linda Dakos	3011	Nancy Powell
868	Sandra Dalan	3012	Lillie Powell
869	Frances D'Alessio	3013	Betty Powell
870	Lucille Daly	3014	Anna Powell
871	Geneta Daly	3015	Cassandra Powell
872	Angela Dance	3016	Tonisha Powell
873	Zoe Daniel	3017	Jessie Powell
874	Shirley Daniel- Rundberg	3018	Diana Lynn Powers
875	Jennie Daniels	3019	Betty Ppiersel
876	Brenda Daniels	3020	Dawna K. Prater
877	Margaret Daniels	3021	Theresa Pratt
878	Jacqueline Daniels	3022	Barbara Pratt
879	Gloria Danzwith	3023	Marie Preciado
880	Florence Dapo	3024	Inez Presto
881	Kim Darsee	3025	Mercie Prevose
882	Sophia Dashab	3026	Nanci Price
883	Teresa Davenport	3027	Thelma Price

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884	Mary Davidson	3028	Sharon Ann Priddy
885	Heren Davidson	3029	Joyce Pride
886	Barbara Davidson	3030	Sheila Pridgen
887	Lola Davis	3031	Katherine Primrose
888	Deloris Davis	3032	Mavis Prisco
889	Deborah Davis	3033	Linda G. Privett
890	Eula Davis	3034	Marlene Proulx
891	Rosemary Davis	3035	Kim Provitt
892	Salley Davis	3036	Gilmer Pruitt
893	Sheila Davis	3037	Bonnie Pruitt
894	Debbie J. Davis	3038	Wanda Pryor-Jones
895	Mary Davis	3039	Kimberly Puente
896	Lavonia Davis	3040	Genese Pugh-Williams
897	Nellie Davis	3041	Yolanda Pulk
898	Carolyn Davis	3042	Nancy Rae Pullam
899	Cynthia Faye Davis	3043	Dawn Pulliam
900	Kathleen Davis	3044	Maria Punches
901	Ann Davis	3045	Gwendolyn Purnell
902	Valerie Davis	3046	Jeanette Pyle
903	Lillie Davis	3047	Regina Pyle
904	Rebecca Davis	3048	Cynthia Quaife
905	Helen Davis	3049	Aleene M Queen
906	Annie Davis	3050	Christine M Questrell
907	Frances Davis	3051	Annie Quick
908	Pearl Davis	3052	Kay Quillin

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909	Helene Davis	3053	Jolene Quinn
910	Patricia Davis	3054	Margarita Y. Quintana
911	Dedra Davis	3055	Meryl Rabinowitz
912	Betty Davis	3056	Nova Rachal
913	Deborah Davis	3057	Monique Rae
914	Donna Davis	3058	Betty Ragan
915	Michelle Davis	3059	Mary Ragan
916	Angela Yvonne Davis	3060	Freda Ragusi
917	Willie Mae Davis- Williams	3061	Jesteen Raines
918	Lori Dawson	3062	Gwendolyn Rainey
919	Deborah Day	3063	Linda Rainey
920	Earnestine De La Rosa	3064	Marilyn Ralson
921	Gloria De Rogatis	3065	Marjorie Ramirez
922	Cynthia De Saeger	3066	Miriam Ramirez
923	Susie Deal	3067	Barbara Ramm
924	Vertie Dean	3068	Peggy Ramos
925	Robin Dean	3069	Marisol Ramos
926	Robbie Dean	3070	Janina Ramsey
927	Victoria Deane	3071	Juanita Randall
928	Sharon Dearing	3072	Linda Randall
929	Wanda Dearmore	3073	Gloria Randle
930	Eileen Deaton	3074	Arlice Randolph
931	Elizabeth Debay	3075	Madine Randolph

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932	Mary Debock	3076	Janet Elaine Ranfeld
933	Janet Decker	3077	Eilene Raslowsky
934	Ruth Decker	3078	Tammy Ratcliff
935	Mary Decker	3079	Cynthia Rathbone
936	Roberta Decker	3080	Sherry Ellen Mae Ratliff
937	Barbara DeForest	3081	Patricia A Rattay
938	Brenda Dehlinger	3082	Marjorie Ray
939	Maria Del Carmen Sanchez	3083	Carolyn Ray
940	Catherine Del Prete	3084	Sally Raya
941	Theresa Delaney	3085	Lynn Ream
942	Helen DeLauder	3086	Mary Rebar
943	Jami Delliquadri	3087	Carol Rector
944	Rosalyn Deloatch	3088	Jan Reddick
945	Susan Deluney	3089	Nancy Reece
946	Nora Demay	3090	Linda Reed
947	Edit Demeter	3091	Agnes Reed
948	Carol Dendinger	3092	Gwendolyn Reed
949	Judith Deniso	3093	Helen Reed
950	Beverly Denney	3094	Susan Reed
951	Maureen Dennis	3095	Juanita Reed
952	Mattie Dennis	3096	Betty Reed
953	Marilyn Dennis	3097	Betty Reed
954	Sonya Dennis	3098	Sybil Reed
955	Rita Derosier	3099	Vera Reeder

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956	Mary DeRossett	3100	Oretha Reese
957	Virginia Desalvo	3101	Jacquelyn Reese
958	Cynthia Dewitt	3102	Cheryl Ann Reese
959	June E. Dewitt	3103	Linda Reeves
960	Lisa Lynne Dews	3104	Janice Reeves
961	Sunantha Dharmasaroja	3105	Mary Regins
962	Urmil Dhawan	3106	Kathleen Register
963	Jacquelyn Diamond	3107	Glenda Reid
964	Imelda Diaz	3108	Ida Reid
965	Isabel Diaz	3109	Sabrina Reillo
966	Lorretto Diaz	3110	Pauline Reincke
967	Paulette Dibibar	3111	Alta Will Reives
968	Dolores Dickerson	3112	Edita Relos
969	Donna Dickerson	3113	Jane Remer
970	Gloria Dickerson	3114	Sharon Renfro
971	Shirley Dickerson	3115	Pauline Renfroe
972	Mary Dicus	3116	Imogene Renner
973	Darleen Diebold	3117	Olivia Renteria-Komura
974	Nancy Dietrich	3118	Deon Revis
975	Leslie Dillard	3119	Joanna Mary Reyes-Rivera
976	Maria Antoinette Dillard	3120	Clarice Reynolds
977	Leslie Dillard	3121	Laura Lee Reynolds
978	Elizabeth Dingle	3122	Vicky Reynolds

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979	Debra Dirks	3123	Shirley Reynolds
980	Gayle Dirksen	3124	Stella Reynolds
981	Vivian Ditkovich	3125	Vikkilee Reynoldson
982	Scott Ditrich	3126	Teresa Rhoades
983	Lana Dittrich	3127	Rosetti Rhodes
984	Margaret Ditty	3128	Donna Rhyneer
985	Anna Dixon	3129	Cynthia Rice
986	Carolyn Dixon	3130	Cindy Rice
987	Bettie Dixon	3131	Yvonne Rice
988	Eva Dixon	3132	Ruth Ann Rich
989	Lola Dixon	3133	Deloris Richard
990	Charlotte Dixon	3134	Elsie Richards
991	June Donald Dixon	3135	Letitia Richardson
992	Jennifer Dixon	3136	Elizabeth Richardson
993	Jane Doane	3137	Yolanda Richardson
994	Shirley Dobbs	3138	Ruth Richardson
995	Phyllis Dober	3139	Myrthala Richardson
996	Marci Dobson	3140	Judith Richardson
997	Rhonda Leigh Dobson	3141	Melba Richardson
998	Betty Dockery	3142	Deborah Richardson
999	Gina Dockery	3143	Judith Richey
1000	Helen Doerner	3144	Debra Rideout
1001	Khatun Doganyan	3145	Anna Rider

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1002	Josephine Dollarhide	3146	Aretta Rife
1003	Mable Donald	3147	Amanda Riggins
1004	Pamela Donaldson	3148	Peggy Riley
1005	Raji Donat	3149	Emily Riley
1006	Kathleen Doner	3150	Pamela Riley
1007	Suzanne Donnelly-Yingling	3151	Evelyn Riley
1008	Betty Dooley	3152	Vicki Lee Ring
1009	Betty Dooley	3153	Cora Ripley
1010	Claudia Dorf	3154	Betty Ripp
1011	Bernice Dorneson	3155	Alta Risk
1012	Barbara Dorris	3156	Waltraud Risley
1013	Ellen Dorsey	3157	Lisa Ritchie
1014	Johnnie Mae Dorsey	3158	Celia Rivera
1015	Adele Dorsey	3159	Camille Rivers
1016	Sandra Dotson	3160	Virginia Rivers
1017	Mary Dotson	3161	Lucky Rives
1018	Helen Douglas	3162	Deberah Rivington
1019	Juanita Douglas	3163	Novalee Robbins
1020	Connie Douglas	3164	Carolean Roberson
1021	Angela Douglas	3165	Marilyn Roberson
1022	Annie Douglas	3166	Savannah Roberson
1023	Ravyne Dow	3167	Nancy Roberson
1024	Brenda Dowd	3168	Mary Robert-Gartin
1025	Nadine Alese Downing	3169	Hazel Roberts

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1026	Shelly Downing	3170	Elfrida Roberts
1027	Ruth Doyle	3171	Cathy Roberts
1028	Patricia Doyle	3172	Jonna Roberts
1029	Barbara Drabant	3173	Linda Roberts
1030	Diane Draper	3174	Ganelle Dennis Roberts
1031	Musu Draper	3175	Ganelle Roberts
1032	Christine Mary Drazkowski	3176	Helen Roberts
1033	Kathie Drummond	3177	Brenda Roberts
1034	Amalia Duckwall	3178	Frances Roberts
1035	Cyrel Dudley	3179	Candacy Roberts-Anderson
1036	Sherry Dufrane	3180	Linda Robertson
1037	Debra Duke	3181	Christina Lynn Robertson
1038	Judith Ann Duke	3182	Melissa Robinette
1039	Margaret Dukes	3183	Laverene Robinson
1040	Barbara Dumas	3184	Gloria Robinson
1041	Chevorilynne Dunbar	3185	Brenda Robinson
1042	Faye Duncan	3186	Chenetta Robinson
1043	Rose Duncan	3187	Ella Robinson
1044	Marretta Dunk	3188	Doris Robinson
1045	Dorothy Dunlap	3189	Betty J. Robinson
1046	Bonnie Dunlap	3190	Virginia Robinson
1047	Debbie Dunn	3191	Clarissa Robinson

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1048	Sheila Dunn	3192	Lillian Robinson
1049	Annie Dunn	3193	Clara Robinson
1050	Rosemary Dupre	3194	Martha Robinson
1051	Sharon Dupuy	3195	Dorthy Robinson
1052	Rhonda Durden	3196	Janice Robinson
1053	Cecilia Durham	3197	Gwendolyn Robinson
1054	Mamie Durio	3198	Marilyn Robinson
1055	Donna Duval	3199	Milda Jangar Robles
1056	Grace Dyal	3200	Milgros Robles
1057	Denise Dye	3201	Terry Roby
1058	Audrey Dyess	3202	Gayle Roby
1059	Debora Dykes	3203	Doreen Rockehad
1060	Mable Eaddy	3204	Wilma Rockingham
1061	Shirley Eagle	3205	Carolyn Roddy
1062	Fannie Eames	3206	Virginia Roddy
1063	Maridee Earl	3207	Linda Rodgers
1064	Marlene Easterling	3208	Florine Rodgers
1065	Patricia Easterling	3209	Shirley Baker Rodgers
1066	Mary Eckerson	3210	Rosa Rodriguez
1067	Theresa Eckhard	3211	Lupe Vasquez Rodriguez
1068	Theresa Eckhard	3212	Rosa Rodriguez
1069	Ida Eden	3213	Juanita Rodriguez
1070	Mae Edgar	3214	Patricia Rodriguez

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1071	Debra Edgley	3215	Sandra Rodville
1072	Virginia Mae Edington	3216	Patricia Roe
1073	Deborah Edwards	3217	Joanne Roesler
1074	Tammy Edwards	3218	Margie Rogers
1075	Brenda Edwards	3219	Ricki Rogers
1076	Roxie Edwards	3220	Linda Rogers
1077	Wanda Egbert	3221	Lena Rogers
1078	Myrna Egbufoama	3222	Brenda Sue Rohn
1079	Bonnie Eggleston	3223	Patricia Rohrig
1080	Penelope Eichelberger	3224	Carmella Rokes
1081	Catrina Eimer	3225	Kathy P Roll
1082	Helen Einspahr	3226	Patricia Romagnoli
1083	caryn Eisenberg	3227	Jeanne Romans
1084	Betta Elarms	3228	Marilyn Rome
1085	Joan Elby	3229	Carmen Romero
1086	Dorothy Eldridge	3230	Ann Rook
1087	Janet Sue Elenbaas	3231	Janice Elaine Roque
1088	Bernita Elko	3232	Olga Rosario
1089	Deborah Ellington	3233	Aida Rosario
1090	Helen Elliott	3234	Jean Rose
1091	Denise Elliott	3235	Carolyn Rose
1092	Ramona Ellis	3236	Janet Rose
1093	Linda Ellis	3237	Frankie G. Rose
1094	Naomi Ellison	3238	Glenda Roseburrow

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1095	Joanne Ellis- Steinmetz	3239	Vickie Roseman
1096	Barbara Ells	3240	Lois Rosenhahn
1097	Jean Elson	3241	Kelly Ross
1098	Debbie Elswick	3242	Beverly Ross
1099	Lessie Elza	3243	Juanita Rothweiler
1100	Mary Emely	3244	Marilyn Rouda
1101	Joanne Englerth	3245	Rose Rowe
1102	Aldyne English	3246	William Rowlands
1103	Ruth English	3247	Linda Roy
1104	Tammy English	3248	Louise Royal
1105	Brenda Ennis	3249	Donna Royer
1106	Linda Ennis	3250	Barbara Rubel
1107	Alicia Epps	3251	Wanda Rubin
1108	Kathie Epps	3252	Kathy Ruble
1109	Marion Epps	3253	Faenza Rudolph
1110	Elaine Erdely	3254	Judith Ann Ruf
1111	Chris Erickson	3255	Carolyn Ruffin
1112	Lorene M. Eriksen	3256	Beverly Rule
1113	Luz Escalera	3257	Mariam Rumelyan
1114	Benedicta Espanol	3258	Laurella Runkle
1115	Mercedes Esparza	3259	Lila Rusek
1116	Lena Esquivel	3260	Benita Rush
1117	Margarita Esquivel	3261	June Russ
1118	Lisa Esquivel	3262	Debra Russel
1119	Lisa Esquivel	3263	Jessie Russell
1120	Melinda Estep	3264	Rita Russell

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1121	Wyoma Estes	3265	Patricia Russell
1122	Paula Estrada	3266	Ida Russell
1123	Aurora Estrella	3267	Mildred Rutledge
1124	Juanita Evans	3268	Dorothy Rutledge
1125	Margaruita Evans	3269	Marie Rutledge
1126	Lauren Evans	3270	Verbia Ryan
1127	Miriam Evans	3271	Carolyn Ryant
1128	Shirley Evans	3272	Vivian Sabey
1129	Emma Evans	3273	Violet Sadaka
1130	Jannie Evans	3274	Mahin Sadegholghol
1131	Bobbie Evans	3275	Lilly Saenz
1132	Evanetta Evans	3276	Martha Sahnnow
1133	Dianne Evans	3277	Mary Sain
1134	Kathleen Evans	3278	Kathleen Sainato
1135	Thelma Evans	3279	Olga Salazar
1136	Annie Evans	3280	Glenna Salinas
1137	Anna Evans	3281	April G. Salinas
1138	Madeline Evans- Brown	3282	Ethel Salisbury
1139	Sheliah Evans- Williams	3283	Susan Salvatore
1140	Lisa Everage- Scott	3284	Jocelyn Salvo
1141	Carolyn Everidge	3285	Josephine Sam
1142	Margaret Everts	3286	Kyucha Samara
1143	Diane Ewing	3287	Carla Sampson
1144	Marilyn Ewing	3288	Doretha Sampson
1145	Tomader Ezzeldin	3289	Joe L. Sampson

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1146	Debra Fabiano	3290	Laverne Samuel
1147	Patricia Ann Fadis	3291	Poonia Samuel
1148	Glenda Fairley	3292	Carmen Samuels
1149	Phyllis Faller	3293	Reda Samy
1150	Viola Faria	3294	Mary Sanchez
1151	Katie Farmer	3295	Denise Sanchez
1152	Christine Farnsworth	3296	Ann Sanchez
1153	Sandra Farthing	3297	Shirley Sanders
1154	Shirley Farthing	3298	Jirri Sanders
1155	Debra Farve	3299	Shirley Sanders
1156	Diane Faulcon	3300	Tammy Sanders
1157	Ethel Faulk	3301	Georgia Sanders
1158	Lawanna Faulker	3302	Georgia Sanderson
1159	Darrell Faulker	3303	Sue Sandifer
1160	Lawanna Faulkner	3304	Merline Sandvand
1161	Cheryl Faulkner	3305	Lila Sanehi
1162	Lora Fawkes	3306	Sheila Sanford
1163	Vickie Faye	3307	Frances Sanford
1164	Regina Feberdino	3308	Judith Santiago
1165	Illene Felder	3309	Magda Santiago
1166	Ann Fell	3310	Yvonne Sarafan
1167	Wanda Fellion	3311	Lenora Sarantos
1168	Monique Felton	3312	Joleen Sartori
1169	Madeleine Fenner	3313	Vivian Satchel

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1170	Janice Ferganchick	3314	Jean Sauer
1171	Dorothy Ferguson	3315	Patricia Saunders
1172	Christine Ferguson	3316	Paula Savage
1173	Barbara Ferguson	3317	Janet Saylor
1174	Amber Ferguson	3318	Jackie Scales
1175	Lella Ferguson	3319	Luella Scarpitta
1176	Bernadette Fernandez	3320	Othell Scarso
1177	Texanna Fernandez	3321	Donna Schaeffer
1178	Mary ferrell	3322	Anna Schaffer
1179	Lilymirna Ferrer	3323	Marilyn Schaum
1180	Karen Fetherolf	3324	Billie Scheets
1181	Neta Few	3325	Dorothy Schenck
1182	Janet Fick	3326	Angelia Schilling
1183	Carolyn Fielder	3327	Susan Schlenker
1184	Ruth Fields	3328	Marcy Schlesinger
1185	Arva Fields	3329	Jacquelyn Schlessman
1186	Patricia Fields	3330	Jacqueline Schmidt
1187	Charlotte Fields	3331	Revolon Schmidt
1188	Virginia Fields	3332	Dorothy Schmidt
1189	Wanda Fike	3333	Lori Schnabel
1190	Janice Filer	3334	Lori Schnarr
1191	Aileen Fine	3335	Marta Schoemberger

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1192	Alberta Finlay	3336	Nichole Schopp
1193	Selma Finley	3337	Marianne Schulten
1194	Tasha Finley- Crawford	3338	Teresa Schultz
1195	Joyce Finney	3339	Mary Schutz
1196	Michele Finney	3340	Drona Scott
1197	Sandra Fish	3341	Jeryl Scott
1198	Linda Fisher	3342	Patty Scott
1199	Nadine Fisher	3343	Jewell Scott
1200	Carol Fisher	3344	Glenda Nell Scott
1201	Corinne Fisher	3345	Dorothy Scott
1202	Cherri Fishlowitz	3346	Debra Bennice Scott
1203	Wanda Fitzpatrick	3347	Elouise Scott
1204	Ann Fivecoate	3348	Marian Scott
1205	Yudora Flack	3349	Lynniece Scott
1206	Beverly Flagg	3350	Mary Scott
1207	Yolanda Flanagan	3351	Lula Scott
1208	Debra Fleak	3352	Elaine Scott
1209	Linda Fleeger	3353	Olga Scullen
1210	Glenda Fletcher	3354	Sharal Scully
1211	Audrey Fletcher	3355	Sallyann Scuorzo
1212	Jean Fletcher	3356	Mary Seabaugh
1213	Gilda Fletcher	3357	Beulah Seal
1214	Marie Laverne Fletcher	3358	Patricia Seaman
1215	Phyllis Ann Flinchpaugh	3359	Henrietta Seamster

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1216	Dora Flores	3360	Anne Seaton
1217	San Juana Flores	3361	Cnythia Seaver
1218	Juanita Flores	3362	Dorothy Seawright
1219	Vicki Florio	3363	Clara Seay
1220	Theresa Flowers	3364	Donna Sue Sebastian
1221	Jessie Floyd	3365	Martha Secharan
1222	Shirley Floyd	3366	Marilyn A Seeber-Scisco
1223	Vonda Floyd	3367	Margaret Segal
1224	Violet J. Flynn	3368	Katherine Seibert
1225	Patricia Flynn	3369	Francine Seidita
1226	Bonnie Flyte	3370	Bonnie Lee Selby
1227	September Fohrenkam	3371	Denova Self
1228	Lousetta Foley	3372	Jennie Selim
1229	Marianne Folise	3373	Donald Sell
1230	Gail Fontenot	3374	Lisa Seller
1231	Luella Forbis	3375	Sheila Seltzer
1232	Teresa Ford	3376	Bonnie Sommelmann
1233	Jo Ann Ford	3377	Geraldine Senior
1234	Yvonne Ford	3378	Colleen Serio
1235	Diane Ford	3379	Grace Session
1236	Mary Ford	3380	Donna Sestak
1237	Pamela Ford	3381	Jameelah Shabazz
1238	Maria Fordham	3382	Renee Shackelford
1239	Nina Foree	3383	Susan Shaffer

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1240	Vickie Foresman	3384	Mehri Shahmoradian
1241	Diane Forman	3385	Willie Shahraki-Heard
1242	Joyce Formica	3386	Mary Shamburger
1243	Viviana Forrest	3387	Michele Sharp
1244	Lynnette Fortman	3388	Robin Sharp
1245	Patricia Fortune	3389	Martha Shaw
1246	Pamela Foster	3390	Linda Shaw
1247	Kelly Foster	3391	Randalene Sheets
1248	Deborah Foster	3392	Linda Shelley
1249	Loretta Foster	3393	Donna Shelman
1250	Mildred Foster	3394	Leota Shelton
1251	Anne Fountain	3395	Shelby Shelton
1252	Dorothy Fowler	3396	Ethel Shelton
1253	Helene Fowler	3397	Gale Shemwell
1254	Caroline Franklin	3398	Belinda Shepard
1255	Darlene Franklin	3399	Betty Shepherd
1256	Darlene Franklin	3400	Doris Sherman
1257	Wilhelmia Franklin	3401	Cynthia Sherman
1258	Marcela Franklin	3402	Ora Sherrell
1259	Connie Franklin	3403	Donna M Shertzer
1260	Penny Franklin	3404	Sally Sherwood
1261	Diane Franzoia	3405	Joyce Shields
1262	Linda Franzone	3406	Rhonda Shields
1263	Patricia Fraser	3407	Bobbie Shields
1264	Wanda Frasier	3408	Dana Shilling

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1265	Lavern Frazier	3409	Dana Shilling
1266	Phyllis Frazier	3410	Ophelia Shillingford
1267	Katherine Frazier	3411	Denise Shirley
1268	Bonnie Frazier	3412	Letitia Shoemake
1269	Staci Freeland	3413	Clara Shoemaker
1270	Audrey Freeman	3414	Ronda Shoemaker
1271	Brenda Freeman	3415	Mark (Estate of Karin Bell) Shoop
1272	Gloria Freeman	3416	Cynthia Short
1273	Alta Freeman	3417	Lois Short
1274	Helen Freeney	3418	Donna Short
1275	Connie French	3419	Ivy Shorts
1276	Darlene Frick	3420	Doris Shrader
1277	Emma Frields	3421	Sofia Shterenberg
1278	Florence Friendly	3422	Katherine Shyne
1279	Betty Fries	3423	Sandra Sibley
1280	Patricia Fritz	3424	Gloria Sickman
1281	Barbara Fuccille	3425	Elaine Sidberry
1282	Carol Fuentes	3426	Linda Siddell
1283	Oda Fay Fugate	3427	Segalilt Siegel
1284	Joyce Fuller	3428	Maria Jane Sierra
1285	Brenda Fuller	3429	Gloria Siess
1286	Ella Fullerton	3430	Alice Sifuentes
1287	Elizabeth Fulmore	3431	Margaret Silecchia
1288	Katrina Fulmore	3432	Sharron Siler
1289	Sharon Fulton	3433	Bertha Sills
1290	Bonnie Fultz	3434	Olga Silva

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1291	Wanda Funderburk	3435	Gloria Silva
1292	Jaqueline Funk	3436	Lucina Silva
1293	Mary Furness	3437	Sylvia Silva
1294	Debra Furney	3438	Edna Mae Silvester
1295	Patricia Furst	3439	Rosalie Simeti
1296	Lynn Furutani	3440	Linda Simmons
1297	Leila Futrell	3441	Debra Simmons
1298	Samuel Gabriel	3442	Laverne Simmons
1299	Marie Gahr	3443	Mary Simmons
1300	Sandra Gaines	3444	Billie Simmons
1301	Marta Gaines	3445	Patricia Simmons
1302	Mary Galason	3446	Virgie Simmons
1303	Joan Gallegly	3447	Terrie Simmons
1304	Hope Gallegos	3448	Pinta Simnungkalit
1305	Estelita Gallero	3449	Yolanda Simon
1306	Wanda Galloway	3450	Nancy Simonic
1307	Kimberly Gammage	3451	Margaret Simons
1308	Vickie Gammons	3452	Beverly Simpson
1309	Carolyn Gansz	3453	Ruth Simpson
1310	Jeanette Gant	3454	Gertrude Simpson
1311	Ana Garcia	3455	Glenda Simpson
1312	Maria Garcia	3456	Kelsey Caroline Sims
1313	Pauline Garcia	3457	Wilie Sims-Lewis
1314	Rose-Ann Garcia	3458	Rose Sinclair
1315	Guadalupe Garcia	3459	Theresa Skaggs

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1316	Juana Garcia	3460	Carol Skeif
1317	Shirley Garcia	3461	Diane Skerlak
1318	Maria Garcia	3462	Lorraine Skerski
1319	Priscilla Garcia	3463	Deborah Skinner
1320	Gloria Garcia-Ceja	3464	Dovie Skinner
1321	Willie Gardner	3465	Esther Skrine
1322	Flo Garlandton	3466	Mary Slade
1323	Carol Garlick	3467	Susan Slagle
1324	Gladys Jeanette Garner	3468	Ellen Slaney
1325	Cathy Garner	3469	Christina Slater
1326	Gwendolyn Garner	3470	Sandra Slaton
1327	Patricia Garrett	3471	Kathy Slaton
1328	Vickie Garrison	3472	Opal Slaughter
1329	Teresa Garrison	3473	Brinda Slaughter
1330	Rose Garrity	3474	Patricia Slowley
1331	Delorise Garvin	3475	Gloria Small
1332	Sylvia Garza	3476	Judith Smalley
1333	Maria Garza	3477	Judy Smarch
1334	Judith Gaskamp	3478	Mary Smart
1335	Carla Gaskins	3479	Betty Smiley
1336	Vicki Gates	3480	Sherry Smith
1337	Velma Gates	3481	Nancy Smith
1338	Huda Gatia	3482	Mary Smith
1339	Linda Gatton	3483	Patricia Smith
1340	Rosalie Gaudiello	3484	Stephanie Smith
1341	Denise Gauthier	3485	Susan Smith

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1342	Martha Diane Gay	3486	Betty Smith
1343	Anita Gay	3487	Christine Smith
1344	Myrtle Gayler	3488	Shirley Smith
1345	Arrie Theresa Gehan	3489	Karen R Smith
1346	Jane Gekker	3490	Glenda Smith
1347	Marcia Genatowski	3491	Susan Smith
1348	Frieda Genauer	3492	Mary E. Smith
1349	Nancy Gendron	3493	Emma Smith
1350	Leavinia Genovese	3494	Lue Smith
1351	Donna Gentry	3495	Bobbie Smith
1352	Oire George	3496	Lorene Smith
1353	Jacquelynne George	3497	Betty Smith
1354	Lavera George	3498	Mary M. Smith
1355	Tracy George	3499	Nancy A. Smith
1356	Maureen George	3500	Sondra Smith
1357	Wanda George	3501	Kimberly Smith
1358	Marilyn Gerdes	3502	Jeanne Smith
1359	Joyce Ortaliz Geronca	3503	Jayne Smith
1360	Susan Gerry	3504	Ina Smith
1361	Galane Gevorkian	3505	Frances Smith
1362	Zeina Ghandour	3506	Cherryl Smith
1363	Heghine Ghukasyan	3507	Carrie Smith
1364	Lori Giannotti	3508	Brenda Smith

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1365	Sandra Gibbeny	3509	Nancy Smith
1366	Claryce Gibbons	3510	Lucynda Smith
1367	Celestine Gibbs	3511	Lillie Smith
1368	Trina Marie Gibson	3512	Joan Smith
1369	Barbara Gibson	3513	Kathy Smith
1370	Betty Gibson	3514	Vanessa Smith
1371	Deborah Gibson	3515	Sheila Smith
1372	Deborah Gibson	3516	Glenda Smith
1373	Mindee Gibson	3517	Barbara Smith
1374	Doreen Gideon	3518	Yvonne Smith
1375	Margaret Gilbert	3519	Doris Smith
1376	Sandra Gilbert	3520	Robin Smith
1377	Teresa Marie Gildersleeve	3521	Bernice Smith
1378	Cindy Giles	3522	Jenell Smith
1379	Garal Gilliam	3523	Marlene Smith
1380	Florence Gillis	3524	Vera Smith
1381	Barbara Gillis	3525	Juanita Smith
1382	Paulette Gipson	3526	Mary Smith
1383	Barbara Girard	3527	Bertha Smith
1384	Ann Givan	3528	Charlotte Smith
1385	Linda Glasper	3529	Gloria Smith
1386	Lurlia Glaze	3530	Judith Smith
1387	Nellie Glenn	3531	Lawana Smith
1388	Linda Glenn	3532	Nadine Smith
1389	Mary Ann Glispy	3533	Bobbie Smith
1390	Michelle Glover	3534	Bertie Smith

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1391	Freda Goff	3535	Geneva Smith
1392	Kathy Goins	3536	Melanie Smith
1393	Sondra Goins	3537	Marilyn Smith
1394	Barbara Golden	3538	Viola Smith
1395	Helen Faye Golden	3539	Theresa Smith-Allen
1396	Sondra Goldfarb	3540	Kathleen Smithenry
1397	Brandee Goldsmith	3541	Debra Smitherman
1398	Nahid Goldstein	3542	Terri Smitherman
1399	Bertha Gomez	3543	Annie Smoot
1400	Maria Gomez	3544	Anne Snipes
1401	Virginia Gomez	3545	Christine Snow
1402	Ana Gomez	3546	Gerald Snyder
1403	Elizabeth Gonsoulin	3547	Margaret Snyder
1404	Elton Gonsoulin	3548	Lisa Jane Soape
1405	Clorinda Gonzales	3549	Sheilla Soares
1406	Michelle Gonzales	3550	Carmen Soler
1407	Sheila Gonzalez	3551	Christine Sommerfeld
1408	Gloria Gonzalez	3552	Joan Sonnier
1409	Linda Good	3553	Emily Sorio-Harris
1410	Bonnie Good	3554	Patricia Soskin
1411	Cherry Goode	3555	Mattie Sotelo
1412	Virginia Gooding	3556	Nicole Spain
1413	Dianna Goodling	3557	Addline Spann
1414	Barbara Goodman	3558	Virginia Spaulding

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1415	Marcia Goodman	3559	Amy Spence
1416	Patricia Goodrich	3560	Patricia Spencer
1417	Jamie Gooslin	3561	Michelle Spencer
1418	Mary Gordon	3562	Ester Spencer
1419	Dondie Gordon	3563	Lynette Spencer
1420	Mary Gore	3564	Sonya Spencer
1421	Betty Gorelick	3565	Ina Spencer
1422	Mary Gorie	3566	Mattie Spencer
1423	Christine Gorman	3567	Violet Sperry
1424	John J. Gorman	3568	Doris Spetsas
1425	Carol Gorrell	3569	Juana Spight
1426	Dale Gorski	3570	Jackie Spires
1427	Jane E Goss	3571	Cheryl Spitzer
1428	Frances Gour	3572	Sharon Spivey
1429	Alfaye Gowans- Taylor	3573	Gloria Spivey
1430	Sandra Grafton	3574	Joan C. Splendido
1431	Louanne Graham	3575	Angela Spratt
1432	Sherry Graham	3576	Mary Springer
1433	Robin Graham	3577	Shirley Spurlock
1434	Catherine Graham	3578	Pauline St. Jean
1435	Ennis Graham	3579	Margaret Staats
1436	Debra Graham	3580	Linda Staats
1437	Daphne Graham	3581	Tonia Stacey
1438	Belinda Graham	3582	Edna Stafford
1439	Martha Granado	3583	Charlene Stafford
1440	Ima Granger	3584	Ruby Stafford

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1441	Denise Grant	3585	Evelyn Stafford
1442	Vivian Grant	3586	Courtney Stalley
1443	Millie Grant	3587	Sandra Stallings
1444	Barbra Grant	3588	Mary Stallings
1445	Elizabeth Grant	3589	Sarah Catherine Stallworth
1446	Erma Jean Grant	3590	Roxanne Stampely
1447	Linda Gray	3591	Rae Stanco
1448	Beverly Gray	3592	Betty Stanford
1449	Zurita Gray	3593	Ethel Stanley
1450	Ida Gray	3594	Rena Stanley
1451	Vicky Graybeal	3595	Dorothy Staples
1452	Clyretha Grayson	3596	Patricia Stark
1453	Mary T. Green	3597	Terri Starkey
1454	Ernest I. Green	3598	Mary Starling
1455	Katha Green	3599	Franchetta Starnes
1456	Virginia Green	3600	Esther Steckman
1457	Sheila Green	3601	Marie G Steele
1458	Barbara Green	3602	Barbara Steele
1459	Roberta Green	3603	Florance Steele
1460	Lynda Green	3604	Betty Steffen
1461	Dorothy Green	3605	Shary Stegall
1462	Lorraine Greenhaw	3606	Suzanne Steldt
1463	Dollie Greenwood	3607	Romma Stepetin
1464	Alex Greenwood	3608	Juatassa Stephens
1465	Sandra Greer	3609	Suzanne Stephens
1466	Elizabeth Greer	3610	Mary Stephens

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1467	Theresa Gregory	3611	Carol Stephens
1468	Janet Gregory	3612	Evelyn Sterling
1469	Beverly Gribble	3613	Josie Sterling
1470	Mammie Grice	3614	Vonda Sterling
1471	Leona Grierson	3615	Julia Sterling
1472	Ruthie Griffin	3616	Janice M. Sterling
1473	Wynell Griffin	3617	Ellen Stern
1474	Letitia Griffin	3618	Shirley Stevens
1475	Antoinette Grimes	3619	Sonya Stevens
1476	Kim Grimm	3620	Wendy Stevens
1477	Myrna Grose	3621	Patricia Stevens
1478	Sharon Grose	3622	Linda Stevens
1479	Sharon Grover	3623	Betty J. Stevens
1480	Gladys Guadalupe	3624	Fannie Stevenson
1481	Rebecca Guajardo	3625	Elberta Stewart
1482	Emma Guarr	3626	Beverly Stewart
1483	Rebel Lee Guertin	3627	Debra Stewart
1484	Aurora Guevara	3628	Leora Stewart
1485	Herminia Guillen	3629	Margaret Stewart
1486	Dorothy Guilliams	3630	Pearlie Stewart
1487	Patricia Guillory	3631	Janice Stewart
1488	Tabathy Guillot	3632	Vinita Stewart
1489	Raylene Gull	3633	Conseatta L Stewart
1490	Teresa Gunby	3634	Darlene Stewart
1491	Delorse Gunter	3635	Carol Stier
1492	Karen Guthrie	3636	Mary Stillman

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1493	Diana Guthrie	3637	Mary Stimpson
1494	Ozhen Guymjyan	3638	Racheal Stinson
1495	Rita Habegger	3639	Sharon Stockwell
1496	Sylvia Habel	3640	Karla Stofflet
1497	Anna Habermehl- Schultz	3641	Gladys Stokeley
1498	Diane Hackett	3642	Janie Stokes
1499	Georgia Haddock	3643	Pearl Stokes
1500	Lillie Haddock	3644	Faye Stokes
1501	Sharon Haden	3645	Shirley Stokes
1502	Susan Hadland	3646	Patricia Storey
1503	Patricia Hadley	3647	Kathleen Stormer
1504	Terrell Hagey	3648	Carol Stout
1505	Teressa Haines	3649	Stephanie Stout
1506	Edna Haines	3650	Juanitha Stovall
1507	Mary Halbert	3651	Mary Strange
1508	Shirley Hale	3652	Sheila Young Strawther
1509	Lavergne Hale	3653	Linda Strickland
1510	Linda Hall	3654	Cynthia Strickland
1511	Sherry Hall	3655	Monte Strickland
1512	Mildred Hall	3656	Bobbie Stricklin
1513	Bernita Hall	3657	Mel Strockman
1514	Camelia Hall	3658	Ellen Strohl
1515	Brenda Hall	3659	Betty Strohm
1516	Shirley M. Hall	3660	Paula Strom-Sell
1517	Linda Hall	3661	Sandra Strother
1518	Patricia Hall	3662	Donna Strozier

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1519	Julia Hall	3663	Margaret Strucker
1520	Patricia Hall	3664	Donna Strunk
1521	Katherine Hall	3665	Melody Struthers
1522	Shirley Halle	3666	Jill Stuart
1523	Anita Hallmark	3667	Sharon Stull
1524	Robbie Halmon	3668	Sheran Stump
1525	Barbara Halvorson-Magee	3669	Bernice Stuphen
1526	Lita Haman	3670	Louise Styles
1527	Sandra Hambeck	3671	Virginia Styron
1528	Jessie Hamblin	3672	Gloria Suacedo
1529	Sima Hamedi	3673	Viola Sucedo
1530	Delphine Hamilton	3674	Annette Sue
1531	Naydean Hamilton	3675	Linda Suerer
1532	Alma Hamm	3676	Karen Sullivan
1533	Charlotte Hammer	3677	Myrna Jean Sullivan
1534	Sue N Hammock	3678	Frances Summers
1535	Judy Hammond	3679	Susan Summers
1536	Paulette Hampton	3680	Beverley Summers
1537	Gladys Hampton	3681	Christine Sutton
1538	Ella Hampton	3682	Celina K Sutton
1539	Sherry Hamrick	3683	Claudia Svihl
1540	Peggy Handley	3684	Bertha Swan
1541	Connie Hanes	3685	Sharon Sweeney
1542	Ethel Hankins	3686	Ann Swigart

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1543	Brenda Hankins	3687	Galynda Swoape
1544	Vickie Graybeal Hanks	3688	Laurie Sydow
1545	Bernice Hannon	3689	Marie Sykes
1546	Catherine Hannon	3690	Victoria Rae Sylvester
1547	Connie Hannon	3691	Joann Syracuse
1548	Glenda Hansbruagh- Harris	3692	Marcella Sy-Smith
1549	Janet Hansen	3693	Barbara Tadlock
1550	Roberta Hansen	3694	Dolores Tafoya
1551	Marion Hanson	3695	Azam Taherabadi
1552	Susan Hanson	3696	Yolanda Tahod
1553	Janet Hanson	3697	Mixdalia Taime
1554	Janice Harden	3698	Frances Talbert
1555	Donna Hardin	3699	Barbara Talbert
1556	Evelyn Hardin	3700	Bobbie Talton
1557	Jeanne Harding	3701	Juanita Tamez
1558	Shirley Hardmon	3702	Angela Tartt
1559	Carol Hardwick	3703	Karen Tassone
1560	Paulette Hardy	3704	Charlene Tate
1561	Kimberly Hardy	3705	Violet Tatooskhoygani
1562	Ruby Hare	3706	Catterria Tatum
1563	Hope Hare	3707	Charlesetta Taylor
1564	Fay Harless	3708	Cheryl Taylor
1565	Deborah Harless	3709	Melody Taylor

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1566	Margaret Harness	3710	Sonya Taylor
1567	Diana Harp	3711	Dianne Taylor
1568	Ingrid Harper	3712	Linda Taylor
1569	Fannie Harper	3713	Victoria Janna Taylor
1570	Josephine Harper	3714	Sandra Taylor
1571	Bernadette Harper	3715	Debra Taylor
1572	Paige Harper	3716	Cynthia Taylor
1573	Hollie Harrell	3717	Iva Taylor
1574	Denise Harrell	3718	Vera Taylor
1575	Josie Harrell	3719	Lerlene Taylor
1576	Mary Harrell	3720	Gloria Taylor
1577	Linda Harrelson	3721	Darlene Taylor
1578	Tecolia Harrington	3722	Carole Taylor
1579	Deborah Harrington	3723	Arlene Taylor
1580	Elvita Harris	3724	Lovey Taylor
1581	Formeka Harris	3725	Deborah Taylor
1582	Gloria Harris	3726	Constance Taylor
1583	Fannie Harris	3727	Altha Taylor
1584	Kathy Harris	3728	Brenda Taylor
1585	Shirley Harris	3729	Charlita Taylor
1586	Johilda Harris	3730	Helen Taylor
1587	Essie Harris	3731	Michelle Teague
1588	Debra Harris	3732	Loretta Teanggeow
1589	Ella Harris	3733	Nancy Tedesco

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1590	Louise Harris	3734	Peggy Teeples
1591	Sheila Harris	3735	Lenor Teixeira
1592	Mary Harris	3736	Kathleen Tello
1593	Dorothy Harris	3737	Harriett Terrell
1594	Helen Harris	3738	Ernestine Terry
1595	Rebecca Harris	3739	Patricia Terry
1596	Nancy Harris	3740	Joyce Thalacker
1597	Judith Harris	3741	Wendelin Thibodeaux
1598	Sheldon Harris	3742	Marilyn Thilges
1599	Wanda Harris	3743	Altena Thomas
1600	Dora Harrison	3744	Kim Thomas
1601	Wendell Harrison	3745	Vanessa Thomas
1602	Peggy Hart	3746	Bobbie Thomas
1603	Beverly Hartman	3747	Patricia Thomas
1604	Carolyn Ruth Harvel	3748	Evelyn Thomas
1605	Jennifer Harvey	3749	Willie Thomas
1606	Robin Harvey	3750	Octavia Thomas
1607	Barbara Harvey	3751	Valerie Thomas
1608	Adelheid Harvey	3752	Christine Thomas
1609	Carlotta Harvey	3753	Margaret Thomas
1610	Sharon Harvey	3754	Willette Thomas
1611	Patricia Harvey	3755	Becky Thomas
1612	Debbie Hash	3756	Evelyn Thomas
1613	Rosemary Hasler	3757	Thelma Thomas
1614	Sheila Hastings	3758	Lorine Thomas-Dendy

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1615	Therese Hatcher	3759	Maria Thomas-Lee
1616	Teresa Hatcher	3760	Linda Thomposon
1617	Anita Hatcher	3761	Earlene Thompson
1618	Wanda Hatchett	3762	Lizzie Thompson
1619	Marietta Haugh	3763	Alberta Thompson
1620	Darlene Carnley Havard	3764	Joan Thompson
1621	Claudine Hawkins	3765	Donna Thompson
1622	Barbara Hawkins	3766	Jessie Thompson
1623	Leola Hawkins	3767	Ermia Thompson
1624	Viola Hawkins	3768	Linda Thompson
1625	Valerie Hawthorne	3769	Dorothy Thompson
1626	Diane Lynn Hayden	3770	D'Audra Thompson
1627	Kathy Hayes	3771	Sandra Thon
1628	Geraldine Hayes	3772	Sarah Thornburg
1629	Cheryl Hayes	3773	Sharon Thorne
1630	Virginia Hayes	3774	Mae Thornton
1631	Ora Ann Hayes	3775	Charlesa Thornton
1632	Sheila Hayes	3776	Donna Thorp
1633	Vera Hayes	3777	Judy Thurmond
1634	Linda Hayes	3778	Debbie Tice
1635	Deah Hayle	3779	Martha Tieken
1636	Mayzelle Haynes	3780	Debra Tift
1637	Reatha Haynes	3781	Geraldine Tilkins
1638	Melissa A Haynie	3782	Marline Tillery
1639	Clara Hazelton	3783	Susan Tilley

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1640	Joan Hazelwood	3784	Ella Tilley
1641	Patricia Head	3785	Amonzie Tillman
1642	Edith Headen	3786	Janet Timbrell
1643	Wanda Headrick	3787	Deborah Tindle-Matthews
1644	Mary Heaney	3788	Donna Tiner
1645	Patria Heard	3789	Brenda Tippins
1646	Theresa Heath	3790	Jessie Tisdale
1647	Renee Heavyrunner	3791	Carol Tjarks
1648	Tena Hebert	3792	Kristy Tobias
1649	Lydia Hebert	3793	Marjorie Tobin
1650	Deborah Heflin	3794	Janet Todd
1651	Belinda Hefner	3795	Rosemary Toelcke-Smith
1652	Lisa Hegazy	3796	Darlene Toledo
1653	Geraldine Heine	3797	Mary Tolentino
1654	Mary Heis	3798	Deborah Tolliver
1655	Lesta Hemstreet	3799	Dorothy Ann Tolliver
1656	Janet Henderson	3800	Yvonne Tolman
1657	Eva Henderson	3801	Yvonne Tolman
1658	Elizabeth Hendree	3802	Phillis Tolson-Williams
1659	Madline Hendrixson	3803	Bettina Toohey
1660	Judy Henemyre	3804	Ana Iris Torres
1661	Sharon Henry	3805	Pearl Torres

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1662	Harold Henry III	3806	Rosyna Toure
1663	Mildred Hensley	3807	Barbara Townes
1664	Rhonda Henson	3808	Altressa Townsel
1665	Barbara Henson	3809	Donna Townsend
1666	Filomena Heotis	3810	Sarah Townsend
1667	Margaret Heri	3811	Nita Toy
1668	Linda Hernandez	3812	Magda Trager
1669	Gwendolyn Herod	3813	Elizabeth Travers
1670	Patricia Herrera	3814	Maple Travis
1671	Deborah Herring	3815	Marcella Traylor
1672	Laurel Herring	3816	Alice Treadway
1673	Polly Herrington	3817	Sara Trepanier
1674	Donna Hesson	3818	Manuela Alicia Trevizo
1675	Mable Hickman	3819	Miriam Trezevant
1676	Mable Hickman	3820	Sheila Trigg
1677	Charlotte Hicks	3821	Tina Trinh
1678	Mildred Hicks	3822	Joann Trippodo
1679	Martha Hicks	3823	Joan Trosper
1680	Angela Hicks- Hickman	3824	Patricia Trotman
1681	Emma Hickson	3825	Tina Trotter
1682	Dorothy Higgs	3826	Calrene Truax
1683	Patricia High	3827	Revonja Truby
1684	Sharyell Highland	3828	Rosemary Trujillo
1685	Judith Hill	3829	Olga Trujillo
1686	Jackie Hill	3830	Theresa Trujillo
1687	Marilyn Hill	3831	Rudy Trujillo

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1688	Jessie Hill	3832	Dorothy Trujilo
1689	Deborah J. Hill	3833	Judy Trujilo
1690	Donna Hill	3834	Kim Tucker
1691	Terri Hillard	3835	Estela Tucker
1692	Sharon Hill- Howrd	3836	Lottie Tucker
1693	Judith Hilliard	3837	Danna Tucker
1694	Kimberly Himes	3838	Sonia Tucker
1695	Patsy Hines	3839	Maxine Turner
1696	Charlotte Hines	3840	Glenda Turner
1697	Judie Hines	3841	Louvenia Turner
1698	Vicki Hines	3842	June Turner
1699	Christine Hinkle	3843	Althea Turner
1700	Ninfa Cevallos Hinojosa	3844	Doris Turner
1701	Tammy Hinshaw	3845	Marion Turner
1702	Florance Hinton	3846	Claudia Turner
1703	Molly Kathleen Hirschfield	3847	Brenda K. Turney
1704	Linda Hitchcok	3848	Marisol Tutt
1705	Kay Hoag	3849	Barbara Twitty
1706	Brenda C. Hobbs	3850	Tonya Tyler
1707	Desiree Hobson	3851	Patricia Tyler
1708	Linda Hobson	3852	Monique Tyler
1709	Margaret Hocker	3853	Carrie Tyson
1710	Dora Hodge	3854	Kim Tyson
1711	Ida Hodge	3855	Alice Tyson
1712	Farah Hodges	3856	Sandra Tysor

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1713	Rose Hodges	3857	Jacquelyn Uhlman
1714	Barbara Hoerner	3858	Barbara Ulmer
1715	Janice Hofacker	3859	Dana Underwood
1716	Deana Hoffman	3860	Rosetta Underwood
1717	Frazine Hogan	3861	Tanya Upshaw
1718	Mildred Holbert	3862	Sara Urbina
1719	Pamalyn Holbrook	3863	Bonnie Utynek
1720	Gwendolyn Holder	3864	Peggy Vail
1721	Nancy Holguin	3865	Barbara Vajda
1722	Hilda Holland	3866	Margie Valdez
1723	Gladys Holland	3867	Diana Valdez
1724	Patricia Holland	3868	Louella Valenti
1725	Shirley Holland	3869	Maryline Valenti
1726	Deborah Holley	3870	Ouida Valentine
1727	Lillie Holliday	3871	Ruth M Valentine
1728	Anica Holliday	3872	Gila Van Valkenburg
1729	Josephine Holliman	3873	DeOttis Vallet
1730	Kim Holliman	3874	Valerie Van Zile
1731	Pamela Holloway	3875	Elanor Vanalstyne
1732	Earnestean Holloway	3876	Penny Vanarsdale
1733	Deborah Holloway	3877	Deborah Vance
1734	Karen Hollowell	3878	Beth Vanderhorn
1735	Eva Hollowell	3879	Melba Vanderwyk
1736	Jerrylene Holman	3880	Stacey Vanloozen
1737	Sallie Holmes	3881	Brenda Vann

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1738	Charlene Holmes	3882	Janet Vannoy
1739	Bernice Holmes	3883	Elizabeth Vanover
1740	Geneva Holmes	3884	Beverly VanRuden
1741	Cheryl Holquist	3885	Angela Vanzandt
1742	Ronald Holt	3886	Gaynee Varderessian
1743	Mary Jean Holt	3887	Gloria Vargas
1744	Cherilyn Holton	3888	Cecelia Varges
1745	Jeannette Holtz	3889	Alice Fay Varnado
1746	Ella Holyfield	3890	Orjen Vartanian
1747	Lorene Honorable	3891	Gloria Vasek
1748	Anita Honore	3892	Jimmi Vassar
1749	Lola Hook	3893	Charlotte Vasseur
1750	Richard (Estate of Jane Hazel Hoover) Hoover	3894	Joanna Vaughan
1751	Linda Hoover	3895	Victoria Vaughan
1752	Paula Hope	3896	Linda Vaughn
1753	Barbara Hopes	3897	Carol Vaughn
1754	Barbara Hopkins	3898	Lillie Vaughn
1755	Debra Hopkins	3899	Ada Vaughn
1756	Karla Hopkins	3900	Olga Vazquez
1757	Carmel Hopkins	3901	Gloria Veazie
1758	Constance hopple	3902	Myra Veentjer
1759	Janice Hopwood	3903	Jodi Veer
1760	Cindy Horan	3904	Mary Vega
1761	Marilyn Horn	3905	Alice Vela
1762	Vicky Hornbeck	3906	Minerva Velaquez

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1763	Karen Sue Hornick	3907	Rosina Vera
1764	Peggy Horton	3908	Tracy Verdun
1765	Linda Hoskins	3909	Cathy Verhalen
1766	Mary Housley	3910	Frances Verner
1767	Caroline Houston	3911	Becssie Vernon
1768	Claudette Howard	3912	Virgina Verrilli
1769	Shirl Howard	3913	Rachel Videau
1770	Dasie Mae Howard	3914	Ruby Vigne
1771	Shirley Howard	3915	Martha Villalba
1772	Delores Howard	3916	Carmen Villalobos
1773	Rosina Howard	3917	Diana Villarreal
1774	Betty Howard	3918	Cynthia Villegas
1775	Donna Howard	3919	Janet Vinson
1776	Texanna Gullry Howard	3920	Viola Vinyard
1777	Betty Hoyt	3921	Elizabeth Virola
1778	Thelma Hubbard	3922	Denise Vital
1779	Virginia Hubbs	3923	Joan Voorhees
1780	Portia Hudson	3924	Pansy Voss
1781	Karen M. Hudson	3925	Brenda Votta
1782	Eva Hudson	3926	Dorothy Vowell
1783	Constance Hudson	3927	Lisa Vowels
1784	Shirley Hudson	3928	Mona Waddell
1785	Anita Hudson- Meadows	3929	Amira Wadud
1786	Barbara Huerena	3930	Cindy Wages

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1787	Virginia Huffman	3931	Judith Wagner
1788	Debbie Huffman	3932	Edith Wakabayashi
1789	Karen Huffman	3933	Annabelle Walden
1790	Bertha Hughes	3934	Annabelle Walden
1791	Mary Hughes	3935	Terrie Waldon
1792	Barbara Lee Hughes	3936	Kim Waldrop
1793	Jo Hughes	3937	Naomi Walker
1794	Wanda Hughes	3938	Sandra Walker
1795	Jo Ann Hughes	3939	Stephanie D. Walker
1796	Lizzie Hughes	3940	Elisa Walker
1797	Mary Hughes	3941	Rosetta Walker
1798	Shelia Hughes	3942	Dorothy Walker
1799	Mary Hughes	3943	Goldie Walker
1800	Wanda Hull	3944	Martha Walker
1801	Elizabeth Hunt	3945	Thelma Walker
1802	Sandra Hunter	3946	Yolanda Walker
1803	Flora Hunter	3947	Laura Walker
1804	Ev Angelina Huntington	3948	Mildred Walker
1805	Tom E. Huntington	3949	Lizzie Walker
1806	Carol Huntowski	3950	Rose Walker
1807	Betty Hurst	3951	Bernia Walker
1808	Norma Hurst	3952	Linda Walker
1809	carolyn Hurst	3953	Margaret Walker
1810	Lennel Hurt	3954	Betty Walker

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1811	Lillia Hurtado	3955	Cathy Walker
1812	Glenda Huskey	3956	Anna L Walker
1813	Gale Hutchinson	3957	Donnah Wallace
1814	Della Hutchinson	3958	Maize Wallace
1815	Lavonne Hutchinson	3959	Shirley Wallace
1816	Ivy Hutzler	3960	Raquel Wallace
1817	Linda Hyde	3961	Joanetta Waller-Davis
1818	Nettie Hymowitz	3962	Bertine Walls
1819	Doris Ibarra	3963	Wanda Kay Walter
1820	Darlene Idleburg	3964	Cheryl Walters
1821	Tracey Ignazzitto	3965	Viola Walters
1822	Wanda Imhoff	3966	Karen Walters
1823	Mary Ingram	3967	Kimberly Waltner
1824	Laura Ingram	3968	Delois Walton
1825	Frances Inserra	3969	Vanessa Walton
1826	Sundra Ironshield	3970	Bonnie L. Waltz
1827	Leslie Isaacs	3971	Debra Waltz
1828	Jackline Isaacs	3972	Emma Wanicki
1829	Mary Isbell	3973	Mary Wann
1830	Rose Isder	3974	Eleanor Ward
1831	Susan Isham- Crisman	3975	Rudolf Ware, Jr.
1832	Elizabeth Isom	3976	Barbara Warfield
1833	Tomie Isrel	3977	Susan Warman
1834	Rabihah Issa	3978	Vickie Warner
1835	Barbara Ivey	3979	Candace Warnes

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1836	Catherine Jackanic	3980	Mary Kathryn Warren
1837	Roberta Jackson	3981	Mary Warren
1838	Cynthia Jackson	3982	Mary Warren
1839	Freddie Jackson	3983	Josephine Warren
1840	Birdie Jackson	3984	Debra Warren
1841	Mary Jackson	3985	Dawn Warren
1842	Martha Jackson	3986	Janice Warren
1843	Nan Jackson	3987	Roberta Washington
1844	Michelle Jackson	3988	Gail Washington
1845	Carolyn Jackson	3989	Monica Washington
1846	Dorothy Jackson	3990	Johnella Washington
1847	Cheryl Jackson	3991	Linda Washington
1848	Annette Jackson	3992	Sandra Washington
1849	Shirley A. Jackson	3993	Linda Washington
1850	Ruth Jackson	3994	Judy Washington
1851	Myrle Jackson	3995	Donna Washington
1852	Margaret Jackson	3996	Shirley Washington
1853	Gloria Jackson	3997	Michelle Washington
1854	Irene Jackson	3998	Ann Louise Waskiewicz
1855	Rogee Jackson	3999	Michelle Wasserman
1856	Ida Jackson	4000	Vickey Watkins
1857	Barbara Jackson	4001	Keary Watkins

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1858	Margie Ann Jackson	4002	Rose Watkins
1859	Carmella Jackson	4003	Betty Watkins
1860	Jearline Jackson	4004	Dianne Watkins
1861	Rosie Jackson	4005	Diane Watkins
1862	Nadine Jackson-Lowe	4006	Mickey Watlington
1863	Karen Jacobs	4007	Leta Watson
1864	Nandy Jacobs	4008	Judith Watson
1865	Ruth Jacobs	4009	Janice Watson
1866	Sharon Elaine Jacobsen	4010	Linda Watson
1867	Linda Jacobson	4011	Nancy Watters
1868	Sushma Jain	4012	Debbie Watts
1869	Deborah Jamerson	4013	Elizabeth Watts
1870	Bonnie James	4014	Linda Watts
1871	Pari Jamshidi	4015	Romanethia Watts
1872	Danelle Jannazzo	4016	Bettie Weaver
1873	Debbie Janssen	4017	Sylvia Weaver
1874	Annette Jaremko	4018	Regina Webb
1875	Cathy Jarreau	4019	Sharon Lynn Webb
1876	Ethel Jarrett	4020	Clauda Webb-Elmore
1877	Benita Jarrett	4021	Louise Webber
1878	Dolores Jaszczak	4022	Kathleen Weber
1879	Edith Javius	4023	Cheryl Webster
1880	Linda Jeffers	4024	Cheryl Webster

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1881	Diane Jeffers	4025	Ricky Webster
1882	Pricilla Jeffers	4026	Myrna Wedemeier
1883	Corinne Penelope Jeffers	4027	Jacqueline Weeks
1884	Gwen Jefferson	4028	Patricia Weeks
1885	Vivian Jefferson	4029	Zilpah Weeks
1886	Carolyn Jefferson	4030	Judy C Weeks
1887	Francis Jefferson	4031	Mary Wehner
1888	Shirley Jeffries	4032	Lori Weisman
1889	Janie Jelks	4033	Dolores Weist
1890	Patricia Jenkins	4034	Vickie Welch
1891	Peggy Jenkins	4035	Judith Welch
1892	Rose Jenkins	4036	Tony Welch
1893	Marsha Jenkins	4037	Mildred Welch
1894	Deborah Jenkins	4038	Lilshirley Welch
1895	Shirley Jenkins	4039	Betty Welcome
1896	Collen Jenkins	4040	Anita Weld
1897	Betty Jennings	4041	Shirley Wellman
1898	Shirley Jennings	4042	Alice B. Wells
1899	Claretha Jess	4043	Dawn Wells
1900	Rachel Jessen	4044	Helen E Wells
1901	Lawrene Jessop	4045	Teri Wells
1902	Patricia Jester	4046	Catherine Wells
1903	Sandy Jewell	4047	Judith Weltman
1904	Gayle Jewell	4048	Susana Weltz-Medina
1905	Lei Jiang	4049	Penelope Wertz
1906	Debra Jibri	4050	Benitta Wesco

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1907	Sabree Johnson	4051	Gloria Wesley
1908	Sabrina Sue Johnson	4052	Debra Wesley
1909	Diann Johnson	4053	Karen West
1910	Geraldine Johnson	4054	Leatrice West
1911	Costa Johnson	4055	Ruth West
1912	Darlene Johnson	4056	Leatrice West
1913	Margaret Johnson	4057	Latonya Westbrook
1914	Yvonne Johnson	4058	Eleanor Whalen
1915	Patricia Johnson	4059	Carolyn Whatley
1916	Sheila Johnson	4060	Joyce Wheeler-Thornton
1917	Sun Hui Johnson	4061	Eileen Whisenant
1918	Sue Johnson	4062	Beverly Whisenton
1919	Eunice Johnson	4063	Sabrina Whitaker
1920	Alfrenella Johnson	4064	Brenda Whitaker
1921	Cynthia Johnson	4065	Lena Whitaker
1922	Judy C. Johnson	4066	Linda White
1923	Peggy Johnson	4067	Karla White
1924	Veronica Johnson	4068	Lettie White
1925	Joann Johnson	4069	Sharen White
1926	Christina Johnson	4070	Tammy White
1927	Stephanie Johnson	4071	Ruby White
1928	Irma Johnson	4072	Judy White

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1929	Ellen Suzanne Johnson	4073	Kathryn Whited
1930	Wanda Johnson	4074	Rachel White-Doncontell
1931	Delores Johnson	4075	Mary C. Whitfield
1932	Grace Johnson	4076	Robyn Whitney
1933	Sylvia Johnson	4077	Joyce Whittaker
1934	Mattie Johnson	4078	Betty Whitten
1935	Dorothy Johnson	4079	Catherine Whittleton
1936	Jeanne Johnson	4080	Dale Whittleton
1937	Delores Johnson	4081	Edna Whyllie
1938	Alberta Johnson	4082	Carrie Widby
1939	Darlene Johnson	4083	Shirley Widmer
1940	Evalina Johnson	4084	Robin Wiese
1941	Brenda Johnson	4085	Pat Loper Wiget
1942	Pearl Johnson	4086	Barbara Wiggins
1943	Grace Johnson	4087	Kathy Wigginton
1944	Wynema Johnson	4088	Rhonda Wilber
1945	Ruby Johnson	4089	Janet Wilburn
1946	Gayle S. Johnson	4090	Carolyn Wilcher
1947	Vicotoria Johnson	4091	Patricia Wilcox
1948	Annie Johnson	4092	Janet Higgins Wilding
1949	Sylvia Johnson	4093	Barbara Wiley
1950	Evelyn Johnson	4094	Judy Wiliams
1951	Paulette Johnson	4095	Yolanda Wiliams
1952	Doris Johnson	4096	Tressia Wilkerson

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1953	Claudette Johnson	4097	Alice Wilkes
1954	Patricia Johnson	4098	Rebecca Wilkins
1955	Gertrude Johnson	4099	Ebtisam Wilkins
1956	Suzanne Johnson	4100	Natalie Willesden
1957	Odessa Johnson	4101	Jennie Williams
1958	Minnie Johnson	4102	Ruby Williams
1959	Angela Johnson	4103	Joyce Williams
1960	Marie Johnson	4104	Armelia Williams
1961	Christine Johnson	4105	Thomasena Williams
1962	Onita Johnson	4106	Lula Williams
1963	Beatrice Johnson	4107	Dorothy Williams
1964	Linda Johnson	4108	Barbara Williams
1965	Jerelene Johnson	4109	Murlena Williams
1966	Annie Johnson	4110	Angela Williams
1967	Darlene Johnson- Adams	4111	Jan Marie Williams
1968	Loretta Johnson- Walker	4112	Rose Williams
1969	Shar'ron Johnson- Wilkins	4113	Felicia Williams
1970	Granieta Johnson- Wilson	4114	Cornelia Williams
1971	Andrea Joiner	4115	Callie Williams
1972	Cydene Joiner	4116	Margie Williams
1973	Julie Jonas	4117	Doris Williams
1974	Alberta Jones	4118	Ethel R. Williams
1975	Alice Jones	4119	Shacretta Williams

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1976	Peggy Jones	4120	Myra Williams
1977	Geneva Jones	4121	Jennie A. Williams
1978	Melissa Jones	4122	Mary E. Williams
1979	Barbara Jones	4123	Alvira Williams
1980	Lou Jones	4124	Dawn Williams
1981	Rosilyn Jones	4125	Ellen Williams
1982	Colleen Jones	4126	Rachel Williams
1983	Shirley Jones	4127	Evelyn Williams
1984	Olivia Jones	4128	Jesselyne Williams
1985	Mary Jones	4129	Bonita Williams
1986	Juanita L Jones	4130	Sonjia Williams
1987	Lola Jones	4131	Peggy Williams
1988	Helen Jones	4132	Maudrena Williams
1989	Mary Jones	4133	Velvety Williams
1990	Dorothy Jones	4134	Linda Williams
1991	Peggy Jones	4135	Rose Williams
1992	Margarite Jones	4136	Annie Williams
1993	Joyce Jones	4137	Diane Irmguard Williams
1994	Gennett Jones	4138	Connie D. Williams
1995	Renee Jones	4139	Shirley Williams
1996	Kimberlyn Jones	4140	Sheena Williams
1997	Linda Jones	4141	Barbara Williams
1998	Markeyta Jones	4142	Roberta Williams
1999	Amal Jones	4143	Susan Williams
2000	Forrestine Jones	4144	Alberta Williams
2001	Jacqueline Jones	4145	Chasa Williams

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2002	Judie Jones	4146	Fiette Williams
2003	Jacqueline Jones	4147	Jewel Williams
2004	Sharon Jones	4148	Julie Williams
2005	Denise Jones	4149	Marilyn Williams
2006	Walter Jones	4150	Frances Williams
2007	Joann Jones	4151	Patricia Williams
2008	Shirley Jones	4152	Rose Williams
2009	Priscilla Jones	4153	Joann Williams
2010	Francine Jones	4154	Darlene Williams
2011	Gloria Jones	4155	Maureen Williamson
2012	Olivia Jones	4156	Marcia Williamson
2013	Catherine Jones	4157	Anita Williamson
2014	Pearl Jones	4158	Gloria Williamson
2015	JoAnn J Jones	4159	Sherry Williamson
2016	Carolyn Jones- Hedgepeth	4160	Janette Williamson
2017	Diana Jordan	4161	Annie Willis
2018	Martha Jordan	4162	Susie Willis
2019	Faye Jordan	4163	Donna Willis
2020	Darlene Jordan	4164	Mary Willis Mackey
2021	Tula Jordan	4165	Annie Harris Willrich
2022	Janis Judd	4166	Evelyn Wills
2023	Eva Jump	4167	Debra Wilson
2024	Bettie Junkin	4168	Hyla Wilson
2025	Julie Jurancich	4169	Peggy Wilson
2026	Jeanie Jurgeit	4170	Renee Wilson

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2027	Patti Kahl	4171	Leslie Wilson
2028	Peggy Ann Kaiser	4172	Vera Wilson
2029	Nancy Kaiser	4173	Jannie Wilson
2030	Deborah Kaker	4174	Susan Wilson
2031	Barbara Kalember	4175	Cremaya Wilson
2032	Barbara Kanedy	4176	Beverly Wilson
2033	Kathleen Karmis	4177	Beatrice Wilson
2034	Sharon Karroll	4178	Doris Ann Wilson
2035	Anne Kates	4179	Betty J. Wilson
2036	Karen Kathriner	4180	Elaine Wilson
2037	Nancy Katz	4181	Jancie Wilson
2038	Merle Katzenbach	4182	Rita Wilson
2039	Elizabeth Keene	4183	Patricia Wilson
2040	Maria Keffe	4184	Ernestine Wilson
2041	Nona Keith	4185	Doris Wilson
2042	Linda Keleher	4186	Kelly Wilson-Butler
2043	Josephine Keller	4187	Mary Wimmer
2044	Donna Keller	4188	Dorothy Winchester
2045	Connie Kelley	4189	Melody Windom
2046	Patricia Kelley	4190	Earline Winfield
2047	Susan Kelley	4191	Geraldine Winfield
2048	Carol Kelley	4192	Janice Winge
2049	Janet Kelley	4193	Cathy Wingo
2050	Joretha Kellum	4194	Sandra Winkelspecht
2051	Ingrid Kelly	4195	Debbie Winkler
2052	Michelle H Kelly	4196	Lillians Winslow

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2053	Denise Kelly	4197	Jacqueline Winston
2054	Alice Kemp	4198	Wendy Wintjen
2055	Kimberly Kemp	4199	Ellen Wise
2056	Marie Kempel	4200	Constance Wise
2057	Sandra Kendrick	4201	Debra Louise Wiseman
2058	Louise Kendrick	4202	Donna Witek
2059	Kimberley Kenedy	4203	Tracy Witherspoon
2060	Susan Kennedy	4204	Cleta Witt
2061	Sandra Kennedy	4205	Virginia Wodkowski
2062	Constance Kenny	4206	Judith Wojnovich
2063	Ronda Kent	4207	Nhien Wolf
2064	Joan Keppler	4208	Terri Wolf
2065	Karen Kerley	4209	Patricia Wolfe
2066	Sandra Kerr	4210	Phyllis Wolford
2067	Betty Kersey	4211	Lora Womack
2068	Reba Kessler	4212	Martha Womack
2069	Jeri Kessler	4213	Cynthia L. Wong
2070	Bonnie Kessner	4214	Ronwyn Woo
2071	Susan Kester	4215	Kathy Lynn Wood
2072	Deborah Keutzer	4216	Peggy E Wood
2073	Elaine L. Key	4217	Deborah Wood
2074	Alice Key	4218	Patsy Wood
2075	Donna Keye	4219	Edna Woodard
2076	Glorius Keys	4220	Claudine Woodberry
2077	Jamila Khayoumi	4221	Lucretia Woodburn
2078	Astkhik Khodagholian	4222	Michelle Wooden

2079	Shavonda Kidd	4223	Blanche Woodley
2080	Barbara Kieifer- Milenki	4224	Cynthia Woodrick
2081	Eddie Kilgore	4225	Margaret Woodruff
2082	Anna Kilgore	4226	Deborah Woods
2083	Jomarie Kilpatrick	4227	Roalie Woods
2084	Maude Kimble	4228	Carnie Woods
2085	Annette Kincaid	4229	Patricia Woods
2086	Cynthia King	4230	Alicia Woods
2087	Maebel King	4231	Georgia Woodson
2088	Christi King	4232	Ella Woodson
2089	Emma King	4233	Linda Woodward
2090	Bernice King	4234	Linda Wooley
2091	Beverly King	4235	Linda Wooley
2092	Mattie King	4236	Eula Wooten
2093	Wanda King	4237	Taneshia Worthean
2094	Jessie Lee King/Hale	4238	Catherine Worthen
2095	Gloria Kingsby	4239	Carolyn Wortman
2096	Linda Kinney	4240	Cheryl Wotton
2097	Kathleen Kinsman	4241	Elosie Wright
2098	Geraldine Kirk	4242	Teresa Wright
2099	Kalyphall Kivq	4243	Sharon A. Wright
2100	Shirley Kizzie	4244	Toni Wright
2101	Mary Kloke	4245	Marian Wright
2102	Judy Kloss	4246	Barbara Wright

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2103	Sulema Klumpe	4247	Teresa Wright
2104	Della Klumpp	4248	Shirley Wright
2105	Rose Klyder	4249	Sandra Wright-Freitas
2106	Toyca Knazze	4250	Delores Wright-Goss
2107	Annette Knight	4251	Jacqueline Wunder
2108	Mary Knight	4252	Rebecca Wunder
2109	Valerie Knight	4253	Sheilah Wyatt
2110	Sharon Knoepfler	4254	Margaret Wynn
2111	Juanita Knowles	4255	Maria Xochrhua
2112	Renee Koelle	4256	Mercedes Yaghazarian
2113	Glenda Koenig	4257	Ruth Yaker
2114	Annika Kohler	4258	Karen Yandle
2115	Geraldine T. Kopczenski	4259	Sylvester Yandle
2116	Silvia Kornhauser	4260	Stella Yatar
2117	Melissa Koroma	4261	Rosalie Yokel
2118	Jill Korte	4262	Sherry York
2119	Alma Kozack	4263	Darlene Youker
2120	Lynda Kramer	4264	Kathy Youmans
2121	Janice Krattiger	4265	Diane Young
2122	Lois Kratzner	4266	Theresa Young
2123	Jean Krausert	4267	Shirley Young
2124	Catherine Kremenik	4268	Vothress Young

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2125	Alleen C Krewatch	4269	Carolyn Young
2126	Debbie Kridler	4270	Bettie Young
2127	Noreen Krier	4271	Myrtle Yslava
2128	Janice Krivak	4272	Emilya Yudson
2129	Donna Kruenegel	4273	Caterina Zatorski
2130	Cheryl Krumm	4274	Emily Zboyovsky
2131	Michael S. Krumm	4275	Gertrude Zdanowicz
2132	Deborah Kulpa	4276	Dorothy A Zibkowski
2133	Edna Kuykendall	4277	Merrilyn Zilbar
2134	Elizabeth Kwiatek	4278	Shirley Zimmer
2135	Sadie Kyles	4279	Ruth Zimmerman
2136	Tatina Kyles	4280	Millicent Zimmerman
2137	Kathleen Labenz	4281	Charlotte Zimmerman
2138	Debra Lablance	4282	Judy Zippi
2139	Lois Laboy	4283	Regina Zornes
2140	Nancy Lacey	4284	Donna Zuar
2141	Fredida Lach	4285	Ellen Zucker
2142	Linda Lacy	4286	Joy Zullo
2143	Marilyn Ladson	4287	Gina Zuniga
2144	Kathy LaFortune		

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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 18-80059

[Filed August 22, 2018]

ALIDA ADAMYAN; et al.,)
)
Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)

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).

FG/MOATT

APPENDIX B

JS-6

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

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

[Filed May 10, 2018]

IN RE LIPITOR)
)
)

**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 state court. Specifically, the Court found that 100 or more Plaintiffs had not proposed that their cases be

tried jointly as is required for mass action jurisdiction. (See *In re: Pfizer*, Case No. SAMC 17-00005-CJC-JPRx at Dkt. 20 [hereinafter, “May 23, 2017 Order”].)

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

II. BACKGROUND

A. Original Remand

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

Beginning in March 2014, Pfizer removed the lawsuits to this Court, invoking the mass action

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.

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

B. Plaintiffs Attempt to Amend the JCCP Procedure

On June 27, 2017, back in California state court, Plaintiffs made a request to amend the procedure by which Plaintiffs could join the JCCP. (Mot. at 3.) Plaintiffs wanted to clarify that by joining the JCCP, they sought to coordinate pretrial proceedings but were not proposing a joint trial. (*Id.*) Pfizer opposed this request and argued that it conflicted with California’s coordination statute, California Code of Civil Procedure section 404. (Dkt. 56-5.) On August 4, 2017, the JCCP court, Judge Carolyn Kuhl, issued an order declining to implement Plaintiffs’ requests. (*See* Dkt. 56-11.) In her order, Judge Kuhl explained that she “does not have

. . . a stake in how the federal courts interpret CAFA.” (*Id.* at 3.) Nevertheless, she noted that it was appropriate to explain the coordination procedures of her court to aid federal courts “seek[ing] to understand California state court coordination procedures in order to apply federal law.” (*Id.* at 3–4.) Judge Kuhl then proceeded to explain the following procedures:

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.) [. . .] Nevertheless, the fact that the [state court] 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).) [. . .] The ultimate determination of which cases in a

App. 6

coordinated proceeding will be tried by the coordination trial judge is dictated by promotion of the ends of justice.

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

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

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

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

² Plaintiffs also attempt to invoke 28 U.S.C. § 1332(d)(11)(B)(ii)(II), which excludes defendant-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. Merck Sharp & Dohme*, 796 F.3d 1038, 1048 (9th Cir. 2015). Pfizer’s mere failure to object does not constitute an “affirmative” act.

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 requirement. On the other hand, Pfizer argues that a judge’s *sua sponte* order can trigger mass action jurisdiction. The Ninth Circuit has so far declined to resolve this question. *Tanoh*, 561 F.3d at 956 (“We express no opinion as to whether a state court’s *sua sponte* joinder of claims might allow a defendant to remove separately filed actions to federal

court as a single ‘mass action’ under CAFA.”); *see also Briggs*, 796 F.3d at 1048 (declining to decide whether “a proposal by a state court for a joint trial would qualify as a ‘proposal’ under [CAFA]”).

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

The Court’s interpretation is also supported by the cases that have addressed this issue. For example, in *Koral v. Boeing Co.*, 628 F.3d 945, 946–47 (7th Cir. 2011), the Seventh Circuit indicated that a “state court’s deciding on its own initiative to conduct a joint trial would not enable removal” under CAFA, because

“[t]hat would not be a proposal.” The Seventh Circuit expressly acknowledged that it was answering the question left open by the Ninth Circuit of who could make a “proposal” for a joint trial to confer mass action jurisdiction. *Id.* (citing *Tanoh*, 561 F.3d at 956). At least one district court in this District, relying on the Seventh Circuit’s opinion in *Koral* and the plain language of the statute, has reached the same result. *Alexander v. Bayer Corp.*, No. CV-16-6822-MWF (MRW), 2016 WL 6678917, at *3 (C.D. Cal. Nov. 14, 2016), *appeal dismissed*, No. 17-55828, 2017 WL 6345791 (9th Cir. July 10, 2017) (“[T]he Court agrees with Plaintiffs that a state court’s *sua sponte* consolidation of cases should not automatically entitle Defendants to federal jurisdiction notwithstanding Plaintiffs’ attempts to remain in state court.”).

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

which expressly decline to decide the issue, as supporting Pfizer's position.

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

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

The sequence of events that occurred prior to Pfizer's re-removal of the cases demonstrates that the state court's orders to coordinate the cases are not orders for a joint trial. Shortly after this Court remanded the cases to state court on May 23, 2017, Plaintiffs repeatedly attempted to clarify that their desire to coordinate their cases was for pretrial purposes only and not a request for a joint trial. Plaintiffs tried to amend the procedure for joining the JCCP and when they failed on that front, Plaintiffs tried to coordinate the cases through notices of related cases. All along, Plaintiffs represented to Judge Kuhl that they wanted to avoid taking any action that could be construed as a proposal for a joint trial. Although Judge Kuhl did not grant Plaintiffs' requests to amend the JCCP procedure or to relate the cases, she indicated in her orders deep skepticism that the cases here would be jointly tried. She explained that "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.” She stated that where, as here, the claims arise out of injuries from pharmaceutical products, there has never been “any instance in which the claims of more than one party . . . have been tried at the same time or to the same jury.” And, she noted that in coordinated proceedings involving thousands of plaintiffs, “[n]o single judge can conduct so many trials, and to attempt to do so would deprive plaintiffs of timely adjudication of their claims.”

Given this backdrop, it defies common sense to suggest that Judge Kuhl’s subsequent coordination of the cases constituted a proposal for a joint trial. “A proposal for purposes of CAFA’s mass action jurisdiction, even an implicit proposal, is a voluntary and affirmative act, and an intentional act. It is not a mere suggestion, and it is not a mere prediction.” *Briggs*, 796 F.3d at 1048 (citations and quotations omitted). When Judge Kuhl *sua sponte* ordered the cases be coordinated, she gave no indication that the coordination would be for purposes of a joint trial. In other words, there was no “voluntary and affirmative act” demonstrating that she was now deciding to rule against Plaintiffs and to deviate from her own prior statements expressing doubt that a joint trial of these cases would, or could, be held.

Pfizer claims that, because Judge Kuhl granted coordination of the cases pursuant to California Code of Civil Procedure section 404.1, which provides that

actions can be coordinated “for all purposes,” the cases were coordinated for purposes of trial. (Opp. at 16.) But this argument invokes the California procedural rule in a vacuum and ignores the series of events that occurred before the state court. The mere presence of the phrase “for all purposes” in the rule providing for coordination does not mean Judge Kuhl was reversing her prior position that a joint trial of these coordinated cases was unlikely, and does not constitute a “voluntary and affirmative” act necessary to make a “proposal.”

IV. CONCLUSION

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

DATED: May 10, 2018

/s/Cormac J. Carney
CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 18-80059

[Filed January 22, 2019]

ALIDA ADAMYAN; et al.,)
)
Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)

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

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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.

FG/MOATT

App. 18

APPENDIX D

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

[Filed November 17, 2017]

No. 17-80094

**D.C. No. 8:17-mc-00005-CJC-JPR
Central District of California, Santa Ana**

JOSEPHINE ABRAMS, et. al.)
Plaintiffs in DC #:)
2:14-cv-01872-CJC-JPR; et al.,)
)
Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
)

No. 17-80129

D.C. No. 2:17-cv-00123-CJC-JPR

NORMA ADATAN; et al.,)
)
Plaintiffs-Respondents,)
)
v.)

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PFIZER, INC.,)
)
 Defendant-Petitioner.)
 _____)

No. 17-80130

D.C. No. 2:17-cv-03781-CJC-JPR

PATSY WOOD; et al.,)
)
 Plaintiffs-Respondents,)
)
 v.)
)
 PFIZER, INC.,)
)
 Defendant-Petitioner.)
 _____)

No. 17-80133

D.C. No. 2:17-cv-02993-CJC-JPR

CAROLYN DAVIS; et al.,)
)
 Plaintiffs-Respondents,)
)
 v.)
)
 PFIZER, INC.,)
)
 Defendant-Petitioner.)
 _____)

App. 20

No. 17-80135

D.C. No. 2:17-cv-00113-CJC-JPR

JOAN ALSTON; et al.,)
)
 Plaintiffs-Respondents,)
)
 v.)
)
 PFIZER, INC.,)
)
 Defendant-Petitioner.)

)

No. 17-80136

D.C. No. 2:17-cv-00657-CJC-JPR

SYLVIA ALVARADO; et al.,)
)
 Plaintiffs-Respondents,)
)
 v.)
)
 PFIZER, INC.,)
)
 Defendant-Petitioner.)

)

No. 17-80137

D.C. No. 2:17-cv-00272-CJC-JPR

DENA BLACKMORE; et al.,)

App. 21

Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

No. 17-80153

D.C. No. 2:17-cv-05364-CJC-JPR

_____)
VENICIA AVILA, an individual)
and LINDA JEFFERS, an)
individual,)
)
Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

No. 17-80158

D.C. No. 2:17-cv-05327-CJC-JPR

_____)
PATRICIA ALEXANDER; et al.,)
)
Plaintiffs-Respondents,)
)
v.)
)

App. 22

PFIZER, INC.,)
)
 Defendant-Petitioner.)
_____)

No. 17-80169

D.C. No. 2:17-cv-05708-CJC-JPR

_____)
ANGELA BROWN, individually;)
et al.,)
)
 Plaintiff-Respondents,)
)
 v.)
)
 PFIZER, INC.,)
)
 Defendant-Petitioner.)
_____)

No. 17-80170

D.C. No. 3:14-cv-01204-EMC

_____)
KATHLEEN DAVIS,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 PFIZER, INC.,)
)
 Defendant-Petitioner.)
_____)

App. 23

No. 17-80171

D.C. No. 3:14-cv-01196-EMC

ANNETTE PETERS,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 PFIZER, INC.,)
)
 Defendant-Petitioner.)
)

No. 17-80172

D.C. No. 3:14-cv-01488-EMC

PATRICIA STARK,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 PFIZER, INC.,)
)
 Defendant-Petitioner.)
)

No. 17-80173

D.C. No. 3:14-cv-01195-EMC

MARILYN S. ROUDA,)

App. 24

Plaintiff-Respondent,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

No. 17-80178

D.C. No. 3:14-cv-01177-EMC

LORETTA LITTLE; et al.,)
)
Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

No. 17-80179

D.C. No. 2:17-cv-01254-CJC-JPR

AMAL JONES, individually and)
as wife; et al.,)
)
Plaintiffs-Respondents,)
)
v.)

PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

No. 17-80180

D.C. No. 2:17-cv-02841-CJC-JPR

_____)
RACHEL LESSEM, an)
individual; et al.,)
)
Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

No. 17-80181

D.C. No. 2:17-cv-01259-CJC-JPR

_____)
MARLENE TILLERY,)
individually; et al.,)
)
Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

App. 26

No. 17-80182

D.C. No. 2:17-cv-01841-CJC-JPR

MARIA XOCHRHUA, an)
individual; et al.,)
)
Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
)

No. 17-80183

D.C. No. 1:17-cv-00663-LJO-MJS

SYLVIA WEAVER, an individual,)
)
Plaintiff-Respondent,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
)

No. 17-80184

D.C. No. 1:14-cv-00365-LJO-MJS

MARIA ALANIS; et al.,)

App. 27

Plaintiffs-Respondents,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

No. 17-80229

D.C. No. 2:17-cv-07685-CJC-JPR
Central District of California, Los Angeles

_____)
ANTONIA BATISTA, an)
individual,)
)
Plaintiff-Respondent,)
)
v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

No. 17-80230

D.C. No. 2:17-CV-07795-CJC-JPR
Central District of California, Los Angeles

_____)
DORTHY BYRD-HARRIS,)
individually; and LINDA)
MCMURRAY, individually,)
)
Plaintiffs-Respondents,)

App. 28

v.)
)
PFIZER, INC.,)
)
Defendant-Petitioner.)
_____)

ORDER

Before: TASHIMA, W. FLETCHER, and TALLMAN,
Circuit Judges.

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

IHP/MOATT

APPENDIX E

JS-6

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

Case No.: SAMC 17-00005-CJC(JPRx)

Case No.: *SEE ATTACHED LIST*

[Filed May 23, 2017]

IN RE: PFIZER)
)
)

)

**ORDER GRANTING PLAINTIFFS'
MOTION TO REMAND**

I. INTRODUCTION

This proceeding involves over 100 cases that were previously filed in California state court by thousands of women alleging that use of the drug Lipitor caused them to suffer from Type II diabetes. The cases were removed to federal court based on “mass action” jurisdiction pursuant to the Class Action Fairness Act (“CAFA”) and then consolidated under a master case number for administrative purposes. (*See Attached List.*) Before the Court is Plaintiffs’ consolidated motion to remand the cases back to state court on the ground that 100 or more plaintiffs have not proposed that their cases be tried jointly as is required for mass action

jurisdiction. (Dkt. 8 [Motion, hereinafter “Mot.”].) After considering the evidence and the arguments presented by the parties, the Court GRANTS Plaintiffs’ motion to remand. Although many plaintiffs have proposed a joint trial, 100 plaintiffs have not done so.

II. BACKGROUND

In their original complaints filed in California state court, Plaintiffs alleged that Lipitor, a prescription drug developed and manufactured by Pfizer, Inc., and marketed and distributed by McKesson Corporation, caused them to suffer from Type II diabetes. (*Id.* at 3.) On August 16, 2013, three such plaintiffs filed a petition with the California Judicial Council to have their individual cases coordinated in a Joint Council Coordinated Proceeding (“JCCP”) pursuant to California Code of Civil Procedure Section 404. (Dkt. 9 [Declaration of Charles G. Orr, hereinafter “Orr Decl.”] ¶ 2; *id.* Ex. A.) After additional plaintiffs filed similar state court actions, a group of twenty-one plaintiffs from eight state court cases, including the three from the original petition, filed an amended coordination petition on September 25, 2013. (*Id.* ¶ 3; *id.* Ex. B Pt. 1 at 2–10 [hereinafter “Am. Pet.”].) The amended petition stated that it was “based upon the criteria codified in California Code of Civil Procedure § 404.1. That is, in the LIPITOR® cases sought to be coordinated herein:

One judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether common questions of fact or law are predominating and significant to the litigation; the convenience of parties, witnesses, and

counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; *the disadvantages of duplicative and inconsistent rulings, orders, or judgments*; and, the likelihood of settlement of the actions without further litigation should coordination be denied.”

(Am. Pet. at 6–7 (quoting almost verbatim the requirements of Cal. Civ. Proc. Code § 404.1) (emphasis added).) The amended petition specified that coordination would “promote the ends of justice because there are common issues of fact and law, namely the adequacy of the . . . LIPITOR® warning labels, and coordination will avoid duplicative and inconsistent rulings, orders, and judgments.” (*Id.* at 8.) It also stated that counsel for those twenty-one plaintiffs named in the amended petition “is informed and believes that additional LIPITOR® injury cases will be filed within the next weeks. Petitioners will seek to join these additional cases via Add-On Petitions.” (*Id.* at 7.)

The memorandum of points and authorities supporting the amended petition further explained that the cases will “involve duplicative requests for the same defendant witness depositions and the same documents related to the development, manufacturing, testing, marketing and sale of LIPITOR®. Absent coordination of these actions by a single judge, there is a significant likelihood of duplicative discovery, waste of judicial resources and possible inconsistent judicial rulings on legal issues.” (Orr Decl. Ex. B Pt. 1 at 11–19)

[hereinafter “MPA”] at 3; *see also id.* at 7 (“[T]here will be duplicative discovery obligations upon the common defendants unless coordination is ordered. Coordination before initiation of discovery in any of these cases will eliminate waste of resources and will facilitate economy.”.) It reiterated the concern of preserving judicial resources and avoiding “duplicative and inconsistent rulings, orders, or judgments.” (*Id.* at 7–8.) It further represented that “issues likely to be raised in this action include issues pertaining to liability, allocation of fault and contribution, as well as the same wrongful conduct of defendants. Such difficult issues may ultimately be addressed by the California Court of Appeal. Coordination is required in order to avoid duplicative efforts and inconsistent rulings.” (*Id.* at 8.) The amended petition was also accompanied by an attorney declaration which stated that “[w]ithout coordination, two or more separate courts will decide essentially the same issues and may render different rulings on liability and other issues.” (Orr Decl. Ex. B. Pt. 1 at 27–32 [hereinafter “Finson Decl.”] ¶ 11.)

On December 6, 2013, the Judicial Council granted the request for coordination and created a JCCP with the special title of “Lipitor Cases,” but only included the three cases from the original petition in the JCCP. (*Id.* ¶ 4; *id.* Ex. C.) The JCCP was assigned to Judge Kenneth R. Freeman of Los Angeles Superior Court. (*Id.* ¶ 5; *id.* Ex. D.) On January 13, 2014, Judge Freeman entered an order granting an add-on petition whereby four plaintiffs in another state court action sought to be added to the JCCP, bringing the total number of plaintiffs in the JCCP to seven. (Orr Decl. ¶ 6; *id.* Ex. E.)

The next day, Pfizer exercised an automatic peremptory challenge to Judge Freeman’s assignment as coordination judge for the JCCP, (*id.* ¶ 7; *id.* Ex. F), so the JCCP was reassigned to Judge Jane Johnson, (*id.* ¶ 8; *id.* Ex. G). Judge Johnson entered orders granting add-on petitions filed by two plaintiffs who had been named in the amended coordination petition but not included in the initial order creating the JCCP, bringing the total number of plaintiffs in the JCCP to nine. (*Id.* ¶¶ 9–10; *id.* Exs. H, I.) Fifty-three more plaintiffs sought to be added to the JCCP through add-on petitions, including fifteen more plaintiffs who had been named in the amended coordination petition but not included in the initial order creating the JCCP. (*Id.* ¶¶ 11–13; *id.* Exs. J, K, L.) These petitions are still pending. Thus, to date only sixty-five plaintiffs have sought to be coordinated in the JCCP—nine were actually coordinated, fifty-three still have pending petitions, and three more were named in the amended coordination petition but have not filed add-on petitions to be coordinated after they were left out of the initial order creating the JCCP.

On February 24, 2014, the parties had their first and only status conference in state court before Pfizer started removing the cases to federal court. (Orr Decl. Ex. M.) At the conference, counsel for the JCCP plaintiffs (hereinafter “JCCP Counsel”) provided Judge Johnson with a chart demonstrating that at that point in time, there were at least fifty-four cases concerning similar effects of Lipitor filed in California, which encompassed 1,855 plaintiffs. (*Id.* at 5:20–6:4; 6:16–17.) JCCP Counsel explained that they have “had total transparency with respect to communications of

lawyers both in California and nationally who had any interest in or doing anything [sic] litigation involving Lipitor,” (*id.* at 7:2–5), and presented Judge Johnson with a proposed “leadership structure” comprising of an executive committee and a steering committee to handle the rapidly-expanding litigation, (*id.* at 7:15–18). JCCP Counsel had also “given every lawyer who’s interested at all in participating in the organizational structure and leadership, the opportunity to contact [them] and . . . enter their willingness or interest in being part of the leadership structure,” and had not turned down a single lawyer who expressed such interest. (*Id.* at 11:7–17.) They further represented that they “know lawyers that are filing the cases,” “know who is interested in participating in leadership and who’s not,” and hoped “to get the cases that have been filed obviously added on [to the JCCP] as soon as possible.” (*Id.* at 11:19–21, 15:22–23.) Counsel for both parties then sought clarification regarding the details of coordination, and the following exchange took place:

MR. KIESEL: And that’s for discovery purposes; that they are coordinated together for discovery.

THE COURT: Right.

MR. CHEFFO: Well, would they be sent back?

THE COURT: They can be sent back. They can be sent back for trial. Yes, they can be sent back.

MR. CHEFFO: So the coordination order is with respect to discovery?

THE COURT: Everything is sort of bundled here for case management and discovery. And they can be tried here, but they can be sent back for trial.

(*Id.* at 17:13–23.)

On March 4, 2014, Judge Johnson signed a proposed order to streamline the procedures for adding new cases to the JCCP through additional add-on petitions. (Dkt. 13-1 [Declaration of Marshall Searcy, hereinafter “Searcy Decl.”] at Ex. C.) The order regarding add-on procedures stated that “[a]ll cases filed in California state court against Pfizer, Inc. or McKesson Corporation, alleging injuries related to the development of Type II diabetes, and seeking damages, injunctive relief, or restitution arising from the investigation of Lipitor®, are assigned to the Honorable Jane L. Johnson,” and the “parties to such actions, however, are still required to comply with the stipulation or notice add-on procedures set forth in this Order.” (*Id.* at 1.) The order further explained that after the parties filed either stipulated or noticed add-on petitions, any party named in such a petition would have ten days from the date of service to file a notice of opposition to the coordination. (*Id.* at 3.) If no notice of opposition was filed, the cases identified in such add-on petitions would be automatically added to the JCCP. (*Id.* at 3–4.)

Beginning on March 12, 2014, Pfizer began removing the state court actions, including cases that had not been named in the amended coordination petition or add-on petitions, to federal court on the grounds of diversity jurisdiction (fraudulent joinder)

and mass action jurisdiction pursuant to CAFA. (Orr Decl. ¶ 15; Dkt. 13 [Opposition, hereinafter “Opp.”] at 9–10.) Pfizer also requested a stay in federal district court pending transfer of the cases to Multi-District Litigation (“MDL”) court in South Carolina. (*Id.* ¶ 16.) “While some removed plaintiffs acquiesced in the transfer of their cases to the MDL and chose at that time not to seek remand to California state court, many removed plaintiffs immediately advised the MDL court that they would be seeking remand to California and asked the MDL court to stay their actions pending determination of the threshold question of federal subject matter jurisdiction.” (*Id.*) The MDL court did so, (*id.* Ex. N), and then in June 2014 determined that diversity jurisdiction did not exist, *In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prod. Liab. Litig.*, No. 2:14-CV-01810, 2016 WL 7335738, at *6 (D.S.C. Nov. 7, 2016). Because the only remaining basis for federal subject matter jurisdiction was CAFA’s mass action provision, and because a majority of plaintiffs did not consent to transfer to MDL, the MDL court recommended that the Judicial Panel on Multidistrict Litigation remand the cases. (*Id.* at *7–*8.) The cases were then transferred back to this Court. By the last count, Plaintiffs have filed more than 140 California state court actions involving 4,800 plaintiffs, which have been removed to federal courts in all four districts of California. (*Id.* at 10.) Plaintiffs now ask this Court to remand the cases to state court on the grounds that the mass action removal requirements of CAFA are not met. (*See generally* Mot.)

III. DISCUSSION

CAFA provides federal district courts with original 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). 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 Proposal for a Joint Trial Was Made

Plaintiffs’ motion explains that “at the time the amended coordination petition was filed, the attorneys who drafted the petition believed they were proposing coordination for pretrial proceedings only.”¹ (Dkt. 15

¹ In *Romo v. Teva Pharm. USA, Inc.*, 731 F.3d 918 (9th Cir. 2013), *rehearing en banc granted and decision vacated*, 742 F.3d 909 (Feb. 10, 2014), the Ninth Circuit considered whether, as a matter of first impression, a coordination petition pursuant to California Code of Civil Procedure Section 404 constituted a proposal for a

[hereinafter “Reply”] at 3n.1.) However, Plaintiffs do not seriously challenge Pfizer’s position that the amended coordination petition proposed a joint trial, (*see generally id.*; Mot.). Nor could they.

As “masters of their complaints,” plaintiffs are permitted to structure actions to avoid federal jurisdiction under CAFA. *Corber v. Xanodyne Pharm., Inc.*, 771 F.3d 1218, 1223 (9th Cir. 2014). But they are “also the masters of their petitions for coordination. Stated another way, when we assess whether there has been a proposal for joint trial, we hold plaintiffs responsible for what they have said and done.” *Id.* Here, JCCP Counsel requested a joint trial on behalf of the plaintiffs named in the amended coordination petition and add-on petitions. The amended petition incorporated the language of Section 404.1 and requested coordination “*for all purposes.*” (Am. Pet. at 6–7 (emphasis added).) It explained that plaintiffs sought to avoid not only duplicative and inconsistent rulings and orders, but also *judgments*. (*Id.* at 8.) The

joint trial, and concluded that it did not. *Id.* at 921–23. *Romo* was issued the day before Plaintiffs filed their amended petition. *Romo* analyzed the coordination petitions and supporting memorandum of points and authorities and concluded that although the memorandum encouraged coordination of “all of the actions for all purposes” and sought to avoid “inconsistent judgments” and “conflicting determinations of liability,” the “obvious focus” of the petition was on “pretrial proceedings, *i.e.*, discovery matters.” *Id.* at 922–23. On February 10, 2014, however, the Ninth Circuit granted rehearing *en banc* and vacated the decision. *Romo v. Teva Pharm. USA, Inc.*, 742 F.3d 909 (9th Cir. 2014). In *Corber v. Xanodyne Pharm., Inc.*, 771 F.3d 1218 (9th Cir. 2014), described below, the Ninth Circuit reexamined the coordination petitions in *Romo* and concluded that they did propose a joint trial. *Id.* at 1223.

accompanying memorandum of points and authorities contained considerable language about coordination for discovery purposes, (MPA at 3, 7), but again reiterated the need to avoid “duplicative and inconsistent rulings, orders, or *judgments*,” (*id.* at 7–8 (emphasis added)). Notably, it explained the need to avoid “duplicative efforts and inconsistent rulings” on “issues pertaining to *liability*, allocation of fault and contribution, as well as the same wrongful conduct of defendants” because they might “ultimately be addressed by the California Court of Appeal.” (MPA at 8 (emphasis added).) Finally, the accompanying attorney declaration expressed the desire to avoid inconsistent “rulings on *liability* and other issues.” (Finson Decl. ¶ 11 (emphasis added).) The amended petition clearly stressed a need for coordination beyond pre-trial proceedings.

The language of the amended petition and supporting documents is substantially similar to that in *Corber*, in which the Ninth Circuit *en banc* considered whether coordination petitions constituted a proposal for a joint trial. *Corber*, 771 F.3d 1218. *Corber* focused heavily on the text of the petitions and supporting documents and explained that while the petitions did not expressly request a “joint trial,” they sought coordination “for all purposes,” just as the petition in this case does. *Id.* at 1223. *Corber* reasoned that read literally, “[a]ll purposes’ must include the purposes of trial.” *Id.* The Court also noted that the petitions’ stated reasons for coordination, namely the danger of inconsistent judgments and conflicting determinations of liability, further supported the conclusion that they sought a joint trial. *Id.* at 1223–24.

The *Corber* plaintiffs had not simply recited the factors articulated in Section 404.1, but asserted that “[t]he inevitability of realizing the inconsistency and duplication factor of California Code of Civil Procedure Section 404.1[] weighs heavily in favor of coordination,” that “issues pertaining to liability, allocation of fault and contribution, as well as the same wrongful conduct of defendants,’ would require coordination,” and “repeatedly stated that the factors catalogued in section 404.1 all supported coordination, including the fact that ‘[o]ne judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice.” *Id.* at 1224. Here too, the amended petition did not simply recite the Section 404.1 factors, but rather it repeatedly noted the need to avoid inconsistent judgments and rulings on issues of liability, which could ultimately come before the California Court of Appeal. (Am. Pet. at 8; MPA at 7–8; Finson Decl. ¶ 11.)

Corber clarified that not all petitions for coordination under Section 404 are “*per se* proposals to try cases jointly for the purposes of CAFA’s mass action provision.” *Corber*, 771 F.3d at 1224. A coordination petition that “expressly seeks to limit its request for coordination to pre-trial matters” would align with the CAFA carve-out for claims that have been consolidated or coordinated solely for pretrial proceedings.² *Id.*

² *Corber* also noted that “[i]t is not clear whether the California Judicial Council would grant coordination for less than ‘all purposes.’ However, if Plaintiffs had qualified their coordination

Although JCCP Counsel represented at the February 25, 2014, status conference in state court that their primary concern was coordination for purposes of discovery, the language of the amended coordination petition was not limited to pre-trial matters. (Orr Decl. Ex. M at 17:13–23.) It clearly proposed coordination for judgments and proceedings that would involve issues of liability, and the Court must hold the plaintiffs who submitted the amended petition and accompanying add-on petitions responsible for this proposal of a joint trial. *Corber*, 771 F.3d at 1223.

B. 100 or More Plaintiffs Did Not Propose a Joint Trial

The real dispute among the parties is whether there was a proposal that 100 plaintiffs' cases be tried jointly. The Ninth Circuit has so far declined to specify exactly who must make a proposal for a joint trial to trigger CAFA's mass action provision, which encompasses cases "in which monetary relief claims of 100 or more persons *are proposed* to be tried jointly." *Briggs v. Merck Sharp & Dohme*, 796 F.3d 1038, 1047 (9th Cir. 2015) (emphasis added) (citing 28 U.S.C. § 1332(d)(11)(B)(i)) (declining to decide whether a proposal for a joint trial could come from a judge). The Ninth Circuit has only held that it is insufficient for a proposal for a joint trial to come from a defendant. *Id.* at 1048. However, in *Briggs*, the Ninth Circuit recently clarified that although "implicit proposals may trigger

request by saying that it was intended to be solely for pre-trial purposes, then it would be difficult to suggest that Plaintiffs had proposed a joint trial." *Corber*, 771 F.3d at 1224–25.

CAFA’s removal jurisdiction,” a “proposal for purposes of CAFA’s mass action jurisdiction, *even an implicit proposal*, is a ‘*voluntary and affirmative act*’ . . . and an ‘*intentional act*.’” *Id.* at 1048 (emphasis added) (quoting *Corber*, 771 F.3d at 1224 and *Parson v. Johnson & Johnson*, 749 F.3d 879, 888 (10th Cir. 2014)). “It is ‘not a mere suggestion’” or “a mere prediction.” *Id.* (quoting *Scimone v. Carnival Corp.*, 720 F.3d 876, 883 (11th Cir. 2013)).³

Plaintiffs insist that at most only sixty-five plaintiffs proposed that their cases be jointly tried, because that is the maximum number of plaintiffs that ever attempted to join the JCCP. (Mot. at 21.) They maintain that the rest of the plaintiffs did nothing more than file their complaints in state court, and the plaintiffs in the JCCP cannot bind other plaintiffs who have not yet been added through an add-on petition or other means. (*Id.* at 16–19 (citing *Tanoh*, 561 F.3d at 953–54 and *Briggs*, 796 F.3d at 1049).) The Court agrees.

Only the sixty-five plaintiffs who were named in the amended coordination petition or add-on petitions have

³ *Briggs* also explained that “[w]hile *Corber* held that an initial petition for a JCCP can constitute a proposal, it is not clear whether an add-on petition can constitute a proposal as well—particularly where, as here, the claims in the add-on petition would not meet CAFA’s hundred-person threshold unless added to claims that had previously been joined ‘upon motion of a defendant.’” *Briggs*, 796 F.3d at 1050. *Briggs* did not reach this issue, however, because “even if the . . . plaintiffs’ add-on petition could be construed as a proposal, it was not a proposal for a joint trial.” *Id.*

acted voluntarily and affirmatively to propose a joint trial. While most of these plaintiffs' add-on petitions are still pending, and a few who were included in the amended petition and left out of the initial order creating the JCCP did not subsequently file an add-on petition, these sixty-five plaintiffs each proposed, in some form or another, that their cases be tried jointly. This number, however, falls short of the required 100 plaintiffs in CAFA's mass action provision.

Pfizer argues that JCCP Counsel proposed joining thousands of plaintiffs to the coordinated action by "repeatedly stat[ing] that they would seek to add 'all subsequent LIPITOR actions.'" (Opp. at 2–3, 7.) Contrary to Pfizer's assertion, JCCP Counsel's statements are insufficient to trigger CAFA mass action jurisdiction, because they are merely suggestions or predictions—not voluntary and affirmative acts proposing a joint trial on behalf of the remaining plaintiffs. Although JCCP Counsel provided Judge Johnson with a list of all known Lipitor actions filed in California State Court at the time of the February 25, 2014, status conference, this did not "unambiguously inform[] [Pfizer] to a substantial degree of specificity" that the claims of at least 100 Plaintiffs had been proposed to be tried jointly. (*See* Opp. at 14–15 (citing *Portnoff v. Janssen Pharm., Inc.*, 2017 WL 708745, at *6 (E.D. Pa. Feb. 22, 2017).) It merely alerted Judge Johnson and Pfizer to additional cases that could *potentially* be coordinated. Pfizer is correct that the statutory question is whether a joint trial has been proposed, not whether it will actually take place. (Opp. at 14.) However, absent add-on petitions or similar affirmative actions or definitive commitments by the

remaining plaintiffs or their attorneys, they have not proposed a joint trial.⁴

Pfizer also notes that JCCP Counsel represent at least 2,823 plaintiffs in 77 Lipitor actions, and have stated that they are in close communication with the attorneys working on the rest of the Lipitor cases. (Opp. at 2–3.) Pfizer apparently believes that the fact that JCCP Counsel are working on additional cases that have not yet filed add-on petitions and are cooperating with other plaintiffs’ attorneys is enough to impute the joint trial proposal of the sixty-five plaintiffs onto remaining plaintiffs. This is unpersuasive, because it is the identities and actions of the clients, not that of the attorneys, that matters. JCCP Counsel have not acted on *behalf* of any plaintiffs beyond the aforementioned sixty-five —JCCP Counsel have merely represented that they anticipate many additional, unspecified cases will be coordinated. Neither the actions of the sixty-five plaintiffs nor JCCP Counsel can be imputed to the remaining plaintiffs here.

⁴ It is important to note that the legislative history of the mass action provision supports the view that it is the 100 or more plaintiffs themselves who must propose the joint trial. The legislative history provides that “subsection 1332(d)(11) expands federal jurisdiction over mass actions—suits that are brought on behalf of numerous named plaintiffs *who claim* that their suits present common questions of law or fact that should be tried together even though they do not seek class certification status. . . . Under subsection 1332(d)(11), any civil action in which 100 or more *named parties seek to try their claims* for monetary relief together will be treated as a class action for jurisdictional purposes.” S. Rep. 109-14, at 46, 2005 U.S.C.C.A.N. 3, at 43–44 (emphasis added).

The Court also finds Pfizer's attempts to minimize the effects of *Briggs* unavailing. (See Opp. at 18–19.) The Court is aware that in *Briggs*, it was the defendants who had initiated coordination proceedings, and the plaintiffs had only represented to the district judge that their cases would likely be joined for trial in the state court JCCP if they were remanded. *Briggs*, 796 F.3d. at 1049. *Briggs* reasoned that the plaintiffs had not made proposals that could trigger CAFA mass action jurisdiction simply by “filing their cases in the California state court system, when a consolidated proceeding covering similar claims, initiated by defendants, was underway in California court,” or by representing to the federal district court “what would or might happen to their cases, if they were remanded to the state court,” especially since the district court lacked authority to add cases to the state court JCCP. *Id.* In this case, unlike in *Briggs*, plaintiffs initiated the JCCP and had made representations to the JCCP court regarding their desire to coordinate additional cases. Nevertheless, *Briggs*' holding that a “proposal” is a “voluntary and affirmative” act clearly applies here. And only sixty-five plaintiffs have proposed a joint trial. No other plaintiff has acted voluntarily and affirmatively to be part of or be bound by that proposal.

Pfizer also contends that the remaining plaintiffs took other affirmative steps in their complaints to propose a joint trial. Apparently, more than 100 Lipitor cases involving 3,400 plaintiffs have civil cover sheets attached to their complaints indicating that the cases are “complex” pursuant to California Rules of Court 3.400 because they are subject to “[c]oordination with related actions pending in one or more courts in other

counties, states, or countries, or in federal court;” fifty-nine state court complaints included notices of related cases stating that the case was related to the JCCP before Judge Johnson; twenty-five attached copies of an order entered by Judge Johnson limiting Plaintiffs’ complex case fees for “all new add-on cases joined to this coordinated proceeding;” and four identified the JCCP in their case captions. (Opp. at 3, 8–9; 9 n.5.) However, these actions are all administrative in nature and merely alert the clerk’s office to the *possibility* of coordination in order to assist with case sorting and management. They do not constitute voluntary and affirmative acts by each plaintiff to be part of and bound by a proposal for a joint trial.⁵ *See Briggs*, 796 F.3d. at 1049 (The plaintiffs had not made a proposal for a joint trial by simply “filing their cases in the California state court system, when a consolidated proceeding covering similar claims . . . was underway in California court.”).

Nor can the Court assume that at least thirty-five more plaintiffs will be coordinated in this action because of the sheer number of plaintiffs that have filed Lipitor cases. Plaintiffs are free to structure

⁵ The parties debate whether the coordination petitions in *Corber* explicitly encompassed at least 100 plaintiffs or whether the effects of the coordination petitions were merely imputed onto other plaintiffs. (See Opp. at 15–16; Reply at 3–5, 4 n.2.) This fact was not discussed in *Corber* and its implications were not argued or addressed in the opinion. *See generally Corber*, 771 F.3d 1218. *Corber* only analyzed the narrow question of whether the coordination petitions were sufficient to constitute proposals, not whether they could bind plaintiffs that were not explicitly named in the coordination petitions or add-on petitions. *Id.* at 1222.

actions to avoid CAFA jurisdiction. *Corber*, 771 F.3d at 1223 (“[P]laintiffs are the ‘masters of their complaint’ and do not propose a joint trial simply by structuring their complaints so as to avoid the 100-plaintiff threshold.”). The plaintiffs who are not yet part of the JCCP could have many legitimate reasons for not wanting a joint federal trial. For example, some plaintiffs might seek to distance themselves from those with seemingly weaker claims or from those who will be preoccupied with defenses unique to them. Other plaintiffs who have suffered more severe injuries or consequences, such as stroke, blindness, and amputation, or who are bringing suit on behalf of a deceased family member, may not wish to have their claims tried jointly with patients who have had milder injuries or consequences. The Court will not speculate, nor base its jurisdictional decision, on whether thirty-five or more plaintiffs will likely take voluntary and affirmative action to be part of and bound by a proposal for a joint trial. All that matters for the Court’s decision now is that at least thirty-five additional plaintiffs have not yet taken such voluntary and affirmative action.

Finally, Pfizer suggests that Judge Johnson herself has proposed a joint trial of 100 or more plaintiffs because her order regarding add-on procedures states that “[a]ll cases filed in California state court against Pfizer, Inc. or McKesson Corporation, alleging injuries related to the development of Type II diabetes . . . are assigned to the Honorable Jane L. Johnson, Los Angeles Superior Court for purposes of coordination.” (Opp. at 14 (citing Searcy Decl. Ex. C at 1).) Pfizer submits that because the Ninth Circuit has left open

the possibility that “a state court’s *sua sponte* joinder of claims might allow a defendant to remove separately filed actions to federal court as a single ‘mass action’ under CAFA,” Judge Johnson’s order should give rise to mass action jurisdiction. (*Id.* at 14 n.7 (citing *Tanoh*, 561 F.3d at 956).) The Court disagrees. The sentence immediately following the one Pfizer cites clarifies that “[t]he parties to such actions, however, *are still required to comply* with the stipulation or notice add-on procedures set forth in this Order.” (Searcy Decl. Ex. C at 1 (emphasis added).) By the express terms of Judge Johnson’s order, the additional cases will not be part of the JCCP or subject to the terms of the coordination petition unless and until they are added by an add-on petition and not subject to a notice of opposition. Indeed, Judge Johnson has only granted two add-on petitions thus far, bringing the total number of plaintiffs in the JCCP to just nine. (Orr Decl. Exs. H, I.) Moreover, at the status conference, Judge Johnson repeatedly stated that the JCCP cases “can be sent back for trial,” so it is far from clear whether Judge Johnson’s order is even proposing a joint trial, let alone one involving 100 or more plaintiffs. (Orr Decl. Ex. M at 17:13–23.)

IV. CONCLUSION

Since less than 100 plaintiffs have proposed that their cases be tried jointly, the Court does not have jurisdiction under CAFA’s mass action provision and all Lipitor cases presently before this Court must be remanded to state court. Accordingly, Plaintiffs’ motion to remand is GRANTED.

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DATED: May 23, 2017

/s/Cormac J. Carney
CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

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Pamela McKenzie et al v. Pfizer Inc et al	2:14-cv-01800 CJC (JPRx)
Wanda Dearmore et al v. Pfizer Inc et al	2:14-cv-01801 CJC (JPRx)
Juana Garcia et al v. Pfizer Inc et al	2:14-cv-01804 CJC (JPRx)
Judy Miller et al v. Pfizer Inc et al	2:14-cv-01805 CJC (JPRx)
Bernadette Fernandez et al v. Pfizer Inc et al	2:14-cv-01806 CJC (JPRx)
Segalilt Siegel et al v. Pfizer Inc et al	2:14-cv-01807 CJC (JPRx)
Luretta Alexander-Jackson et al v. Pfizer Inc et al	2:14-cv-01808 CJC (JPRx)
Willie Sims-Lewis et al v. Pfizer Inc et al	2:14-cv-01809 CJC (JPRx)
Bonnie Kessner et al v. Pfizer Inc et al	2:14-cv-01811 CJC (JPRx)
Jeri Kessler et al v. Pfizer Inc et al	2:14-cv-01812 CJC (JPRx)
Ravyne Dow et al v. Pfizer Inc et al	2:14-cv-01813 CJC (JPRx)
Deberah Rivington et al v. Pfizer Inc et al	2:14-cv-01814 CJC (JPRx)
Phyllis Beima et al v. Pfizer Inc et al	2:14-cv-01815 CJC (JPRx)
Nina Obuch et al v. Pfizer Inc et al	2:14-cv-01816 CJC (JPRx)
Adelle Calabretta et al v. Pfizer Inc et al	2:14-cv-01817 CJC (JPRx)

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Dorothy M Andres et al v. Pfizer Inc et al	2:14-cv-01820 CJC (JPRx)
Donna Krueenegel et al v. Pfizer Inc et al	2:14-cv-01822 CJC (JPRx)
Mattie King et al v. Pfizer Inc et al	2:14-cv-01823 CJC (JPRx)
Patricia Banks et al v. Pfizer Inc et al	2:14-cv-01824 CJC (JPRx)
Rose A Williams et al v. Pfizer Inc et al	2:14-cv-01828 CJC (JPRx)
Vicky Avila et al v. Pfizer Inc et al	2:14-cv-01829 CJC (JPRx)
Maizy Benons et al v. Pfizer Inc et al	2:14-cv-01831 CJC (JPRx)
Linda Roy et al v. Pfizer Inc et al	2:14-cv-01832 CJ C(JPRx)
Brenda Johnson et al v. Pfizer Inc et al	2:14-cv-01836 CJC (JPRx)
Blanca Mejia et al v. Pfizer Inc et al	2:14-cv-01837 CJC (JPRx)
Lori Ann Weisman et al v. Pfizer Inc et al	2:14-cv-01841 CJC (JPRx)
Sylvia Alvarado v. Pfizer Inc et al	2:14-cv-01843 CJC (JPRx)
Lena Whitaker et al v. Pfizer Inc et al	2:14-cv-01844 CJC (JPRx)

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Martha Bowser v. Pfizer Inc et al	2:14-cv-01846 CJC (JPRx)
Patricia Lewis et al v. Pfizer Inc et al	2:14-cv-01848 CJC (JPRx)
Emma Fields et al v. Pfizer Inc et al	2:14-cv-01850 CJC (JPRx)
Fiette Williams et al v. Pfizer Inc et al	2:14-cv-01853 CJC (JPRx)
Pallavi Mehta et al v. Pfizer Inc et al	2:14-cv-01854 CJ C(JPRx)
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Deborah McClain et al v. Pfizer Inc et al	2:14-cv-01858 CJC (JPRx)
Valerie Davis v. Pfizer Inc et al	2:14-cv-01860 CJC (JPRx)
Tonisha Powell et al v. Pfizer Inc et al	2:14-cv-01861 CJC (JPRx)
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Loretta Curley et al v. Pfizer Inc et al	2:14-cv-01876 CJC (JPRx)
Regina Feberdino et al v. Pfizer Inc et al	2:14-cv-01889 CJC (JPRx)
Ruth English et al v. Pfizer Inc et al	2:14-cv-01892 CJC (JPRx)
Cheri Lubenko v. Pfizer Inc et al	2:14-cv-01894 CJC (JPRx)
Jessie Hill et al v. Pfizer Inc et al	2:14-cv-01895 CJC (JPRx)
Doris Choate et al v. Pfizer Inc et al	2:14-cv-01896 CJC (JPRx)
Susan Kelley et al v. Pfizer Inc et al	2:14-cv-01897 CJC (JPRx)
Charlene Tate et al v. Pfizer Inc et al	2:14-cv-01898 CJC (JPRx)
Mary Adamian et al v. Pfizer Inc et al	2:14-cv-01899 CJC (JPRx)
Candacy Roberts-Anderson et al v. Pfizer Inc et al	2:14-cv-01904 CJC (JPRx)
Louise Harris et al v. Pfizer Inc et al	2:14-cv-01906 CJC (JPRx)
Shirley Reynolds et al v. Pfizer Inc et al	2:14-cv-01907 CJC (JPRx)
Juanita Banks et al v. Pfizer Inc et al	2:14-cv-01908 CJC (JPRx)

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Marion Constant v. Pfizer Inc et al	2:14-cv-01911 CJC (JPRx)
Janice S Robinson et al v. Pfizer Inc et al	2:14-cv-01912 CJC (JPRx)
Joy Zullo et al v. Pfizer Inc et al	2:14-cv-01914 CJC (JPRx)
Donna Willis v. Pfizer Inc et al	2:14-cv-01916 CJC (JPRx)
Frankie Brown et al v. Pfizer Inc et al	2:14-cv-01921 CJC (JPRx)
Jocelyn Clemente Salvo et al v. Pfizer Inc et al	2:14-cv-01924 CJC (JPRx)
Gladys Anderson et al v. Pfizer Inc et al	2:14-cv-01925 CJC (JPRx)
Darlene Jordan et al v. Pfizer Inc et al	2:14-cv-01928 CJC (JPRx)
Deann Pierce v. Pfizer Inc et al	2:14-cv-01929 CJC (JPRx)
Denelle Bailey et al v. Pfizer Inc et al	2:14-cv-01930 CJC (JPRx)
Edith Wakabayashi v. Pfizer Inc et al	2:14-cv-01931 CJC (JPRx)
Maye Alberstone et al v. Pfizer Inc et al	2:14-cv-01932 CJC (JPRx)
Rose Hodges v. Pfizer Inc et al	2:14-cv-01936 CJC (JPRx)
Marilyn Williams et al v. Pfizer Inc et al	2:14-cv-01937 CJC (JPRx)

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Tomie Isrel et al v. Pfizer Inc et al	2:14-cv-01943 CJC (JPRx)
Elizabeth Ann Watts et al v. Pfizer Inc et al	2:14-cv-01997 CJC (JPRx)
Jewel Williams et al v. Pfizer Inc et al	2:14-cv-03477 CJC (JPRx)
Kim Collins et al v. Pfizer Inc et al	2:14-cv-05792 CJC (JPRx)
Linda Watson et al v. Pfizer Inc et al	2:14-cv-06226 CJC (JPRx)
Helen Elliott et al v. Pfizer Inc et al	2:14-cv-06617 CJC (JPRx)
Eliane Scott et al v. Pfizer Inc et al	2:14-cv-07432 CJC (JPRx)
Michelle Bradley et al v. Pfizer Inc et al	2:14-cv-07649 CJC (JPRx)
Granieta Johnson-Wilson et al v. Pfizer Inc et al	2:14-cv-08261 CJC (JPRx)
Judy Kloss et al v. Pfizer Inc et al	2:14-cv-09567 CJC (JPRx)
Ann Sanchez et al v. Pfizer Inc et al	2:15-cv-01211 CJC (JPRx)
Judith Smalley et al v. Pfizer Inc et al	2:15-cv-01483 CJC (JPRx)
Julie Williams et al v. Pfizer Inc et al	2:15-cv-01626 CJC (JPRx)

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Gloria Wilson et al v. Pfizer Inc et al	2:15-cv-03525 CJC (JPRx)
Amy Caro et al v. Pfizer Inc et al	2:15-cv-03880 CJC (JPRx)
Shari Beneda et al v. Pfizer Inc et al	2:15-cv-04267 CJC (JPRx)
Magda Santiago et al v. Pfizer Inc et al	2:15-cv-04299 CJC (JPRx)
Shary Stegall et al v. Pfizer Inc et al	2:15-cv-05013 CJC (JPRx)
Michelle Davis et al v. Pfizer Inc et al	2:15-cv-05188 CJC (JPRx)
Pauline St Jean et al v. Pfizer Inc et al	2:15-cv-06068 CJC (JPRx)
Anita Perlhefter et al v. Pfizer Inc et al	2:15-cv-06555 CJC (JPRx)
Priscilla Garcia et al v. Pfizer Inc et al	2:15-cv-07257 CJC (JPRx)
Ruth Yaker et al v. Pfizer Inc et al	2:15-cv-7258 CJC (JPRx)
Nadine Smith et al v. Pfizer Inc et al	2:15-cv-08138 CJC (JPRx)
Gloria Ashley et al v. Pfizer Inc et al	2:15-cv-08604 CJC (JPRx)
Betty Stevens et al v. Pfizer Inc et al	2:15-cv-08845 CJC (JPRx)
Mixdalia Taime et al v. Pfizer Inc et al	2:15-cv-09495 CJC (JPRx)

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Pari Jamshidi et al v. Pfizer Inc et al	2:16-cv-00586 CJC (JPRx)
Jonna Roberts et al v. Pfizer Inc et al	2:16-cv-01400 CJC (JPRx)
Emilya Yudson et al v. Pfizer Inc et al	2:16-cv-01762 CJC (JPRx)
Aleene M Queen et al v. Pfizer Inc et al	2:16-cv-01924 CJC (JPRx)
Theresa Bagliere et al v. Pfizer Inc et al	2:16-cv-02996 CJC (JPRx)
Teresa Brooks et al v. Pfizer Inc et al	2:16-cv-03811 CJC (JPRx)
Genevieve Monreal et al v. Pfizer Inc et al	2:16-cv-04007 CJC (JPRx)
Elizabeth DeBay et al v. Pfizer Inc et al	2:16-cv-04015 CJC (JPRx)
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Sharon Campbell et al v. Pfizer Inc et al	2:16-cv-05156 CJC (JPRx)
Lawana Smith et al v. Pfizer Inc et al	2:16-cv-05560 CJC (JPRx)
Mildred Lois Brown et al v. Pfizer Inc et al	2:16-cv-06157 CJC (JPRx)
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Rose A Carpenter et al v. Pfizer Inc et al	2:16-cv-07084 CJC (JPRx)
Cynthia Faye Davis et al v. Pfizer Inc et al	2:16-cv-07118 CJC (JPRx)

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Patricia Williams et al v. Pfizer Inc et al	2:16-c-v07762 CJC (JPRx)
Vicky Chaffee et al v. Pfizer Inc et al	2:16-cv-07977 CJC (JPRx)
Tonya Baker et al v. Pfizer Inc et al	2:16-cv-08542 CJ C(JPRx)
Vivia Artz et al v. Pfizer Inc et al	2:16-cv-08694 CJC (JPRx)
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Josefina Allison et al v. Pfizer Inc et al	2:16-cv-08721 CJC (JPRx)
Bessie Barringer et al v. Pfizer Inc et al	2:16-cv-09091 CJC (JPRx)
Mary Baker et al v. Pfizer Inc et al	2:16-cv-09532 CJC (JPRx)
Alma Richards v. Pfizer Inc et al	5:14-cv-00485 CJC (JPRx)
Chasa Williams v. Pfizer Inc et al	5:14-cv-00493 CJC (JPRx)
Sharon Parker et al v. Pfizer Inc et al	5:14-cv-00496 CJC (JPRx)

APPENDIX F

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA -
WESTERN DIVISION
HONORABLE CORMAC J. CARNEY, U.S.
DISTRICT JUDGE**

Case No. 8:17-mc-00005-CJC-JPR

[Dated February 1, 2017]

IN RE: PFIZER)
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)

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Certified

**REPORTER'S TRANSCRIPT OF
STATUS CONFERENCE
WEDNESDAY, FEBRUARY 1, 2017
9:12 A.M.
SANTA ANA, CALIFORNIA**

**DEBBIE HINO-SPAAN, CSR 7953, CRR
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Thomas Sims, Esq.

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**SANTA ANA, CALIFORNIA; WEDNESDAY,
FEBRUARY 1, 2017**

9:12 A.M.

THE COURT: Good morning. All right. Well, I want to thank all of you for being here. I thought it would be productive if we had a brief chat and I gave you some of my thoughts about how I think we should proceed, and then I'd like to hear from any of you. There's not that many people here. I was preparing for over 30 lawyers, I guess.

How many do we have right now on the docket, Melissa?

THE COURTROOM DEPUTY: I don't know. 30, 40, maybe.

THE COURT: Looks like about 30 or 40 lawyers, but looks like we only have about eight or nine on the plaintiff's side. What I thought needs to be done is I have to decide the jurisdictional issue, whether I have jurisdiction over any of these cases. And I think the total now is up to about 130 cases. And so what I want to do is focus on that issue. If I have jurisdiction, I have jurisdiction. And then we can talk about case management of the case. If I don't have jurisdiction

over any of these cases, they're going back to State Court.

So I guess maybe my question is more for the plaintiffs' group, is how best can we tee up the jurisdictional issue? Can we have one consolidated motion, or do we have to have a few motions because depending on the case, the jurisdictional

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analysis is different? And I don't profess to say I know the plaintiffs' cases very well, and so I'll be looking for guidance. And what I thought I would do is just tee that issue up to you and then give you a few moments to chat among yourselves, and then you can let me know how best to proceed.

I assume, based on the status report submitted by Pfizer, that the simpler, the fewer motions, the better, that you would prefer to do consolidated opposition. But I need to know on the plaintiff's side are we talking about one motion, two motions, three motions, four motions?

MR. ROBINS: May I address the Court, Your Honor?

THE COURT: Please. If you could just say who you are and who you represent.

MR. ROBINS: Thank you, Your Honor. I'm Bill Robins, Santa Monica. And by way of background, I was appointed by Judge Johnson as one of the members of the executive committee in the JCCP when these cases were first -- early on when these cases were

filed. The reason you don't have 30 lawyers here is because we've organized ourselves. And I'm here speaking on behalf of all the plaintiffs that have made their way here so far.

THE COURT: Oh, great.

MR. ROBINS: And we will suggest to Your Honor that the orderly way to handle this is through consolidated, and I'm going to say most likely two motions.

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THE COURT: Okay.

MR. ROBINS: And the reason for that is there is a distinction between those plaintiffs who originally moved for the JCCP and then sort of everybody else who did nothing more than file the lawsuit and got removed. And there is a distinction, we think, in that, and there's also some distinctions concerning waiver that we think apply to the first group that don't apply to the second. And so when we originally filed our motions way back when and they were -- most of the cases Your Honor knows are here in front of you, but there were cases in the Eastern District. There's some cases up in the Northern District.

The way that it was teed up in most of the districts was with three groups because of some distinctions that no longer exist because of Judge Gergel's order. We're now down, I think, to two groups from the way I can tell in looking at his order and what's left for Your Honor to decide on the question of subject matter jurisdiction. So our suggestion would be that it is a

consolidated briefing, that we will file -- and I think we'll be able to get to a point of having an agreement on every single plaintiff that is coming here.

One comment I would make is that we've been watching closely the orders that have been coming out of Judge Gergel and getting back to the JPML and making their way back here to Your Honor. There are a few cases that, you know, have not

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quite landed at LAX, made their way -- I guess here would be John Wayne, but they haven't made it here yet. They'll be here soon.

Judge Gergel just signed another remand order, I'm told, this morning on a case of somebody that was still up there. And there are a few lawyers that are in that group that were not part of the original JCCP leadership, were not part of the steering committee that we formed. I have every expectation that we'll get control over those cases as well and those lawyers will be willing to allow leadership team to, you know, bring them in under the tent. But I would ask the Court within your consideration as we're setting the briefing schedule to give us a little bit of time to let those cases come in here.

There may be a few left that for whatever reason still end up in front of Judge Gergel and don't get completely looped in, but just in terms of the efficiency of things, we think that it would be best if we can get all of the cats herded in sort of one or two motions as I'm saying. We're not looking for a lot of time. I was going to suggest to Your Honor 45 days from today for

us to file opening briefs. The defense and I have already conferred about this. I think we're in agreement on this. They would file a response 30 days after that; we would file a reply two weeks later. You know, they asked me about a surreply, and I know those are generally discouraged in the Central District. It's up to Your Honor as to how you want to

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handle that, but this is a schedule that we were going to suggest to you.

THE COURT: Sounds great. I'm delighted that you're on top of this and it's coordinated and organized. I really want to proceed as efficiently as possible, and it sounds like you got a head start. So I'm very comfortable with that.

What I would ask, then, is if you could submit a proposed briefing and hearing schedule in an order that I can sign, and then that will be the order of the Court. One question I need a moment to talk to the clerk of this courthouse as well as my own clerk is whether we should set up a new case where these are filed in as opposed to filing the motions in 130 cases, if you follow me. That's more an internal. I want to make it as simple for you as possible. So I imagine it would be easier -- it's a question, not an argument -- if you just had to file in one case the two motions or do you see it differently?

MR. ROBINS: Your Honor, we conferred. I conferred with Mr. Cheffo's colleague about that exact issue yesterday, and we completely agree with that. That would be the most logical way to do it, you know,

with, you know, an exhibit that picks up all the case numbers that apply. That -- you know, that makes the most sense. And we would certainly ask Your Honor if we can do that feasibly here, that would be the best approach. Because otherwise, we're just -- we have 140 filings and all that and it doesn't really make any logical sense to

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have to do that, Your Honor. It's going to be a me too motion on everything behind it.

And frankly, it may confuse things a little bit because of the fact that we have -- what I said before, you know, some distinctions in terms of just which buckets each one goes in. So if we could sort of handle it exactly the way you're suggesting, I think it's going to make it a lot easier at the end of the day for everyone.

THE COURT: Okay. So then I guess the question that I have for you to follow up, should we have one case that you file it on or two cases that you file it on?

MR. ROBINS: I think if we can file it in one case, that would make the most sense and we cross-reference the cases by case number that it would apply to. I don't see the necessity. Maybe Mr. Cheffo will disagree. Yeah, I think that's easiest for us.

THE COURT: Okay. Could you give me a moment and I'll talk to Terri and Melissa here.

(A discussion was held off the record.)

THE COURT: All right. I think the proposal is going to work. What I think I'll have to do is issue a minute order indicating what the new case number is and indicating in each individual case all 130, or if that's going to be 140 that all filings need to be in this new case number. So if you see that type of minute order, now you know why.

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So I guess the ball, then, is in your court; right? You're going to submit a stipulation and Proposed Order about the briefing and hearing schedule?

MR. ROBINS: Yes, Your Honor.

THE COURT: And I'll get an order -- minute order out with a new case number. And all filings should be in this new case number.

Okay. Tell me, is there anything else you'd like to talk about?

MR. ROBINS: Your Honor, Bill Robins, again, for the plaintiff. Just as a clarification, you know, I don't -- I can't imagine, as I'm sitting here, anything that would get filed as, you know, the next filing other than the motion, other than you may get CTOs coming back from the JPML for these individual cases. And so I think -- you know, I'd just make one caveat to what you're saying about this whole organization of one case number. You know, in a sense, we need to treat this as a mini MDL in that you don't want 140 cases filing -- I don't think you do anyway, because later it would be a problem for things that are unrelated to a common issue.

THE COURT: Right.

MR. ROBINS: And so my suggestion on the minute order would be that it, you know, addresses that it is for matters that are -- you know, have common issues applicable to the entire, you know, cases or something like that so that as

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there may be other case-specific things that theoretically could come up, you know, I would leave it to you obviously on how you want to handle pro hac for this, maybe it makes sense to put that in the general.

But for things coming from the JPML initially or perhaps -- I don't know what, but there may be something that a lawyer in an individual case or for some reason, you know, Pfizer needs to file an individual case, I would just leave that possibility open.

THE COURT: You're right.

MR. ROBINS: Rather than put everything in one number.

THE COURT: You are right. You are right. And plus I wouldn't want to -- we're trying to streamline and have this new case number have the important stuff. And I don't want to bog it down with pro hac vice or conditional transfer orders. I don't want that. So I agree.

MR. ROBINS: Okay.

THE COURT: I'll work with the wording and hopefully it's going to be acceptable. And if anybody has a problem with it, you can just let me know.

MR. ROBINS: Certainly, Your Honor.

THE COURT: Okay.

MR. CHEFFO: Good morning, Your Honor. Mark Cheffo for Pfizer. I'm going to be brief. I think you'll also hear

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what I have to say is that, you know, we're in kind of violent agreement, I think, on most of these issues. We are fortunate to have good lawyers on the plaintiff's side at least, and we've been coordinating well on what makes sense.

So I think what you've heard is something that we second in terms of an orderly process that's kind of most efficient for the Court and for the parties. And thank you for that, and thank you for granting my pro hac.

So with that, I think the only thing -- and I should, just as a housekeeping matter, maybe say it once and get it out of the way, we have a personal jurisdiction affirmative defense that it's not something -- we think it will be moot frankly to the extent that we're here before Your Honor in this Court, as we think we should be under CAFA. But to the extent we're not in State Court, I don't want there to be any confusion that we have waived that issue. But that's not something I think this Court is going to need to take up.

THE COURT: And I saw that in the briefing, and I don't mean to suggest that you've waived any of your other defenses or arguments or issues that might be there, but all I'm saying is I don't want to do anything about the case until I've decided this CAFA is a jurisdictional issue.

MR. CHEFFO: And we couldn't agree more. The jurisdictional issue goes away to the extent that Your Honor determines that there's CAFA jurisdiction.

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So with that, I think that we are prepared to -- you know, I think the one or the two briefs makes some sense. We've talked about that. We will do that within 30 days. I think we had just talked about, you know, a surreply frankly. That's something we'll wait and see whether you think we need it, you need it, but we'll take that as it comes, Your Honor.

THE COURT: I appreciate it. I'm not trying to curry anybody's favor, but I appreciate the civility and professionalism. I haven't had that in a while. It's been very contentious lately for whatever reason, and it's not productive. So I appreciate everybody trying to be coordinated and efficient, and I think we have a game plan on how to proceed. And it sounds like I'll be resolving this jurisdictional issue, it sounds like, in the next 90 days if you're going to be filing in 45 days and with that briefing schedule you talked about.

MR. CHEFFO: Thank you, Your Honor.

THE COURT: Okay. Thank you.

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THE COURTROOM DEPUTY: All rise.

(Proceedings concluded at 9:32 a.m.)

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APPENDIX G

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

MDL No. 2:14-mn-02502-RMG

[Filed November 7, 2016]

IN RE: LIPITOR (ATORVASTATIN)
CALCIUM) MARKETING, SALES)
PRACTICES AND PRODUCTS)
LIABILITY LITIGATION)
)

CASE MANAGEMENT ORDER NO. 87

This Order relates to cases:

2:14-cv-01810	2:14-cv-02326
2:14-cv-02231	2:14-cv-02327
2:14-cv-02241	2:14-cv -02328
2:14-cv-02256	2:14-cv-02330
2:14-cv-02257	2:14-cv-02339
2:14-cv-02263	2:14-cv-02340
2:14-cv-02273	2:14-cv-02341
2:14-cv-02274	2:14-cv-02342
2:14-cv-02287	2:14-cv-02343
2:14-cv-02289	2:14-cv-02344
2:14-cv-02290	2:14-cv-02345
2:14-cv-02291	2:14-cv-02346

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2:14-cv-02296	2:14-cv-02349
2:14-cv-02297	2:14-cv-02350
2:14-cv-02298	2:14-cv-02351
2:14-cv-02299	2:14-cv-02352
2:14-cv-02300	2:14-cv-02353
2:14-cv-02301	2:14-cv-02354
2:14-cv-02302	2:14-cv-02355
2:14-cv-02303	2:14-cv-02356
2:14-cv-02304	2:14-cv-02357
2:14-cv-02305	2:14-cv-02358
2:14-cv-02306	2:14-cv-02359
2:14-cv-02308	2:14-cv-02361
2:14-cv-02309	2:14-cv-02362
2:14-cv-02310	2:14-cv-02364
2:14-cv-02311	2:14-cv-02365
2:14-cv-02316	2:14-cv-02366
2:14-cv-02317	2:14-cv-02370
2:14-cv-02318	2:14-cv-02372
2:14-cv-02320	2:14-cv-02373
2:14-cv-02321	2:14-cv-02374
2:14-cv-02322	2:14-cv-02376
2:14-cv-02323	2:14-cv-02377
2:14-cv-02324	2:14-cv-02379
2:14-cv-02325	2:14-cv-02380

Motions to Remand (Dkt. Nos. 267, 268, 269)

For the reasons stated below, Plaintiffs' Motions to Remand (Dkt. Nos. 267, 268, 269) are GRANTED IN PART.¹

A. Background

Each of these cases was originally filed in California state court against Defendants Pfizer, Inc. ("Pfizer") and McKesson Corp. ("McKesson"). Plaintiffs allege that Lipitor caused them to develop Type II diabetes and that, among other things, Defendants did not properly disclose the risks associated with Lipitor. Defendants removed these actions to federal district courts in California, asserting (1) diversity jurisdiction and (2) federal jurisdiction under the Class Action Fairness Act of 2005 (CAFA). While complete diversity is lacking on the face of the Complaints, Pfizer contends that (a) McKesson was fraudulently joined and should be disregarded for the purposes of determining whether diversity jurisdiction exists and (b) that non-California Plaintiffs are fraudulently misjoined and that their claims should be severed.

¹ This order does not address the motions with regard to *Banks, et al. v. Pfizer Inc., et al.*, 2:14-cv-1811; *Bowser v. Pfizer Inc., et al.*, 2:14-cv-2329; *Constant v. Pfizer Inc., et al.*, 2:14-cv-2360; *Hodges v. Pfizer Inc. et al.*, 2:14-cv-2375; *Lubniewski v. Pfizer Inc., et al.*, 2:14-cv-2378; *Owens v. Pfizer Inc., et al.*, 2:14-cv-2307; *Pierce v. Pfizer Inc., et al.*, 2:14-cv-2371; and *Willis v. Pfizer Inc., et al.*, 2:14-cv-2363. In these eight cases, there are no California Plaintiffs. Therefore, complete diversity exists on the face of the Complaints. The Court will address these eight cases by separate order.

After removal, these cases were transferred to this MDL by the JPML, and Plaintiffs' filed motions to remand. (Dkt. No. 267, 268, 269). In addition to lack of subject matter jurisdiction, Plaintiffs also argue that the forum defendant rule bars removal, that Pfizer's removal of certain cases was untimely, and that the Court should remand the cases to California federal courts in accordance with CAFA. The Court referred these motions to remand to the Magistrate Judge. (Dkt. No. 292).

The Magistrate Judge issued an order granting the motions to remand and ordering that these actions be transferred to the federal district courts in California from which they came. (Dkt. No. 715). However, because it has not been definitively established whether an order of remand is dispositive such that it must be ruled on by a District Judge absent consent of the parties, Judge Marchant ordered that the parties were allowed to file objections to the order of remand and that if any objections were filed, the case be forwarded to this Court for de novo review and final disposition. (*Id.*). Defendants filed objections, Plaintiffs responded, and the parties have filed several notices of supplemental authority and additional briefing. (*See* Dkt. Nos. 755, 796, 829, 845, 867, 889, 894, 1654, 1664, 1673). This matter is now before the Court for de novo review.

B. Fraudulent Joinder of McKesson

Pfizer makes three arguments that McKesson is fraudulently joined: (1) the state law claims against McKesson are preempted by federal law so there is no possibility they can establish a cause of action in state

court against McKesson, (2) Plaintiffs have failed to state a claim against McKesson, and (3) Plaintiffs lack a genuine intent to prosecute claims against McKesson. The Court takes each of these arguments in turn and ultimately finds that McKesson is not fraudulently joined with regard to California Plaintiffs.

1. Legal Standard

The fraudulent joinder doctrine “effectively permits a district court to disregard, for jurisdictional purposes, the citizenship of certain nondiverse defendants, assume jurisdiction over a case, dismiss the nondiverse defendants, and thereby retain jurisdiction.” *Johnson v. Am. Towers, LLC*, 781 F.3d 693, 704 (4th Cir. 2015) (quotations omitted). To establish that a nondiverse defendant has been fraudulently joined, the removing party must establish either: (1) that there has been outright fraud in the plaintiff’s pleading of jurisdictional facts or (2) that there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court. *E.g., Johnson*, 781 F.3d at 704; *Marshall v. Manville Sales Corp.*, 6 F.3d 229, 232 (4th Cir. 1993).

This is a heavy burden. *Johnson*, 781 F.3d at 704. The defendant must show the plaintiff cannot establish a claim against the nondiverse defendant “even after resolving all issues of law and fact in the plaintiff’s favor.” *Id.* The standard “is even more favorable to the plaintiff than the standard for ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6).” *Id.* (quotations marks omitted). “[T]here need be only a slight possibility of a right to relief to defeat a claim of fraudulent joinder.” *Mayes v. Rapoport*, 198 F.3d 457,

466 (4th Cir. 1999) (internal quotations marks omitted).

2. Preemption

Pfizer argues that the claims against McKesson are preempted by Federal Drug and Cosmetic Act (FDCA). The U.S. Supreme Court has held that a generic drug manufacturer cannot change its label without FDA approval and, thus, any state law claims alleging that the manufacturer should have changed its label are preempted by federal law. *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567, 2571 (2011); *see also Mut. Pharm. Co. v. Bartlett*, 133 S. Ct. 2466 (2013) (holding that when a defendant's only option to comply with both state and federal law is to stop selling a drug, federal law preempts state law claims, i.e., defendants are not required to stop selling the drug). Pfizer argues that as a distributor, McKesson also cannot unilaterally change the label of prescription medicines it distributes under federal law, and, thus, any state law claims are preempted.

Courts outside the Fourth Circuit, applying the fraudulent joinder doctrine, have held that even though this argument has some logic to it, until *Mensing* and *Barlett* are explicitly extended to distributors, "it is not obvious" that plaintiffs have "absolutely no claim" against McKesson, and remand is appropriate. *See, e.g., Smith v. Amylin Pharm., LLC*, No. 13CV1236 AJB MDD, 2013 WL 3467442, at *4 (S.D. Cal. July 10, 2013); (*see also* Dkt. No. 1580 at 12-13 (citing cases)). Pfizer argues that the Fourth Circuit's decision in *Johnson v. Am. Towers, LLC*, 781 F.3d 693 (4th Cir. 2015), requires the Court to squarely address the

preemption issue on the merits. In *Johnson*, the Fourth Circuit held that the defendant was fraudulently joined where “the Communications Act *clearly* preempts the [plaintiffs’] state-law tort claim against [the non-diverse defendant] as a matter of law.” *Id.* at 705-06, 706 (emphasis added). This finding was based on prior, binding Fourth Circuit authority. *Id.* at 706. Therefore, *Johnson* stands for the proposition that where state causes of action are clearly preempted by federal law, there is no possibility of a plaintiff’s success on these claims. *Johnson* did not change the standard for fraudulent joinder or the fact that the Court must “resolve all legal and factual issues” in favor of Plaintiffs. *Id.* at 704.

Turning to the issue at hand, the Court holds that the claims against McKesson based on Lipitor’s label are clearly preempted by federal law. See *In re Fosamax (Alendronate Sodium) Prod Liab. Litig.* (No. II), No. MDL 2243 JAP-LHG, 2012 WL 181411, at *4 (D.N.J. Jan. 17, 2012) (holding label claims against distributor preempted). As a result of the scheme set forth by the FDCA, McKesson has no authority to unilaterally change Lipitor’s label. *Id.* at *3. That authority lies with the FDA and/or with Pfizer. See 21 C.F.R. 314.70 (limiting label changes to those approved by the FDA and “Changes Being Effected” or “CBE” changes by the “applicant,” which is the manufacturer).

However, Plaintiffs’ labeling claims are not their only claims. Plaintiffs have alleged claims based on McKesson’s advertising and marketing of Lipitor as well as claims for fraudulent concealment of information. (See Dkt. No. 347-14). Pfizer has not

provided any authority that these claims are preempted by federal law but attempts to lump all claims together and paint them with the same brush. (See Dkt. No. 347 at 28 n.9 (“[Plaintiffs’] claims are, at heart, product liability claims relating to labeling and design.”)). Because Plaintiffs allege distinct causes of action, not solely based on the labeling of Lipitor, the Court cannot say there is no possibility of success on Plaintiffs’ other claims.

3. Failure to State a Claim

In all of the cases at issue here, at least one Plaintiff in each case is a California resident. Therefore, the Court starts with an analysis under California law. Pfizer argues that Plaintiffs have not adequately pled causation. Plaintiffs plead that McKesson was “the largest single distributor of Pfizer’s pharmaceutical products,” that it sold and distributed Lipitor in California, and that “[u]pon information and belief,” McKesson distributed the Lipitor that Plaintiffs ingested. (Dkt. No. 347-14 at 3, 4, 6). Pfizer complains that Plaintiffs have not alleged any information about the pharmacies where they obtained Lipitor or the relationship between these pharmacies and McKesson and argue Plaintiffs have not adequately alleged facts showing that McKesson did in fact distribute the Lipitor that they ingested. (Dkt. No. 755 at 31).

However, under California law, “[w]hen a plaintiff lacks knowledge and the means of obtaining knowledge of facts material to his or her cause of action because the matters are peculiarly within the knowledge of the adverse party, and the pleader can learn of them only from statements of others, the pleader may plead what

he or she believes to be true as a result of information (hearsay) the pleader has received.” *JF. ex rel. Moore v. McKesson Corp.*, No. 1:13-CV-01699-LJO, 2014 WL 202737, at *5 (E.D. Cal. Jan. 17, 2014) (quoting *Dey v. Cont’l Cent. Credit*, 170 Cal. App. 4th 721, 725 n. 1 (2008)); accord 4 Witkin, Cal. Proc. 5th Plead § 398 (2008). While there is a split of authority, at least one court has held the type of pleading at issue here to be sufficient: “Whether McKesson distributed the pills which caused the alleged injuries is not information within the Plaintiffs’ knowledge. Instead, they must obtain this information from McKesson, the pharmacy or other third party. Thus, the allegation that McKesson distributed the drug at issue, based upon information and belief, is sufficient.” *J.F. ex rel. Moore v. McKesson Corp.*, 2014 WL 202737 at *5. It is at least possible that California allows information and belief pleading in this situation, and the Court finds the “glimmer of hope” standard set by the Fourth Circuit met. See *D.A. ex rel. Wilson v. McKesson Corp.*, No. 1:13-CV-01700-LJO, 2014 WL 202738, at *5 (E.D. Cal. Jan. 17, 2014) (“The fact that Plaintiff’s allegations [are] based on information and belief does not make it obvious according to the settled rules of the state that the complaint fails to state a claim.”) (internal quotations omitted). Thus, the Court finds that McKesson is not fraudulently joined as to California Plaintiffs.

In the multi-plaintiff California cases, Plaintiffs from multiple other jurisdictions are named. Pfizer argues that, under choice-of-law rules, the law of those Plaintiffs’ home states would apply to their claims and that fifteen (15) of those jurisdictions categorically

rejects distributor product liability claims. (See Dkt. No. 347 at 32). Plaintiffs disagree that any law other than the law of California would apply, (Dkt. No. 386 at 12 n.11), but the Court need not decide the issue. Because there is at least one California Plaintiff in each of these cases and the Court has found McKesson is not fraudulently joined as to the California Plaintiffs, as long as all the Plaintiffs are properly joined in the actions, diversity jurisdiction is lacking. In other words, Pfizer's fraudulent joinder arguments with regard to non-California Plaintiffs are only relevant if the Court severs Plaintiffs' claims under the fraudulent misjoinder doctrine. Because the Court finds Plaintiffs are not fraudulently misjoined, as explained below, diversity jurisdiction is lacking, and the Court need not consider whether McKesson is fraudulently joined with regard to non-California Plaintiffs.

4. Plaintiffs Alleged Bad Faith

Pfizer relies on *In re Avandia Mktg., Sales Practices & Prod Liab. Litig.*, No. 07-MD-1871, 2014 WL 2011597 (E.D. Pa. May 15, 2014) ("*Avandia II*"), for its final argument. In the Avandia MDL, a number of California Plaintiffs named McKesson as a defendant. The fraudulent joinder issue was initially raised early in the MDL, in 2008. At that time, the *Avandia* court found that the plaintiffs could have colorable claims against McKesson under California law and, thus, McKesson was not fraudulently joined. See *id* at *2; see also *In re: Avandia Mktg., Sales Practices and Products Liability Litig.*, 624 F. Supp. 2d 396 (E.D.Pa. 2009) ("*Avandia I*"). However, the issue was raised again, five years later, in 2014.

In 2014, the *Avandia* court held that plaintiffs had “no real intention in good faith to prosecute the action against the defendant or seek a joint judgment,” and, thus, held that McKesson was fraudulently joined. *Avandia I*, 2014 WL 2011597 at *2 (quoting *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990)). The court noted that not a single plaintiff sought any discovery from McKesson in the intervening five years and that, at a hearing on the matter, counsel could not explain why they had not done so despite the fact that discovery of the other defendant (the manufacturer) had long been completed. *Id.* at 3.

Pfizer argues that Plaintiffs’ actions in this MDL are analogous to those of the plaintiffs in *Avandia II* and that the Court should find that Plaintiffs have “no real intention” to proceed against McKesson. While Plaintiffs have not conducted discovery of McKesson in this MDL, the Court stayed discovery in these actions (with very limited exceptions) pending its ruling on the motions to remand. (*See, e.g.*, CMO 10, Dkt. No. 292). Thus, Plaintiffs were not ***allowed*** to conduct discovery of McKesson.

Pfizer also argues that Plaintiffs’ opposition to jurisdictional discovery exhibits a lack of intent to prosecute its claims against McKesson. (Dkt. No. 755 at 25). In other words, Pfizer argues that the existence of federal subject matter jurisdiction turns on whether Plaintiffs have opposed jurisdictional discovery. This is not the law. Opposing jurisdictional discovery, by itself, does not amount to a lack of intent to pursue one’s claims. Therefore, the Court finds *Avandia II* inapplicable here.

C. Fraudulent Misjoinder

The fraudulent misjoinder doctrine asserts that while all the claims pled may be viable, the claims of a non-diverse plaintiff (or against a non-diverse defendant) are so unrelated to the remaining causes of action that they cannot be joined in a single suit under Fed. R. Civ. P. 20 or a similar state rule. *Wyatt v. Charleston Area Med. Ctr., Inc.*, 651 F. Supp. 2d 492, 496 (S.D.W. Va. 2009); *see also In re Prempro Products Liab. Litig.*, 591 F.3d 613, 620 (8th Cir. 2010) (stating that fraudulent misjoinder occurs “when a plaintiff sues a diverse defendant in state court and joins a viable claim involving a nondiverse party . . . even though the plaintiff has no reasonable procedural basis to join them in one action because the claims bear no relation to each other.”). The doctrine asserts that these claims must be severed and only the claims of the non-diverse plaintiff (or against the non-diverse defendant) be remanded.

In CMO 83, this Court adopted the fraudulent misjoinder doctrine and adopted a standard analogous to the fraudulent joinder standard in the Fourth Circuit, holding that to establish fraudulent misjoinder, the removing party must show (1) outright fraud or (2) that there is no possibility that plaintiffs would be able to properly join the claims involving a non-diverse party in state court.² (*See* CMO 83, Dkt. No. 1681). Thus, the Court must determine whether there is any

²The Court does not repeat its reasoning and analysis for adopting the fraudulent misjoinder doctrine and this standard but incorporates Sections B and C of CMO 83 by reference here.

possibility that Plaintiffs' claims would be properly joined in California state court.

Under California law, “[a]ll persons may join in one action as plaintiffs if . . . [t]hey assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.” Cal. Civ. Proc. Code § 378 (West 2016). While Defendants concede that “the ‘common question’ requirement may in some cases be satisfied by plaintiffs who allege the same injury from ingestion of the same medicine,”³ they argue that the same transaction or series of transactions requirement cannot be met in such an instance. (Dkt. No. 759 at 14).⁴

California courts interpreting California’s joinder rule have allowed the joinder of plaintiffs alleging individualized injuries due to a common scheme by a defendant. For example, in *State Farm Fire & Cas. Co. v. Superior Court*, 165 individual homeowners whose homes were damaged in an earthquake brought an action against their insurer. 45 Cal. App. 4th 1093, 1113 (1996), *abrogated on unrelated grounds by Cel-Tech Commc’ns, Inc. v. Los Angeles Cellular Tel. Co.*, 973 P.2d 527 (Cal. 1999). The court found that the

³ Indeed, the creation of this MDL was based in part on the JPML’s finding that “these actions involve common questions of fact.” (Dkt. No.1 at 3).

⁴ Pfizer incorporated its briefing from the *Hoffman* case. (Dkt. No. 755 at 33).

claims were properly joined despite the fact that plaintiffs each had separate insurance policies entered into on different dates, noting that plaintiffs “alleged that State Farm engaged in a systematic practice to deceive its policy holders with respect to their purchase of earthquake insurance” and “[t]hose allegations clearly reflect a claim containing common facts central to the alleged deception.” *Id.* In *State Farm*, plaintiffs also alleged 15 different types of improper claims handling processes, but these differences were not enough to constitute improper joinder. *Id.* at 1099, 1113-14.

Similarly, in *Anaya v. Superior Court*, over 200 employees and their family members claimed injuries resulting from exposure to hazardous chemicals over a period of years at their place of employment. 160 Cal. App. 3d 228, 231, 233 (1984). The court found these claims properly joined, stating that “[t]he fact that each employee was not exposed on every occasion any other employee was exposed does not destroy the community of interest linking these petitioners.” *Id.* at 233.

Finally, in *Petersen v. Bank of America*, the court found joinder of 965 mortgage borrowers proper where they alleged the lender used inflated real estate appraisals to increase the amount of the loans and misled the borrowers as to their ability to repay. 232 Cal. App. 4th 238, 252 (2014), *review denied* (Mar. 25, 2015). The court found that “[w]hile the individual damages among these 965 plaintiffs of course vary widely, that is not the salient point . . . The salient point is that *liability* is amenable to mass action treatment.” *Id.* at 253 (emphasis in original). The court

went on to state policy reasons for its decision. First “[t]o require these plaintiffs to file separately not only clogs up the courts, but also deprives them of economies of scale otherwise available . . . , particularly in regard to the clearly common proof bearing on [defendant’s actions].” *Id.* Second, the court found mass joinder conserved judicial resources. *Id.* at 253-54.

While each of these cases might be able to be distinguished factually in some way, given this precedence, the Court finds that there is at least a possibility that Plaintiffs in this action are properly joined under California law. Therefore, Plaintiffs are not fraudulently misjoined.

D. Forum Defendant Rule

Plaintiffs also argue that the forum defendant rule barred removal of these actions. Title 28 U.S.C. § 1441(b)(2), known as the “forum defendant rule” or “home-state defendant rule,” provides that “[a] civil action otherwise removable solely on the basis of [diversity jurisdiction] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” By its own terms the rule only applies where diversity jurisdiction exists.⁵ *See, e.g., Lively v. Wild Oats Markets, Inc.*, 456 F.3d 933, 939 (9th Cir. 2006) (“Separate and apart from the statute conferring diversity jurisdiction, 28 U.S.C. § 1332, § 1441(b) confines removal on the basis of diversity jurisdiction

⁵ The rule specifically also does not apply to cases removed under the Class Action Fairness Act, which Defendants have also asserted as a basis for jurisdiction. *See* 28 U.S.C. § 1453(b).

to instances where no defendant is a citizen of the forum state.”); *Aguayo v. AMCO Ins. Co.*, 59 F. Supp. 3d 1225, 1248 (D.N.M. 2014) (“The forum-defendant rule applies only to cases removed under diversity jurisdiction.”). Because the Court has found diversity jurisdiction lacking, the rule is inapplicable, and the Court does not address it further.

E. CAFA

Defendants assert federal jurisdiction under the Class Action Fairness Act (*CAFA*). Under *CAFA*, federal courts have jurisdiction over class actions if there is minimal diversity and the amount in controversy, when aggregated, exceeds \$5 million.⁶ *CAFA* specifically provides that, for the purposes of the statute, “a mass action shall be deemed to be a class action,” removable under the statute if it meets the other requirements of the statute. *Id.* at § 1332(d)(11)(A). The term “mass action” is 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.” *Id.* at § 1332(d)(II)(B)(i). The term specifically does not include actions in which “claims have been consolidated or coordinated solely for pretrial proceedings.” *Id.* at § 1332(d)(11)(B)(ii)(IV). The parties dispute whether the cases removed here are a “mass action” within the meaning of *CAFA*.

⁶ There are additional requirements not relevant here, such as the proposed class must have at least 100 members. *See* 28 U.S.C. § 1332(d).

However, Plaintiffs argue that the Court need not reach the issue because even if the cases are mass actions, the CAFA statute prevents their transfer to an MDL and the cases should be remanded back to district courts in California. (Dkt. No. 796 at 7-9). This Court agrees.

CAFA explicitly provides that any “mass actions” removed under CAFA “shall not thereafter be transferred to any other court pursuant to section 1407 [the MDL statute], or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.” 28 U.S.C. § 1332(d)(11)(C)(I). The JPML has held that this statute only restricts the transfer of mass actions “made removable only pursuant to CAFA.” *In re Darvocet, Darvon & Propoxyphene Prod Liab. Litig.*, 939 F. Supp. 2d 1376, 1381 (JPML 2013). In other words, CAFA “does not prohibit Section 1407 transfer of an action removed pursuant to CAFA’s mass action provision so long as another ground for removal is asserted.” *Id.* at 1381. Thus, the JPML transferred these actions to the MDL because Defendants asserted diversity jurisdiction as well as CAFA jurisdiction. *See In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Prod Liab. Litig. (No. II)*, No. MDL 2502, 2015 WL 7769022, at *1 (JPML June 8, 2015) (transferring similarly situated California actions to this MDL). However, this Court has now held that diversity jurisdiction is lacking, and the only possible basis for federal jurisdiction is CAFA.

The question, then, is what happens to a case when the transferee Court (the MDL court) determines that

no basis for jurisdiction exists other than (possibly) CAFA. Plaintiffs argue that the case should be remanded back to transferor court, in accord with Congressional intent. Defendants argue that statute only restricts initial transfer and that once the case is in the MDL, the issue is moot, and that any attempt to transfer the case back would be “overruling” the JPML.

The Magistrate Judge found that transfer of the cases back to California district courts was proper. “Otherwise, the Defendants in any case would be able to circumvent the consent requirement of § 1332(d)(11)(C)(I) simply by adding non-CAFA grounds for removal that are frivolous.” (Dkt. No. 715 at 23). Thus, the Magistrate Judge found that the Court should suggest remand of these actions back to California district courts.

After the Magistrate Judge’s recommendation in this MDL, the Darvocet MDL court reached the same conclusion in a well-reasoned opinion. *In re Darvocet*, 106 F. Supp. 3d 849 (E.D. Ky. 2015), *appeal dismissed* (Nov. 17, 2015), *motion to certify appeal granted*, No. 2:11-MD-2226-DCR, 2015 WL 4385926 (E.D. Ky. July 14, 2015), *leave to appeal denied* (Nov. 17, 2015). The *Darvocet* court reasoned:

Without the benefit of precedent, this Court must determine the better of two potential outcomes. The first outcome is that the cases remain in the transferee court, despite being removed solely on the basis of CAFA’s mass action provision. Although more efficient for pretrial proceedings, this cannot be the correct result, as it would allow parties to bypass

§ 1332(d)(II)(C)(I) simply by asserting meritless grounds for removal. Just as cases are “not transferrable merely because the defendant has cited to the mass action provision as an additional ground in its notice of removal,” (MDL Record No. 2596, p. 4] cases are not bound to adjudication in a transferee court merely because the defendant has cited to additional grounds that later prove insufficient.

The second potential outcome is JPML remand of mass actions to their original federal courts following a transferee court’s finding that removal was proper solely on CAFA grounds. This result, although less efficient, preserves the effect of CAFA’s prohibition on transfers. It does not require the JPML panel to impermissibly consider the validity of jurisdictional grounds asserted, but merely affords the transferee court an opportunity to determine jurisdiction and, where appropriate, relinquish cases that are not subject to transfer under CAFA. The JPML has noted and the parties agree that “the language of Section 1332(d)(11)(C)(i) clearly circumscribes the Panel’s authority to transfer an action removed solely as a mass action.” [MDL Record No. 2596, p. 2] Nothing in the JPML’s decision in *In re Darvocet* suggests that a case that would otherwise have been precluded from MDL transfer under CAFA must be retained by a transferee court merely because the defendant has cited additional, meritless grounds in its notice of removal. *See* 939 F.Supp.2d at 1381. Moreover, if the grounds for removal had

originally been determined by the transferor courts, § 1332(d)(II)(C)(I) would have precluded transfer to this Court. The undersigned finds no reason to reach a different result simply because of the cases' procedural posture at the time of transfer.

Id. at 858-59.

This Court agrees with the reasoning of *In re Darvocet*. Congress struck a compromise in CAFA: federal courts would have jurisdiction over mass actions but these actions could not be transferred to an MDL unless a majority of the plaintiffs so requested. Under Defendants' theory, a defendant could add a frivolous jurisdictional ground to evade this statute, and ***no court could review it***. Because the JPML, the only body with authority to transfer a case, also lacks authority to address the merits of subject matter jurisdiction, a defendant's assertion of non-CAFA jurisdiction, no matter how frivolous, requires transfer to an MDL without court review and then, once in the MDL, the case must stay there regardless of the transferee court's determinations regarding subject matter jurisdiction. The Court finds such machinations contrary to Congressional intent. Therefore, this Court will suggest that the JPML remand these cases to the federal district courts in California. Furthermore, the Court's suggestion of remand will provide the JPML with an opportunity to address this question directly, as it is the final arbiter of whether cases should be remanded to the transferor courts. *See, e.g., Pinney v. Nokia, Inc.*, 402 F.3d 430, 452 (4th Cir. 2005) (noting

that only the JPML has the authority to remand a case to the transferor court).

F. Timeliness

Plaintiffs contend that nine of the California cases (the ones at issue in the motion to remand at Dkt. No. 269) were not timely removed by Defendants because they were not removed within 30 days of being served with the Complaint. Defendants argue that the removal was timely under the “revival” rule because the grant of the coordination petition by the California Judicial Council, followed by the filing of an additional 3,000 claims substantially changed the nature of the suit and triggered the ability to remove the case under CAFA. The Court does not reach this issue. The Court has left the ultimate decision of whether CAFA jurisdiction exists to the California district courts and, therefore, leaves this related issue to those courts as well.

G. Conclusion

For the reasons stated above, the Court **GRANTS IN PART** Plaintiffs’ Motions to Remand (Dkt. Nos. 267, 268, 269). The Court finds that it lacks diversity jurisdiction over these actions and that the only possible ground for federal jurisdiction is CAFA. Therefore, for the reasons stated above, the Court **SUGGESTS** to the JPML that these actions be remanded to their transferor courts for further proceedings.

AND IT IS SO ORDERED.

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/s/Richard Mark Gergel
Richard Mark Gergel
United States District Court Judge

November 7, 2016
Charleston, South Carolina

APPENDIX H

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

2:14 MN 2502

[Dated October 21, 2016]

IN RE: LIPITOR :)
)
)

)

Motion Hearing in the above-captioned matter held on Friday, October 21, 2016, commencing at 10:04 a.m., before the Honorable Richard M. Gergel, in Courtroom III, United States Courthouse, 83 Meeting Street, Charleston, South Carolina, 29401.

REPORTED BY DEBRA LEE POTOCKI,
RMR, RDR, CRR
Official Reporter for the U.S. District Court
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A P P E A R A N C E S

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Keith Altman, Esquire

APPEARED FOR DEFENDANTS:

Michael T. Cole, Esquire
Mark S. Cheffo, Esquire
Rachel B. Passaretti-Wu, Esquire

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THE COURT: Do we have folks on the telephone as well?

THE CLERK: Yes, sir.

THE COURT: And they're there?

THE CLERK: They're there.

THE COURT: Very good. Okay. Folks, we have something which I've never done, try to handle ten appeals at the same time, right? That's a challenge for all of us, I'm sure, counsel as well as the Court. And I presume everyone saw my order of yesterday in which I was trying to create some sanity to this process and rationality.

And, folks, for those -- I want to hear from everybody who has something important to say, but there's obviously an element of repetition here after awhile, on -- there's, you know, obviously some distinct issues in certain states, which I expect those state counsel to address. But we need not relitigate over and over again, the same issues. If you have something you need to point out that maybe somebody else didn't, I want to hear that. This argument is not an empty exercise; I'm trying to make sure I've considered everything.

For those of you who have not had the opportunity to previously appear before me, let me start with some premises. I read everything. I have read every Magistrate Judge order, I have read every brief, and I'm embarrassed to say I've read every case, okay? So somebody giving me a factual background

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or a legal standard, it's not that helpful. I kind of know where we are.

Mr. Cheffo, are you going to argue on behalf of the appellant here?

MR. CHEFFO: I am, Your Honor.

THE COURT: Very good. And we're going to begin with the California cases. Do you wish to reserve anything in reply?

MR. CHEFFO: I do, Your Honor, thank you. Thanks for the order. It was actually very helpful to get that guidance.

I would like to reserve three minutes. I would just say this, too, Your Honor, I'll be guided however you want to proceed. I took to heart a lot of what you said, and as you can see, frankly, if there are four or five arguments that would apply to California, frankly, those -- four of them, if you will, will apply to Illinois and Missouri.

THE COURT: Correct.

MR. CHEFFO: So I, again, with your indulgence, I don't think I need a lot more time. If I had an extra five minutes, I could probably cover those, and then basically when we get to Illinois, say see what I told you a little earlier.

THE COURT: That would be helpful. I just want to -- Illinois counsel may have a particular twist on something, and I want to give you both a chance to address those and to reply to that, if you feel like you need to. But you've appeared in

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front of me enough to know that there's certain things that are kind of a waste of time and some things that are useful in terms of oral argument.

So let's start with -- we're going to reserve three minutes. And why don't you come to the podium, if you might.

MR. CHEFFO: Yes, Your Honor.

THE COURT: And I'll be glad to hear from you on the California remand issues.

MR. CHEFFO: Thank you, Your Honor. And I also did -- I thought this one lent itself -- hopefully you'll find it helpful, some Power Points. We don't use them every time, but maybe this is as helpful for me as it is for you.

THE COURT: Well, it always sends my staff into uncontrollable laughter when anyone tries to do a Power Point with me, but I'm glad to hear you out on that.

MR. CHEFFO: I think I've tried to helpfully get to the point here, and we'll leave obviously copies for counsel and for Your Honor.

So the four issues, and again, really at any time obviously this is for Your Honor, so you tell me, as you will, I know, if things -- First going to talk about the Magistrate Judge's ruling, just to determine, as you know, he determined that there's essentially no jurisdiction to hear that, so I was going to talk a little bit about that, and then move specifically into the reasons, assuming that you agree or

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you're going to entertain that, to hear CAFA, why we think there is CAFA jurisdiction. Frankly, beyond that, as Your Honor probably knows, we wouldn't need to probably get to fraudulent joinder and misjoinder and severance, if you determine CAFA, at least as to the California cases, but I'm prepared to at least --

THE COURT: I think you ought to be prepared to argue all of those, because they do -- the last two obviously have something to do with other states.

MR. CHEFFO: They do.

THE COURT: And they're important issues. Let me start with you, just to disrupt your planned presentation here.

MR. CHEFFO: That's okay.

THE COURT: That we start with this -- let's just assume for purposes of this argument that with the Ninth Circuit cases, this would be a mass action, okay? Just the sort of unique aspects of Ninth Circuit law interplaying with the California law about saying for all purposes. Let's just assume for purposes of that, we've got a mass action.

Here's where it's confusing to me. The JPML has taken the position it won't look at the reasonableness of removal, that that's something for the transferring court. It said that in the Darvocet case, it said it in my very case, there were 91 California plaintiffs who asserted this and were told, go to

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South Carolina. I understand the defendant argument to be I can't look at it. And it strikes me, Mr. Cheffo, that just can't be the law that you can -- that a defendant can remove a case, and no court can review that. That just can not be the law.

And I agree with you, and I think y'all kind of straightened out my Magistrate Judge, that he couldn't -- we could not remand cases directly to the District Court of California; that is a unique prerogative of the

JPML. But there can be a recommendation of that from my court.

And so I have trouble understanding how, number one, I can't look at it, which doesn't make sense to me. And then, you know, when we get down to looking squarely at the issue, I've dug a little bit into the legislative history of CAFA, and there was obviously this huge debate going on about class actions that were sticking in the state courts because of the very issue y'all are raising about fraudulent joinder. Okay? I mean, they weren't winning because the case law is so terrible. And defendants like your clients were urging the Court to -- the Congress, because they weren't winning in the courts, to provide some federal jurisdiction. And Congress looks like to me it reached a compromise, as Congress, when it works, does. And agreed, A, we're going to let, with minimal diversity, not complete diversity, we're going to allow federal jurisdiction, but we are not going to let 407

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transfers, we're not going to have MDL transfers. That's what I sort of understood to be the deal. Unless, unless, the plaintiffs consented.

So yes, I mean, the way I read -- and I got into the legislative history a little bit -- was yes, we're going to allow federal jurisdiction in the districts where these cases were removed, but the plaintiffs are going to have to consent to join an MDL.

What I see your argument is that I should basically, for one reason or another, ignore what seems to me a central part of the deal under CAFA, and force the

plaintiffs who do not wish to be here, to join this MDL. And I understand the policy argument that it would be, in a perfect world, it would be wonderful to have everybody here at the party, right? I mean, that's a rational orderly way of doing things. But it just appears that's not what the law is. And if I were in Congress, I might vote differently.

But tell me, as a judge, how, when I'm trying to apply the rule of law in a neutral way, how I'm able to overcome these problems, and force this group of plaintiffs who don't want to be here, under CAFA, how I can make them be here.

MR. CHEFFO: Let me see if I can answer. I understand those points and I think they're fair points, or they're fair questions, mainly because you asked them.

THE COURT: Kind of important. You know, I try not

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to hide the ball here, I kind of want to let people know where my concerns are. And if I were your client, I would have sympathy for your view. I can understand the plaintiffs' view as well.

MR. CHEFFO: Actually I think I have answers to both of them.

THE COURT: Good, I want to hear that.

MR. CHEFFO: Let's see if I can skip ahead, you'll get a preview.

THE COURT: I always make you do this on your Power Point, you have to go skipping around.

MR. CHEFFO: Pretty much. Good thing I looked at these before today.

So the first issue really is kind of like what the -- Where is the Darvocet cases? Is that earlier on? So here's -- I think as the --

THE COURT: We're talking about the Darvocet JPML cases?

MR. CHEFFO: Correct. And really yours. This is the issue. So as I hear Your Honor saying, look, you know, how is it that these cases, you know, can be transferred, and what's the remedy, right, is there a remedy for appeal, and I think there is a remedy. So the Darvocet JPML and the JPML in connection with these cases essentially said we understand plaintiffs' position on CAFA, that you can't transfer these

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based on the CAFA rules; however, we are reading that consistent with the MDL rules, that if there are other bases for --

THE COURT: First of all, let me say I agree with that, but then you have to win the fraudulent joinder issue to get there.

MR. CHEFFO: Again, that's -- I'll address that, too, Your Honor, but here's the issue. Let me get first, if I could, what's the way to address this? There is a way. If any case -- forget about CAFA -- if a case is transferred improperly or somebody believes it's been

transferred improperly, there is a provision, to take an extraordinary writ to the Fourth Circuit in this case. That's what people can do if they think that the case is improperly transferred.

THE COURT: That is not what the JPML thinks is going to happen, and how they interpret the rule as a practical matter, requiring some extraordinary -- I mean, there's always in every case the ability to go to a court in an extraordinary writ, regardless what the rules are. We've had that come up in a variety of areas. But there is -- listen, it is very clear that my colleagues on that panel, A, do not feel they have the authority or really the capacity, with their limited staff, to get into these cases, and they expect a transferring court to deal with it. I'm just going to tell you that. I'm just telling you, that's reality.

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MR. CHEFFO: Sure.

THE COURT: And so I'm going to review it. I'm sorry, Mr. Cheffo, I'm going to look at it. But then I've got to look at this, you know, this provision that says I -- first of all, I'm going to assume -- I'm asking a question I know the answer, but let's just put it on the record -- the plaintiffs do not consent to be here, the majority; am I correct?

MR. CHEFFO: I think that's fair.

THE COURT: Okay. So I see a nod.

MR. CHEFFO: Any of them, I think. I think --

THE COURT: So I mean, I think there's a procedure better than the one that always exists, which is you can seek an extraordinary writ.

I don't believe that the -- that there was an intention to create a situation where no court responsible for the case could review your action in removal. That just can not be the law.

MR. CHEFFO: And that's not really our position. So there's a few things. One is the idea was you remove it, you have multiple causes of action. Certainly you have the good faith provisions and when the cases are removed if there's something obviously egregious. Then the cases get tagged and they go to the JPML. Now, JPML's job is not to look at the merits, we all agree with that, but they've determined, based

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on 1407, that they're going to transfer them to you, just like they would any remand motion.

THE COURT: There's like no filter there. I'm telling you, there is no -- Let me say this. There is both the law, there is the interpretation, and there's a certain knowledge that those of us who are handling these major cases have acquired, okay? And there's a famous Fourth Circuit case that says, "You seek to persuade us as judges what we know to be untrue as men." Okay? I mean, there just can't be the law that you could just sort of bring them all there, there's no filter there, it's just a mechanical process.

MR. CHEFFO: On that one I would disagree, Your Honor.

THE COURT: They do not. They don't have the -- their staff -- I don't know if you know about their staff, it's very limited staff.

MR. CHEFFO: It is.

THE COURT: I have one person assigned to this case.

MR. CHEFFO: And they do a fantastic job --

THE COURT: I don't criticize them, I'm just telling you there's one staff member assigned to the Lipitor case.

MR. CHEFFO: But there is a process, right? So there's things, once you get tagged, and I know Your Honor knows this, but sometimes there's also a provision to file objections, and they get briefed. And these issues were

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briefed. So --

THE COURT: And they said, under Darvocet, we don't review this. They're expecting me to do it. I'm going to do the job that the transferring court has responsibility to do, which is to take a look at this, and to say, hold it a minute, CAFA jurisdiction -- Now, you know, if it's CAFA plus something else, and there's otherwise jurisdiction, diversity, for instance, as you assert, no problem. No problem. Okay? That's not an issue. But if there's no other jurisdiction but CAFA, you can't make the plaintiffs be here.

MR. CHEFFO: So there's two issues, right? Let's see what Judge Reeves did in Darvocet. Judge Reeves basically had the cases transferred -- I was involved in that litigation, too, and he --

THE COURT: There's a famous story that Thurgood Marshall, arguing at that very podium, was arguing a major civil rights case, and somebody said, what about this case? And he said, I handled that case. What about this case? I handled that case. And every case, he handled the case.

MR. CHEFFO: Let's be clear, this is not Thurgood Marshall arguing remand issues, just so we're very clear today.

But so with respect to Darvocet, what Judge Reeves did was he basically said, you know, I think he shared a similar view. But what he did do was he decided CAFA. Right? And then what he said -- so he first -- he took the case, he decided it.

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Because look, there's --

THE COURT: When you say decided CAFA, what do you mean by that?

MR. CHEFFO: He said there is CAFA jurisdiction. He decided the ultimate issue. So I just want to make sure we're clear on this. To me, there's like three or four different set issues. One is, you know, can this essentially be an appeal or correction of the issues before you? The second issue is, once you have

them, can you ultimately look at them? You know, we think the magistrate judge --

THE COURT: You've got one issue is, does this appear to be a mass action? I think you're right. I think under the fourth -- the Ninth Circuit cases, I think it's -- I might not have logically reached that conclusion, but I understand how they did it, makes sense to me, I'm going to apply their law.

MR. CHEFFO: That's what Judge Reeves did.

THE COURT: But then I've got to say this has been transferred, so I'm assuming the Federal District Court in California -- now, there is one issue I haven't addressed, timeliness. Okay? The question is, who should do that, we'll talk about that in a second.

But yes, I think there is likely CAFA jurisdiction in the Federal District Courts of California. Okay? But the next question is, is it subject to removal, with that the only basis of jurisdiction, to the In Re: Lipitor MDL in the

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District of South Carolina? That is the problem.

MR. CHEFFO: There's two remedies. So if we get -- potential remedies, right? Three. One is you've now, let's assume you decide there is CAFA jurisdiction here, you then can say I'm going to -- these cases, essentially the venue transfer provisions are really a one-way street, and there was colorable claims -- and of course I'm not, you know, throwing away the other

claims, because you may also agree with us on some of these others.

THE COURT: We're going to get to that.

MR. CHEFFO: Assume for argument sake you said I've looked at everything, I find CAFA, I don't find anything else, right?

THE COURT: Yes.

MR. CHEFFO: You then can say, well, because there was a good faith, these are not frivolous arguments, I'm going to keep the case. That's one.

The other thing you could do is you could certify the question to the Fourth Circuit. Not appeal, I'm not suggesting appeal, but you could say, hey, I now have this case --

THE COURT: I don't feel the need to do that.

MR. CHEFFO: And you may not. Or what you could do is you could then do a suggestion of remand to the MDL panel. Right? And you could do that. And then probably what would

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happen at that point is that this issue may get briefed with that, and they may not, they may --

THE COURT: They avoided it in the Darvocet case.

MR. CHEFFO: They did, but what happened ultimately in Darvocet, once it got back to California, you know what the judges did?

THE COURT: No.

MR. CHEFFO: 1404'ed it back to the MDL.

THE COURT: And that may be what they do here. And you know, one of the things you have -- counsel has asked, lead counsel has asked me not to close down the MDL after these orders. And I am, you know, inclined not to do that. For one reason, the Fourth Circuit might not agree with me, and second reason is there could be issues like this that they could come back.

The question is, what's the right court to do -- I mean, let me just say this, Mr. Cheffo. I don't want to blow past this timeliness issue. It's not a small issue. And I've looked at it. I think it's better for the District Courts in California who have, you know, they know that -- they apply that California state law regarding the consolidation of cases, Ninth Circuit's their circuit, I think they're the better court, frankly, to look at this issue. But it's not a small issue, Mr. Cheffo. I'm going to tell you, it's not a small issue. And I think I'm probably doing you a favor not

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to rule on it, frankly. If you pressed me, I might, but I think you're probably better served let the district judges.

My general practice -- I want to talk to you about this. Is like these fraudulent joinders, there's some issues that have been raised in this MDL no District Judge in America has ever seen. I mean, they're just unique, interesting issues. Fraudulent joinder is like

something we get like seven times a day. Okay? I mean, we have these counties in South Carolina where the plaintiffs love to try cases, and they're always looking for the conductor or, you know, the pharmacist or whoever it would be, the random state party of the defendant to defeat diversity. And we get these cases constantly. And our practice here is that we remand them. And many times my defendants go back there and immediately do discovery. I mean, they don't mess around, when that thing is -- there's a challenged remand, they take it right back, because they have that one year, they get back there, they do discovery, they get summary judgment against the defendant who, as they asserted, there's no real claim, and they come back. I see that all the time. Y'all elected not to do that. You had your own strategic reasons, I don't question it. Some defendants don't do that, I mean, I don't question the strategy. But that was an option your client had to do. But I don't keep those cases. I don't sit there and dig into whether there's -- I mean, my circuit, you know, glimmer of

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hope, whoever heard of such a legal standard, right? Who could invent a glimmer of hope standard. I don't think there's any other area of the law that has a lower legal bar or standard than fraudulent joinder. I mean, it is --

MR. CHEFFO: I agree.

THE COURT: It is the lowest standard that I have ever encountered in any area of the law.

And you can -- I mean, I have the occasion to deal with capital cases which, you know, people's lives are in jeopardy. Higher standard, okay? I mean, this is like the lowest standard known. And it's not a new issue, Mr. Cheffo. This has been a century of this stuff, right? This is 1913 is the original case.

MR. CHEFFO: There's no question. And everything you said, I frankly agree with. I think there are a few different issues here, right, there are issues here of fraudulent joinder, but there's also issues here of procedural misjoinder, which is not quite as clear.

THE COURT: Let me say this, and to make it easy for you, I think y'all's various variations of the fraudulent joinder theory are interesting, and in the right case are credible. I found them pretty interesting. But they're all going to have the glimmer of hope, no possibility standard. Because they're joinder issues.

MR. CHEFFO: No, well --

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THE COURT: I believe that's the standard. And --

MR. CHEFFO: I would say -- I'm sorry to interrupt, Your Honor, but the only thing I would say is we've actually approached this from two ways. So we approached it the -- it's not egregiousness, but I would give you the standard is high. But here's what most courts, there's a Benicar court just did this in New Jersey. The Court basically looked at this and said, you know, probably similar to much of what you're saying, this is kind of complicated, there's a lot of different

ways of dealing with this; however, I don't need to get there, I can basically decide this by just good old Rule 21 severance. Right? I'm going to look at these cases. And frankly, when you do that, you basically -- all of the issues that we've been talking about. So here, so the Benicar case, and there are others, said I have CMOs in place that essentially disaggregate this. Well, we do, too, we have short form complaints. No one has ever suggested that, you know, you could even file a multi-person complaint. You have been, you know, kind of in this litigation, you know what the claims are, what the differences are, right? So from a joinder perspective in severance, look at -- these are just a few of them, different pharmacies, different purposes, different doses, conversations --

THE COURT: My Magistrate Judge pointed out, same drug, same research, same marketing. I mean --
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MR. CHEFFO: But those are not severance.

THE COURT: I mean, I think these very -- I call them the variations of the fraudulent joinder theory which you apply to defense claims, you apply to plaintiffs, are interesting ideas. I don't think they are particularly persuasive in this particular set of facts.

MR. CHEFFO: Your Honor, I mean here's where -- I would just urge you to think differently about fraudulent joinder of plaintiffs and defendants, and procedural misjoinder. They make my kind of head spin, but those are different contexts, there's some law on them, and they talk about very high standards, and there is -- some courts have adopted them, many courts

have not. But when you look at the basic severance, there is a huge number of cases that I think sometimes people try and make this too hard. Right? They basically, look, this is the Benicar case, the issue of complete diversity is mooted by virtue of the management order requiring severance of the plaintiffs. So when they got there they had to be severed.

There's actually this Propecia case, "If plaintiffs can escape the MDL by joining multiple, unconnected and nondiverse parties in a State Court of their choice, they defeat the purposes of the MDL and deny defendants their rights."

Most of -- this is Propecia is a hair loss -- most of these, if you look at these, these are all medical device

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pharmaceutical cases, same exact issues, they go on and on.

THE COURT: Let me tell you something. I know y'all disagree with the State Courts that -- I mean, in Missouri, for instance, you know, there is these -- my colleagues in Missouri are all over the place about -- and there's no appellate court case in Missouri. But there's at least an Eighth Circuit case that hasn't been reversed and still followed as recently as this year, in which it says, you know, that these -- that the defendant has consented to personal jurisdiction in the -- to jurisdiction in the state by registering -- and I mean, I -- listen, I know that argument, okay? That's not the law in South Carolina, but I'm saying -- I'm looking at is there no possibility that they're going to be

successful there? I would say, depending on the judge they get, they may have 100 percent chance of winning; depends who the judge is.

MR. CHEFFO: So I look at this -- Can I step over here, Your Honor?

THE COURT: Absolutely.

MR. CHEFFO: A few things. So we have CAFA, right? First. Then we basically -- let me look at my note here -- we have -- before we even get into fraudulent joinder or misjoinder -- Can you see that?

THE COURT: I can.

MR. CHEFFO: We basically have this idea of

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severance, right, so you don't even need to get into these first.

THE COURT: Why would I sever it?

MR. CHEFFO: Because if you looked at severance, you would have a number of cases that would have just straight -- and this applies, frankly, in the Missouri cases as well -- it's what -- and this is what the Federal Courts do. And I think this is like setting the table. It's not a substantive merits issue. So you'd say wait a minute, let's say someone came into Federal Court and they filed a 97-person complaint from all over the place. Right? If the clerk would even accept that, without doing it, you know, most -- in this case, forget the other one --

THE COURT: These are not direct file cases, these are coming out of a State Court in which the clerk in the State Court allowed it.

MR. CHEFFO: I understand.

THE COURT: And the court in that state permitted it. I agree with you, we wouldn't allow it.

MR. CHEFFO: Okay. But here's what the point is. We are investigating, you are investigating determining whether my client, right, has Federal Court jurisdiction, a very important, you know, issue for us and for you and for the courts. And when you set the table to make these decisions, you have to use the tools that you have. Just like you'd

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apply Daubert here if the state had jurisdiction.

So before you get all these things, you should, like all of these other cases do, say, wait a minute, you could file -- I recognize there may be in St. Louis or in California, if you did it, you could do it, but we're not in St. Louis or California, we are trying to determine if there's Federal Court jurisdiction here.

So you have to look, I believe --

THE COURT: Under CAFA. Under CAFA.

MR. CHEFFO: Well, under CAFA, now we're actually on -- probably under fraudulent joinder and misjoinder.

THE COURT: Okay. Okay.

MR. CHEFFO: Okay? So CAFA is easy for California, you decide it, and if you keep it, we're all --

THE COURT: I'm with you.

MR. CHEFFO: But in terms of severance, this has very significant implication, because if you first sever, there's frankly hundreds of cases where just by the virtue of severance, you don't even have to reach fraudulent joinder. There's cases, for example, where you have a Wisconsin person in one of those, you know, 97-person California claims -- and there's complete diversity, right -- the only issue there, and, in fact, some of those, they've waived the forum defendant rule. So let's say there's two, 300 cases where, if you had basically -- if you sever and you broke them up and

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look at them individually, say okay, Mrs. Smith versus Pfizer here and McKesson. Some of them would automatically be in this court. Not all of them, in fact, the majority would not. The majority then, once you sever it, then you would have to go through and do a fraudulent joinder analysis.

So whether you want to call this severance under Rule 21, or you want to call it procedural misjoinder, those are important issues. Then I think what you would look at, and I understand Your Honor's -- your point on some of the fraudulent joinder issues. But McKesson is a unique animal. This is not like, you know, a local defendant who actually you're suing a big company and someone actually did something. There's three cross-cutting arguments as to McKesson, that I think are incredibly powerful, particularly here.

The first is preemption, right? And, you know, very simply, in *Mensing and Bartlett*, if you can't change the label and you can't redesign it, how can you respect McKesson, all they are is the distributor of the medicine.

THE COURT: Of course, they allege marketing, sales, representations.

MR. CHEFFO: No, and we'll talk about that, I'll go back to the podium in a second, but there is essentially failure on the pleadings. So basically what they say is they say McKesson distributes one-third of all medicines in America, and on information and belief, you know, all the

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people in this complaint did it. So that doesn't meet any standard.

And then there's actually this intent issue. And I will give you, as to people, some of the plaintiffs will talk about, that's a harder argument for us, but as to a number of them, it's a pretty easy argument. Because the Lopez firm, for example, filed motions to remand. So let me just take them one at a time.

THE COURT: I mean, you acknowledge that the sort of egregious circumstances of *Avantia* are not here.

MR. CHEFFO: I do and I don't. Okay? So, for example, and I don't in any way mean to pick on Mr. Lopez, but these cases -- So what happened -- you probably remember this -- very back in 2014 -- so, you know, Mr. Lopez is one of the executive committee

members, as Your Honor knows, and he had some cases, right? And he said, I am going to keep all these cases here, right? And he -- not only is he an executive committee member, he had three discovery pool cases, was intimately involved in discovery, they have not served a single document request. I haven't even heard McKesson in any of these depositions use -- they've never attended.

So then -- and basically this is what they did, remember we were talking about all kind of minutia about adverse events, and they pursued all that; they did not pursue anything versus McKesson.

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So when you talk about intent -- and these were discovery pool cases. So I would argue two things on that, Your Honor. The first is, at least as to all of the cases that are in -- and this is -- these remand motions --

THE COURT: But if McKesson was a party in some of the pool cases, we would not have tried McKesson, would we have? I mean, my MDL is --

MR. CHEFFO: No, but here's why, right, and this goes to the intent point. They only filed motions to remand hundreds of cases, after your Daubert ruling came out. So they basically -- this is Avantia --

THE COURT: Let me say this.

MR. CHEFFO: -- on steroids.

THE COURT: We all know that everybody games jurisdiction. No one is free of that. My friend,

Andre Davis, a Fourth Circuit case which he dissents from an en banc case, and he, in a great dissent, he said, listen, everybody games jurisdiction. Start looking at people's ethics, because everybody does it, and there's nothing wrong with it, it's just the defendants want to be in Federal Court, the plaintiffs want to be in State Court, that's just the way it is. And they all use the rules, and it's just -- the court's trying to be neutral in these things and apply the rules. So --

MR. CHEFFO: Your Honor, this is not about ethics.

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THE COURT: So when you say -- I mean, I stayed all the remand cases, so they didn't do any discovery in those cases. They moved to stay, you consented to it, so I mean, they weren't going to do discovery in those cases. And I wasn't going to try McKesson cases if they were in my pool, right?

MR. CHEFFO: Right. Well, that's why I said there are two issues. Right? And I'm not -- just to be clear, I'm not in any way challenging ethics, I think this was the right choice. Basically what happened -- and let me put aside the non -- let me only talk about Mr. Lopez' cases and then we'll talk about the state California cases.

These are cases that are in your court that are not stayed. Okay? He filed in the -- for hundreds of them. He filed motions to remand, after Your Honor ruled on Daubert. Based on the cases that are already here. So that's what I'm talking about right now, right? So those, when you want to look at did he have an intent,

this is not ethics; he was right, he said, look, I don't really need McKesson in these cases, I want to stay in Federal Court, they don't add any value, and I'm not going to really pursue them. And that's what he did all through the litigation, and then after the Daubert rulings come down, he says, oh, by the way we have a subject matter jurisdiction here and there's no diversity. So that's one.

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THE COURT: But you want me to reach down and point out in these thousands of cases, one lawyer, and focus on his intent. You know, there are practical limitations on an MDL management of reaching down like this.

MR. CHEFFO: I agree.

THE COURT: I mean --

MR. CHEFFO: I agree.

THE COURT: And you know, this is not like a single case which we could -- we wouldn't have the time -- I mean, one of my great disappointments in this MDL is we never found a case to try. And, you know, I -- you know, I went to great lengths --

MR. CHEFFO: You did.

THE COURT: -- to try to get one tried. And lo and behold, after we did all that, that the new theory is they don't need an expert, right? I mean, I would have loved one of them to step forward and we'd have tried the case.

But, you know, I can't be -- it's just not practical to be reaching down and trying to get the measure of the intent of a lawyer, of a lawyer, when most of his cases were stayed, the remand cases, he later did this, listen, I get it, I saw what he did, I mean, you know, wasn't any secret to me, I saw. He was -- everybody's gaming the system, just like somebody would say, well, what is Pfizer reaching in California and transferring these cases to the MDL? I don't fault you for

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it. That's a reasonable effort, whether you succeed or not, it's done in good faith, I don't question your good faith. It might have been pushing the limits of the law, but what's wrong with that? That's what good lawyers do.

So I think what's good for the goose here is good for the gander. I'm not big on trying to examine the bad faith of lawyers.

MR. CHEFFO: Let's me say this. There's no question, as to all of the others, I think we raised the argument, that's not our strongest argument. When you look at the issues here, once you -- if you do sever, or frankly, even if you don't, when you look at the fraudulent joinder, I think the preemption argument as to McKesson is the strongest, and I think also this issue of intent, failure to state a claim.

So plaintiff's complaint must allege causation. McKesson was in some way responsible for the pills that caused plaintiffs' alleged injury. The fact the pleadings are liberally construed does not dispense with this requirement. And Your Honor, I'm sure, has

and will go back, but I went back and looked at the complaints --

THE COURT: I went back, I have them in my notebook. I didn't read obviously every one, but I did read several.

MR. CHEFFO: Sure. And we understand liberal pleading, but I think this is a very strong and very fair argument that when you're basically trying to look at [p.30]

putting -- if you get past preemption, then you have the pleading issues in terms of fraudulent joinder.

I think there's two other quick arguments that we have that are actually a little more specific.

So here's kind of the wrinkle. Upon, you know, upon information and belief, then you have maybe one --

THE COURT: Then you have 15 states that don't have it. But here's my point on that. I can understand it's a strategy call in complex litigation you have to make. Am I going stay here and fight for jurisdiction here, or am I going to go back to the State Court and move for summary judgment in those states that have -- obviously there's no liability to the distributor. You make the call to do that. I don't question it. There's not a right or wrong answer to this, there's a strategic calls you make.

But having me get into the weeds on these individual cases doesn't make a lot of sense to me. What we do here is we send them back and we try it. You know, we have these like really sound practices,

and you can't always follow them all in an MDL, but you try to use sound practices.

When we have a removal and there's this -- there's fraudulent joinder issues, we remand it, and some defendants aggressively jump on it and whack them good, there's no claim, and -- you know, before I even know they're gone, they're back.

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MR. CHEFFO: Judge, here's the difference, I think, in this, right, just so we're clear what's been going on. I would understand if we were kind of selectively around the country saying, okay, we're not going to remove cases from Wisconsin because there's some tactical advantage, right? We have removed and tagged every case --

THE COURT: But that doesn't make it right. If you don't have jurisdiction, you don't have jurisdiction.

MR. CHEFFO: No, I understand that, but you were saying why don't you just kind fight these battles out. And I think the difference is in the one off cases is that's the whole point of the MDL. Our position when, you know, when the first MDL was -- once the Court established it, was we want to have all of these issues. You know, we didn't remove after Your Honor's Daubert ruling or after this or that, we basically said we think these cases have jurisdiction, you should not be able to file, you know, 3000 plus cases in California, of which four or -- 400 something of them are California residents, right, lump them together, they have nothing to do, they maybe could find California on a map, probably most people have never been to

California or done anything, and we basically said, we're entitled to this thing called federal jurisdiction, there's an MDL. So our efforts from the very beginning were to move. In fact, we asked for jurisdictional discovery. So we --

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THE COURT: And I wasn't going to get into the weeds on these individual cases.

MR. CHEFFO: Right.

THE COURT: You see, if I put my hat on as the MDL judge and say I want -- you know, my preference would be to have every case here, have it in one place, and then all these different courts wouldn't have to tackle, and all these parties wouldn't have to run around the country litigating these issues. I get that. But that's not what Congress provided with CAFA. I mean, that's not what Congress did. And I can't rewrite the deal that Congress -- the compromise Congress wrote about that.

And similarly, this issue about the, you know, defense, this is not a secret that many defendants have loudly complained with the manipulation of jurisdiction. And one of the solutions could be to do something about fraudulent joinder, not to -- reverse somehow in the rules, establish a statutory basis that's higher than, you know, glimmer of hope. Okay? Congress could do that, they could --

MR. CHEFFO: But severance does that, Your Honor.

THE COURT: Well, I'm not -- I frankly think that these -- if I took down an individual case, these parties would have -- I wouldn't sever them, I just wouldn't do it. And it's not something we normally do. And I think it's creative, it's interesting. It's not practical. It's not

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practical how we apply the rules, and I don't think we ought to be trying to defeat what seems to be the policy in CAFA, your jurisdiction under CAFA is very limited, and you're trying to, through different devices, to turn it into general jurisdiction.

And if I were in Congress, I might have voted that way, but that's not my hat I'm wearing here.

MR. CHEFFO: So, Your Honor, I only want to be up here as long as it's helpful.

THE COURT: By the way, I'm giving the other side as long a time as you get.

MR. CHEFFO: They may not need it, depending on how Your Honor comes out.

So is it Your Honor's view, and again, just so I know kind of what may be helpful and may not be helpful, is your view that this CAFA decision is not something that you believe you should be ruling on, and --

THE COURT: Yeah, I think that there's -- it seems to me that the issue of whether this is a mass action is largely settled by the Ninth Circuit decision. So I don't think that's the question. There is a timeliness question that needs -- about whether

removal was timely, but I feel like the right decision on my part is to send to my colleagues in California whether that initial removal was proper, allow them to rule on that issue and litigate that issue. And then if it

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wasn't timely, and/or otherwise they determined there's not CAFA jurisdiction, they could send it back to State Court. If they determine no, it was timely and there is CAFA jurisdiction, then they can consolidate them within each of the districts where these cases are pending, and can have their sort of mini MDL within those individual districts.

Listen, I wouldn't design that as a system, but that's what Congress, as I read the CAFA statute, to provide for that. That was the deal. And there were benefits to that, because if you didn't have that, you couldn't even argue you had federal jurisdiction without complete diversity, but it came with strings. And I can't shed those strings.

I've got to say, I started considering all this remand issue, saying, gee, wouldn't it be nice to keep everybody here, I'll be honest with you, that's sort of the MDL judge, that's sort of your idea is you want all the cases here. But that's not what the law is. I have to apply the law.

And as I read each of the MDL -- each of the remand orders that my Magistrate Judge did, Judge Marchant, I began to -- every time they came in, I read them, I would look at the underlying cases, and then eventually in preparation of this argument I looked at everything again. And I went back and read the

legislative history of CAFA. And I know it's not a result that you particularly endorse, but I think it's the proper application of the law. I really do.

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Now, you might go back to the JPML and urge them, you know, to send it back to me, I mean, I can't remand. Okay? I don't have the authority. I could make a suggestion, and my colleagues at the JPML will make a decision about what to do. And if they send it back in the District of California, you can contest this issue about whether you have even CAFA jurisdiction.

You know, it's not a perfect solution, but that's -- we have this rule of law in America, you know, we follow the rules, and those are the rules, as I read them.

MR. CHEFFO: Okay, Your Honor. And I understand that. And just so then the only other issue, right, is all of this other severance, fraudulent joinder, is that something that -- because we do have a report and recommendation, we have the ruling here, is that something -- because we do have some other arguments that if your point is they're better positioned on timeliness. So, for example, right, when the cases first came in, we said, look, you know, we don't want a lot of discovery, but we know most of these people are not going to have proof of it, so why don't you give us some limited jurisdiction. And what Your Honor said was -- you didn't say no, you said, I'm going defer on that, because if there ever comes a time where that is relevant, which is a reasonable position --

THE COURT: Let me just say my thoughts about that,

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because this issue was raised, is the idea that we were going to go find -- How many California cases are there?

MR. CHEFFO: Cases or plaintiffs?

THE COURT: I mean how many plaintiffs.

MR. CHEFFO: Three thousand plus.

THE COURT: Okay. We were going to take thousands of people who had tens of thousands, maybe hundreds of thousands of prescriptions, and we were going to somehow dig into where every one of those prescriptions came from. Now, in a perfect world one person would go to the same pharmacy. You're now the world's expert that that's not what happens, right? They go to all kinds of pharmacies. And it was going to be a, you know, huge confusing -- I mean, this was not like anything you could briefly do. I know y'all said, oh, we can tell McKesson and who these pharmacies are. Just the process of figuring all that, that just seemed to me a complete diversion. Some of them were going to stay, there was no question McKesson was a substantial number, we didn't know what percentage, but some substantial number was going to stay. That's just not the way we do these issues. We don't do all of the discovery here, when there's -- we send it back to the remand court to do that. And you will have the opportunity at some point to raise that issue. And I understand your client's view is that we fight here for federal jurisdiction, we don't go back and fight in every state. I get that strategy. But that strategy

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comes with some pluses and some negatives. And one of the negatives is you don't get to go back there and whack these cases out of the -- you know, removing those defendants that -- in which there is no legal basis for them.

Listen. You know, we could have a conference on this issue in which parties could discuss -- we could have a thing, what are the areas of the law which, you know, over the years involved adoptions that if we ever were starting over, we wouldn't adopt, this might be near the top of the list. But that's the law.

MR. CHEFFO: Your Honor, I have been before the Court enough to know that you give everything a full and fair opportunity. We may not agree on this issue, but I hear what you're saying.

The last thing I will just say is I would -- the law doesn't change in an MDL per se, but there are different considerations.

THE COURT: There are different, I agree with that.

MR. CHEFFO: That's what I think all of these other courts, there's about 15 or 20 of them, Benicar, Fosamax, because what every court says is I do not have to basically be the victim of someone's creative lawyer's word processor. And I'm able to basically set the table and look at this under the Federal Rules and find out what's really going on here.

And I think if you do that, I don't want to be

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presumptuous, but we all know exactly what's going on here, is that people are trying to basically -- See, we're looking at it from Pfizer trying to get jurisdiction, but this is frankly, as I see it, an affirmative effort to deny Pfizer the jurisdiction that it deserves under both diversity and under CAFA. And that is an affirmative effort.

THE COURT: That's an argument that is a hundred years in the making. This approach of naming parties is done every day in the courts of America. You're laying out an argument that defendants complain about every day. But that's the law.

MR. CHEFFO: Well --

THE COURT: And you may not like it, and you might want me to find some work around to avoid what I believe is the law of the country. And I'm just not going to -- you know, I understand if I was sitting at one of these seminars and you were talking about how we might change the rule, we might talk about it. But I don't have that freedom, and I don't believe I should manipulate the rules.

You know, you talk about your client's interests; there's also issues of state comity between State Courts and Federal Courts. These aren't single factors here in which there's only -- all good is on one side and all the other -- there are arguments, some would say you overreached pulling these cases, California has this system, they consolidate cases and you

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snatched it out. I don't fault you for it, I think it was, you know, why not try it. But in the end we all have to work out these things, and the only way I know how to do it is to neutrally apply the rules in a way that I think is reasonable, and then whatever happens, happens.

MR. CHEFFO: So are you going to rule, Your Honor, on the -- all these fraudulent joinder issues, or is that something that you're going to allow the District Courts in --

THE COURT: I'm going to have the district courts do it. I really think there's enough -- you know, I've looked at these several -- this is like, you know, something that's so -- as much baked into what we do every day as different judges, we see these things. And you're not from here, but there are certain counties here, I could tell Mr. Cole could look at it, we could name the counties where everybody -- all these plaintiffs' lawyers are trying to, every time somebody stubs a toe in the county, they're bringing major lawsuits. And there are all these devices to avoid federal jurisdiction. And it takes a fairly unskilled plaintiff's lawyer not to get it back. I mean, I'm just saying to you, the ones who know what they're doing, it's not heavy lifting. Now, should that be the law? I mean, that's my circuit's law, it's the country's law, and -- but, you know, you're preaching to the choir a little bit here, but I think under the limits of what I can do about it.

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MR. CHEFFO: Thank you, Your Honor.

THE COURT: Thank you.

Okay. How about my California counsel; who's going to argue that?

MR. CHEFFO: Thank you, Your Honor.

MR. KAUFMAN: I don't know if I'm that plaintiff.

THE COURT: What is your name?

MR. KAUFMAN: My name is Justin Kaufman.

THE COURT: Yes, sir, Mr. Kaufman. Where are you from?

MR. KAUFMAN: I am from New Mexico, but I am here on behalf of the California, Missouri --

THE COURT: Mr. Cheffo would say that's part of the conspiracy that -- even the lawyers have no California connection. Have you ever been to -- By the way, have you ever been to California?

MR. KAUFMAN: I have been, Your Honor. There is a good reason for that. We're here out of the Lipitor JCPP. My law partner, Bill Robbins, who is on the executive committee, had a conflict, I drew the short straw, so here I am.

And based on your conversation with Mr. Cheffo, you know, our position, as you've read, is very clear. We think the Magistrate Judge was correct in his orders,

we think he eventually came around to the right decision with respect to the JPML. And unless you have any other questions for us, we

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agree with everything you've said so far this morning.

THE COURT: Well, many lawyers will get up after I questioned the other lawyer and try to buy it back, they want to give me other arguments.

Yeah, it just seems to me, Mr. Kaufman, that y'all adequately pled it to -- the claims to survive a claim on fraudulent joinder. That I have no doubt if the Court digs into these that many of the claims might go away, would go away. But I'm not able, I don't think it's proper for me to do that, that's for the traditional practices for the remand court to do it. And I don't ascribe any bad motives to anybody, it's just the gamesmanship of jurisdiction that both parties practice. But if you don't have anything further, we'll move on to another state.

MR. KAUFMAN: That's it, Your Honor. We've actually touched on. Obviously I'm here for Missouri and Illinois as well, so I'll have the same thing to say.

THE COURT: Okay.

MR. KAUFMAN: But we've touched on really all the issues from those states as well.

THE COURT: Thank you, sir.

MR. KAUFMAN: Thank you, Your Honor.

THE COURT: Okay. Mr. Cheffo, do you want to proceed to Missouri?

MR. CHEFFO: Yes, Your Honor.

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THE COURT: Yeah.

MR. CHEFFO: I think this filing was helpful that we had, because a lot of what we've been talking about, I think are, you know, arguments that we've made here. There are some differences.

THE COURT: There are some Missouri twists.

MR. CHEFFO: Yeah, there are. So there are three cases, right, each has one Missouri and one or more plaintiffs. I won't make the argument again, other than to encourage you to look at these through severance and misjoinder, because I think that, frankly, when you set the table like that it really makes many of these cases diverse and you don't need to go, because there's not a fraudulent joinder issue here. These are just basically putting a bunch of folks together with one nondiverse plaintiff, and were you to --

THE COURT: Missouri law, I mean, I know Judge Perry very well, who is a St. Louis judge who ruled most recently in -- she's like a really serious judge, I know her very well from the MDL conferences and so forth, and she -- I don't remember which of the cases, but in one of them she, you know, basically said the Eighth Circuit in Nolton said you can bring these, you know, that an out-of-state defendant which has

registered to do business and designated an agent for service, has consented to service -- I mean, that's one view of the

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law. There are other colleagues there who have a different view. And I've got to look at it and say is there like no possibility that they would -- that that's -- is there no possibility? No, there is a possibility. I mean, the split in the law basically answers the question. And so --

MR. CHEFFO: I guess -- I am sorry.

THE COURT: Go ahead.

MR. CHEFFO: Two things. One is, which I will get to the personal jurisdiction argument I think you're referencing, but the rules of severance would be governed by this circuit, and I think you looked at them, basically just Rule 21, and then you then look at them kind of differently.

THE COURT: But it's the same -- my Magistrate Judge, I thought, made a lot of sense on this. Same drug, same research. I mean, yeah, you know, that there are some differences, but we wouldn't, in a normal case, sever this case. We wouldn't sever it and try separately. No, we'd never do that. We'd try them together. So just practically speaking, I'm telling you we would.

MR. CHEFFO: If people filed, I mean, a-hundred-person complaint here --

THE COURT: Well, I wouldn't do that, but Missouri apparently does that.

MR. CHEFFO: But if you -- again, I would just argue, Your Honor, that for severance issues, we're not talking

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substantive law here. It's the what would happen if. If someone came in --

THE COURT: It's just a device. I mean, these cases came to us from Missouri. Arguably, that procedure is allowed in Missouri. And I'm supposed to come in and carve out the New York person, I mean, it's just a more intense involvement than we would normally do in these cases. And I'm just not persuaded that's the role for us to do.

And there was a method -- you've elected not to do it -- to go back and get the Missouri courts to rule on that. God knows somebody needs to get them to rule on it, right? And you elected not do that. And then if you were right on that, there's just -- that the New York plaintiff was improperly in the case, you know, you would have had complete diversity and you'd have -- I just -- you know, you're asking me to now use the Rule 21 as sort of this device that is a work around, and I just think that's a proper -- we wouldn't normally do that.

MR. CHEFFO: I don't want to be presumptuous --

THE COURT: Go right ahead.

MR. CHEFFO: No, no, just a practicality, because you don't, you know, I mean, I don't think this district wants to become a place where people come and start filing, you know, thousands cases from all over the country. So I would actually just -- I think --

THE COURT: Usually the JPML has some role, and I

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have kind of consent over whether we're going to --

MR. CHEFFO: But let's assume now they decide, okay, well, we can go down to South Carolina and we can file one complaint, you know, 80 people. Lipitor is all over the world, all over the country, right, and pay one filing fee. I actually disagree. I think that, one, your clerk would do it, and I think if you had seven or eight of those cases and you had 800 cases and you would say, wait a minute, you're putting these all in the same complaint, you're not telling me anything about these cases, you would say wait a minute, you have to break these up. These are individual cases. Like you did in your case management order here, you have to file single party, you have to do a fact sheet, you have to look at them individually.

So no one is suggesting that you couldn't have mechanisms to combine them. But in terms of whether these -- the standard, do they all arise out of the same transaction or occurrence. You know certainly as well as I do the differences in these cases. And that's the issue here. This is not a work around. This is what would happen if you had people who said, you know, I drank Coke-a-Cola and I think there's a problem, and

I'm coming from Wisconsin and I drank it eight years ago, and then I'm coming from New Mexico and I drank it yesterday, and this person drank it for one day and I drank it for ten years, I think any court, and most courts

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and --

THE COURT: You're talking about a direct file.

MR. CHEFFO: Well, right, and essentially that's what's before the Court. You'd say if that was the case, if that was filed today, this case direct file, what you would do, and I think any court in this circuit would do, is to say wait a minute, do these satisfy the Rule 21 standards? Is this appropriate?

THE COURT: But you're talking about a direct file case versus a case which is arguably, you know, properly filed in Missouri, pulled out of Missouri, where there is not complete diversity, brought here --

MR. CHEFFO: Right.

THE COURT: -- on the basis there is complete diversity, and you're asking me now to drill down into the cases, which would be proper in Missouri, arguably proper in Missouri. The normal way we would deal with that is I'd send it back to the Missouri court, and if it's not proper, that would be addressed within the year, and they could come back. That's the way we do it. And to ask me now, using the device of severance to separate something that under Missouri law is proper,

it just -- You talk about being on steroids; you'd be turning removal on steroids.

MR. CHEFFO: But, Your Honor, there is a difference here. And the real difference is this is not a single-person

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case where you send it back and you come back. This is a situation where people are putting hundreds of cases that on their face, right, I mean there's three complaint --

THE COURT: You say on their face? Apparently Missouri courts don't feel that way. At least some Missouri courts don't feel that way.

MR. CHEFFO: What we're asking you to do, Your Honor, is determine if this court has Federal Court jurisdiction. How the procedural findings, you may issue a Daubert ruling, and the Court may says that's Daubert, I have Frye or Kemp, so there may be differences, and that's even more substantive. I believe this court and every court in the Federal Courts has to look at -- I mean -- there are times when you look, and I'll talk about with jurisdiction, whether you look at what the underlying law is. But frankly, this is a relatively -- I don't want to lean on the Court, but it's a mechanical federal look, under the law of this circuit. It doesn't matter what, you know, what happened before and how they put their word processor. Once we get in court we say, Judge Gergel, we'd like you to look at this and put your -- the real world glasses on, and if someone did file this same case for the first time here,

I believe that every court would sever it. And if that's the answer, then that's the way for something as --

THE COURT: But removal cases, the practice is to

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send it back to the State Court to address that issue. You elected, for your own reasons, I understand them, not to do that. There is a procedure; you elected not to use it, Mr. Cheffo, that's the problem. Is you could go back to -- Let's look at the practical thing. They moved to remand. You say, listen, I think I got the right position, this is not proper under Missouri law. I go back to Missouri, I immediately move, explain to the court we're trying to do this within the year, we want to do expedited discovery and get this issue, and then we want a definitive determination. There is a method; you elected not to pursue that. And now you're asking me to drill down into these cases, which arguably under the fraudulent joinder standard are properly before me, and you want me to drill down and start applying Rule 21 severance to those cases. That's just not -- that is a role in the process on removal and remand we don't do.

MR. CHEFFO: Judge --

THE COURT: That's just not what we do.

MR. CHEFFO: Look, I'm going to -- I hear you, and I am just going to make one other point, just because the fact that there may be procedural rules in a particular state that allow people to file multi-party complaints, okay, that really has -- someone should not

be able to take something as important as diversity -- now, you're saying maybe if we go back, they allow it, and I would probably agree with you, and

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if we do go back, we'll make those motions, may or may not win, depending whether somebody can file the complaint. But assuming they can, that doesn't change the court's look here, again, that's just the fact that someone --

THE COURT: But the plaintiff started their case in Missouri. They filed it in Missouri. We give some deference, and we say under very limited circumstances, very limited, we let the defendant remove the case, not just because we don't like the venue in St. Louis or -- We have certain rights under federal law to remove. Very limited rights. And now we're, you know, we're really, under fraudulent joinder status, we couldn't really remove it, but now we want the Court to come and put a surgical knife, go in and cut out all those people, sever them into another case, and then say, voila, we now have complete diversity. I'm not going to do that. In all due respect to you, I'm not going to do that.

And I think that's a manipulation of jurisdiction that I wouldn't feel comfortable doing.

MR. CHEFFO: Okay, Your Honor.

THE COURT: Different from it was a direct file to me. Different status of direct file versus --

MR. CHEFFO: Respectfully, I think they're the same, but I'm going to move on because you told me where you are on this. And, you know, we'll talk about the jurisdiction, and you may be in the same place. But basically our argument on

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jurisdiction is really twofold. Right?

And just to be clear, this is -- I am not arguing now for the kind of jurisdictional type discovery and documents, I mean, so this one is -- you know, you don't even need to do anything, right, we're talking about if you sever or even look at them separately, all you have to say, is this guy from New York or Delaware, they're not, Michigan, you know, so this is not -- you don't need to know anything more than where their complaint is, and you can make your determination. So it's a relatively easy one.

THE COURT: I understand that.

MR. CHEFFO: But so for -- you know, and this goes to, you know, the Supreme Court cases and Daimler, and really our argument is straightforward. And they're flip side. First is they're fraudulently joined because there's no personal jurisdiction.

THE COURT: Yes.

MR. CHEFFO: Right? And you've talked about, you know, some of the issues there. But the other side, frankly, is under the Ruhrgas decision, Supreme Court decision, I think it's 1999, Your Honor can address the personal jurisdiction separately. Because we did file

motions there, and there is some, you know, some precedent in this case that actually might work well, because it's -- rather than sending all these cases back, you could address it. That's essentially our --

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THE COURT: But obviously the Supreme Court case, the Ruhrgas case, talks about the general preference when we do subject matter, there are circumstances where it would be judicial economy to do personal first. Couple of my colleagues in MDLs had very definitive answers where they thought the subject matter jurisdiction was complicated, personal jurisdiction was simple.

Personal jurisdiction here is like really complicated in Missouri. It doesn't really accomplish -- first of all, I have to rule on the subject matter elsewhere, so I'm not avoiding subject matter, I've got to rule on. And the personal here is, I mean, I've read every one of those cases I could find. I went and Shepardized the -- I went and looked up cases that they cite. I mean, I was amazed what the division, and it seems to me on such a major issue, how there could be no State Court. And then I found like State Court trial court says, please, Missouri Supreme Court, reach a decision, you know.

MR. CHEFFO: There is an appeal of one of them, there's an --

THE COURT: Thank goodness. It's ridiculous. But you're asking me to get in there and try to figure out something that has confounded the Missouri judges? No. That's exactly one I would stay on subject

matter, which I think is fairly clear, versus what is very unclear.

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So it's my call under *Ruhrgas*, and I looked at that hard. And I mean, listen, let's face it, Mr. Cheffo, that Missouri thing is a little unusual, right? I mean, allowing these folks to come in and -- it's an unusual thing. But apparently it's sort of allowed in Missouri. And part of our Federal Court State Court system is that we have some respect for the State Court processes, that we respect that. That we aren't sort of like the super court, that everybody just has to follow our tune. We try to respect State Court processes. And sometimes it's easier than others. Sometimes we just feel like the federal interests are so great we just have to do that. I mean, look, I grant habeases, right? But we do it sparingly.

MR. CHEFFO: Is that an option here?

THE COURT: You don't want to be a criminal defendant in my court.

MR. CHEFFO: No, again, I do appreciate the opportunity to present this to the Court. I don't think on this one I have anything else, Your Honor.

THE COURT: Thank you very much. Mr. Kaufman, you have Missouri?

MR. KAUFMAN: Thank you, Your Honor. Very briefly, we, again, agree with everything you said. The only additional point I wanted to make, you talked

about how, you know, this is really a State Court issue, you have the ability

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to send it back to State Court, Pfizer knows well. So the two cases that -- the two later filed Missouri cases, Scotino and Allen, at the time that those were filed, there were actually two other cases that didn't make it here, that's Polk -- and the other case was called -- let me grab it here.

THE COURT: Wasn't there a case set for trial that got settled?

MR. KAUFMAN: No, this is different, Your Honor. Four complaints were filed at the same time.

THE COURT: Okay.

MR. KAUFMAN: And the Clark versus Pfizer case and the Polk versus Pfizer case, they were both remanded before they were transferred to the MDL.

Okay. And the same arguments were made there by Pfizer as were made here, and the Federal Judge in Missouri rejected all those arguments and sent it back to State Court. Now, Pfizer in the State Court in Clark argued personal jurisdiction, which they have a right to do in the State Court in Missouri. And the State Court in Missouri denied that as well. So they found that there was personal jurisdiction over the non-Missouri plaintiffs in that State Court case. Pfizer took it up on a writ, the writ was denied.

So there is a procedure in place, I think Your Honor's identified it; that's the procedure that we think is applicable.

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THE COURT: Obviously, Mr. Kaufman, when we do this mass tort situation, it stresses -- it creates complications from our ability to normally drill down in an individual case and focus. It's just a weakness inherent in this, and we have to design procedures. And if I've got 5000 cases up here, I just can't drill down on 5000 cases. We couldn't manage it in that way.

And so it's not a perfect system. If I had the time and the resources, but we'd need, you know, four times the law clerks, and I mean, it's the same reason my colleagues on the joint panel, they have like minimal staff. They don't have any ability. They have their arms full just transferring the cases to us. I mean, they are just -- they're doing all they can do.

So I have some, frankly, some personal sympathy for the defendant's inability to get a quick ruling. I wish I could do it. There's just not a practical way to do that. And the process is, as you described, you go back to the State Court, you address it in State Court, and frankly, I think the defendant didn't do it here because they didn't think -- they thought they had more chance of winning here. I respect their strategic call, these are good lawyers, they make their call. And maybe the experience in Missouri validated that they didn't have very good options either way.

So I think the right decision is to send it back and allow

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the State Court in Missouri to address these issues.

MR. KAUFMAN: We agree, Your Honor, and that's all I need to say on that.

THE COURT: Very good.

Okay. The next is Illinois related cases. Anyone want to speak with regard to Illinois?

MR. CHEFFO: I think I've said our -- It's the same argument, Your Honor.

THE COURT: Very good. How about Michigan? Anything, Mr. Cheffo?

MR. CHEFFO: Yeah, I'll be very brief, because again, I do think --

THE COURT: By the way, I'm not allowing attorneys' fees. They asked for attorneys' fees. No. No.

MR. CHEFFO: Thank you.

THE COURT: I thought you might like that. You can call your client and say the bad news is they sent you the 700 jurisdiction, but good news is I didn't get tagged for attorney fees.

MR. CHEFFO: I'm going to flip them actually. I have some good news for you today.

So again, I just wanted to make sure that there's nothing kind of specific. I think the issues here, if you

don't get to severance, you don't get to our arguments, Your Honor, so you'd have to sever, and then --

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THE COURT: Same thing with the pharmacy defendant. Same situation.

MR. CHEFFO: And it's a fraudulent joinder argument which I think we've talked about.

THE COURT: Yes.

MR. ALTMAN: Your Honor, Keith Altman on behalf of the Michigan plaintiffs. I think everything has pretty much been said. If Your Honor has any questions I can address --

THE COURT: I don't. I think these issues largely overlap with these others. Thank you, sir.

MR. CHEFFO: Not to go back, but this is from Missouri on one second. Again, I know you have lots of things going on and -- but you probably already worked on your order. So one thing I would ask you to consider is the Eighth Circuit is actually addressing that issue of personal jurisdiction. I think it's pretty soon, it's been briefed fully, so, you know, you may or may not want to --

THE COURT: I just think let the -- I mean, you can go back and try to -- having me drill down on these individual states, I just think that's just more than the MDL court ought to be doing. But I've got the law as it is now, I have to apply the law. On every issue, believe me, there's court cases coming in, and y'all have been very good about supplementing, I think we have like

multiple surreplies. I don't know what you call the eighth surreply, but you know, I

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fear for the future of trees in America, they're all killed in this case. But, of course, you can accuse me of contributing to that by allowing all that discovery, right?

MR. CHEFFO: We're not going to go there today, Your Honor. No. Okay. I just wanted to bring that to your attention.

THE COURT: Thank you.

Okay. We are working on an order. I did, frankly, come here with a certain sort of view of the legal and factual issues here. And I largely agree with my Magistrate Judge, certainly on the result. There might be a twist or two in terms of how I get there. But I am going to deny the appeals in all nine cases and remand those cases to the districts where they came, other than California. And I intend to have a suggestion of remand to the JPML as to the California cases.

Are there other matters to come before the Court now, Mr. Hahn? I'm stunned with your silence up to this point.

MR. HAHN: Your Honor, on behalf of the plaintiff steering committee we have no position on --

THE COURT: I thought that would be your view.

MR. HAHN: However, to the extent that any of the remanded cases either have used or will use in the future any of the discovery of the plaintiff steering committee, we would like the Court to protect us as far as the confidential assessment.

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THE COURT: I thought we tried to address that issue. Remind me, what CMO is it? I thought we tried to address that in anticipation that that might happen.

MR. HAHN: There is an order out there. The plaintiffs that are being remanded back, I'm not sure that they've all signed the document recognizing. And that it may come back around, Your Honor.

THE COURT: Listen, I think the work the plaintiffs did, both sides did in discovery, is just remarkable. And I don't think it's proper for counsel to come in, and in their capacity as part of this case, take that work product and then go back and basically, without compensation, not contribution to all these lawyers participating in this, I think that's wrong. And if I need to address it, I will. I think y'all have done a yeoman's work in pulling together that.

So if you see that we need to address the issue, I need to bring all the parties here, I want to give everybody notice, so I can hear from all sides here. But obviously I am very aware of extraordinary efforts that the litigation team for the plaintiff undertook here. And the understanding was that they were to receive this information as part of a share or a cost, that there was a collective effort, and I would -- unless you can

show me law I don't have the authority to do that, I would intend to enforce that, Mr. Hahn.

MR. HAHN: Thank you, Your Honor.

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THE COURT: Any other matters to come before the Court? Very good. With that, the hearing is adjourned.

(Court adjourned at 11:30 a.m.)

REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the stenographically recorded above proceedings.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR

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APPENDIX I

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 17- 80094

[Filed June 2, 2017]

IN RE: PFIZER

JOSEPHINE ABRAMS, et al.,*
Plaintiffs-Respondents,

v.

PFIZER INC.,
Defendant-Petitioner.

*Petition for Permission to Appeal From United States
District Court, Central District of California,
Hon. Cormac J. Carney, District Judge,
Case No. 8:17-MC-00005-CJC*

**PETITION FOR PERMISSION TO APPEAL
PURSUANT TO 28 U.S.C. § 1453(C)**

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**Full list of Plaintiffs-Respondents and related
proceedings set forth in Addendum.*

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CORPORATE DISCLOSURE STATEMENT

Defendant-Petitioner Pfizer Inc. hereby states that it has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

Dated: June 2, 2017

/s/ Mark S. Cheffo

Mark S. Cheffo

*Attorney for Defendant-Petitioner
Pfizer Inc.*

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Defendant-Petitioner Pfizer Inc. respectfully petitions under FRAP 5 and 28 U.S.C. § 1453(c) for permission to appeal from, and for summary reversal of, the May 23, 2017 Order of the Central District of California (Carney, J.) remanding 132 cases to state court (“Remand Order,” Ex. A).

QUESTION PRESENTED

In the Class Action Fairness Act (CAFA), Congress authorized removal of “mass actions,” which are minimally diverse civil actions “in which monetary relief claims of 100 or more persons are proposed to be tried jointly.” 28 U.S.C. § 1332(d)(11)(B)(i). In *Corber v. Xanodyne Pharmaceuticals, Inc.*, 771 F.3d 1218 (9th Cir. 2014) (*en banc*), this Court held mass actions do not require an express request for joint trial, but are created where plaintiffs propose claims be tried jointly “in language or substance”—there, a California state-court petition to coordinate cases for all purposes. Here, Pfizer removed a coordination identical to *Corber* where leadership represented 3,000 Plaintiffs and proposed to join cases involving nearly 5,000. Yet the district court remanded, holding that only Plaintiffs who took a “formal legal act of significance” by filing a petition or add-on petition for coordination counted toward the 100-plaintiff mass action threshold. (Hr’g Tr. at 15, Ex. B.) The question presented is:

Whether a petition that proposes coordination of filed cases involving thousands of plaintiffs for “all purposes” is removable as a mass action under 28 U.S.C. § 1332(d)(11), even if less than 100 plaintiffs whose claims were subject to that

proposal filed a petition or add-on petition for coordination.

RELIEF SOUGHT

The Court should grant review, answer the question presented in the affirmative, and summarily reverse the decision below as contrary to this Court's *en banc* ruling in *Corber*.

STATEMENT OF FACTS

A. The California Lipitor Coordination

The 4,867 Plaintiffs in these cases¹ allege they developed type 2 diabetes due to their use of Lipitor, a prescription medication manufactured by Pfizer. Plaintiffs hail from around the country and have filed their claims in multi-plaintiff actions in the California Superior Courts.

The coordinated proceeding (or JCCP) in these cases arose in the shadow of the litigation that led to this Court's *en banc* decision in *Corber*. In that litigation, the defendants invoked CAFA's mass action provisions to remove a proposed coordination of California products liability actions concerning the drug propoxyphene. This Court granted review under section 1453(c) of remand orders entered in two of the cases proposed to be included in that coordination: *Romo v. Teva Pharmaceuticals USA, Inc.*, 13-56310,

¹ Although the Plaintiffs moved to remand 139 cases, the Remand Order remanded only 132 cases. Unless otherwise noted, numbers of cases and Plaintiffs in this petition refer to numbers associated with the cases in Plaintiffs' motion to remand.

and *Corber v. Xanodyne Pharmaceuticals, Inc.*, 13-56306 (9th Cir. July 26, 2013). On review of those companion cases, a divided panel of this Court held that the petition to coordinate all actions “for all purposes” and to avoid inconsistent judgments was not a proposal that the constituent claims “be tried jointly,” and thus did not give rise to mass action removal under CAFA. 731 F.3d 918 (9th Cir. 2013), *vacated*, 742 F.3d 909, *and rev’d sub nom. Corber v. Xanodyne Pharms., Inc.*, 771 F.3d 1218 (9th Cir. 2014) (*en banc*).

Using that panel decision as a roadmap, Plaintiffs here filed a similar coordination petition with regard to Lipitor cases in California. As in *Romo* and *Corber*, they requested coordination of all Lipitor cases in California before “[o]ne judge ... for all purposes” to “avoid duplicative and inconsistent rulings, orders, and judgments” on “issues pertaining to liability, allocation of fault and contribution, as well as the same wrongful conduct of the defendants.” (Am. Pet. at 7-8, Ex. C; Mem. of Points and Auth. in Supp. of Am. Pet. at 8, Ex. D.)

Also as in *Romo* and *Corber*, Plaintiffs requested that the coordinated proceeding include “all subsequent Lipitor actions.” (Am. Pet. at 7.) Their petition stated that “Petitioners’ counsel is informed and believes that additional LIPITOR injury cases will be filed within the next weeks. Petitioners will seek to join these additional cases via Add-On Petitions.” (*Id.*) The California Judicial Council granted coordination on December 6, 2013, when approximately ten cases involving some 26 Plaintiffs had been filed. (Order Assigning Coordination Trial Judge, Ex. E.)

The pace of filings soon quickened. At a February 25, 2014 conference, Plaintiffs' counsel handed the coordination trial judge a table of over 1,000 claims to be joined to the newly formed coordinated proceeding. They explained that "[a]s of 6:00 o'clock last night there were 54 cases filed in California" with "1,855 plaintiffs in those complaints," which they intended to be "encompassed by the JCCP." (2/25/2014 Hr'g Tr. at 5:25-6:21, Ex. F; Table of Cases, Ex. G.) The Plaintiffs represented to the court that "we'd like to get the cases that have been filed obviously added on as soon as possible" (2/25/2014 Hr'g Tr. at 6:16-17 at 15:22-23), and "make sure that those cases get over to your courtroom" (*id.* at 16:20- 21).

At the status conference, Plaintiffs' counsel also proposed, and the court adopted, appointment of a leadership structure involving ten firms, who had filed claims for the vast majority of the Plaintiffs in the table of cases proffered to the court. (*See* Order of Appointment of Plaintiffs' Counsel, Ex. H; Case Chart, Ex. I.) Plaintiffs' leadership represented to the court that "[w]e've had total transparency with respect to communications of lawyers both in California and nationally who had any interest in or doing ... litigation involving Lipitor." (2/25/2014 Hr'g Tr. at 7:2-5.)

Thereafter, Plaintiffs' leadership submitted a proposed order to streamline the addition of cases to the coordinated proceeding. The proposed order included a form stipulation that "***All cases*** filed in California state court against Pfizer, Inc. ... alleging injuries related to the development of Type II diabetes

... arising from the ingestion of Lipitor®, are assigned to the Honorable Jane L. Johnson ... for coordination purposes.” (Ex. 1 to Proposed Am. Order re Add-On Procedures at 1, Ex. J (emphasis added).) That proposed order was entered by the coordination trial judge without modification. (Am. Order re: Add-On Procedures, Ex. K.)

B. Removal Of The California Lipitor Cases

Around the same time, however, this Court granted rehearing *en banc* in *Romo* and *Corber*, and vacated the panel opinion that had rejected mass action jurisdiction. *See Romo v. Teva Pharms. USA, Inc.*, 742 F.3d 909 (9th Cir. 2014). Based on that decision and Plaintiffs’ proposals to join thousands of claims to the JCCP, Pfizer began removing the California Lipitor cases to federal court as a CAFA mass action and under traditional diversity jurisdiction. Although actions were removed to all four federal district courts in California, the bulk of the California Lipitor cases were filed in Los Angeles Superior Court and removed to the Central District of California (Carney, J.).

Even after Pfizer began removing cases under the mass action theory, Plaintiffs have continued to file actions in California state court. They have taken affirmative steps to join the JCCP, as summarized in Pfizer’s case chart (Ex. I):

- 4 actions comprising a total of 46 Plaintiffs specifically identified the coordinated proceeding in the caption of the Complaint. (*See, e.g.*, Excerpt of Complaint, *Debay v. Pfizer, Inc.*, Ex. L.)

- 59 complaints involving 2,080 Plaintiffs also included notices of related cases stating that the case was related to the coordination. (*See, e.g., Monreal v. Pfizer Inc.*, Notice of Related Cases, Ex. M at 40-41.)
- 25 complaints involving 959 Plaintiffs attached an order from the coordination judge limiting Plaintiffs' payment of otherwise required complex filing fees. (*See Monreal*, Order Limiting Plaintiffs' Complex Case Fees, Ex. M at 28-29.)
- More than 100 cases involving approximately 3,400 Plaintiffs have attached civil cover sheets to their complaints that stated that they were "complex" pursuant to Rule 3.400 of the California Rules of Court because they were subject to "[c]oordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court." (*See, e.g., Monreal*, Civil Cover Sheet, Ex. M at 23.)

C. MDL Proceedings

Following Pfizer's removal of the California Lipitor actions, the Judicial Panel on Multi-district Litigation (JPML) transferred the cases to the Lipitor MDL in the District of South Carolina (Gergel, J.). At Plaintiffs' request, the MDL court stayed the bulk of the cases pending resolution of Plaintiffs' motions to remand, in which they argued that their coordination petition had not proposed their claims be tried jointly. (*See MDL Mot. to Remand at 20-23, 25-26, Ex. N.*)

While these cases were in the MDL, this Court issued its 9-2 *en banc* decision in *Corber*, which settled the questions raised in Plaintiffs’ motion to remand. This Court expressly “reject[ed] the rule urged by Plaintiffs that a petition to evoke CAFA must expressly request a ‘joint trial’ in order to be a proposal to try the cases jointly.” 771 F.3d at 1225. Rather, a court must “carefully assess” the facts “to see whether, in language or substance,” claims have been proposed to be tried jointly. *Id.* at 1223. The Court concluded that a petition to coordinate all cases before one judge “for all purposes” and to avoid inconsistent judgments constituted such a proposal. *See id.* at 1223-25. That proposal provided jurisdiction over all subject cases, including cases like *Romo* and *Corber* that were not listed on the petition, and even cases filed by counsel who did not appear on the petition at all. (*See, e.g., Cohen-Feris v. McKesson Corp.*, 2:12-cv-09976-PSG-E, [Dkt. 27] (C.D. Cal. Jan. 23, 2015), Ex. O.)

Unable to defend their primary arguments following their rejection in *Corber*, Plaintiffs pivoted to a theory they had raised obliquely in their remand motion—that even if there were a proposal to try claims jointly, it applied to fewer than 100 claims. (MDL Obj. Resp. [796] at 7-12, Ex. P.) Thus, the same Plaintiffs’ leadership that had promised to work expeditiously to join cases with thousands of plaintiffs to the JCCP sought to avoid federal court by arguing they never proposed to join those other plaintiffs.

At the MDL hearing on Plaintiffs’ remand motions, the MDL court observed that “I think [Pfizer is] right” that these cases “appear to be a mass action,” and

“there is likely CAFA jurisdiction in the Federal District Courts of California.” (10/21/16 MDL Hr’g Tr. at 14:11-12, 14:22-23, Ex. Q.) However, the MDL court concluded that it lacked jurisdiction to decide the existence of CAFA jurisdiction. *In re Lipitor Prods. Liab. Litig.*, 2016 WL 7335738, at *6-7 (D.S.C. Nov. 7, 2016). The JPML then remanded the California Lipitor actions to the California federal courts to determine the existence of mass action jurisdiction.

D. The District Court’s Order

Following the return of these cases from the MDL to the California federal courts, the district court consolidated the 139 actions assigned to him under a new docket number (8:17-MC-00005-CJC) for purposes of deciding CAFA jurisdiction.²

On May 23, 2017, the district court issued the Remand Order. Instead of focusing on which claims were “proposed to be tried jointly,” the court focused on which Plaintiffs proposed joint trial. The district court held that Plaintiffs had proposed a joint trial by requesting coordination of cases for all purposes. (Remand Order 8-10.) Nonetheless, the court ruled that there was no removal jurisdiction under CAFA because, it ruled, the petition’s proposal, though

² Courts adjudicating the Lipitor actions in the Northern and Eastern Districts both abstained from decision pending a ruling by the Central District, where the majority of cases were pending. See Joint Stip. and Order to Stay, [Dkt. 121], *Little v. Pfizer Inc.*, 3:14-cv-01177 (N.D. Cal. Mar. 1, 2017); Minute Order, [Dkt. 36], *Alanis v. Pfizer Inc.*, 1:14-cv-365 (E.D. Cal. Mar. 1, 2017); Minute Order, [Dkt. 33], *Weaver v. Pfizer Inc.*, 1:17-cv-663 (E.D. Cal. May 17, 2017).

directed to all cases, applied to “at most only sixty-five plaintiffs,” which was “the maximum number of plaintiffs that ever attempted to join the JCCP” by filing a petition or add-on petition for coordination. (Remand Order at 11.)

In so doing, the district court disregarded Plaintiffs’ counsel’s submission of a table of cases with over 1,000 claims, their request for a leadership structure of 10 firms, and their filing of cases that informed the Superior Court they were related to the coordinated proceeding. The district court distinguished those acts from petitions and add-on petitions for coordination, characterizing the former as merely “administrative in nature” and alerting the clerk’s office only of “the *possibility* of coordination.” (Remand Order at 14.)

Pfizer now timely petitions for leave to appeal, and requests that the Court summarily reverse under *Corber*.

REASONS FOR GRANTING REVIEW

I. THESE CASES PRESENT AN IMPORTANT ISSUE CONCERNING WHEN A PROPOSED COORDINATION CONSTITUTES A REMOVABLE MASS ACTION UNDER CAFA

Orders to remand actions removed under CAFA are excepted from the general rule against appellate review of remand orders, *see* 28 U.S.C. § 1447(d), and a court of appeals therefore may grant a timely application to review the remand of cases removed under CAFA, *id.* § 1453(c). The “key factor” in determining whether to grant review is the presence of an important issue concerning CAFA. *Coleman v. Estes Express Lines, Inc.*,

627 F.3d 1096, 1100 (9th Cir. 2010). The district court's rejection of CAFA jurisdiction as to 139 cases involving 4,867 Plaintiffs presents such an issue concerning when "the real substance" of a proposed coordinated proceeding constitutes a proposal that claims of 100 persons be tried jointly, thereby triggering mass action removal. *Corber*, 771 F.3d at 1225.

Here, the district court acknowledged that plaintiffs need "not expressly request a 'joint trial'" (Remand Order at 9) and "implicit proposals may trigger CAFA's removal jurisdiction" (*id.* at 11.) Nevertheless, it concluded that creating a mass action requires "some formal legal act of significance" (5/22/2017 Hr'g Tr. at 15:11-12), and held that only Plaintiffs who filed a petition or add-on petition for coordination count toward the 100 plaintiffs needed for a mass action under CAFA. (Remand Order at 8-11.) This ruling conflicts with *Corber* as well as the plain language and purpose of CAFA. The Remand Order warrants this Court's review and should be reversed.

A. Under CAFA, A Court Must Carefully Assess Whether, In Substance, Plaintiffs Proposed Claims Be Tried Jointly

The district court ignored that CAFA must be construed according to its "primary objective" of "ensuring 'Federal court consideration of interstate cases of national importance.'" *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013). As a favored basis of federal jurisdiction, "[n]o antiremoval presumption attends cases invoking CAFA." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014). Indeed, as this Court has recently

explained, “Congress and the Supreme Court have instructed us to interpret CAFA’s provisions ... ***broadly in favor of removal.***” *Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178, 1184 (9th Cir. 2015) (emphasis added).

In light of this appropriately broad interpretation of CAFA, plaintiffs need not “expressly request a ‘joint trial’ in order [for there] to be a proposal to try the cases jointly.” *Corber*, 771 F.3d at 1225; accord *Ramirez v. Vintage Pharms., LLC*, 852 F.3d 324, 329 (3d Cir. 2017); *Atwell v. Bos. Scientific Corp.*, 740 F.3d 1160, 1163 (8th Cir. 2013); *In re Abbott Labs., Inc.*, 698 F.3d 568, 572 (7th Cir. 2012). While “such a rule would be easy to administer, it would ignore the real substance of Plaintiffs’ petitions.” *Corber*, 771 F.3d at 1225. Mass action jurisdiction exists, then, where the “totality of the circumstances” shows that the claims of 100 or more persons have been proposed to be tried jointly. *Id.* at 1220. Accordingly, a court must “carefully assess ... whether, in language or substance” claims have been proposed to be tried jointly. *Id.* at 1223.

B. The “Real Substance” of Plaintiffs’ Actions and Representations Proposed That All California Lipitor Claims Be Tried Jointly

If the “real substance” of the *Corber* plaintiffs’ actions gave rise to mass action removal under the “totality of the circumstances,” then it necessarily did so here as well, where the record of Plaintiffs’ proposal to coordinate thousands of claims is much more robust.

First, when Plaintiffs requested coordination, they asked that the coordination proceedings include “all

subsequent Lipitor actions,” and stated that additional actions would be filed. (Am Pet. at 7.)

Second, when Plaintiffs’ counsel first appeared before the coordination trial judge, they handed the judge a table of cases involving over 1,000 claims and represented that over 1,800 claims to be “encompassed by the JCCP” had been filed. (2/25/2014 Hr’g Tr. at 5:25-6:21; Table of Cases.) They told the court that they would like to have those new cases “obviously added on as soon as possible” and would “make sure that those cases get over to your courtroom.” (2/25/2014 Hr’g Tr. at 6:16-17, 15:22-23, 16:20-21.)

Third, in anticipation of the administrative difficulties that would be created by this number of claims, Plaintiffs proposed a leadership structure of ten firms, which alone have filed cases involving 2,797 Plaintiffs. (Case Chart.)

Fourth, to facilitate the addition of cases to the JCCP, Plaintiffs submitted—and the coordination judge entered—a proposed order to streamline the add-on process, again stating the coordination was for “all purposes.” (Am. Order re: Add-On Procedures.) The stipulation that they proposed in connection with this order stated that “***all cases filed in California state court*** ... alleging injuries related to the development of Type II diabetes ... from the ingestion of Lipitor® are assigned to the Honorable Jane L. Johnson, ... for purposes of coordination.” (*Id.* at Ex. 1 ¶ 2.)

Fifth, thousands of plaintiffs affirmatively and voluntarily indicated their intent to join the coordination proceedings on their complaints.

Approximately 3,400 plaintiffs indicated in their civil cover sheets that the cases are “complex” because they are subject to “[c]oordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court.” (*See, e.g.*, Ex. M at 23.) Fifty-nine complaints involving 2,080 Plaintiffs include notices of related cases stating that they are related to the JCCP. (*See, e.g.*, Ex. M at 40-41.) Twenty-five complaints involving 959 Plaintiffs attached an order from the coordination judge limiting Plaintiffs’ payment of complex filing fees. (*See, e.g.*, Ex. M at 28-29.) And four complaints comprising a total of 46 Plaintiffs specifically identified the JCCP in the caption. (*See, e.g.*, Ex. L.)

These factors plainly show that Plaintiffs intended to include in the coordination proceedings far more than the 65 plaintiffs who filed a petition or add-on petition. The record of Plaintiffs’ intent to include thousands of claims in the coordination proceedings is far stronger than the record in *Corber*. In *Corber*, no coordinated proceeding was even established before the cases were removed, and most of those actions, including *Corber* itself, were not identified in the petition. (*See* Pet. for Coord., *Rentz v. McKesson Corp.*, (Cal. Jud. Council Oct. 23, 2012), Ex. R.) Nevertheless, this Court held that the petition’s request to hear “**all of the actions**’ together ‘for all purposes’ ... propose[d] a joint trial, triggering federal jurisdiction as a mass action under CAFA.” *Corber*, 771 F.3d at 1225 (emphasis added). These petitions “were in legal effect proposals for **those actions** to be tried jointly.” *Id.* at 1222 (emphasis added).

Because the proposal in the petition in *Corber* extended to “all of the actions,” mass action removal also extended to all plaintiffs, “who in total number far more than 100.” 771 F.3d at 1223. The only other basis of showing that these cases were part of the removal group was an email confirmation by plaintiffs’ counsel that “Plaintiffs intend for all the recently filed CA cases to become part of the Petition for Coordination in Los Angeles.” (See Decl. of Rachel Passaretti-Wu, [Dkt. 22-6], *Corber v. McKesson Corp.*, 12-cv-9986 (C.D. Cal. Feb. 26, 2013), Ex. S.) This Court implicitly found this sufficient to bring those plaintiffs within the petition’s proposal. Indeed, it summarily reversed the remand orders not only in cases identified in the coordination petition, but also in ***all other related cases*** filed in California. That included *Romo* and *Corber* themselves, as well as cases filed by counsel who did not appear on the petition. (See, e.g., *Cohen-Feris v. McKesson Corp.*, 2:12-cv-09976-PSG-E, [Dkt. 27] (C.D. Cal. Jan. 23, 2015).)

The same result occurred before the Sixth Circuit in seven additional cases that were removed based on the petition at issue in *Corber* and transferred to a related MDL proceeding in the Eastern District of Kentucky. When the issue of CAFA jurisdiction in those cases came before the Sixth Circuit, the plaintiffs argued just what Plaintiffs here argued: that removal was “premature” because “none of the seven cases before this Court was included in the ... petition for coordination” or “included in any ‘Add-on Petition’ seeking to add these cases to the coordinated proceeding.” (Opp. to Pet. for Permission to Appeal at 6, [Dkt. 27], *In re McKesson Corp.*, Nos. 13-504 et al.,

(6th Cir. Aug. 15, 2013).) Unpersuaded, the Sixth Circuit summarily vacated the remands in those cases (see Order, [Dkt. 81-1], *In re McKesson Corp.*, Nos. 13-504 et al. (6th Cir. Feb. 23, 2015), Ex. T), and the district court found subject matter jurisdiction under CAFA. *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, 2015 WL 858937 (E.D. Ky. Feb. 27, 2015).

In sum, if removal was proper in *Corber*, where there was nothing more than a petition for coordination of all actions and an e-mail from counsel concerning plaintiffs' intent, then it is plainly proper here. Plaintiffs requested coordination of all cases, specifically identified thousands of claims subject to the coordination, established a leadership structure to accommodate those claims, secured an order streamlining their addition to the coordination proceedings for all purposes, and included multiple references to the JCCP in numerous complaints. The "totality of the circumstances" admits of no other conclusion.

C. No "Formal Legal Act of Significance" Is Required For Mass Action Removal

Despite this record, the district court held that there was no mass action because fewer than 100 plaintiffs took a "formal legal act of significance" (5/22/2017 Hr'g Tr. at 15:11-12) by filing a petition or add-on petition for coordination. (Remand Order at 11-15.) The district court's requirement of a "formal legal act of significance" is flatly contrary to this Court's directive to look to the "real substance" of Plaintiffs' acts. See *Corber*, 771 F.3d at 1225. *Corber* found a mass action under CAFA in *all cases* based solely on the

coordination petition and email confirmation of counsel's intent. *See supra* at 6-7. And *Corber* endorsed the Eighth Circuit's decision in *Atwell*, which, it observed, found mass action jurisdiction where plaintiffs' counsel "***argued at the motions hearing***" for relief that would have required claims to be tried jointly. *Corber*, 771 F.3d at 1225 (quoting *Atwell*, 740 F.3d at 1164) (emphasis added). The trial court's demand for a "formal legal act of significance" is irreconcilable with this precedent.

The district court also erred in dismissing as merely "administrative in nature" the various other ways in which Plaintiffs sought joinder to the coordinated proceedings. (Remand Order at 14.) Indeed, a coordination petition itself is just an "administrative" act, which merely creates the "possibility of coordination" (*see id.*), subject to the determination of the California Judicial Council. *See* Cal. R. Ct. 3.521, 3.531. The only distinction between a coordination petition and these other affirmative acts by Plaintiffs is that a coordination petition is directed to the California Judicial Council, rather than the court where the cases are filed. That distinction is immaterial because the Los Angeles Superior Court also has power to assign the cases to the coordination judge "for all purposes," L.A. Super. Ct. R. 3.3(k), and has done so in cases where plaintiffs designated the JCCP in the caption and checked the civil cover sheet complex box. (*See, e.g.*, Ex. A to Not. of Removal at 28-29, *Wood v. Pfizer Inc.*, 2:17-cv-03781, [Dkt. 1-2] (C.D. Cal. May 19, 2017), Ex. U.)

It is equally immaterial to CAFA whether coordination ultimately occurs—in *Corber*, for instance, no coordination had been formed at the time of removal. “It does not matter whether a trial covering 100 or more plaintiffs actually ensues; ***the statutory question is whether one has been proposed.***” *Bullard v. Burlington N. Santa Fe Ry. Co.*, 535 F.3d 759, 762 (7th Cir. 2008) (emphasis added).

If the district court’s interpretation stands, it will create more confusion with respect to the timing constraints on CAFA removals, which run 30 days from “when the defendant receives a document *from the plaintiff* from which the defendant can unambiguously ascertain CAFA jurisdiction.” *Graiser v. Visionworks of Am., Inc.*, 819 F.3d 277, 285 (6th Cir. 2016); *Jordan*, 781 F.3d at 1184; *Walker v. Trailer Transit, Inc.*, 727 F.3d 819, 824 (7th Cir. 2013). At the time of removal, Pfizer had been served with complaints implicating over 100 claims, had attended a hearing before the coordination trial judge where Plaintiffs submitted a table of more than 1,000 to be joined, and had received the Plaintiffs’ proposed “all cases” add-on protocol. Had Pfizer waited for Plaintiffs to further formalize their proposals to join the coordination, as the district court has suggested, Plaintiffs would have argued that removal was time-barred, as they have in other cases. *See, e.g., Portnoff v. Janssen Pharms., Inc.*, 2017 WL 708745, at *2 (E.D. Pa. Feb. 22, 2017). The Court should therefore grant review and reverse to avoid further confusion and inconsistent results in the district courts as to both the timing and merits of mass action removal.

**D. A Proposal To Coordinate “All Cases”
Renders All Cases Removable**

The district court also erroneously held that CAFA jurisdiction applied only to the Plaintiffs who proposed joint trial, rather than to those whose claims were “proposed to be tried jointly.” 28 U.S.C. § 1332(d)(11)(B)(i). The district court found that the petition’s proposal to coordinate “all cases” did not apply to those cases that had not yet joined the JCCP, reasoning that the petitioning Plaintiffs could not “bind other plaintiffs who have not yet been added through an add-on petition or other means.” (Remand Order at 11.) In support, the district court cited *Briggs v. Merck Sharp & Dohme*, 796 F.3d 1038 (9th Cir. 2015), which stated that a “proposal for purposes of CAFA’s mass action jurisdiction, *even an implicit proposal*, is a ‘voluntary and affirmative act’ ... and an ‘intentional act.’” (Remand Order at 11 (quoting *Briggs*, 796 F.3d at 1048 (quotations omitted, alterations in Remand Order)).) This was error.

Contrary to the district court’s view, none of this Court’s precedents require a “voluntary and affirmative act” by each and every plaintiff. Rather, they require only that a proposal be a voluntary act by a party other than the defendant. Thus, in *Corber*, this Court held that “Plaintiffs’ filing of the petitions for coordination” was a “voluntary and affirmative act” that gave rise to removal, 771 F.3d at 1224, even as to cases filed by other plaintiffs and other counsel. *See supra* at 6-7. *Corber* mentioned this “voluntary and affirmative act” only as a ground for distinguishing the case from *Tanoh v. Dow Chem. Co.*, 561 F.3d 945 (9th Cir. 2009),

where the plaintiffs took no action to join the “separate actions that the *defendant* sought to try jointly.” *Corber*, 771 F.3d at 1224 (emphasis added). Similarly, this Court’s references in *Briggs* to an “intentional act” that is “not a mere suggestion” drew on cases from other circuits that, as in *Tanoh*, rejected mass action removal due to the absence of *any* affirmative act by *any* plaintiff to join separately filed cases. *Briggs*, 796 F.3d at 1048 (quoting *Parson v. Johnson & Johnson*, 749 F.3d 879, 888 (10th Cir. 2014); *Scimone v. Carnival Corp.*, 720 F.3d 876, 883 (11th Cir. 2013)). No such affirmative act was present in *Briggs* because the *defendant* had filed the underlying petition for coordination. 796 F.3d at 1049.

CAFA does not limit jurisdiction to plaintiffs who “propose” a joint trial, but rather extends jurisdiction over claims that “are proposed” to be tried jointly. 28 U.S.C. § 1332(d)(11)(B)(i). Nor does CAFA contain any limitations on the source of the proposal, except that it cannot come from the defendant. 28 U.S.C. § 1332(d)(11)(B)(ii)(II); *see also Briggs*, 796 F.3d at 1038 (“It is possible that a proposal by a state court for a joint trial would qualify as a ‘proposal.’”). In drafting CAFA, Congress could have conferred federal jurisdiction over only those plaintiffs who affirmatively proposed their claims be tried jointly—including through the specific application the district court required here. Instead, Congress conferred jurisdiction over the broader category of those whose claims “are proposed to be tried jointly.” *Id.* The district court narrowed that grant of jurisdiction without any statutory basis for doing so.

Nor is there merit to the district court's concerns about whether one plaintiff "binds" another with a proposal. CAFA is not concerned with whether a proposal binds even the plaintiff that makes it: "[i]t does not matter whether a trial covering 100 or more plaintiffs actually ensues; the statutory question is ***whether one has been proposed.***" *Bullard*, 535 F.3d at 762 (emphasis added). Nor are provisions where one 21 plaintiff's claims are affected by another plaintiff's acts unique to mass actions. For example, Congress requires plaintiffs who file claims subject to an MDL to litigate in the MDL even if they do not consent, *see* 28 U.S.C. § 1407, and the federal rules prescribe specific procedures for plaintiffs to opt out of the very class actions that CAFA makes removable. *See* Fed. R. Civ. P. 23; 28 U.S.C. § 1332(d). So it is hardly surprising that Congress has conferred jurisdiction over a plaintiff whose claims "are proposed to be tried jointly" with 99 others without any requirement that each plaintiff join in that proposal. 28 U.S.C. § 1332(d)(11)(B)(i).

Finally, while the district court failed to acknowledge CAFA's purpose of "ensuring 'Federal court consideration of interstate cases of national importance,'" *Knowles*, 133 S. Ct. at 1350, it instead based its holding on a narrow illustration from CAFA's legislative history describing mass actions as cases where "numerous named plaintiffs ... claim that their suits ... should be tried together." (Remand Order at 12 n.4 (quoting S. Rep. 109-14, at 46, 2005 U.S.C.C.A.N. 3, at 43-44).) The citation of one example of mass action use—which does not address this issue at all—does not exclude its use in other circumstances.

The district court's extra-statutory limitation on mass action jurisdiction thus conflicts with CAFA's plain language, this Court's decision in *Corber*, and CAFA's purpose and legislative history.

II. THE COURT SHOULD GRANT REVIEW OF THE DISTRICT COURT'S OTHERWISE UNREVIEWABLE ORDER TO PREVENT PREJUDICE TO PFIZER FROM DUPLICATIVE AND INCONSISTENT PROCEEDINGS

Review is supported by additional factors as well. Although, as discussed above, the presence of an important issue concerning CAFA is the key factor in determining whether to grant review, "[t]he appellate court should also consider whether the record is sufficiently developed and the order sufficiently final to permit 'intelligent review.'" *Coleman*, 627 F.3d at 1100. The "likelihood that the question will 'evade effective review if left for consideration only after final judgment'" should be considered. *Id.* Finally, there is the "familiar inquiry into the balance of the harms." *Id.* Each of these factors supports review here.

First, the record is fully developed, and the Remand Order is final. The decision to remand was based on an unusually full three-year record of briefing of the issues in multiple district courts. Indeed, it is hard to imagine a better record on which to consider the important question presented here.

Second, as this Court noted in *Coleman*, in a case such as this one, "[t]he probability that a state court or the Supreme Court will review the federal jurisdictional question after the merits of the case have been decided is almost non-existent." *Id.* at 1101. If

these cases are remanded, the state courts lack jurisdiction to decide whether CAFA jurisdiction was proper after final judgment. This appeal represents Pfizer's only real opportunity to contest the district court's erroneous construction of CAFA, and if permission to appeal is denied, there is a very high "likelihood that the question will 'evade effective review.'" *Id.*

Third, the balance of hardships favors granting appeal. Pfizer will be irreparably harmed absent review because, as just noted, it "will lose almost any chance of litigating this case in a federal forum if it is not allowed to appeal the remand order." *Id.* at 1101. In addition, Pfizer will be subjected to duplicative proceedings and potentially inconsistent rulings in the related cases still proceeding in the Northern and Eastern Districts. Conversely, the only harm Plaintiffs will experience if appeal is permitted is delay, which will be limited because CAFA appeals are expedited. *See* 28 U.S.C. § 1453(c). That delay presumably will not prejudice Plaintiffs, who requested a three-year stay of litigation while these cases were pending in the MDL.

Thus, case-specific considerations also support review.

CONCLUSION

This Court should grant the Petition to review and summarily reverse the Remand Order.

Dated: June 2, 2017

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Respectfully submitted,

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*[Certification of Compliance and Certificate of Service
Omitted in the Printing of this Appendix]*

BACKGROUND

1. This civil action is a single mass action under the Class Action Fairness Act (CAFA) consisting of 156 California state-court lawsuits involving more than 4,300 Plaintiffs¹ from around the country who allege they developed type II diabetes as a result of their use of Lipitor, a prescription medication manufactured by Pfizer. (*See, e.g.*, Complaints, Ex. B-1 through B-156.)²

2. This is the second removal of many of these actions, but on new grounds and based on intervening developments. Pfizer previously removed several of these and other actions to this District (and others) under the “mass action” provisions of the Class Action Fairness Act on the basis that the proposed inclusion of thousands of Plaintiffs in the California coordinated proceeding for Lipitor cases, JCCP 4761, meant that the claims of more than 100 persons were “proposed to be tried jointly.” 28 U.S.C. § 1332(d)(11). Judge Carney held that Plaintiffs’ proposal to form and join the Lipitor JCCP was a proposal for joint trial, *see Corber v. Xanodyne Pharms., Inc.*, 771 F.3d 1218 (9th Cir. 2014), but determined that no mass action resulted for

¹ A complete listing of all Plaintiffs involved in this mass action is attached hereto as Exhibit A. All exhibits are attached to the supporting Declaration of J.D. Horton.

² Two actions named additional defendants, including Greenstone (a subsidiary of Pfizer), Kaiser Permanente, and Kaiser Downey Pharmacy. *See Smith et al. v. Pfizer et al.* (BC617993); *Smith et al. v. Pfizer et al.* (BC594196). The presence of these additional defendants does not affect the minimal diversity on which mass action jurisdiction depends, nor is Pfizer required to obtain the consent of these co-Defendants prior to removal.

the California Lipitor cases because fewer than 100 plaintiffs joined that proposal by filing petitions or add-on petitions to join the JCCP. *In re Pfizer*, 2017 WL 2257635 (C.D. Cal. May 23, 2017). The Ninth Circuit declined to review the remand orders in those cases. *See Abrams v. Pfizer Inc.*, 17-80094 (9th Cir. Nov. 17, 2017).

3. After the Ninth Circuit declined to review the remand of the California Lipitor cases, the Hon. Debra K. Weintraub, the Supervising Judge of the Civil Department of the Los Angeles County Superior Court, entered an order invoking the add-on procedures for the JCCP and requesting that 62 actions involving thousands of Plaintiffs be added to the JCCP (Order, Ex. C), in which 7 actions involving 49 Plaintiffs were already pending. (List of JCCP Cases, Ex. D.) The coordination trial judge then entered an order inviting the parties to respond and object to that proposal for coordination. (Ex. E.) No Plaintiff objected to that proposal, and in fact, Plaintiffs' leadership affirmatively responded by identifying 81 additional actions that "share common questions of law or fact" with the cases in the JCCP. (Ex. F.)

4. The coordination trial judge then issued an Order granting Judge Weintraub's request and added the 62 actions identified by Judge Weintraub to the coordinated proceeding. (Order, Ex. G.) In that Order, the coordination trial judge also asked the parties to address whether additional pending Lipitor cases not already part of the JCCP could be added without a request from Judge Weintraub. The parties "agreed that [the JCCP], *sua sponte*, may add on to th[e]

coordinated proceeding cases that raise similar issues involving the drug Lipitor.” (Order, Ex. H) (emphasis added.) The JCCP then *sua sponte* ordered that an additional 88 cases, involving thousands of plaintiffs, be added into the JCCP. (Order, Ex. I.) Thus, the claims of more than 100 Plaintiffs have now been joined to the JCCP.

5. Plaintiffs’ proposal to form the JCCP, together with Judge Weintraub’s request, as well as both JCCP Orders, all constitute a proposal that the claims in these actions be tried jointly, thus rendering them removable as a mass action. CAFA authorizes mass action removal where 100 claims are “proposed to be tried jointly,” unless the proposal is made by the Defendant. *See* 28 U.S.C. § 1332(d)(11)(B)(ii)(II). Thus, the Ninth Circuit has repeatedly recognized that a *sua sponte* action by a court may effect a “proposal” for claims to be tried jointly triggering CAFA removal. *See Briggs v. Merck Sharp & Dohme*, 796 F.3d 1038, 1048 (9th Cir. 2015); *Tanoh v. Dow Chem. Co.*, 561 F.3d 945, 953 (9th Cir. 2009). Here, the *sua sponte* actions of the California Superior Court in proposing addition of the claims of over 100 plaintiffs to the coordinated proceeding, which Judge Carney has already held constitutes a proposal for claims to be tried jointly, render these cases subject to mass action jurisdiction.

6. Pfizer therefore removes these actions to this District as a single mass action.

GROUND FOR REMOVAL

I. THESE CASES ARE REMOVABLE UNDER CAFA'S MASS ACTION PROVISIONS

7. These cases are removable pursuant to the mass action provisions of CAFA, enacted within the diversity jurisdiction statute at 28 U.S.C. § 1332(d)(11). CAFA authorizes removal of “mass actions,” which it defines as a civil action that meets the following requirements:

a. It involves the monetary relief claims of 100 or more persons that are proposed to be tried jointly on the ground that the plaintiffs’ claims involve common questions of law or fact, *see id.* § 1332(d)(11)(B)(i);

b. The aggregate amount in controversy exceeds \$5,000,000 and the claims of the individual plaintiffs each exceed the amount of \$75,000, *see id.* §§ 1332(a), (d)(2), (d)(11)(B)(i); and

c. Any plaintiff is a citizen of a State different from any defendant, *see id.* § 1332(d)(2)(A).

8. As set forth below, these actions satisfy all the jurisdictional requirements for a mass action. In addition, Pfizer has satisfied all procedural requirements for removal of a mass action pursuant to 28 U.S.C. §§ 1446 and 1453. Accordingly, mass action removal is proper.

A. The Court Proposed That the Claims of More Than 100 Persons Be Tried Jointly

9. These cases are removable as a mass action because Plaintiffs’ proposal to form the JCCP, together with Judge Weintraub’s proposal and the orders of the

coordination trial judge, which joined more than 4,300 Plaintiffs to the California Lipitor JCCP, constitute a proposal to try the claims of those Plaintiffs jointly.

10. CAFA expressly provides that a “mass action” is “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)(11)(B)(i). The Ninth Circuit has held *en banc* that a petition to coordinate claims in California state court involving more than 100 Plaintiffs constitutes a proposal for joint trial that gives rise to mass action removal. *Corber v. Xanodyne Pharms., Inc.*, 771 F.3d 1218 (9th Cir. 2014). Consistent with *Corber*, Judge Carney previously held that a proposal to join the Lipitor JCCP constituted a proposal for joint trial. *In re Pfizer*, 2017 WL 2257635 (C.D. Cal. May 23, 2017).

11. While the statute makes clear that “the term ‘mass action’ shall not include any civil action in which ... the claims are joined upon motion of a defendant,” the text and structure of CAFA also makes clear that a “propos[al]” to create a mass action can come from a state court as well as from Plaintiffs. Multiple courts of appeal, including the Ninth Circuit, have recognized the “possib[ility] that a proposal by a state court for a joint trial would qualify as a ‘proposal’ under § 1332(d)(11)(B)(i).” *See Briggs v. Merck Sharp & Dohme*, 796 F.3d 1038, 1048 (9th Cir. 2015); *see also Tanoh v. Dow Chem. Co.*, 561 F.3d 945, 953 (9th Cir. 2009); *Parson v. Johnson & Johnson*, 749 F.3d 879, 887 (10th Cir. 2014); *Scimone v. Carnival Corp.*, 720 F.3d 876, 881 (11th Cir. 2013). Indeed, last year, the Ninth

Circuit granted interlocutory review under CAFA of a decision of this District that held that a state court's *sua sponte* consolidation does not qualify as a proposal for joint trial under CAFA. *See Alexander et al. v. Bayer Corp.*, No. 17-55828 (9th Cir.) (settled on appeal).

12. Here, Judge Weintraub *sua sponte* invoked the add-on procedures of the Lipitor JCCP and requested that 62 Lipitor actions, which comprise the claims of 2,335 individual Plaintiffs, “should be joined” to the Lipitor JCCP currently proceeding in Los Angeles County Superior Court, because “it would be extremely burdensome for the Los Angeles Superior Court to handle the cases ... individually and outside of a coordinated proceeding.” (*See Order, Ex. C.*) No Plaintiff objected. The coordination trial judge then ordered that those 62 cases be coordinated and *sua sponte* ordered that an additional 88 cases, involving thousands of additional plaintiffs, be added into the JCCP. (*See Ex. G.*) Accordingly, these actions of the coordination trial judge constitute a proposal that the claims of more than 100 persons be tried jointly within the meaning of CAFA.

13. In addition, Plaintiffs' leadership's submission to the Lipitor JCCP stating that “Judge Weintraub's request included only a partial list of all pending California state court Lipitor cases,” and identifying an additional 81 California state court Lipitor cases that “involve common questions of fact and law with the cases identified in Judge Weintraub's request” also constitutes an affirmative proposal for joint trial that triggers removal of those cases as well

under CAFA. As noted above, the coordination trial judge ordered these actions added to the Lipitor JCCP.

14. Accordingly, the first requirement of mass action removal is satisfied.

B. The Amount in Controversy Is Satisfied

15. Both the individual \$75,000 and aggregate \$5,000,000 amount in controversy requirements for mass action removal are readily satisfied. *See* 28 U.S.C. §§ 1332(a), (d)(2), (d)(11)(B)(i).³

16. First, it is apparent from the face of the Complaint, and the serious nature of the injuries alleged by each Plaintiff—type 2 diabetes—that the amount in controversy exceeds \$75,000 for each Plaintiff, just as for the claims in the other actions embraced by the California Lipitor Coordination.

17. Where, as here, Plaintiffs allege serious bodily injuries, courts have readily found that the amount-in-controversy requirement is satisfied. *See In re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 296 (S.D.N.Y. 2001). In addition, compensatory and punitive damages in excess of the jurisdictional amount of \$75,000 have been awarded in products liability cases in California. *See, e.g., Stewart v. Union Carbide Corp.*, 117 Cal. Rptr. 3d 791, 804 (Cal. Ct. App. 2010); *Karlsson v. Ford Motor Co.*, 45 Cal. Rptr. 3d 265, 282-83 (Cal. Ct. App. 2006); *Jones v. John Crane, Inc.*, 35 Cal. Rptr. 3d 144, 161 (Cal Ct. App. 2005). Other

³ Pfizer does not, however, concede that Plaintiffs would be entitled to any of the relief sought in the Complaint.

federal courts have thus concluded that the amount in controversy exceeded \$75,000 in similar pharmaceutical cases. *See, e.g., Smith v. Wyeth Inc.*, 488 F. Supp. 2d 625, 630-31 (W.D. Ky. 2007) (denying motion to remand); *accord Copley v. Wyeth, Inc.*, 2009 WL 1089663, at *2-3 (E.D. Pa. Apr. 22, 2009). In addition, because Plaintiffs' demands for punitive damages are also included in the amount in controversy, *see Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007), it is evident, from the face of the Complaint that the amount of recovery sought by each Plaintiff exceeds \$75,000.

18. Second, because each individual Plaintiff's claim exceeds \$75,000, the aggregate amount in controversy for this mass action, which embraces the claims of thousands of individual plaintiffs, necessarily exceeds \$5,000,000.

19. Accordingly, the amount-in-controversy requirement is satisfied.

C. The Diversity Requirement Is Satisfied

20. The diversity requirements for mass action removal have been satisfied. *See* 28 U.S.C. § 1332(d)(2)(A). While diversity removal normally requires complete diversity between plaintiffs and defendants, for removal of a mass action, only "minimal diversity" is required—i.e., that at least one plaintiff be diverse from one defendant. *See id.* This requirement is readily satisfied here. Plaintiff Asmik Adetyan is a citizen of California and therefore diverse from Pfizer, a citizen of Delaware and New York. *See Adamyan* Compl. ¶¶ 2, 34 (attached within Ex. B).

21. Accordingly, all the jurisdictional requirements of mass action removal are satisfied.

II. PFIZER HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

22. In order to efficiently litigate the issue of mass action jurisdiction, Plaintiffs have agreed to waive any argument that removal is untimely provided removal was accomplished within 30 days of the coordination trial judge's most recent order adding cases. The Ninth Circuit has held that "[t]he statutory time limit for removal petitions is merely a formal and modal requirement and is not jurisdictional." *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1212 (9th Cir. 1980). Therefore, "[a]lthough the time limit is mandatory and a timely objection to a late petition will defeat removal, a party may waive the defect or be estopped from objecting to the untimeliness by sitting on his rights." *Id.* See also *Smith v. Mylan Inc.*, 761 F.3d 1042, 1045 (9th Cir. 2014).

23. Where the Plaintiff has "waived any procedural defect in the removal ... the district court lack[s] the authority to remand *sua sponte*." *Corona-Contreras v. Gruel*, 857 F.3d 1025, 1030 (9th Cir. 2017) (specifically holding "that the district court exceeded its authority under § 1447(c) in *sua sponte* ordering a remand based on a procedural defect in the removal from state court."). Accordingly, the Court need not consider the timeliness of removal.

24. For purposes of mass action removal, consent to removal by other Defendants is not required. See 28 U.S.C. § 1453(b).

25. For purposes of mass action removal, McKesson's forum citizenship is not a bar to removal. *See* 28 U.S.C. § 1453(b).

26. These actions, pending in the California Superior Court of Los Angeles County, are being removed to the district and division embracing the place where the actions are pending. *See* 28 U.S.C. § 1441(a).

27. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders served on Pfizer, including the Complaints in each affected action, are attached collectively as Exhibit B-1 through B-156.

28. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for Plaintiffs and a copy is being filed with the Clerk of the Superior Court of the County of Los Angeles.

WHEREFORE, Pfizer respectfully removes to this Court as a single mass action the following actions pending in the coordinated proceeding in the Superior Court of the County of Los Angeles, in the State of California:

Case Name (Lead Plaintiff)	State Court Docket Number
Adamian, Mary	BC537296
Adamyman, Alida	BC538067
Adatan, Norma	BC637353
Alanis, Maria	13-CE-CG02977
Alberstone Maye	BC537393
Alexander, Patricia	BC659589

Case Name (Lead Plaintiff)	State Court Docket Number
Alexander-Jackson, Loretta	BC537893
Allison, Josefina	BC638755
Alston, Joan	BC630499
Alvarado, Sylvia	BC645073
Anderson, Gladys	BC538088
Andres, Dorothy	BC537635
Antonelli, Carole	BC655821
Artz, Vivia	BC635793
Ashley, Gloria	BC597288
Avila, Vicky	BC537532
Avila, Venicia	BC664367
Azzam, Mazal	BC537600
Bagdasarian, Clara	BC537311
Bagliere, Theresa	BC615571
Bailey, Denelle	BC536974
Baker, Tonya	BC635991
Baker, Mary	BC642382
Banks, Patricia	BC537645
Banks, Juanita	BC536936
Barringer, Bessie	BC640576
Batista, Antonia	BC669583
Beima, Phyllis	BC537770
Beneda, Shari	BC583448
Benons, Maizy	BC537848
Blackmore, Dena	BC643523

Case Name (Lead Plaintiff)	State Court Docket Number
Boles, Joni	BC632342
Bowser, Martha	BC537143
Bradley, Michelle	BC558396
Brooks, Teresa	BC619090
Brown, Angela	BC667266
Brown, Frankie	BC536012
Brown, Mildred Lois	BC627217
Calabretta, Adelle	BC537652
Campbell, Sharon	BC623414
Carbajal, Maria	BC538103
Caro, Amy	BC582062
Carpenter, Rose	BC631286
Chaffee, Vicky	BC629051
Choate, Doris	BC537844
Clemente Salvo, Jocelyn	BC536162
Collins, Kim	BC552092
Constant, Marion	BC537142
Curley, Loretta	BC536939
Davis, Kathleen	CGC-14-537611
Davis, Michelle	BC586171
Davis, Carolyn	BC648688
Davis, Cynthia Faye	BC631285
Davis, Valerie	34-2013-00151922
Dearmore, Wanda	BC536754
DeBay, Elizabeth	BC620597

Case Name (Lead Plaintiff)	State Court Docket Number
Diaz, Imelda	BC537248
Dow, Ravyne	BC533634
Elliott, Helen	BC554988
English, Ruth	BC536937
Feberdino, Regina	BC538066
Fernandez, Bernadette	BC537531
Franzone, Linda	BC538104
Frields, Emma	BC536932
Garcia, Juana	BC537846
Garcia, Priscilla	BC593065
Gibson, Barbara	BC627824
Gray, Zurita	BC536938
Hare, Ruby	BC537836
Harris, Dorthy-Byrd	BC674644
Harris, Louise	BC537346
Hill, Jessie	BC537845
Hodges, Rose	BC537348
Isrel, Tomie	BC536931
Jackson, Myrle	BC622449
Jamshidi, Pari	BC605794
Johnson, Brenda	BC537046
Johnson-Wilson, Granieta	BC560896
Jones, Amal	BC645186
Jordan, Darlene	BC536930
Kelley, Susan	BC537297

Case Name (Lead Plaintiff)	State Court Docket Number
Kessler, Jeri	BC537074
Kessner, Bonnie	BC537298
King, Mattie	BC537847
Kloss, Judy	BC564968
Kruenegel, Donna	BC537292
Lessem, Rachel	BC652140
Lewis, Patricia	BC535923
Little, Loretta	HG14-714753
Lorentzen, Susan	BC677995
Lubenko, Cheri	13-cv-8470
Lubniewski, Joyce	BC537410
McClain, Deborah	BC537313
McKenzie, Pamela	BC537271
Medina, Theresa	BC537314
Mehta, Pallavi	BC537045
Mejia, Blanca	BC537851
Miller, Judy	BC536855
Monreal, Genevieve	BC620308
Obuch, Nina	BC536974
Owens, Clara	BC537002
Owhady, Shahla	BC535854
Parker, Sharon	CIVDS1311371
Perlhefter, Anita	BC592059
Peters, Annette	CGC-14-537609
Pierce, DeAnn	BC537141

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Case Name (Lead Plaintiff)	State Court Docket Number
Powell, Tonisha	BC537850
Queen, Aleene	BC611182
Quillin, Kay	BC666508
Reynolds, Shirley	BC537946
Richard, Deloris Ann	BC535893
Richards, Alma	CIVRS1306724
Rivington, Deberah	BC536942
Roberts, Jonna	BC609198
Roberts-Anderson, Candacy	BC536941
Robinson, Janice	BC536358
Rouda, Marilyn	CGC-14-537608
Roy, Linda	BC536940
Sanchez, Ann	BC568284
Santiago, Magda	BC576975
Scott, Elaine	BC556545
Scully, Sharal	BC625835
Siegel, Segalilt	BC536933
Sims-Lewis, Willie	BC537470
Smalley, Judith	BC571105
Smith, Nadine	BC594196
Smith, Lawana	BC617993
St. Jean, Pauline	BC589684
Stark, Patricia	RG14719217
Stegall, Shary	BC585392
Stevens, Betty	BC599866

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Case Name (Lead Plaintiff)	State Court Docket Number
Taime, Mixdalia	BC595160
Tate, Charlene	37-2013-00067338
Tillery, Marline	BC645478
Valentine, Ouida	BC537052
Wakabayashi, Edith	BC518223
Watson, Linda	BC553501
Watts, Elizabeth Ann	BC538131
Weaver, Sylvia	FCS043259
Weisman, Lori Ann	BC536163
Whitaker, Lena	BC537924
Whitney, Robyn	BC573889
Williams, Chasa	CIVDS1312865
Williams, Julie	BC573918
Williams, Patricia	BC627979
Williams, Fiette	BC536934
Williams, Jewel	BC539180
Williams, Marilyn	BC536935
Williams, Rose	BC537852
Willis, Donna	BC537140
Wilson, Gloria	BC580553
Wood, Patsy	BC652781
Xochrhua, Maria	BC647065
Yaker, Ruth	BC593129
Yudson, Emilyya	BC604980
Zullo, Joy	BC537849

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Dated: March 1, 2018

Respectfully submitted,

QUINN EMANUEL URQUHART &
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By: /s/ J.D. Horton
J.D. Horton
Attorneys for Defendant Pfizer Inc.

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APPENDIX K

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 18-80059

[Filed May 18, 2018]

IN RE: LIPITOR, JCCP 4761

ALIDA ADAMYAN, et al.,*
Plaintiffs-Respondents,

v.

PFIZER INC.,
Defendant-Petitioner.

*Petition for Permission to Appeal From United States
District Court, Central District of California,
Hon. Cormac J. Carney, District Judge,
Case No. 2:18-cv-01725-CJC (JPRx)*

**PETITION FOR PERMISSION TO APPEAL
PURSUANT TO 28 U.S.C. § 1453(C)**

Mark S. Cheffo
Rachel B. Passaretti-Wu
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**Full list of Plaintiffs-Respondents set forth
in Addendum.*

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CORPORATE DISCLOSURE STATEMENT

Defendant-Petitioner Pfizer Inc. hereby states that it has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

Dated: May 18, 2018

/s/ Mark S. Cheffo

Mark S. Cheffo

*Attorney for Defendant-Petitioner
Pfizer Inc.*

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Pursuant to FRAP 5 and 28 U.S.C. § 1453(c), Defendant-Petitioner Pfizer Inc. requests leave to appeal the May 10, 2018 Order of the Central District of California (Carney, J.) remanding this coordinated proceeding of more than 4,300 Plaintiffs to state court (“Remand Order,” Ex. A).

QUESTION PRESENTED

This Petition presents the following question: can a state court’s *sua sponte* request that claims be added to a California coordinated proceeding trigger removal under the mass action provisions of the Class Action Fairness Act (CAFA)? This Court has previously determined that where *plaintiffs* make such a request, the claims are “proposed to be tried jointly” and thus removable as a mass action. *Corber v. Xanodyne Pharms., Inc.*, 771 F.3d 1218 (9th Cir. 2014) (en banc). Last year, this Court granted review in *Alexander v. Bayer*, 17-55828, to decide a related question it raised in two prior cases: whether “a proposal *by a state court* for a joint trial would qualify as a ‘proposal’” under CAFA. *Briggs v. Merck Sharp & Dohme*, 796 F.3d 1038, 1048 (9th Cir. 2015) (emphasis added); *Tanoh v. Dow. Chem. Co.*, 561 F.3d 945, 956 (9th Cir. 2009). However, *Alexander* was dismissed by agreement before a decision.

This Petition presents an opportunity to decide what *Alexander* left open. The district court held categorically that a court’s “order” can never be a “proposal,” and therefore remanded more than 4,300 Lipitor claims that the Los Angeles Superior Court asked to be joined to a coordinated proceeding. Remand Order at 6-8. This Court should review and reverse.

RELIEF SOUGHT

The Court should grant review, answer the question presented in the affirmative, and reverse the decision below.

STATEMENT OF FACTS

Pfizer previously removed these cases, in which some 4,300 Plaintiffs from around the country allege the development of type 2 diabetes due to Lipitor, based on Plaintiffs' actions seeking joinder to the California Lipitor coordination, JCCP 4761. Pfizer contended the claims of more than 100 persons were thereby "proposed to be tried jointly," thus triggering removal under CAFA's mass action provisions. 28 U.S.C. § 1332(d)(11). The district court agreed that, under this Court's decision in *Corber*, a proposal to join the "all purposes" Lipitor coordination was a proposal for joint trial for CAFA purposes. *In re Pfizer*, 2017 WL 2257635, at *6 (C.D. Cal. May 23, 2017). However, it remanded because it found that less than 100 Plaintiffs had made such a proposal. *Id.* at *1.

On remand, Plaintiffs tried to avoid proposing coordination, but judges of the Los Angeles Superior Court *sua sponte* requested these cases be joined to the Lipitor coordination. *See* Remand Order at 5-6. Pfizer removed again on that basis. However, the district court again remanded, holding not only that a state-court order cannot be a proposal, but that proposed inclusion in the same Lipitor coordination was not a proposal for joint trial. *Id.* at 7-10. Pfizer now seeks review.

A. Pfizer Removes the California Lipitor Cases

The Lipitor coordination was created based on a plaintiff request to coordinate all Lipitor cases in California before “[o]ne judge ... for all purposes” to “avoid duplicative and inconsistent rulings, orders, and judgments” on a variety of issues. *In re Pfizer*, 2017 WL 2257635, at *1. Other Plaintiffs took various actions to join cases to that proceeding, including identifying nearly 2,000 claims to the coordination judge; submitting a proposed order to join “[a]ll cases” to the proceeding; and identifying the coordinated proceeding in their captions, civil cover sheets, and notices of related cases. *See id.* at *2-3, 7. Based on those actions, Pfizer contended the claims of more than 100 persons were “proposed to be tried jointly,” and removed all of these cases as a “mass action” under CAFA. 28 U.S.C. § 1332(d)(11). Plaintiffs moved to remand.

B. The District Court Remands the Cases

The district court agreed with Pfizer, and this Court in *Corber*, that a proposal to join a coordinated proceeding was a proposal for joint trial. 2017 WL 2257635, at *5. “The language of the amended petition and supporting documents is substantially similar to that in *Corber*,” which this Court held constituted a proposal for joint trial. *Id.* (citing *Corber*, 771 F.3d 1218). As in *Corber*, Plaintiffs here had requested “coordination ‘for all purposes’” and to avoid “inconsistent judgments and conflicting determinations of liability,” which “supported the conclusion that they sought a joint trial.” *Id.* However, the district court granted remand because it held that “[o]nly the sixty-

five plaintiffs who were named in the amended coordination petition or add-on petitions” had proposed joint trial, such that CAFA’s 100-plaintiff numerosity requirement was not met. *Id.* at *6. Pfizer sought leave to appeal, which was denied. *See Abrams v. Pfizer Inc.*, 17-80094 (9th Cir. Nov. 17, 2017).

C. On Remand, Plaintiffs Avoid Seeking Coordination

Following remand, these cases were assigned to over 30 different judges in Los Angeles Superior Court and other counties. Because of the district court’s holding that a petition to join the coordination would constitute a proposal for joint trial, Plaintiffs unsuccessfully attempted to achieve coordination by other means.

First, Plaintiffs requested that the coordination judge amend the procedure for adding cases to clarify that any additions were for pretrial purposes only, since CAFA exempts such proceedings from mass action removal. *See* 28 U.S.C. § 1332(d)(11)(B)(ii)(IV); *see also* Proposed Am. Order re Add-On Procedures (Ex. B). Pfizer opposed, and the coordination trial judge (Kuhl, J.) denied Plaintiffs’ motion. Judge Kuhl explained that while she had no “stake in how the federal courts interpret CAFA,” for purposes of California law, “[t]he shape of a coordinated proceeding is set when the coordination motion judge determines that cases should be coordinated pursuant to the California rules.” *See* Minute Order at 3-4, *Lipitor Cases*, JCCP 4761 (Aug. 4, 2017) (Ex. C). Judge Kuhl observed that, while a single trial of all claims may not ultimately occur, “California law contemplates that

cases will be coordinated for all purposes, not merely for pretrial proceedings.” *Id.* at 4-5 (citing Cal. Code. Civ. P. § 404.1). Thus, she could not grant coordination for pre-trial purposes only, and Plaintiffs’ motion so requesting was denied.

Second, Plaintiffs then asked the coordination judge to relate 62 cases in which a Notice of Related Case had been filed. *See* Pls.’ Mot. re Related Cases (Ex. D). Plaintiffs said they would also ask the California Judicial Council to limit the scope of the coordination, but because “it is not certain that the Judicial Council will grant the forthcoming petition,” they asked Judge Kuhl to utilize California’s related cases procedure instead. *Id.* at 2. Judge Kuhl denied Plaintiffs’ request, explaining that the related cases procedure was “inapplicable,” in part because a coordinated proceeding had been established. *See* Minute Order at 2, *Lipitor Cases*, JCCP 4761 (Nov. 21, 2017) (Ex. E). Plaintiffs ultimately never moved the California Judicial Council to amend the scope of the Lipitor coordination.

D. California Courts Request Coordination Sua Sponte

Following Plaintiffs’ unsuccessful efforts to create *de facto* coordination, the Los Angeles Superior Court acted on its own.

First, the Hon. Debre K. Weintraub, the Supervising Judge of the Civil Department of the Los Angeles County Superior Court, entered a document captioned as a “Request.” *See* Request, *Lipitor Cases*, JCCP 4761 (Cal. Sup. Ct. Nov. 17, 2017) (Ex. F). That

“Request” asked that the 62 actions Plaintiffs sought to relate be added to the coordination. *See id.* The “Request” was made pursuant to Cal. Code. Civ. P. § 404.4, which provides that “[t]he 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.” *See id.* at 1 (emphasis added). Judge Weintraub explained that, although no party had requested the cases be added on, “it would be extremely burdensome for the Los Angeles Superior Court to handle the cases ... individually and outside of a coordinated proceeding.” *Id.* at 3. Accordingly, she requested that Judge Kuhl “add the cases ... to the Lipitor JCCP, after notice and hearing.” *Id.*

Second, three days later, Judge Kuhl entered an Order stating that the parties had 10 days to “serve and submit a notice of opposition to [Judge Weintraub’s] Request.” *See Order, Lipitor Cases, JCCP 4761 (Nov. 20, 2017) (Ex. G).* Pfizer did not respond. Plaintiffs, however, filed a response that did not oppose, but instead stated that “Judge Weintraub’s request included only a partial list of all pending California state court Lipitor cases” and attached a list of 81 additional cases involving thousands of additional Plaintiffs that shared “common questions of fact and law with the cases identified in Judge Weintraub’s request but were not included in that request.” *See Pls.’ Notice (Ex. H)*

Judge Kuhl then issued an Order granting Judge Weintraub's Request. Order, *Lipitor Cases*, JCCP 4761 (Dec. 15, 2017) (Ex. I). In that Order, Judge Kuhl "note[d]" Plaintiffs' "listing" of additional cases, and asked the parties to address whether additional pending Lipitor cases not already part of the coordination could be added without a request from Judge Weintraub. *Id.* at 2. The parties agreed that Judge Kuhl, "*sua sponte*, may add on th[e] coordinated proceeding cases that raise similar issues involving the drug Lipitor." Order, *Lipitor Cases*, JCCP 4761 (Jan. 30, 2018) (Ex. J) (emphasis added). Judge Kuhl then *sua sponte* ordered that an additional 88 cases, involving thousands of plaintiffs, be added to the Lipitor coordination. Order, *Lipitor Cases*, JCCP 4761 (Jan. 30, 2018) (Ex. K).

E. The District Court Again Remands the Cases

Pfizer then removed the entire Lipitor coordination to federal court, contending that the California Superior Court's *sua sponte* actions coordinating the cases had now satisfied the numerosity requirement imposed by the district court's prior order. Notice of Removal (Ex. L). The district court entered a briefing schedule and a hearing date for Plaintiffs' motion to remand. Order re: Briefing Schedule (Ex. M). However, it granted remand before the hearing, based primarily on an argument that Plaintiffs raised for the first time in their reply brief.

First, the district court held that "a state court's *sua sponte* order cannot 'propose' a joint trial to trigger mass action jurisdiction." Remand Order at 8. Without

addressing the substance of the documents issued by the California Superior Court, the district court held that a court order cannot be a proposal because it is “a command or direction authoritatively given,” not “an offer to be accepted or rejected.” *Id.* (quoting Black’s Law Dictionary online (2nd ed.)).

Second, the district court found that, while a request by Plaintiffs to coordinate cases for all purposes proposed joint trial, the requests by the state courts for the same thing did not. Remand Order at 9-10. The district court based this conclusion on what it deemed Plaintiffs’ purported “desire to coordinate their cases ... for pretrial purposes only,” and Judge Kuhl’s “deep skepticism that the cases here would be jointly tried.” *Id.* The district court did not address either Judge Weintraub’s request or Judge Kuhl’s observation that “California law contemplates that cases will be coordinated for *all purposes*, not merely for pretrial proceedings.” Minute Order at 4 (Ex. C) (emphasis added).

Pfizer now timely petitions for leave to appeal.

REASONS FOR GRANTING REVIEW

I. THIS PETITION PRESENTS AN IMPORTANT CAFA ISSUE THAT THIS COURT HAS PREVIOUSLY DEEMED WORTHY OF REVIEW

The net effect of the district court’s remand orders is that federal jurisdiction exists over an “all purposes” coordinated proceeding if 100 plaintiffs formally ask to join it by filing add on petitions, but not if a court *sua sponte* adds cases that plaintiffs agree belong in the coordination. On its face, this draconian result is

contrary to CAFA’s “primary objective”—never mentioned in the district court’s order—of “ensuring ‘Federal court consideration of interstate cases of national importance.’” *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013). As this Court has explained, “Congress and the Supreme Court have instructed us to interpret CAFA’s provisions ... ***broadly in favor of removal.***” *Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178, 1184 (9th Cir. 2015) (emphasis added). The incongruous outcomes from the district court, in contrast, evince the “antiremoval presumption” that the Supreme Court has expressly directed courts to discard. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 554 (2014).

Because CAFA is a favored basis of removal, orders to remand actions removed under CAFA are excepted from the general rule against appellate review of remand orders. *See* 28 U.S.C. § 1447(d). A court of appeals therefore may grant a timely application to review the remand of cases removed under CAFA. *Id.* § 1453(c). The “key factor” in determining whether to grant review is the presence of an important issue concerning CAFA. *Coleman v. Estes Express Lines, Inc.*, 627 F.3d 1096, 1100 (9th Cir. 2010). This Court has already acknowledged the importance of the question presented by this Petition in granting review in *Alexander*. Since that question was not answered in *Alexander*, review is even more important here to resolve the issue of federal jurisdiction as to these thousands of Plaintiffs. The Petition should be granted.

A. The Court Should Review Whether a State Court May Propose Joint Trial Within the Meaning of CAFA

1. Review Should Be Granted to Decide the Question Left Open by *Alexander*

This Court should grant review to decide a question that it, and several other courts of appeals, have raised but never resolved: whether a *sua sponte* state court order can serve as a “proposal” that triggers mass action removal under CAFA. This Court has noted that possibility for nearly a decade, observing that a “state court’s *sua sponte* joinder of claims might allow a defendant to remove separately filed actions to a federal court as a single ‘mass action’ under CAFA.” *Tanoh*, 561 F.3d at 956. More recently, this Court noted that “[i]t is possible that a proposal by a state court for a joint trial would qualify as a ‘proposal.’” *Briggs*, 796 F.3d at 1048. In *Alexander*, this Court granted review to decide the question it had identified in *Tanoh* and *Briggs*, but the appeal was dismissed before a decision was issued. This Petition now presents the appropriate vehicle to definitively resolve the question left open by *Alexander*.

A decision on this issue will not only answer an acknowledged open question in this Circuit, but will also provide guidance to the other courts of appeals. The Tenth Circuit, like this Court, has similarly noted that CAFA “does not specify who can make such a proposal—the plaintiffs only, or the district court through an order of consolidation or coordination.” *Parson v. Johnson & Johnson*, 749 F.3d 879, 887 (10th Cir. 2014). Likewise, the Eleventh Circuit has observed

that CAFA’s plenary grant of mass action jurisdiction “must be referring to a proposal made by the plaintiff, by the defendant, or perhaps by the state court acting *sua sponte*.” *Scimone v. Carnival Corp.*, 720 F.3d 876, 881 (11th Cir. 2013). Only one court of appeals, the Seventh Circuit, has “assume[d]” to the contrary, in dicta without analysis. *Koral v. Boeing Co.*, 628 F.3d 945, 946 (7th Cir. 2011). This Petition thus presents the opportunity to decide what has previously been only assumed or suggested. Review should therefore be granted.

2. The Statutory Language Supports Removal Based on *Sua Sponte* State-Court Proposals

Not only does this Petition present an important CAFA-related question, but there is substantial doubt as to whether the district court’s resolution of that question was correct. The language and structure of CAFA reflect that Congress contemplated mass action removal based on state-court proposals. The Supreme Court has long admonished that “in interpreting a statute a court should turn first to one, cardinal canon before all others”—it “must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). CAFA defines “mass action” to include “**any**” case in which 100 or more claims “are proposed to be tried jointly.” 28 U.S.C. § 1332(d)(11)(B)(i) (emphasis added). By using the passive voice—“are proposed to be tried jointly”—Congress evinced an “agnosticism ... about who does the [prescribed action].” *Watson v. United*

States, 552 U.S. 74, 81 (2007). The passive voice indicates that “[i]t is whether something happened—not how or why it happened—that matters.” *Dean v. United States*, 556 U.S. 568, 572 (2009).

The significance of that agnosticism is further clarified by the one limit Congress *did* place on the source of the proposal: it cannot come from the defendant. 28 U.S.C. § 1332(d)(11)(B)(ii)(II). Having specifically excepted only one source of proposal as a potential mass action trigger, Congress logically left all other sources of proposal available, including proposals by state courts. “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acted intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotation omitted). To read in another unwritten exception to the mass action provision would do violence to CAFA’s plain language and subvert its purpose in favor of removal. *See Jordan*, 781 F.3d at 1184. “Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.” *TRW v. Andrews*, 534 U.S. 19, 28 (2001). If a statute already contains an explicit exception, “the familiar judicial maxim *expressio unius est exclusio alterius* counsels against finding additional, implied, exceptions.” *Syed v. M-I, LLC*, 853 F.3d 492, 501 (9th Cir. 2017). The statute “would have to be rewritten in order to carry

[Plaintiffs’] meaning.” *Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1028 (9th Cir. 2010).

“When the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” *Tanoh*, 561 F.3d at 953 (quotation omitted). There is no such absurdity here—to the contrary, CAFA quite sensibly allows removal of large, interstate joint-trial proceedings, whether proposed by plaintiffs or by the court, since the source of the proposal makes no difference to the federal interest in “ensuring ‘Federal court consideration of interstate cases of national importance.’” *Knowles*, 133 S. Ct. at 1350. At the same time, CAFA understandably disallows removal based on a defendant’s self-serving proposal, lest the plaintiffs become “servants of defendants’ litigation strategy.” *Briggs*, 796 F.3d at 1049; *accord Tanoh*, 561 F.3d at 954. Under this clear policy rationale and clearer statutory language, mass action removal was well supported here.

3. The District Court Erred in Categorically Holding That a Court Cannot Make a Proposal

The district court held that a court’s order can never be a proposal because an order is “a command or direction authoritatively given,” not “an offer to be accepted or rejected.” Remand Order at 8 (quoting Black’s Law Dictionary online (2nd ed.)). Yet the district court reached this conclusion without evaluating any of the actions of the California Superior Court advanced by Pfizer as bases for removal. This

alone was contrary to CAFA's liberal construction as applied by this Court, which has instructed that a court evaluating mass action jurisdiction must consider "the real substance" of an alleged proposal, rather than its formalities. *Corber*, 771 F.3d at 1225. Mass action jurisdiction exists, then, where the "totality of the circumstances" shows that the claims of 100 or more persons have been proposed to be tried jointly. *Id.* at 1220.

Had the district court "carefully assess[ed] ... whether, in language or substance" claims have been proposed to be tried jointly, *id.* at 1223, it would readily have found that the California Superior Court made "proposals" here. Indeed, the initial *sua sponte* action of Judge Weintraub was not an order at all, but was in fact explicitly captioned as a "Request." (Ex. F). Contrary to the district court's categorical holding that a court can only issue orders, California procedure in fact specifically provides for the ability of "[t]he presiding judge of any court" to "**request** the judge assigned to hear the coordinated actions for an order coordinating the action." *See id.* at 1 (quoting Cal. Code. Civ. P. § 404.4) (emphasis added). If this "request" was not a "proposal," it is unclear what is. Yet the district court failed to address it at all.

Likewise, the "totality of the circumstances" shows that Judge Kuhl's orders were also proposals within the meaning of CAFA. *Corber*, 771 F.3d at 1223. Initially, the district court's grudging interpretation that says an order is not a proposal because it is mandatory is contrary to the liberal construction to be afforded to CAFA. *See Dart Cherokee Basin*, 135 S.Ct.

at 554. Indeed, to the extent there is any substantive difference between an order for joint trial and a proposal for joint trial, that difference should cut in favor of jurisdiction, not against it. The federal interest in large interstate proceedings is even more substantial where joint trial is compelled than where it is merely requested.

Even more important here, focusing on the status of Judge Kuhl's actions as "orders" obscures "the real substance" of *what Judge Kuhl ordered*. That is, Judge Kuhl *suggested* that adding the cases at issue was warranted, and then *ordered* the parties to respond with any opposition (which Plaintiffs declined to offer in their response). (Ex. G; Ex. I.) This too constitutes a proposal—an offering "for consideration, discussion, acceptance, or adoption," *Briggs*, 796 F.3d at 1048 (quotation omitted)—which the district court erroneously held could never come from a court. And as with Judge Weintraub's Request, California law specifically contemplates Judge Kuhl's approach (*see* Cal. R. Ct. 3.544), again refuting the district court's conclusion that courts cannot propose.

The only case cited by the district court that rejected removal based on a state-court proposal is distinguishable on these very grounds. In *Alexander v. Bayer Corp.*, 2016 WL 6678917 (C.D. Cal. Nov. 14, 2016), as to which this Court granted review, the district court rejected removal because the state court "did not propose consolidation and then ask for the parties' thoughts or responses." *Id.* at *2. Here, in contrast, that is precisely what happened: the supervising judge issued a "Request" to Judge Kuhl

that she add on 62 cases, subject to the notice and hearing requirements of Cal. R. Ct. 3.544, and Judge Kuhl then provided the parties with an opportunity to object. Plaintiffs not only failed to object, they affirmatively identified other cases that Judge Kuhl should coordinate. Pfizer noted this distinction to the district court as well, but the district court did not address it.

4. The “Master of the Complaint” Principle Does Not Apply

Plaintiffs’ only remaining argument, which they abandoned in their reply brief in the district court, was that to allow mass action removal based on *sua sponte* proposals would be “at odds with the well-settled principle that plaintiffs are masters of their complaints and remain free to structure them so as to avoid [federal] jurisdiction.” Mot. at 19 (Ex. N). That principle in no way precludes removal here.

The notion that plaintiffs are “masters of the complaint” is not an ironclad rule of jurisdiction, but rather a tautology used to express that where removal is based on the content of a plaintiffs’ pleadings, that content defines the limits of removal. Thus, for example, in *Briggs*, the plaintiffs specifically disclaimed a proposal for joint trial, and this Court held that removal was not proper because plaintiffs were “masters of their complaints.” *Briggs*, 796 F.3d at 1049. In contrast, in *Corber*, where the plaintiffs sought coordination “for all purposes” and to avoid “inconsistent judgments,” this Court found subject matter jurisdiction pursuant to CAFA, observing that the plaintiffs were “masters of their petitions for

coordination,” and therefore were held “responsible for what they have said and done.” 771 F.3d at 1223.

The “master of the complaint” principle does not, however, mean what Plaintiffs suggest: that no case can become removable except by the affirmative action of the plaintiff. Indeed, Congress has repeatedly conferred removal jurisdiction based on actions of other parties not contemplated or authorized by the plaintiff. These removal mechanisms include, for example, the federal officer removal statute, 28 U.S.C. § 1442; *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247 (9th Cir. 2006); the Westfall Act, 28 U.S.C. § 2679(d)(1); *Wilson v. Drake*, 87 F.3d 1073 (9th Cir. 1996); the bankruptcy removal statute, 28 U.S.C. § 1452; *Security Farms v. Int’l Bhd. of Teamsters*, 124 F.3d 999 (9th Cir. 1997); and the federal contract claims removal statute, 28 U.S.C. § 1346(a)(2); *Olivier Plantation, LLC v. St. Bernard Parish*, 744 F. Supp. 2d 575 (E.D. La. 2010). Congress has thus frequently authorized removal of actions based on litigation events completely outside of plaintiffs’ control, and was free to do so with CAFA’s mass action provisions.

B. A Proposal to Join the Lipitor Coordination Is a Proposal for Joint Trial, No Matter the Source

In its prior remand order, the district court held that a petition to join the Lipitor coordination was a proposal for joint trial. *In re Pfizer*, 2017 WL 2257635, at *4-5. Yet with respect to the court actions here that would have identical effect to an add-on petition to join the coordination, the district court reached the opposite result. Specifically, it held there was no proposal for

joint trial because Judge Kuhl observed that a single joint trial of thousands of Plaintiffs' claims was unlikely. *See* Remand Order at 9-10. This too was error.

First, the district court only addressed certain of Judge Kuhl's statements, and ignored the "Request" issued by Judge Weintraub. Even if Judge Kuhl's statements about what might occur were relevant (and for the reasons that follow they are not), they are irrelevant to Judge Weintraub's proposal to add cases to the Lipitor coordination. Under both *Corber* and the district court's own prior ruling in this case, a proposal to join cases to that "all purposes" proceeding was a proposal for joint trial. *See Corber*, 771 F.3d at 1223; *In re Pfizer*, 2017 WL 2257635, at *5.

Second, the district court erroneously focused on whether joint trial "actually ensues" rather than "***the statutory question [of] whether one has been proposed.***" *Bullard v. Burlington N. Santa Fe Ry. Co.*, 535 F.3d 759, 762 (7th Cir. 2008) (emphasis added). This Court rejected this position in *Corber*, where the plaintiffs contended—as the district court held here—that they had not proposed joint trial because joint trial was unlikely to occur. 771 F.3d at 1224 n.5. As this Court explained, "[U]nder the plain language of CAFA, we must determine whether Plaintiffs *proposed* a joint trial, not whether one will occur at some future date. That a judge has discretion to limit coordination to pretrial matters does not weigh on whether Plaintiffs proposed a joint trial." *Id.* Because the plaintiffs had sought coordination for "all purposes" and to avoid "inconsistent judgments," they had

necessarily proposed a joint trial. The same is true here with respect to the scope of the Lipitor coordination, which, as the district court previously acknowledged, is identical to *Corber*. See *In re Pfizer*, 2017 WL 2257635, at *5. As Judge Kuhl observed, “[t]he shape of a coordinated proceeding is set” at its inception, when “the coordination motion judge determines that cases should be coordinated.” (Ex. C at 4).

Third, the district court applied an untenably narrow definition of “joint trial” by focusing on the likelihood that the thousands of claims joined to the Lipitor coordination would all be tried together. As the Seventh Circuit has explained, “[t]he question is not whether 100 or more plaintiffs answer a roll call in court, but whether the ‘claims’ advanced by 100 or more persons are **proposed to be tried jointly**.” *Bullard*, 535 F.3d at 762 (emphasis added). Thus, for example, “[a] trial of 10 exemplary plaintiffs, followed by application of issue or claim preclusion to 134 more plaintiffs without another trial, is one in which the claims of 100 or more persons are being tried jointly.” *Id.* Once again, such procedures are specifically contemplated by California law on coordination, which provides that the coordination judge may order “trial of one or more test cases, with appropriate provision being made concerning the res judicata or collateral estoppel effects of a judgment on plaintiffs and defendants.” *Ford Motor Warranty Cases*, 11 Cal. App. 5th 626, 644–45 (2017). Thus, in *Corber*, this Court observed that plaintiffs’ desire to coordinate to avoid “inconsistent judgments and conflicting determinations of liability” could “be addressed only through **some form of joint trial**.” 771 F.3d at 1223-24 (emphasis

added). The use of the identical language here warrants the same result.

II. ADDITIONAL CONSIDERATIONS SUPPORT REVIEW

Although the presence of an important issue concerning CAFA is the key factor in determining whether to grant review, “[t]he appellate court should also consider whether the record is sufficiently developed and the order sufficiently final to permit ‘intelligent review.’” *Coleman*, 627 F.3d at 1100. The “likelihood that the question will ‘evade effective review if left for consideration only after final judgment’” should be considered. *Id.* Finally, there is the “familiar inquiry into the balance of the harms.” *Id.* Each of these factors supports review here.

First, the record is fully developed, and the Remand Order is final. The parties have briefed the issue of mass action jurisdiction over four years and in multiple district courts.

Second, as this Court noted in *Coleman*, in a case such as this one, “[t]he probability that a state court or the Supreme Court will review the federal jurisdictional question after the merits of the case have been decided is almost non-existent.” *Id.* at 1101. If these cases are remanded, the state courts lack jurisdiction to decide whether CAFA jurisdiction was proper after final judgment. This appeal represents Pfizer’s only real opportunity to contest the district court’s erroneous construction of CAFA, and if permission to appeal is denied, there is a very high “likelihood that the question will ‘evade effective review.’” *Id.* at 1100.

Third, the balance of hardships favors granting appeal. Pfizer will be irreparably harmed absent review because, as just noted, it “will lose almost any chance of litigating this case in a federal forum if it is not allowed to appeal the remand order.” *Id.* at 1101. Conversely, the only harm Plaintiffs will experience if appeal is permitted is delay, which will be limited because CAFA appeals are expedited. *See* 28 U.S.C. § 1453(c). That delay presumably will not prejudice Plaintiffs, who have previously requested stays of litigation pending a decision on jurisdiction.

Thus, case-specific considerations also support review.

CONCLUSION

This Court should grant the Petition and reverse the Remand Order.

Dated: May 18, 2018

Respectfully submitted,

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* * *

*[Certification of Compliance and Certificate of Service
Omitted in the Printing of this Appendix]*

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APPENDIX L

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 18-80059

[Filed September 5, 2018]

IN RE: LIPITOR, JCCP 4761

ALIDA ADAMYAN, et al.,*
Plaintiffs-Respondents,

v.

PFIZER INC.,
Defendant-Petitioner.

*Petition for Permission to Appeal From United States
District Court, Central District of California,
Hon. Cormac J. Carney, District Judge,
Case No. 2:18-cv-01725-CJC (JPRx)*

PETITION FOR REHEARING *EN BANC*

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**Full list of Plaintiffs-Respondents set forth
in Addendum.*

CORPORATE DISCLOSURE STATEMENT

Defendant-Petitioner Pfizer Inc. hereby states that it has no parent corporation and there is no publicly held corporation that owns 10% or more of its stock.

Dated: September 5, 2018

/s/ Mark S. Cheffo

Mark S. Cheffo

*Attorney for Defendant-
Petitioner Pfizer Inc.*

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561 F.3d 945 (9th Cir. 2009). *passim*

TRW v. Andrews,
534 U.S. 19 (2001). 11

Watson v. United States,
552 U.S. 74 (2007). 10

STATUTES AND RULES

28 U.S.C. § 1332 1, 4, 10, 15

28 U.S.C. § 1346 15

28 U.S.C. § 1442 15

28 U.S.C. § 1452 15

28 U.S.C. § 1453 1

28 U.S.C. § 2679 15

Cal. Code. Civ. P. § 404.4 3, 13

Cal. R. Ct. 3.544 14

Fed. R. App. P. 25. 20

Fed. R. App. P. 35. 1

INTRODUCTION AND RULE 35(b)
STATEMENT

The panel decision conflicts with *Dart Cherokee Basin Operating Co. v. Owens*, 135 S.Ct. 547 (2014), because it erroneously denied review under the Class Action Fairness Act (CAFA) of a jurisdictional question of exceptional importance: Whether a state court’s *sua sponte* action may constitute a proposal for joint trial that gives rise to “mass action” removal under CAFA, 28 U.S.C. § 1332(d)(11). The district court answered in the negative, holding that the state courts’ requests to coordinate these claims by more than 4,200 products liability Plaintiffs categorically could not be a proposal. Remand Order, Dkt. 3-2 at 2. Pfizer petitioned for review under 28 U.S.C. § 1453(c), which the panel summarily denied. Rehearing *en banc* should be granted.

In *Dart*, the Supreme Court held that a summary denial of review of a CAFA question is reversible error if it can be attributed only to agreement with legal error by the district court. *Dart*, 135 S. Ct. at 555. Review of a CAFA remand order is warranted when it presents a CAFA question that is “important, unsettled, and recurrent” and will otherwise escape review. *Id.* (quotation omitted); accord *Coleman v. Estes Express Lines, Inc.*, 627 F.3d 1096, 1100 (9th Cir. 2010). Those criteria are indisputably satisfied here—this Court 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), and just last year granted review to decide it, but the appeal

was voluntarily dismissed. *See Alexander v. Bayer*, 17-55828. Three other courts of appeals have also identified or addressed the question, and with conflicting reasoning. *Scimone v. Carnival Corp.*, 720 F.3d 876, 881 (11th Cir. 2013); *Parson v. Johnson & Johnson*, 749 F.3d 879, 887 (10th Cir. 2014); *Anderson v. Bayer Corp.*, 610 F.3d 390, 394 (7th Cir. 2010); *Koral v. Boeing Co.*, 628 F.3d 945, 946 (7th Cir. 2011). And, as in *Dart*, the probability of later state-court review of federal jurisdiction “is almost non-existent.” *Coleman*, 627 F.3d at 1101.

Thus, the only potential ground for the panel’s summary denial of review is that it believed the remand order was correct. *See Dart*, 135 S. Ct. at 555. That determination cannot be squared with CAFA’s plain language, much less its pro-removal purpose, *see id.* at 554, which the district court ignored entirely. CAFA broadly confers mass action jurisdiction in the passive voice over claims that “are proposed to be tried jointly,” which has led several courts of appeals to acknowledge the possibility of removal based on *sua sponte* proposals by state courts. *See Tanoh*, 561 F.3d at 956; *Parson*, 749 F.3d at 887; *Scimone*, 720 F.3d at 881. The district court, however, followed the one decision to the contrary, which suggested in *dicta* that courts can issue only orders, not proposals. *Koral*, 628 F.3d at 946 (Posner, J.). That grudging interpretation ignores not only the many contexts in which orders can include proposals, but also that California law specifically empowers judges to issue a “request” to coordinate cases, which is just what the state court issued here. Cal. Code. Civ. P. § 404.4.

The district court's erroneous decision cannot sustain the panel's decision to deny review of this important question. *En banc* review should be granted.

BACKGROUND

Plaintiffs allege they developed type 2 diabetes due to their use of Lipitor, Pfizer's cholesterol-lowering medication. In the federal multi-district litigation established for such actions, the district court granted summary judgment as to all claims—more than 3,000 plaintiffs—due to lack of admissible expert testimony on causation, which the Fourth Circuit affirmed. *In re Lipitor Mktg., Sales Practices & Prod. Liab. Litig.*, 892 F.3d 624 (4th Cir. 2018). Here, these 4,200-some Plaintiffs seek to revisit that result in the largest parallel state-court proceeding to the federal Lipitor litigation.

A. First Removal Based on Plaintiffs' Requests to Coordinate

Although Plaintiffs hail from around the country, they all filed in California state court, where they took various actions to join their claims to the California coordinated proceeding for Lipitor actions, JCCP 4761. *See In re Pfizer*, 2017 WL 2257635, at *1-2 (C.D. Cal. May 23, 2017). In a previous *en banc* ruling, this Court held that a plaintiff request to join claims to a California coordinated proceeding—before “one judge,” “for all purposes,” and to avoid inconsistent judgments—was a proposal for joint trial within the meaning of CAFA. *Corber v. Xanodyne Pharms., Inc.*, 771 F.3d 1218 (9th Cir. 2014) (*en banc*); *accord In re Abbott Laboratories, Inc.*, 698 F.3d 568, 573 (7th Cir.

2012), *Atwell v. Bos. Scientific Corp.*, 740 F.3d 1160, 1163 (8th Cir. 2013); *Lester v. Exxon Mobil Corp.*, 879 F.3d 582, 588 (5th Cir. 2018). Plaintiffs used the same language here, and Pfizer accordingly removed these cases as a CAFA mass action—that is, a minimally diverse civil action in which the “claims of 100 or more persons are proposed to be tried jointly.” 28 U.S.C. § 1332(d)(11)(B)(i).

The district court (Carney, J.) agreed with Pfizer that, under *Corber*, a proposal to join the Lipitor coordination was a proposal for joint trial. *In re Pfizer*, 2017 WL 2257635, at *6. However, the district court remanded because it found less than 100 Plaintiffs made such a proposal by filing a formal petition for coordination. *Id.* at *1. Pfizer sought leave to appeal, which this Court denied. *Abrams v. Pfizer Inc.*, 17-80094 (9th Cir. Nov. 17, 2017).

B. Second Removal Based on *Sua Sponte* Requests to Coordinate

Following remand, these actions were assigned to a large number of state-court judges. Citing logistical problems caused by these individual assignments, the Supervising Civil Judge of the Los Angeles Superior Court (Weintraub, J.) entered a “Request” under California Code of Civil Procedure section 404.4 that 62 of these actions be added to the Lipitor coordination. *See* Request, Dkt. 3-2 at 47. The Lipitor coordination judge (Kuhl, J.) offered the parties an opportunity to respond to the Request. Plaintiffs then identified 81 additional cases that shared “common questions of fact and law with the cases identified in Judge Weintraub’s

request but were not included in that request.” *See Notice*, Dkt. 3-2 at 77.

Judge Kuhl granted Judge Weintraub’s Request and asked the parties to address whether the additional cases identified by Plaintiffs could also be joined. Order, Dkt. 3-2 at 87-88. The parties agreed that Judge Kuhl, “*sua sponte*, may add on th[e] coordinated proceeding cases that raise similar issues involving the drug Lipitor,” and Judge Kuhl added 88 cases on her initiative. *See* Order, Dkt. 3-2 at 96-97. Based on these proposals, Pfizer removed the entire Lipitor coordinated proceeding to federal court as a mass action.

C. Remand and Petition for Permission to Appeal

The district court again remanded the cases, holding that “a state court’s *sua sponte* order cannot ‘propose’ a joint trial to trigger mass action jurisdiction.” Remand Order, Dkt. 3-2 at 9. Without addressing the substance of the documents issued by the state courts, the district court held that a court order categorically cannot be a proposal because it is “a command or direction authoritatively given,” not “an offer to be accepted or rejected.” *Id.* (quotation omitted). In addition, the district court found that, while a request by Plaintiffs to coordinate cases for all purposes proposed joint trial, the requests by the state courts for the same thing did not. *Id.* at 10-11.

Pfizer timely sought leave to appeal. A two-member panel of this Court (Schroeder and Silverman, J.J.)

summarily denied review, citing *Coleman*, 627 F.3d 1096. Pfizer now seeks rehearing *en banc*.

REASONS FOR GRANTING REHEARING
EN BANC

“Discretion to review a remand order is not rudderless,” and a court of appeals “would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.” *Dart*, 135 S. Ct. at 555. This Court has held that a court of appeals should grant review of a CAFA question that “is ‘important, unsettled, and recurrent’” and cannot otherwise be reviewed. *Coleman*, 627 F.3d at 1100; *accord Dart*, 135 S. Ct. at 555 (quoting *College of Dental Surgeons of Puerto Rico v. Connecticut Gen. Life Ins. Co.*, 585 F.3d 33, 39 (1st Cir. 2009)); *BP America, Inc. v. Oklahoma ex rel. Edmondson*, 613 F.3d 1029, 1034-1035 (10th Cir. 2010). In *Dart*, the Supreme Court held that where those criteria are clearly met, a summary denial of review may be understood to be predicated on agreement with the district court’s resolution of the CAFA question. 135 S.Ct. at 555-56. Thus, if the district court’s resolution of that question is incorrect, the decision to deny review is reversible error. *Id.* at 555.

That is precisely what occurred here. The panel summarily denied review of an exceptionally important and otherwise unreviewable CAFA question that this Court granted review to decide only a year ago. Consistent with the Supreme Court’s holding in *Dart* and this Court’s previous recognition of the issue’s exceptional importance, the Court should grant rehearing *en banc*, accept the appeal, and reverse.

I. THIS CASE PRESENTS A CAFA ISSUE OF EXCEPTIONAL IMPORTANCE THAT WILL OTHERWISE ESCAPE REVIEW

Under the district court’s remand orders, federal jurisdiction exists over an “all purposes” coordinated proceeding if 100 plaintiffs seek to join it, but not if a court *sua sponte* adds cases that plaintiffs agree belong in the coordination. That result cannot be squared with CAFA’s plain text or its express purpose. If affirmed, it will invite plaintiffs to circumvent CAFA’s mass action provisions by refraining from their own requests to coordinate mass litigation, and waiting for courts to do it themselves of necessity—just as Plaintiffs did here by “identifying” cases for *sua sponte* coordination. The district court’s rulings authorizing this outcome thus embody the very “antiremoval presumption” that the Supreme Court has repeatedly directed courts to discard in CAFA cases, and which the district court ignored. *See Dart*, 135 S.Ct. at 554; *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013); *accord Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178, 1184 (9th Cir. 2015).

There can be no dispute that the district court’s ruling concerns an exceptionally important CAFA question. Only a year ago, this Court granted review to decide whether a *sua sponte* state-court action can serve as a “proposal” that triggers mass action removal, but the parties voluntarily dismissed the case before a decision. *See Alexander*, 17-55828. This case presents the opportunity to definitively resolve the question left open by *Alexander*. This Court first raised that question nearly a decade ago, observing that a “state

court's *sua sponte* joinder of claims might allow a defendant to remove separately filed actions to a federal court as a single 'mass action' under CAFA." *Tanoh*, 561 F.3d at 956. And in 2015, it noted that "[i]t is possible that a proposal by a state court for a joint trial would qualify as a 'proposal.'" *Briggs*, 796 F.3d at 1048.

In addition to this Court, three other courts of appeals have identified or addressed this important CAFA issue. The Eleventh Circuit has noted that CAFA's plenary grant of mass action jurisdiction "must be referring to a proposal made by the plaintiff, by the defendant, or perhaps by the state court acting *sua sponte*." *Scimone*, 720 F.3d at 881. And the Tenth Circuit, like this Court, has observed that CAFA "does not specify who can make such a proposal—the plaintiffs only, or the district court through an order of consolidation or coordination." *Parson*, 749 F.3d at 887. The Seventh Circuit also suggested that "perhaps the state court" could "propose to try . . . cases jointly," and thus give rise to mass action removal. *Anderson v. Bayer Corp.*, 610 F.3d 390, 394 (7th Cir. 2010).

In dicta in a subsequent decision, the Seventh Circuit, per Judge Posner, "assume[d] (answering a question left open in the *Anderson* case, . . . and in *Tanoh* . . .) that the state court's deciding on its own initiative to conduct a joint trial would not enable removal." *Koral*, 628 F.3d at 946–47. But the issue was not presented in *Koral*, and the fact that the Seventh Circuit's *dicta* is being relied upon by district courts in this Circuit only heightens the need for appellate guidance.

This appeal is Pfizer's only opportunity to obtain review of this important question. As in *Dart*, if the "remand order remains undisturbed," the case will "leave the ambit of the federal courts for good, precluding any other opportunity for [the defendant] to vindicate its claimed legal entitlement [under CAFA] . . . to have a federal tribunal adjudicate the merits." 135 S.Ct. at 555-56 (quoting *BP America*, 613 F.3d at 1035). Rehearing *en banc* is therefore warranted to preserve Pfizer's only opportunity for review.

II. THE PANEL'S DENIAL OF REVIEW IS CONTRARY TO *DART*

Because the criteria for granting review of the remand order were present, the only explanation for the panel's summary denial of review is agreement with the district court's resolution of the question. For the reasons set forth below, that determination was legal error, and thus the panel's denial of review was an abuse of discretion under *Dart*. If the district court's determination is not reviewed, it will sanction a perverse and judicially inefficient rule, where Plaintiffs may evade mass action removal simply by leaving to state courts the work of creating the multi-plaintiff interstate litigations over which Congress sought to confer federal jurisdiction. The Court should therefore grant rehearing *en banc*.

A. CAFA's Plain Language and Purpose Support Removal Based on *Sua Sponte* State-Court Proposals

CAFA's plain language and purpose indicate that Congress contemplated mass action removal based on

state-court proposals for joint trial. “[I]n interpreting a statute a court should turn first to one, cardinal canon before all others”—it “must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). CAFA defines “mass action” to include “any” case in which 100 or more claims “are proposed to be tried jointly.” 28 U.S.C. § 1332(d)(11)(B)(i) (emphasis added). The breadth of this grant of jurisdiction is apparent from the use of both the capacious label “any,” see *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 93 (2006), as well as the passive “are proposed to be tried jointly,” which evinces an “agnosticism . . . about who does the [prescribed action].” *Watson v. United States*, 552 U.S. 74, 81 (2007). The passive voice indicates that “[i]t is whether something happened—not how or why it happened—that matters.” *Dean v. United States*, 556 U.S. 568, 572 (2009).

The significance of that agnosticism is further clarified by the one limit Congress *did* place on the proposal: it cannot come from the defendant. 28 U.S.C. § 1332(d)(11)(B)(ii)(II). Having specifically excepted only one source of proposal as a removal trigger, Congress logically left all other sources available, including proposals by state courts. “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acted intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotation omitted). To read in another unwritten exception to the mass action provision would do

violence to CAFA's plain language and subvert its pro-removal purpose. *See Jordan*, 781 F.3d at 1184. "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *TRW v. Andrews*, 534 U.S. 19, 28 (2001). If a statute already contains an explicit exception, "the familiar judicial *maxim expressio unius est exclusio alterius* counsels against finding additional, implied, exceptions." *Syed v. M-I, LLC*, 853 F.3d 492, 501 (9th Cir. 2017). The statute "would have to be rewritten in order to carry [Plaintiffs'] meaning." *Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1028 (9th Cir. 2010).

This Court has previously held with respect to the mass action provision that "[w]hen the statute's language is plain," it must be enforced according to its terms, provided "the disposition required by the text is not absurd." *Tanoh*, 561 F.3d at 953 (quotation omitted). There is no such absurdity here. To the contrary, CAFA quite sensibly allows removal of large, interstate joint-trial proceedings, whether proposed by plaintiffs or by the court. At the same time, CAFA understandably disallows removal based on a defendant's self-serving proposal, lest the plaintiffs become "servants of defendants' litigation strategy." *Briggs*, 796 F.3d at 1049; *accord Tanoh*, 561 F.3d at 954. The Seventh Circuit's *dicta* in *Koral*, which narrowly construed the statute's purpose as "prevent[ing] plaintiffs from trying to circumvent the Class Action Fairness Act by bringing a class action as a mass action," 628 F.3d at 947, are flatly inconsistent with the Supreme Court's broad view of CAFA's

purpose as “ensuring ‘Federal court consideration of interstate cases of national importance.’” *Knowles*, 133 S. Ct. at 1350 (quotation omitted). The district court’s reliance on *Koral* conflicts with both Ninth Circuit and Supreme Court precedent.

B. The District Court Erred in Categorically Holding That a Court Cannot Make a Proposal

The district court held that a court’s order can never be a proposal because an order is “a command or direction authoritatively given,” not “an offer to be accepted or rejected.” Remand Order, Dkt. 3-2 at 9 (quoting Black’s Law Dictionary online (2nd ed.)). At the outset, under CAFA’s liberal construction, *see Dart*, 135 S.Ct. at 554, any difference between an order for joint trial and a proposal for joint trial should favor jurisdiction, not cut against it. Indeed, the federal interest in adjudicating large interstate proceedings is even more acute where joint trial is *compelled* by the court than where it is merely *requested*.

Moreover, the district court reached this categorical conclusion without evaluating the actual documents issued by the California Superior Court that led to removal. This too was contrary to CAFA’s liberal construction, which this Court has instructed requires an evaluation of “the real substance” of an alleged proposal under the “totality of the circumstances.” *Corber*, 771 F.3d at 1220, 1225. Had the district court “carefully assess[ed] ... whether, in language or substance,” claims have been proposed to be tried jointly, *id.* at 1223, it would readily have found that the California Superior Court made “proposals” here.

Indeed, the *sua sponte* action of Judge Weintraub was not an order at all, but was in fact explicitly captioned as a “Request.” Dkt. 3-2 at 47. Contrary to the district court’s categorical holding that courts can issue only orders, not proposals, California procedure in fact specifically allows “[t]he presiding judge of any court” to “*request* the judge assigned to hear the coordinated actions for an order coordinating the action.” *See id.* (quoting Cal. Code. Civ. P. § 404.4) (emphasis added). If Judge Weintraub’s “request” was not a “proposal,” it is unclear what is.

Likewise, “the real substance” of Judge Kuhl’s orders shows that they too were proposals. *Corber*, 771 F.3d at 1223. That is, Judge Kuhl *suggested* that adding the cases at issue was warranted, and then ordered the parties to respond with any opposition (which Plaintiffs declined to offer). *See supra* at 4-5. This too constitutes a proposal under this Court’s precedents—an offering “for consideration, discussion, acceptance, or adoption.” *Briggs*, 796 F.3d at 1048 (quotation omitted). And as with Judge Weintraub’s Request, California law specifically contemplates Judge Kuhl’s approach, *see* Cal. R. Ct. 3.544, again refuting the district court’s conclusion that courts cannot propose.

The only case cited by the district court that rejected removal based on a state-court proposal is distinguishable on these very grounds. In *Alexander v. Bayer Corp.*, 2016 WL 6678917 (C.D. Cal. Nov. 14, 2016), as to which this Court granted review, the district court rejected removal because the state court “did not propose consolidation and then ask for the

parties' thoughts or responses." *Id.* at *2. Here, in contrast, that is precisely what happened: the supervising judge issued a "Request" to Judge Kuhl that she add 62 cases, and Judge Kuhl provided the parties with an opportunity to object. Plaintiffs not only failed to object, they affirmatively identified other cases that Judge Kuhl should coordinate. The totality of the circumstances thus establishes that these orders also constituted proposals.

Finally, there is no merit to any suggestion that the "master of the complaint" principle precludes removal here. That principle applies where, as in *Briggs* and *Corber*, it is the allegations of the plaintiffs' pleadings that support removal. *Briggs*, 796 F.3d at 1049 (plaintiffs were "masters of their complaints"); *Corber*, 771 F.3d at 1223 (plaintiffs were "masters of their petitions for coordination"). It does not, however, stand for a generalized principle of jurisdictional autonomy for plaintiffs—indeed, Congress has often conferred federal jurisdiction based on actions other than the plaintiffs'. *See, e.g.*, 28 U.S.C. § 1442 (federal officer removal); 28 U.S.C. § 2679(d)(1) (Westfall Act removal); 28 U.S.C. § 1452 (bankruptcy removal); 28 U.S.C. § 1346(a)(2) (federal contract claims removal). Congress did so here as well when it conferred mass action jurisdiction not over cases that "plaintiffs propose to be tried jointly," but cases that "are proposed to be tried jointly." 28 U.S.C. § 1332(d)(11). Indeed, a major purpose of CAFA was to prevent plaintiffs from keeping important interstate cases out of federal court through artful pleading. *See Knowles*, 133 S. Ct. at 1350.

C. A Proposal to Join a Coordinated Proceeding Is a Proposal for Joint Trial, No Matter the Source

Although the district court previously held that a request to join the Lipitor coordination was a proposal for joint trial, *In re Pfizer*, 2017 WL 2257635, at *4-5, it held here that the same request by the state court was not. *See* Remand Order, Dkt. 3-2, at 10-11. The district court so held based on statements by Judge Kuhl that a single joint trial of thousands of Plaintiffs' claims was unlikely. *Id.* This holding is contrary to the record, CAFA's plain language, the unanimous decisions of the courts of appeals, and California law. Were it the basis for the panel's order denying review, it would equally warrant *en banc* review.

First, the district court erred by focusing on whether joint trial "actually ensues" rather than "*the statutory question [of] whether one has been proposed.*" *Bullard v. Burlington N. Santa Fe Ry. Co.*, 535 F.3d 759, 762 (7th Cir. 2008) (emphasis added). This Court rejected the same position in *Corber*, where the plaintiffs contended they had not proposed joint trial because joint trial was unlikely to occur. 771 F.3d at 1224 n.5. As this Court explained, "[U]nder the plain language of CAFA, we must determine whether Plaintiffs *proposed* a joint trial, not whether one will occur at some future date. That a judge has discretion to limit coordination to pretrial matters does not weigh on whether Plaintiffs proposed a joint trial." *Id.* As the Fifth Circuit recently explained, "[w]hether CAFA applies does not and cannot depend on how a state trial court actually manages various claims within a larger

action,” since CAFA’s focus is “the consolidation that is proposed.” *Lester*, 879 F.3d at 587. Thus, how these cases may ultimately be litigated is immaterial to the jurisdictional effect of the state courts’ proposals.

Second, the district court erred by applying an untenably narrow definition of “joint trial.” As the Seventh Circuit has explained, “[t]he question is not whether 100 or more plaintiffs answer a roll call in court, but whether the ‘claims’ advanced by 100 or more persons are *proposed to be tried jointly*.” *Bullard*, 535 F.3d at 762 (emphasis added). Thus, “[a] trial of 10 exemplary plaintiffs, followed by application of issue or claim preclusion to 134 more plaintiffs without another trial, is one in which the claims of 100 or more persons are being tried jointly.” *Id.*; see also *Ford Motor Warranty Cases*, 11 Cal. App. 5th 626, 644–45 (2017) (noting that California law authorizes “trial of one or more test cases, with appropriate provision being made concerning the res judicata or collateral estoppel effects of a judgment”). This Court also adopted this broad understanding of joint trial in *Corber*, observing that a request to coordinate to avoid “inconsistent judgments and conflicting determinations of liability” could “be addressed only through *some form of joint trial*.” 771 F.3d at 1223-24 (emphasis added).

Third, the district court erred as to who made the proposals. The district court concerned itself with certain of Judge Kuhl’s statements, ignoring that the first operative proposal was the “Request” issued by Judge Weintraub. Even if Judge Kuhl’s statements about what might occur mattered (and as stated above they do not), they are irrelevant to Judge Weintraub’s

proposal to add cases to the Lipitor coordination. Under both *Corber* and the district court's own prior ruling, Judge Weintraub's proposal to join cases to that "all purposes" proceeding was a proposal for joint trial. See *Corber*, 771 F.3d at 1223; *In re Pfizer*, 2017 WL 2257635, at *5.

CONCLUSION

This Court should grant rehearing *en banc*, accept the appeal, and reverse.

Dated: September 5, 2018

Respectfully submitted,

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* * *

*[Certificate of Compliance and Certificate of Service
Omitted in the Printing of this Appendix]*

APPENDIX M

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

CASE NO. JCCP 4761

[Filed November 17, 2017]

Coordinated Proceeding)
Special Title (Rule 3.550))
)
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 against Pfizer, Inc., et al. (hereinafter “Pfizer Defendants”). All coordinated cases alleged that the Plaintiffs took the drug Lipitor, and that in consequence they developed Type II diabetes.

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

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

Whereas the cases listed on Attachment A hereto are currently pending in the Los Angeles Superior Court after remand from the Federal District Court for

the Central District of California. In each case Plaintiffs brought suit against the Pfizer Defendants alleging that the drug Lipitor caused their Type II diabetes. Such cases currently are assigned to the Honorable Carolyn B. Kuhl, but they have not been added on to the Lipitor JCCP because no party has requested that they be classified as add-on cases pursuant to California Rules of Court, rule 3.544.

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

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

Whereas each of the cases listed in Attachment A is a complex case as defined in California Rules of Court, rule 3.400. Moreover, each case listed in Attachment A is brought by a Plaintiff or Plaintiffs against the Pfizer Defendants alleging that the drug Lipitor caused them to develop Type II diabetes. In order meet the goals of California Rules of Court, rule 3.400(a) – avoiding unnecessary burdens on the Court, reducing litigation costs, moving the cases toward resolution expeditiously, and improving the quality of decision making for the parties, counsel and the Court – these

cases, which share common facts and issues of law, should be joined to the Lipitor JCCP.

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

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

Dated: November 17, 2017

/s/Debre K. Weintraub
Honorable Debre K. Weintraub
Supervising Judge of the Civil Departments

- ATTACHMENT A -

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

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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

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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

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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

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

APPENDIX N

**SUPERIOR COURT OF CALIFORNIA, COUNTY
OF LOS ANGELES**

JCCP4761

[Filed December 15, 2017]

Coordination Proceeding)
Special Title Rule (3.550))
Lipitor Cases)
_____)

HONORABLE CAROLYN B. KUHL JUDGE

HONORABLE JUDGE PRO TEM
ADD-ON

NONE Deputy Sheriff

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J. MANRIQUE DEPUTY CLERK
E. MUNOZ, C.A.

ELECTRONIC RECORDING MONITOR

NOT REPORTED Reporter

Plaintiff Counsel
Defendant Counsel

NO APPEARANCES

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 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.

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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 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

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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

Sherri R. Carter, Executive Officer/Clerk

By: /s/J. Manrique, Deputy Clerk
J. Manrique

MINUTES ENTERED 12/15/17 COUNTY CLERK

- ATTACHMENT A -

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
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