No. 13-56310

In the United States Court of Appeals for the Ninth Circuit

JUDITH ROMO, ET AL.,

Plaintiffs-Appellees,

v.

TEVA PHARMACEUTICALS USA, INC.,

Defendant-Appellant.

Appeal from the Judgment of the U.S. District Court
for the Central District of California
Honorable Philip S. Gutierrez, Case No. 5:12-cv-02036-PSG-E

PLAINTIFFS-APPELLEES' SUPPLEMENTAL BRIEF

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It is well settled that plaintiffs are "masters" of their complaint. They may structure litigation to avoid federal jurisdiction under the "mass action" provision of the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat 4 (2005), which confers federal jurisdiction over 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) (emphasis added). *See Tanoh v. Dow Chem. Corp.*, 561 F.3d 945, 953 (9th Cir. 2009); *Scimone v. Carnival Corp.*, 720 F.3d 876, 885 (11th Cir. 2013) ("there is no indication that Congress's purpose in enacting CAFA was to strip plaintiffs of their ordinary role as masters of their complaint and allow defendants to treat separately filed actions as one action regardless of plaintiffs' choice"); *cf. Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345, 1350 (2013). Plaintiffs did so here by including fewer than one hundred plaintiffs in this propoxyphene lawsuit. *Teague v. Johnson & Johnson*, No. 13-6287, slip op. at 18 (10th Cir. Apr. 11, 2014) (adopting "well-established principle . . . that 'state court plaintiffs . . . may bring separate cases with fewer than 100 plaintiffs each to avoid federal jurisdiction under CAFA'") (quoting *Atwell v. Boston Scientific Corp.*, 740 F.3d 1160, 1162-63 (8th Cir. 2013)); *Scimone*, 720 F.3d at 884. Plaintiffs have not proposed or sought a joint trial with other propoxyphene claimants.

The district court and a divided panel of this Court ruled, correctly, that Plaintiffs' petition for coordination under California Code of Civil Procedure §404

was not—given its "obvious focus [] on pretrial proceedings," *Romo v. Teva Pharms. USA, Inc.*, 731 F.3d 918, 923 (9th Cir. 2013)—a proposal that these actions be tried jointly and ordered remand to state court.[1] This *en banc* Court should reach the same conclusion.

This appeal raises two distinct, though interrelated, questions: Does the filing of a petition for coordination under §404, by itself, constitute a request for joint trial sufficient to trigger federal jurisdiction under CAFA's mass action provision? If not, did Plaintiffs include any language in their petition that constitutes such a request? Because the answer to both questions is clearly "no," this *en banc* Court should affirm the district court's remand order.

ARGUMENT

I. THE FILING OF A §404 PETITION FOR COORDINATION IS NOT, BY ITSELF, A PROPOSAL THAT PLAINTIFFS' CLAIMS BE TRIED JOINTLY WITHIN THE MEANING OF CAFA.

A. CCP §404 is a Case Management Procedure That Promotes Judicial Consistency and Efficiency By Placing Related "Complex" Cases Before a Single Jurist; Requests for Joint Trial Are Governed By a Separate Provision.

As Plaintiffs have explained, a §404 petition for coordination is a request to the California Judicial Council that related, "complex" cases filed in different superior courts across California be placed before a single coordination judge, so

[1] At least seven other federal district court judges have agreed. *See* Addendum.

that this judge may efficiently manage the litigation. Plaintiffs-Appellees Ans. Br. 15-26. The Judicial Council does not decide how the coordinated cases will proceed, leaving those decisions for the coordination judge. Cal. Rule of Court 3.541. Coordinated cases need not be tried jointly. *McGhan Med. Corp. v. Superior Court*, 11 Cal. App. 4th 804, 813 (Cal. Ct. App. 1992).

If parties in coordinated proceedings desire a joint trial, they may request one pursuant to CCP §1048(a), the California equivalent of Federal Rule of Civil Procedure 42, which authorizes a court to "order a joint hearing or trial of any or all the matters in issue in" "actions involving a common question of law or fact." CCP §1048(a). Plaintiffs have not sought a joint trial under §1048(a).

Defendants contend that a request for §404 coordination, because it is "for all purposes," including to avoid "inconsistent rulings, orders, or judgments," *see* CCP §404.1, is necessarily a proposal that claims be tried jointly. Teva Opening Br. 11-12, 25-29; Xanodyne Corrected Br. 22-24, 33-38. But California case law, and two leading treatises on California procedure, reject that crabbed understanding:

> Though statutory reference is made to one judge hearing all of the actions for all purposes . . . *coordination does not mean that all the cases will be tried in one forum or that trial of the cases need be unified.*

Leslie M. Larsen *et al.*, 1A *Cal. Jur*. 3d Actions §192 (emphasis added) (citing *McGhan Medical*); *see also* 4 Witkin, *Cal. Proc*. 5th Plead, §353, p. 484 (2008)

("Coordination does not require that the cases be tried in one forum or even that the ultimate trial be unified.") (also citing *McGhan Medical*).

In the leading case, *McGhan Medical*, 11 Cal. App. 4th 804, the judge assigned to consider a §404 petition denied coordination of numerous suits seeking damages for personal injuries sustained by women who received allegedly defective breast implants. *Id.* at 807-08. The judge believed that pre-trial coordination, to facilitate discovery and case management, would be beneficial, but thought a joint trial would be unwieldy. *See id.* at 812-13. Believing that coordination under §404 must be "for all purposes," the trial court denied the §404 petition.

The court of appeal reversed. It acknowledged that §404 speaks of coordination before a single judge "for all purposes." *Id.* at 811-12. But, the court observed, §404.7 "gives the Judicial Council broad discretion to adopt procedures which will foster the goals of coordination," *id.* at 812 (citing *Keenan v. Superior Court*, 111 Cal. App. 3d 336, 341 (Cal. Ct. App. 1980)), and the rules adopted by the Council "are flexible indeed." *Id.* The appellate court concluded that "the intent of the Judicial Council [is] to vest in the coordinating judge whatever great breadth of discretion may be necessary and appropriate to ease the transition through the judicial system of the logjam of cases which gives rise to coordination." *Id.*

The court of appeal expressly considered, and rejected, the argument that coordination under §404 requires joint trial:

> That these cases may be coordinated does not mean they need be tried in one forum; it does not even indicate that ultimate trial of the cases need be unified. The trial judge in his order extolled the benefits of "the establishment of a steering committee wherein those courts would cooperate to facilitate discovery procedures and case management." We see no reason why coordination need interfere with this vision of efficiency.

Id. at 813. Thus, contrary to Defendants' submission, Plaintiffs' filing of a §404 petition does not itself constitute a proposal that these cases be tried jointly.

Defendants' related suggestion that no California procedure even permits coordination solely for pre-trial purposes is wrong for the same reason.[2] Section 404 clearly allows coordination for pretrial purposes, *see id.*, which is precisely why Plaintiffs invoked it. A coordination judge may, *e.g.*, "establish a timetable for filing motions other than discovery motions," "establish a schedule for discovery," and establish "a method and schedule for the submission of preliminary legal questions that might serve to expedite the disposition of the coordinated actions." Cal. Rules of Court 3.541(a)(2), (3), (4).

[2] Defendants cite a law student note, which states that California "do[es] not permit *consolidation* for pretrial purposes." S. Amy Spencer, *Developments in the Law: The Class Action Fairness Act of 2005*, 39 Loy. L.A. L. Rev. 1067, 1096 (2006) (emphasis added). The article never discusses *coordination* pursuant to CCP §404, *see id.*, but rather *consolidation* under CCP §1048, *see id.* at 1096 n.2, which is not at issue here. *See supra* p. 3.

Not a single authority cited by Defendants contradicts this understanding of §404—an understanding uniformly shared by federal district court judges with longstanding experience in California civil procedure. *Romo*, 731 F.3d at 924. Rather, Defendants' authorities simply recognize that, under §404, the coordination judge has considerable power to manage the coordinated cases, *see* Cal. Rules of Court 3.540(b) & 3.541(b); Eric E. Younger & Donald E. Bradley, *Younger on Cal. Motions* §22:14 (2d ed.) ("California Rules of Court . . . empower a 'coordination judge' . . . to tailor-make procedures in complex cases."), and this includes the authority to order consolidation for joint trial if appropriate. *See McGhan Medical*, 11 Cal. App. 4th at 813; Cal. Rule of Court 3.541(b)(2); CCP §1048(a).[3]

Defendants' authorities in fact *confirm* that the filing of a §404 petition is not itself a request that the cases be tried jointly. California Rule of Court 3.541(b)(2), for instance, provides that, in "complex" cases, a coordination judge "may" order "a trial"; while subsection (b)(3) provides that the coordination judge

[3] Defendants quote both the Younger and Witkin treatises for the proposition that §404 coordination is similar to consolidation under §1048. Teva Pet. 5 (citing *Younger on Cal. Motions* §22:14 and 4 Witkin, *Cal. Proc.*, Pleading, §352).Younger, however, in the very section Defendants cite, expressly disclaims any "detail[ed]" consideration of coordination under §404. Witkin, by contrast, directly addresses the issue at hand, and agrees with Plaintiffs: "Coordination does not require that the cases be tried in one forum or even that the ultimate trial be unified." 4 Witkin, *Cal. Proc*. 5th Plead, §353, p. 484 (citing *McGhan Medical*, 11 Cal. App. 4th at 813).

"may" "[o]rder any issue or defense to be tried separately . . . ." Rule 3.541 thus establishes that a coordination judge has the discretionary authority to order that claims be tried jointly in appropriate cases; he is not required to do so.

Consider, also, CCP §403, which governs "non-complex" case coordination and specifically provides that "[t]he court to which a case is transferred may order the cases consolidated for trial pursuant to §1048 without any further motion or hearing." By contrast, §404, governing "complex" cases, has no comparable language. At a minimum, this suggests that a judge must afford the parties notice and an opportunity to be heard before ordering complex cases consolidated for trial pursuant to §1048. The critical point for this appeal, however, is that these procedural rules *reinforce* Plaintiffs' argument that the filing of a §404 petition does not itself constitute a proposal for joint trial. Either the plaintiffs or the court must take a separate, second step—respectively, either requesting or ordering consolidation for trial pursuant to §1048(a).

For all these reasons, Plaintiffs' filing of a §404 petition is not itself a proposal that these cases be tried jointly.

B. The Phrase "Tried Jointly" in 28 U.S.C. §1332(d)(11)(B)(i) Means Just That.

Perhaps recognizing that their reading of §404 cannot be squared with California law and precedent, Defendants and their *amici* try to argue that the phrase "tried jointly" in CAFA does not strictly mean a joint trial. Relying on the

dictionary definition of the word "jointly," *amicus* Washington Legal Foundation ("WLF") argues that "[i]t is sufficient if all trials are being conducted 'in conjunction' with one another." WLF Amicus Br. 10-11. Defendants Teva and Xanodyne would go even further and interpret "tried jointly" to mean "formal judicial examination of issues, facts, or questions of law in conjunction with one another." Teva Opening Br. 20; Xanodyne Corrected Br. 29. This definition is so sweeping it encompasses all phases of litigation; for what part of litigation is *not* a formal judicial examination of issues, facts, or questions of law?

Courts, of course, do not "confine [themselves] to examining a particular statutory provision in isolation" but consider how statutory language fits into "the overall statutory scheme." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-33 (2000); *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to . . . the language and design of the statute as a whole."). CAFA's definition of a mass action expressly excludes claims that are "consolidated or coordinated solely for pretrial proceedings." 28 U.S.C. §1332(d)(11)(B)(ii)(IV). By including this provision, Congress made clear that it intended the jurisdictional trigger for mass actions to be a proposal for a joint trial—not, as Defendants would have it, a "judicial examination of issues, facts, or questions of law in conjunction with one another." Teva Opening Br. 20; Xanodyne Corrected Br. 29.

To be sure, claims can be "tried jointly" without one hundred or more plaintiffs sitting in the courtroom. The touchstone for a joint trial under CAFA, as courts have recognized, is that the trial will have binding or preclusive effect on the claims of one hundred or more plaintiffs. *Bullard v. Burlington N. Santa Fe Ry.*, 535 F.3d 759, 762 (7th Cir. 2008) (exemplary trial, "followed by application of issue or claim preclusion to 134 more plaintiffs without another trial," is joint trial under CAFA); *Koral v. Boeing Co.*, 628 F.3d 945, 947 (7th Cir. 2011) (bellwether trial where liability is "determined with binding effect" would be joint trial); *see also Tanoh*, 561 F.3d at 954 (mass action provision applies only to "actions in which the trial itself would address the claims of at least one hundred plaintiffs").

Contrary to Judge Gould's dissent, *Romo*, 731 F.3d at 928, reading "tried jointly" to mean a trial that binds one hundred or more plaintiffs would not render CAFA's provision regarding coordination "solely for pretrial proceedings" superfluous. As Defendants' and WLF's arguments demonstrate, that provision serves to resolve any possible ambiguity in the meaning of "tried jointly." By contrast, it is Defendants' expansive reading of that phrase that would deny the statutory language concerning pretrial proceedings any office.

Defendants' unrealistically broad reading of the phrase "tried jointly" also violates the rule that removal statutes are to be strictly construed with a presumption against removal. *Id.* at 921; *Tanoh*, 561 F.3d at 953. Thus, even if the

scope of the mass action provision were somehow unclear, that rule should lead the Court to reject Defendants' outsized reading of what constitutes a mass action under CAFA.

II. NONE OF PLAINTIFFS' WRITTEN SUBMISSIONS REQUESTED A JOINT TRIAL.

A. Plaintiffs' Recitation of the Language in §404 Concerning "Inconsistent Judgments" or "For All Purposes" Did Not Constitute a Request for Joint Trial.

Nothing Plaintiffs wrote in their petition for coordination, or in any other submission to the state courts, proposed a joint trial. The petition is simply silent on the question of trial, recognizing that that is properly a question for the coordination judge, not the Judicial Council. Instead, the petition's "obvious focus was on pretrial proceedings." *Romo*, 731 F.3d at 923.

The phrases from the petition that Defendants and the panel dissent latch onto—*e.g.*, "for all purposes" and "inconsistent judgments"—are taken directly from the text of §404.1. As both the district court and the panel majority recognized, and as *McGahn Medical* establishes, these phrases are entirely consistent with a request for coordination that does not necessitate a joint trial. As the panel observed, "Defendants' reliance on the plaintiffs' reference to inconsistent judgments is on shaky ground because judgment may be rendered outside the confines of a trial." *Romo*, 731 F.3d at 923. (citing default judgment and summary judgment as examples).

Plaintiffs' use of the phrase "conflicting determinations of liability" does not alter this conclusion. Liability is simply one issue which a court may address through pretrial motions to dismiss or for summary judgment. Coordination reduces the risk of conflicting determinations of liability in such pretrial proceedings.

Defendants suggest that Plaintiffs' petition for coordination in this case bears striking resemblance to the petition at issue in *In re Abbott Labs., Inc.*, 698 F.3d 568 (7th Cir. 2012). That is wishful thinking. The *Abbott* plaintiffs requested *consolidation* of their cases "through trial" and "not solely for pretrial proceedings." *Id.* at 573. Similarly, in *Atwell v. Boston Scientific*, plaintiffs moved to have multiple "transvaginal mesh cases assigned to a single judge *for both pretrial and trial matters*." 740 F.3d at 1164 (emphasis in original).[4] There is no such explicit language in Plaintiffs' petition.

Plaintiffs' petition for coordination closely tracked—and utilized—the language of §404.1. Nothing in Plaintiffs' petition or any other state court filing proposed a joint trial.

[4] The Eighth Circuit found even this language insufficient to "explicitly disclose" a basis for federal jurisdiction under CAFA. *Id.* at 1162. The court instead based its determination that plaintiffs had requested a joint trial on oral representations made by plaintiffs' counsel at the motion hearing. *Id.* at 1165-66.

B. Bellwether Trials, Unless Binding on Other Plaintiffs, Are Not Joint Trials Under CAFA.

Judge Gould, in his dissent, argued that a joint trial may "'take different forms as long as the plaintiffs' claims are being determined jointly.'" *Romo*, 731 F.3d at 925 (quoting *Abbott*, 698 F.3d at 573). He found a request for joint trial implicit in the coordination petition's references to "the danger of inconsistent judgments and conflicting determinations of liability." *Id.* at 927.[5] To avoid this danger, he concluded, plaintiffs must be seeking a joint trial or "bellwether trials, which amounts to the same thing." *Id.* at 928.

Plaintiffs, in briefing remand, did mention the possibility of bellwether trials in these cases, even though they had not proposed such trials in state court prior to removal. But they strenuously disagree that such trials are the equivalent of a joint trial for purposes of the mass action provision. Bellwether trials normally do not bind any parties other than the bellwether plaintiffs and defendants. *See Principles of the Law of Aggregate Litigation* §2.02 (comment) (2010) (bellwether trials are "not formally binding on other claimants or respondents"); Eldon Fallon, J. Grabill, & R. Wynne, *Bellwether Trials in Multidistrict Litigation*, 82 Tulane L.

[5] The notion that a joint trial proposal may be "implicit" comes from *Bullard*, where more than 100 plaintiffs joined in a single complaint. The Seventh Circuit decided that, under Illinois law, "one complaint implicitly proposes one trial" and found a mass action. 535 F.3d at 762. Plaintiffs dispute that CAFA permits a comparable implication to be drawn from phrases pulled out of their coordination petition.

Rev. 2323, 2331 n.27 (2008). They, therefore, cannot be said to "determine" the claims of other plaintiffs. *See* RE00002, *Corber v. McKesson Corp.*, No. 2:12-cv-00986-PSG-E (C.D. Cal. Mar. 12, 2013) ("Plaintiffs . . . have not requested that any bellwether trials that may occur have preclusive effect. . . . [A] bellwether trial, without more, does not trigger the mass action provision of CAFA.").

Judge Gould wrongly assumes that bellwether trials will necessarily have a preclusive effect on other plaintiffs.[6] Due process prohibits that result, as the Supreme Court has repeatedly observed. *Blonder-Tongue Labs., Inc. v. Univ. of Illinois Found.*, 402 U.S. 313, 329 (1971) ("Due process prohibits estopping [litigants who never appeared in a prior action] despite one or more existing adjudications of the identical issue which stand squarely against their position."); *Taylor v. Sturgell*, 553 U.S. 880, 884 (2008) (rejecting theory of "virtual representation" and reaffirming general principle "that one is not bound by a judgment in personam in a litigation in which he is not designated as a party")

[6] *Abbott*, on which Judge Gould relied, and *Atwell*, which also follows *Abbott*, rest on similar assumptions. 698 F.3d at 573; 740 F.3d at 1165. By contrast, earlier Seventh Circuit rulings declared only that bellwether trials that were binding on other plaintiffs would constitute joint trials. *See Koral*, 628 F.3d at 947; *Bullard*, 535 F.3d at 762.

(internal quotation omitted); *Smith v. Bayer*, 131 S.Ct. 2368, 2379 (2011) (general rule that "only parties can be bound by prior judgments").[7]

To be sure, non-bellwether plaintiffs (and defendants) could agree to be bound by the determination of issues in a bellwether trial, 1 *Restatement (Second) of Judgments* §40, p. 390 (1980), but no such agreement has been entered here, nor was it proposed—even implicitly—in the petition for coordination. Absent such an agreement, a bellwether trial cannot conclusively determine the claims of non-bellwether plaintiffs.

Thus, even if Judge Gould were correct in his conclusion that Plaintiffs' petition for coordination implicitly proposed bellwether trials—which Plaintiffs dispute—it would not constitute a proposal to jointly try the claims of one hundred or more plaintiffs for purposes of federal jurisdiction under CAFA.

III. THE SUPREME COURT'S RECENT DECISION IN *HOOD* STRONGLY SUPPORTS REMAND HERE.

The Supreme Court's recent decision in *Mississippi ex rel. Hood v. AU Optronics Corp.*, 134 S.Ct. 736 (2014), should resolve any doubts about the correctness of the panel's decision. In *Hood*, the Court held that only "persons who

[7] The coordination judge might decide to apply legal rulings from a bellwether trial to subsequent cases, but only on the basis of *stare decisis*, not *res judicata*. *Smith*, 131 S.Ct. at 2381 ("our legal system generally relies on principles of *stare decisis* and comity among courts to mitigate the sometimes substantial costs of similar litigation brought by different plaintiffs."). Subsequent plaintiffs would remain free to dispute the application of such prior rulings to their cases.

propose to try [their monetary] claims jointly as named plaintiffs" count for purposes of the mass action provision's 100-person numerosity requirement. *Id.* at 739.

Hood involved a *parens patriae* suit brought by Mississippi's attorney general against manufacturers and distributors of liquid crystal display panels. Although the state attorney general was the only named plaintiff, defendants removed the case to federal court under the mass action provision, contending that there were more than 100 persons who were "real parties in interest," the consumers who had purchased the panels.

The Supreme Court rejected defendants' CAFA argument and ordered the case remanded. The only persons who count for purposes of the 100-person numerosity requirement, the Court explained, are those "persons who propose to try [their monetary] claims jointly as named plaintiffs." *Id.* at 739. "[T]he '100 or more persons' referred to in the statute are . . . the very 'plaintiffs' referred to later in the sentence—the parties who are proposing to join their claims in a single trial." *Id.* at 742.

The Supreme Court saw great virtue in reading the statutory language in accordance with its ordinary meaning: "interpreting 'plaintiffs' in accordance with its usual meaning—to refer to the actual named parties who bring an action—leads to a straightforward, easy to administer rule." *Id.* at 744; *see also id.* ("'when

judges must decide jurisdictional matters, simplicity is a virtue'") (quoting *Knowles*, 133 S.Ct. at 1350).[8]

The Court took special note of 28 U.S.C. §1332(d)(11)(B)(ii)(II), which specifies that "the term 'mass action' shall not include any civil action in which . . . the claims are joined upon motion of a defendant." 134 S.Ct. at 746. By enacting this provision,

> Congress demonstrated its focus on the persons who are actually proposing to join together as named plaintiffs in the suit. Requiring district courts to pierce the pleadings . . . would run afoul of that intent.

Id.; *see also Teague*, slip op. at 27.

Defendants and their *amici* here, just like in *Hood*, essentially ask this Court to "pierce the pleadings" and divine an intent on the part of plaintiffs to jointly try these separately filed actions, even though Plaintiffs' petition for coordination "stopped far short of proposing a joint trial." *Romo*, 731 F.3d at 922. The district court—and the panel majority—properly declined that invitation and instead

[8] The Supreme Court also considered the context in which Congress enacted the mass action provision as support for reading that provision narrowly:

> Congress' overriding concern in enacting CAFA was with class actions. The mass action provision thus 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.

Id. (citations omitted).

straightforwardly applied CAFA's mass action provision in accordance with its unambiguous terms. The decision in *Hood* affirms the correctness of that approach.

CONCLUSION

For the foregoing reasons, the decision of the district court remanding this case should be affirmed.

Date: April 14, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the length limit granted by court order dated March 14, 2014. The brief's type size and type face comply with Federal Rule of Appellate Procedure 32(a)(5) and (6). This brief is 3,950 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

/s/Louis M. Bograd
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeal for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I certify that all of the participants to this case are registered CM/ECF users.

/s/Louis M. Bograd
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23. *Stigall et al. v. McKesson Corp. et al.*, No. C 5:12-02037 PSG (C.D. Cal. Feb. 21, 2013) (Judge Philip S. Gutierrez)

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25. *Stucker et al. v. McKesson Corp. et al.*, No. C 8:12-02033 PSG (C.D. Cal. Feb. 21, 2013) (Judge Philip S. Gutierrez)

26. *Thomas et al. v. McKesson Corp. et al.*, No. C 5:12-02039 PSG (C.D. Cal. Feb. 21, 2013) (Judge Philip S. Gutierrez)

27. *Tipton et al. v. McKesson Corp. et al.*, No. C 5:12-02056 PSG (C.D. Cal. Feb. 21, 2013) (Judge Philip S. Gutierrez)

28. *Tribbey et al. v. McKesson Corp. et al.*, No. C 8:12-02048 PSG (C.D. Cal. Feb. 21, 2013) (Judge Philip S. Gutierrez)

29. *Wallace et al. v. McKesson Corp. et al.*, No. C 5:12-02038 PSG (C.D. Cal. Feb. 21, 2013) (Judge Philip S. Gutierrez)

30. *Warne et al. v. McKesson Corp. et al.*, No. C 5:12-02048 PSG (C.D. Cal. Feb. 21, 2013) (Judge Philip S. Gutierrez)

31. *Rentz et al. v. McKesson Corp. et al.*, No. C 2:12-09945 PSG (C.D. Cal. Feb. 20, 2013) (Judge Philip S. Gutierrez)

32. *Romo et al. v. McKesson Corp. et al.*, No. C 5:12-02036 PSG (C.D. Cal. Feb. 20, 2013) (Judge Philip S. Gutierrez)

33. *Posey et al. v. McKesson Corp. et al.*, No. C 3:12-05939 RS (N.D. Cal. Jan. 29, 2013) (Judge Richard Seeborg)

34. *Rice et al. v. McKesson Corp. et al.*, No. C 3:12-05949 (N.D. Cal. Jan. 7, 2013) (Judge William Alsup)

35. *LFBR et al. v. Eli Lilly et al.*, No. C 2:12-10025 ODW (C.D. Cal. Dec. 6, 2012) (Judge Otis D. Wright, II)