BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: NATIONAL HOCKEY LEAGUE PLAYERS' CONCUSSION LITIGATION / MDL DOCKET NO. 2551

THE *LACOUTURE* PLAINTIFFS' RESPONSE TO DEFENDANT NATIONAL HOCKEY LEAGUE'S MOTION TO TRANSFER RELATED ACTIONS FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. SECTION 1407

Pursuant to Rule 3.2(a) of Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiffs Dan LaCouture, Dan Keczmer, Jack Carlson, Richard Brennan, Brad Maxwell, Michael Peluso, Tom Younghans, Allan Rourke and Scott Bailey (hereinafter the "*LaCouture* Plaintiffs"), plaintiffs in the action styled *LaCouture v. NHL*, No. 1:14-cv-02531-SAS (S.D.N.Y. filed Apr. 11, 2014) (the "*LaCouture* Action") respectfully submit this response to Defendant National Hockey League's ("NHL" or "Defendant") Motion to Transfer Related Actions for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. §1407 ("Motion"), and agree that this Panel should transfer and coordinate the substantially similar *LaCouture* Action, *Christian v. NHL*, No. 0:14-cv-01140-SRN-JSM (D. Minn. filed Apr. 15, 2014) ("*Christian* Action") and *Leeman v. NHL*, No. 1:13-cv-01856-KBJ (D.D.C. filed Nov. 25, 2013) ("*Leeman* Action") (collectively, the "Related Actions"), and request an order transferring and coordinating the Related Actions to the United States District Court for the Southern District of New York ("Southern District of New York"), or, alternatively, to the United States District Court for the District of Minnesota ("District of

Minnesota") or the United States District Court for the District of Columbia ("District of Columbia") for coordinated pretrial proceedings.

I. INTRODUCTION

The *LaCouture*, *Christian* and *Leeman* Actions are each class actions rooted in claims against the NHL for failure to warn NHL players of, and protect NHL players from, the negative effects of brain injuries caused by concussive and sub-concussive impacts sustained by NHL players. As such, the Related Actions all concern the same questions of fact. The *LaCouture* Plaintiffs request that the Panel transfer and consolidate the Related Actions to the Southern District of New York for coordinated and/or consolidated pre-trial proceedings, and that such proceedings, and any and all additional related actions that may be brought to the attention of the Panel against the NHL, be assigned to the same court. Alternatively, the *LaCouture* Plaintiffs believe that the District of Minnesota or District of Columbia may be appropriate transferee courts for the coordinated or consolidated pretrial proceedings, albeit less so than the Southern District of New York.

The *LaCouture* Plaintiffs further request that should the matter be transferred and consolidated to the Southern District of New York, the federal judge presently presiding over the *LaCouture* Action, the Honorable Shira A. Scheindlin, be designated as the presiding MDL judge. The reasons for selecting the Southern District of New York and Judge Scheindlin are: a) the parties, witnesses and documents relevant to this litigation are located in the Southern District of New York, including the fact that the NHL is headquartered in New York City; b) the Southern District of New York is geographically convenient and easily accessible to all parties and witnesses; c) the Southern District of New York has the resources to handle MDL consolidation and is a highly efficient jurisdiction; and d) Judge Scheindlin, who the Panel has often designated as the presiding MDL judge to manage complex litigation, has the requisite experience to handle this MDL.

However, in the event the Panel transfers the Related Actions to the District of Minnesota or District of Columbia for coordinated or consolidated pretrial proceedings, the federal judges presiding over the *Christian* Action and the *Leeman* Action, the Honorable Susan Richard Nelson and the Honorable Ketanji Brown Jackson, respectively, should be designated as the presiding MDL judge. Judge Nelson and Judge Jackson are each excellent jurists and appear to have the time and resources necessary to devote to the efficient management of this MDL.

II. BRIEF STATEMENT OF FACTS

The Related Actions seek damages, including punitive damages, and equitable relief on behalf of classes of former and current NHL players as a result of the NHL's unlawful exploitation of its players. As alleged in the operative complaint filed in the *LaCouture* Action, through the sophisticated use of extreme violence as a commodity, in which the NHL has generated billions of dollars, the NHL has subjected and continues to subject its players to the imminent risk of head trauma and, as a result, devastating and long-term negative health effects. Notwithstanding the NHL's decades-long knowledge of the risks associated with fights (condoned for years by the NHL and its referees) and bruising, violent play in the NHL, all leading to a chronic concussion problem and severe head and brain trauma among players, the NHL has failed and continues to fail to warn its players of these risks and consequences from head trauma, concealing material scientific and anecdotal information from its players. The NHL has failed to institute policies and protocols that could have and will protect its players from suffering or exacerbating head trauma sustained during practice or in games.

III. ARGUMENT

A. Centralization Will Promote Section 1407's Goals of Insuring the Just and Efficient Conduct of the Actions and Avoiding Inconsistent or Conflicting Determinations

Under 28 U.S.C. §1407(a), civil actions pending in different district courts and involving "one or more common questions of fact" may be "transferred to any district for coordinated or consolidated pretrial proceedings." Transfer is appropriate to serve the convenience of the parties and witnesses, and to promote the just and efficient conduct of the pending actions. *Id*.

Here, these factors militate strongly in favor of centralizing the Related Actions in the Southern District of New York, the District of Minnesota, or the District of Columbia for coordination or consolidation. Likewise, the transfer of actions to a single forum under §1407 is appropriate where, as here, it will prevent duplication of discovery and eliminate the possibility of overlapping or inconsistent pleading determinations by courts of coordinate jurisdictions. *In re Litig. Arising from Termination of Ret. Plan for Emps. of Fireman's Fund Ins. Co.*, 422 F. Supp. 287, 290 (J.P.M.L. 1976); *In re LTV Corp. Sec. Litig.*, 470 F. Supp. 859, 862 (J.P.M.L. 1979).

1. The Related Actions Involve Common Questions of Fact Supporting Transfer and Coordination and Consolidation

The litmus test of transferability and coordination under §1407 is the presence of common questions of fact. *In re Fed. Election Campaign Act Litig.*, 511 F. Supp. 821, 823 (J.P.M.L. 1979). Common questions are presumed "when two or more complaints assert comparable allegations against identical defendants based upon similar transactions and events." *In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974); *see also In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 654-655 (J.P.M.L. 1981).

The Related Actions assert claims that are founded on the NHL's failure to warn and protect former and current NHL players. Indeed, as Defendant concedes in its Motion, the Related Actions all allege that the NHL has been on notice of concussive impacts that can lead to long-terms injury;

the NHL has promoted a culture of violence at the expense of player safety; the NHL took affirmative actions that failed to protect its players from the increased the risk of injury; the NHL voluntarily assumed a duty to protect and warn its players about the risks associated with concussions; and the NHL failed to effectively or timely implement reforms that would have more effectively protected players from the long-terms effects of head trauma. *See* Motion at 3-6. Moreover, the plaintiffs and proposed classes in each of the Related Actions assert many of the same legal claims, including fraudulent concealments and negligence, based upon these identical facts. *Id.* at 3. In addition, all actions seek relief in the form of compensatory damages and medical monitoring. *Id*. As such, centralization is necessary to prevent the duplication of discovery and inconsistent pre-trial rulings. *In re Ryder Truck Lines, Inc. Emp't Practices Litig.*, 405 F. Supp. 308, 309 (J.P.M.L. 1975).

The Related Actions should be coordinated and consolidated pursuant to 28 U.S.C. §1407. These actions are especially amenable for MDL treatment because of the substantial commonality of factual and legal questions presented in the individual cases at issue and the strong potential for the preservation of judicial resources that MDL treatment will afford. *In re S. Pac. Transp. Co. Emp't Practices Litig.*, 429 F. Supp. 529, 531 (J.P.M.L. 1977). The substantially overlapping factual allegations and legal issues are sufficient to merit transfer and coordination or consolidation. *See, e.g., In Re Air Crash*, 598 F. Supp. 2d 1368, 1369 (J.P.M.L. 2009) ("[W]e find that these two actions involve common questions of fact, and that centralization under Section 1407 in the Southern District of Florida will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation."); *In re First Nat'l Bank, Heavener, Okla. (First Mortg. Revenue Bonds) Sec. Litig.*, 451 F. Supp. 995, 997 (J.P.M.L. 1978) ("Transfer under Section 1407 is thus necessary, even though only two actions are involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of inconsistent pretrial rulings.").

Indeed, the Panel has previously centralized and transferred similar actions against the National Football League ("NFL") and the National Collegiate Athletic Association ("NCAA") relating to the failure to warn of the risks of concussions and other head injuries. *See In re NFL Players' Concussion Injury Litig.*, 842 F. Supp. 2d 1378 (J.P.M.L. 2012); *In re NCAA Student-Athlete Concussion Injury Litig.*, MDL No. 2492, 2013 U.S. Dist. LEXIS 178576, at* 1 (J.P.M.L. Dec. 18, 2013). The Panel should do so here as well.

2. Transfer Will Promote the Just and Efficient Conduct of the Related Actions

In light of the common factual allegations asserted and similar legal theories pursued by plaintiffs in the Related Actions, coordination or consolidation will serve the "convenience of the parties and witnesses and will promote the just and efficient conduct" of the litigation. 28 U.S.C. §1407(a); *see also In re Am. Family Mut. Ins. Co. Overtime Pay Litig.*, 416 F. Supp. 2d 1346, 1347 (J.P.M.L. 2006) (directing centralization "in order to eliminate duplicative discovery; prevent inconsistent pretrial rulings, particularly with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary").

Consolidating or coordinating the Related Actions will eliminate duplicative discovery because plaintiffs will seek to develop similar evidence, including evidence of the NHL's failure to warn and protect its players. *In re Vonage Mktg. & Sales Practices Litig.*, 505 F. Supp. 2d 1375, 1377 (J.P.M.L. 2007) (ordering cases transferred to a single district so that a single judge "can formulate a pretrial program" that allows discovery "on common issues").

Moreover, that the plaintiffs in the Related Actions represent virtually the same proposed nationwide and cross-border class weighs heavily in favor of transfer and coordination or consolidation. While the *LaCouture* Plaintiffs seek a nationwide and cross-border class of both retired and current players, and the actions pending in both the District of Minnesota and the District

of Columbia and only seek a class of retired NHL players (or the estates of deceased former players), the "overlapping class allegations contained in the complaints raise the indubitable possibility of inconsistent class determinations by courts of coordinate jurisdiction." *In re Roadway Express, Inc. Emp't Practices Litig.*, 384 F. Supp. 612, 613 (J.P.M.L. 1974). The Panel has "consistently held that the existence of and the need to eliminate this possibility presents a highly persuasive reason favoring transfer under Section 1407." *Id.*; *see also In re Plumbing Fixture Cases*, 298 F. Supp. 484, 493 (J.P.M.L. 1968) (explaining that §1407 was designed to prevent "pretrial chaos" resulting from "conflicting class action determinations").

Thus, where, as here, transfer to a single court will avoid duplicative discovery and potentially conflicting pretrial rulings, transfer for pretrial purposes is warranted to promote the interest of judicial economy and efficiency.

B. The Balance of Factors Tips Decidedly in Favor of Transfer to the Southern District of New York

In determining the appropriate forum for the Related Actions, the Panel may consider, *inter alia*, the location of the parties, witnesses and the evidence; the accessibility of the location to all parties and witnesses for travel purposes; the efficiency and resources of the Court to handle the MDL; and the proposed Judge's availability and experience in handling MDLs.

Here, these factors strongly support transfer to the Southern District of New York.

In sum, the Southern District of New York is the most appropriate forum for the Related Actions because: a) the parties, witnesses and documents relevant to this litigation are located in the Southern District of New York; b) the Southern District of New York is geographically convenient and easily accessible to all parties and witnesses; c) the Southern District of New York has the resources to handle MDL consolidation and is a highly efficient jurisdiction; and d) Judge Scheindlin has the requisite experience to handle this MDL, as the Panel has previously recognized.

1. The Parties, Witnesses and Evidence Are Located in the Southern District of New York

One significant consideration of the Panel in determining the appropriate transferee forum is the location of the parties, witnesses, and documents. *See In re Auto. Refinishing Paint Antitrust Litig.*, 177 F. Supp. 2d 1378, 1379 (J.P.M.L. 2001) (choosing transferee forum, in part, because "pertinent documents and witnesses can be expected to be found in [its] vicinity."). Here, the NHL is headquartered at 1185 Avenue of the Americas, New York, New York, within the Southern District of New York. *See* http://www.hoovers.com/company-information/cs/company-profile.National_Hockey_League.6eb8cbd895fc6ce9.html (last visited May 16, 2014).

The Southern District of New York is therefore an appropriate forum. *See In re Chocolate Confectionary Antitrust Litig.*, 542 F. Supp. 2d. 1376, 1377 (J.P.M.L. 2008) (centralization appropriate where "defendant Hershey's worldwide headquarters are located" in district); *In re Carbon Black Antitrust Litig.*, 277 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003) (consolidating eight actions in the district where one defendant had its principal place of business); *see also In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522, 2014 U.S. Dist. LEXIS 46610, at *3 (J.P.M.L. Apr. 2, 2014) (transferring cases to the District of Minnesota, where Target has its headquarters).

Similarly, the majority of the documents and the witnesses are likely to be found in the Southern District of New York. Because Defendant's principal place of business is in the Southern District of New York, the documentary evidence relevant to this litigation is likely to be located there. Moreover, that the witnesses with knowledge of Defendant's failure to warn and protect NHL players, as well as Defendant's company policies related to these issues are likely to be found in New York also favor transfer to the Southern District of New York. *See In re Vonage*, 505 F. Supp. 2d at 1377 ("The District of New Jersey is a likely source of relevant documents and witnesses,

inasmuch as [defendant's] headquarters are located there."); *cf. In re Reformulated Gasoline (RFG) Antitrust & Patent Litig.*, 370 F. Supp. 2d 1357, 1358-59 (J.P.M.L. 2005) (transferring to the district where the defendant was located and the documents and witnesses were likely to be found).

Simply stated, the Southern District of New York is an appropriate forum because it is "the center of gravity of this litigation and the focal point for discovery." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 568 F. Supp. 1250, 1251-52 (J.P.M.L. 1983); *In re: Apple iPhone 4 Prods. Liab. Litig.*, 746 F. Supp. 2d 1357, 1358 (J.P.M.L. 2010) (transferring actions to the Northern District of California where the headquarters, witnesses and documents of the common defendant were located).

To be sure, in light of the clear nexus of this case to the Southern District of New York, one must wonder as to the self-interested reasons why the NHL has opted to support transfer to the District of Columbia.

2. The Southern District of New York Is Geographically Convenient to the Parties and Witnesses in the Related Actions

Convenience of the parties and counsel is another important factor considered by the Panel in selecting a transferee forum. As an initial matter, Defendant's lead counsel at the Skadden and Proskauer law firms are ***both*** based in New York City, and the *LaCouture* Plaintiff's counsel have offices in the Southern District of New York as well. *See* http://www.skadden.com/professionals/shepard-goldfein (last visited May 16, 2014); http://www.proskauer.com/professionals/joseph-baumgarten (last visited May 16, 2014); http://www.rgrdlaw.com/offices-securities-classaction-lawfirm-manhattan.html (last visited May 16, 2014).

In addition, two of the named plaintiffs in the *Leeman* Action reside in New York, and, upon information and belief, none of the named plaintiffs in any of the Related Actions reside in the D.C.

area. Moreover, the NHL has three hockey teams based in or around New York: the New York Rangers, the New Jersey Devils, and New York Islanders, as opposed to one team in Minnesota and one team in the nation's Capital. For those parties and counsel who will need to travel, the Panel has previously noted that the Southern District of New York "is relatively conveniently located for parties and witnesses and their counsel located both in the United States and abroad." *In re Parmalat Sec. Litig.*, 350 F. Supp. 2d 1356, 1357 (J.P.M.L. 2004) aff'd, 240 Fed. App'x 916 (2d Cir. 2007); *see also In re Rhodia S.A. Sec. Litig.*, 398 F. Supp. 2d 1359, 1360 (J.P.M.L. 2005) (finding the Southern District of New York "provides an accessible, metropolitan location"); *In re Fed. Home Loan Mortg. Corp. Sec. & Derivative Litig.*, 303 F. Supp. 2d 1379, 1380 (J.P.M.L. 2004) (finding the Southern District of New York "is readily accessible for parties and witnesses").

The Southern District of New York is easily accessible to all parties and counsel that need to travel because of the proximity of three international airports (John F. Kennedy International Airport, LaGuardia International Airport and Newark Liberty International Airport), allowing parties and witnesses to travel to and from the District with ease. For example, four of the named plaintiffs from the *LaCouture* Action, and two of the named plaintiffs from the *Christian* Action reside in Minnesota: a flight from New York City, New York to Minneapolis, Minnesota is approximately 3 hours. Three of the named plaintiffs in the *Leeman* Action reside in Ontario, Canada (adjacent to New York State): a flight from New York City, New York to Ontario, Canada is less than 2 hours. Three of the named plaintiffs in the *Leeman* Action reside in Texas: a flight from New York City, New York to Dallas, Texas is approximately 3 1/2 hours. Two of the named plaintiffs in the *LaCouture* Action reside in Massachusetts: a flight from New York City, New York to Boston, Massachusetts is approximately 1 1/2 hours. Moreover, the Southern District of New York is also favored due to its location in the northern hemisphere and proximity to Canada, where the majority of class members reside. Put bluntly, there is no reason why the convenience of the plaintiff class

should be given any less weight than the convenience of the NHL, which is not even headquartered in D.C.

The convenience of the Southern District of New York will assist to facilitate this litigation, and is therefore a favored forum. *Accord In re Worldcom, Inc., Sec. & ERISA Litig.*, 226 F. Supp. 2d 1352, 1355 (J.P.M.L. 2002) ("[A] litigation of this scope will benefit from centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services."); *see also In re Air Crash at Belle Harbor*, 203 F. Supp. 2d 1379, 1380-81 (J.P.M.L. 2002) ("the Southern District of New York courthouse in Manhattan provides a convenient and accessible forum for participants in the coordinated or consolidated pretrial proceedings").

3. The Southern District of New York Has the Requisite Resources to Adjudicate the Related Actions and Can Efficiently Manage A Complex Docket

The Southern District of New York is an ideal forum in which to centralize the Related Actions because of its expertise in multidistrict litigation and the efficiency of its docket. The Panel has recognized that the Southern District of New York "possesses the necessary resources to be able to devote the substantial time and effort to pretrial matters" that complex dockets require. *In re Merrill Lynch & Co.*, 223 F. Supp. 2d 1388, 1390 (J.P.M.L. 2002); *see also In re AOL Time Warner Sec. Litig.*, 235 F. Supp. 2d 1380, 1381 (J.P.M.L. 2002) (same); *see also, In re Elevator & Escalator Antitrust Litig.*, 350 F. Supp. 2d. 1351, 1353 (J.P.M.L. 2004). In fact, the Southern District of New York has one of the most active multidistrict litigation dockets in the country. As of May 15, 2014, 40 multidistrict litigations were pending in the Southern District of New York – this is more than in any other district. *See* Pending MDLs By District as of May 15, 2014, http://www.jpml.uscourts.gov/pending-mdls-0 (last visited May 16, 2014). From the beginning of 2013 through September 2013, the Southern District of New York has adjudicated 135 MDL

litigations. *See* JPML Statistical Information – Cumulated Terminated through Calendar Year 2013, http://www.jpml.uscourts.gov/statistics-info (last visited May 16, 2014). Further, the Southern District of New York has 50 sitting district judges and 16 sitting magistrate judges, and therefore easily has the capacity to manage this volume of complex litigation. *See* http://www.nysd.uscourts.gov/judges/District (last visited May 16, 2014); http://www.nysd.uscourts.gov/judges/Magistrate (last visited May 16, 2014).

In addition, as of March 31, 2013, the Southern District of New York disposed of cases in an average time of 8.3 months. *See* Table C-5, U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending March 31, 2013, available at http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/C05Mar13.pdf (last visited May 16, 2014). Therefore, any multidistrict litigation case before the Southern District New York will be disposed of expeditiously and efficiently.

4. Judge Scheindlin Has the Experience and Expertise to Handle This Litigation

Judge Scheindlin is very well-qualified judge to preside over this MDL, as the Panel has previously acknowledged. Judge Scheindlin has almost twenty years of experience as a district court judge, and is considered a pioneer of e-discovery practice due to her opinions in the *Zubulake v. UBS Warbarg* matter. Moreover, Judge Scheindlin is also very well-versed in MDL proceedings and has previously handled various complex and voluminous MDLs, and managed them both efficiently and effectively. *See e.g.*, *In re Methyl Tertiary Butyl Ether Prods. Liab. Litig.*, MDL No. 1358, 2000 U.S. Dist. LEXIS 14901, at *4 (J.P.M.L. Oct. 10, 2000) ("We note that the New York action is proceeding apace before Judge Shira Ann Scheindlin and we are confident in her ability to conduct pretrial proceedings in this litigation in an expeditious manner."); *In re Initial Pub. Offering (IPO)*

Sec. Litig., 277 F. Supp. 2d 1375, 1377 (J.P.M.L. 2003) ("The Panel is persuaded that the Southern District of New York, where numerous actions are already well underway before Judge Shira A. Scheindlin, is an appropriate transferee district for this litigation."); *In re Ski Train Fire*, 175 F. Supp. 2d 1379, 1380 (J.P.M.L. 2001); *In re Gerova Fin. Grp., Ltd.*, 816 F. Supp. 2d 1381, 1382 (J.P.M.L. 2011). Notably, in *In re Methyl Tertiary-Butyl Ether Prods. Liab. Litig*., in which Judge Scheindlin has been presiding since 2003, at one time consisted of more than 200 cases against the oil industry for contaminating the public drinking water supply with methyl tertiary-butyl ether, a gasoline additive. Accordingly, Judge Scheindlin has the experience and expertise to handle this litigation.

C. Alternatively, the District of Minnesota May Also be an Appropriate Forum

In the event the Panel decides that the Southern District of New York is not the appropriate transferee forum for these cases, the District of Minnesota would also be considered an appropriate forum for the Related Actions because: a) the District of Minnesota is geographically convenient to the parties and witnesses; b) the District of Minnesota has the resources and capacity to handle an MDL consolidation and is a highly efficient jurisdiction; and c) Judge Nelson has the time, resources, experience and expertise to handle this MDL litigation.

1. The District of Minnesota Is Geographically Convenient to the Parties and Witnesses in the Related Actions

As discussed above, the Panel has selected proposed transferee forums by considering, in part, the ease with which potential witnesses will be able to litigate in that jurisdiction. The Panel routinely assesses the ease of access to the transferee forum in selecting the transferee forum. *In re Air Crash Near Van Cleve, Miss., On August 13, 1977*, 486 F. Supp. 926, 928 (J.P.M.L. 1980); *In re A.H. Robins Co., "Dalkon Shield" IUD Prods. Liab. Litig.*, 406 F. Supp. 540, 543 (J.P.M.L. 1975).

Four of the named plaintiffs in the *LaCouture* Action and two the named plaintiffs in the *Christian* Action reside in Minnesota. Further, while not as convenient as the Southern District of New York for those parties and counsel that need to travel, the District of Minnesota is still a convenient forum. *See In re Operation of the Mo. River Sys. Litig.*, 277 F. Supp. 2d 1378, 1379 (J.P.M.L. 2003) ("given the distribution of the parties and actions in this docket, the Minnesota forum is an accessible and geographically convenient district equipped with the resources that this complex docket is likely to require"); *In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.*, 844 F. Supp. 1553, 1554 (J.P.M.L. 1994) (finding the District of Minnesota the appropriate transferee forum, as "Minnesota is a geographically central and accessible location for this nationwide litigation."); *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig*., 398 F. Supp. 2d 1371, 1372 (J.P.M.L. 2005) (concluding that the District of Minnesota is an appropriate forum, as it "is a geographically central, metropolitan district equipped with the resources that this complex products liability litigation is likely to require."); *In re AT&T Equipment Lease Contract Litig.*, MDL No. 781, 1988 U.S. Dist. LEXIS 17027, at *2-3 (J.P.M.L. Oct. 12, 1988) ("While none of the three suggested transferee forums could be described as the focal point for this litigation, on balance we are persuaded that the District of Minnesota is the most appropriate forum in which to locate Section 1407 proceedings [because] Minnesota is a geographically central location for the three constituent actions presently pending in three different regions of the United States.").

There are three international airports within the district (the Minneapolis-St. Paul International Airport, the Rochester International Airport, and the Duluth International Airport). The District of Minnesota is located in the middle of the country and is in very close proximity to Canada, where a substantial number of class members reside. For example, a flight from Minneapolis, Minnesota to Toronto, Ontario is approximately 2 hours; a flight from Minneapolis,

Minnesota to Dallas, Texas is approximately 2 hours and 20 minutes; and a flight from Minneapolis, Minnesota to New York City, New York is approximately 2 hours and 30 minutes.

As such, the District of Minnesota's proximity would therefore help to facilitate this litigation, and is a favorable forum, if less so than the Southern District of New York. *See In re Worldcom, Inc. Sec. & ERISA Litig.*, 226 F. Supp. 2d at 1355.

2. The District of Minnesota Has the Requisite Resources to Adjudicate the Related Actions and Can Efficiently Manage A Complex Docket

According to federal statistics, the District of Minnesota appears to have favorable docket conditions to host this MDL. The District of Minnesota currently has only seven pending MDLs. *See* http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-15-2014.pdf. The relatively low number of MDLs pending in the District of Minnesota weighs in favor of selecting it as a forum. *See In re Gator Corp. Software Trademark & Copyright Litig.*, 259 F. Supp. 2d 1378, 1380 (J.P.M.L. 2003) (transferring to a forum that "is not currently overtaxed with other multidistrict dockets"); *In re Loestrin 24 Fe Antitrust Litig.*, MDL No. 2472, 2013 U.S. Dist. LEXIS 143652, at *4 (J.P.M.L. Oct. 2, 2013) (selecting District of Rhode Island as transferee forum where two of the actions were pending in the District of Rhode Island and four were pending in the Eastern District of Pennsylvania, finding that "[c]entralization in this district also permits the Panel to assign the litigation to a district with only one other multidistrict litigation pending and ample resources to efficiently manage this litigation"). Additionally, for the 12-month period ending June 30, 2013, the District of Minnesota disposed of cases in an average time of only 7.4 months. *See* http://www.uscourts.gov/uscourts/Statistics/FederalCourtManagementStatistics/2013/district-fcms-profiles-september (last visited May 16, 2014).

In short, the District of Minnesota is a favored forum because it has the capacity and resources to manage this MDL litigation, and it will be disposed of expeditiously and efficiently.

See, e.g., *In re Janus Mut. Funds Inv. Litig.*, 310 F. Supp. 2d 1359, 1361 (J.P.M.L. 2004) (transferring to a district with "capacity and experience" where "[g]iven the geographic dispersal of constituent actions and potential tag-along actions, no district stands out as the geographic focal point for this nationwide litigation").

3. Judge Nelson Has the Experience and Expertise and Appears to Have the Time and Resources Necessary to Efficiently Preside Over the Related Actions

Judge Nelson is very well-qualified federal jurist to preside over this MDL. Judge Nelson has ten years' experience as a federal magistrate judge and almost four years of experience as a district court judge. Moreover, Judge Nelson has experience in complex disputes between professional leagues and athletes. *See Brady v. NFL*, 779 F. Supp. 2d 992 (D. Minn. 2011); *Dryer v. Nat'l Football League*, Case No. 0:09-cv-02182-PAM-AJB (D. Minn. Aug. 20, 2009).

The Panel has often recognized the desirability of transferring multidistrict litigation to a judge who "is not currently assigned to another such docket," and thus will be well-equipped to manage the litigation. *In re Bayer Corp. Combination Aspirin Prods. Mktg. & Sales Practices Litig.*, 609 F. Supp. 2d 1379, 1380 (J.P.M.L. 2009); *see also In re Suboxone (Buprenorphine Hydrochloride And Naloxone) Antitrust Litig.*, 949 F. Supp. 2d 1365, 1366 (J.P.M.L. 2013) (assigning to judge who has not yet presided over a multidistrict litigation); *In re Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, 949 F. Supp. 2d 1369, 1370 (J.P.M.L. 2013) (assigning to a district judge with no multidistrict litigation). As of May 15, 2014, Judge Nelson currently has no multidistrict litigations pending before her, nor is she presently burdened with an overly heavy docket. *See* Pending MDLs By District as of May 15, 2014, http://www.jpml.uscourts.gov/pending-mdls-0 (last visited May 16, 2014). Accordingly, Judge Nelson has the experience and expertise to handle this litigation, as well at the time and resources.

D. Alternatively, the District of Columbia May Also be an Appropriate Forum

In the event the Panel decides that neither the Southern District of New York nor the District of Minnesota are appropriate transferee forums for these cases, the District of Columbia would also be considered an appropriate forum for the Related Actions because: a) the District of Columbia is geographically convenient to the parties and witnesses; b) the District of Columbia has the resources and capacity to handle an MDL consolidation; and c) Judge Jackson, while relatively new to the federal bench, has shown herself to be an exceptional jurist who also appears to have the time and resources necessary to devote to the efficient management of this MDL.

1. The District of Columbia Is Geographically Convenient and Easily Accessible to the Parties and Witnesses

As discussed above, the Panel has selected proposed transferee forums by considering, in part, the ease with which potential witnesses will be able to litigate in that jurisdiction. *Accord In re Trasylol Prods. Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008) (selecting transferee district based, in part, on its "accessible metropolitan location"). The Panel routinely assesses the ease of access to the transferee forum in selecting the transferee forum. *In re Air Crash Near Van Cleve, Miss., On August 13, 1977*, 486 F. Supp. 926 at 928; *In re A.H. Robins Co., "Dalkon Shield" IUD Prods. Liab. Litig.*, 406 F. Supp. 540 at 543.

While not as convenient as the Southern District of New York to the plaintiffs, class members, counsel for the parties, and the NHL itself, and not as convenient as the District of Minnesota to multiple plaintiffs and a large number of class members, the District of Columbia is, in fact, easily accessible to all parties and counsel that need to travel because of its proximity to three international airports (Reagan National Airport, Dulles International Airport, and Baltimore-Washington International Airport). For example, a flight from Toronto, Ontario to Washington, D.C. is approximately 1 1/2 hours; a flight from Minneapolis, Minnesota to Washington, D.C., is

approximately 2 1/2 hours; a flight from Dallas, Texas to Washington, D.C. is approximately 3 hours; and a flight from Boston, Massachusetts to Washington, D.C. is approximately 1 1/2 hours.

As such, Washington, D.C.'s proximity would therefore help to facilitate this litigation, and is a favorable forum, if less so than the Southern District of New York. *See In re Worldcom, Inc. Sec. & ERISA Litig.*, 226 F. Supp. 2d at 1355.

2. The District of Columbia Has the Capacity to Handle this Significant MDL

According to federal statistics, the District of Columbia appears to have favorable docket conditions to host this MDL. The District of Columbia currently has only six pending MDLs. *See* http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-15-2014.pdf. The relatively low number of MDLs pending in the District of Columbia weighs in favor of selecting it as a forum. *See In re Gator Corp. Software Trademark & Copyright Litig.*, 259 F. Supp. 2d at 1380; *In re Loestrin 24 Fe Antitrust Litig.*, MDL No. 2472, 2013 U.S. Dist. LEXIS 143652, at *4. Additionally, for the 12-month period ending June 30, 2013, the total number of actions per judge was only 180 in the District of Columbia. *See* http://www.uscourts.gov/uscourts/Statistics/FederalCourtManagementStatistics/2013/district-fcms-profiles-september (last visited May 16, 2014). As of March 31, 2013, there were 2,212 cases pending in the District of Columbia. *See* http://www.uscourts.gov/uscourts/Statistics/FederalJudicialCaseloadStatistics/2013/tables/C00Mar13.pdf (last visited May 16, 2014). In short, the District of Columbia is a favored forum because it has the capacity and resources to manage this MDL litigation. *See In re Janus Mut. Funds Inv. Litig.*, 310 F. Supp. 2d at 1361.

3. Judge Jackson Appears to Have the Time and Resources Necessary to Efficiently Preside Over the Related Actions

As discussed above, the Panel has often recognized the desirability of transferring multidistrict litigation to a judge who "is not currently assigned to another such docket," and thus will be well-equipped to manage the litigation. *In re Bayer Corp. Combination Aspirin Prods. Mktg. & Sales Practices Litig.*, 609 F. Supp. 2d at 1380 (J.P.M.L. 2009); *Suboxone (Buprenorphine Hydrochloride And Naloxone) Antitrust Litig.*, 949 F. Supp. 2d at 1366 (J.P.M.L. 2013); *In re Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, 949 F. Supp. 2d at 1370.

As of May 15, 2014, Judge Jackson currently has no multidistrict litigations pending before her, nor is she presently burdened with an overly heavy docket. *See* Pending MDLs By District as of May 15, 2014, http://www.jpml.uscourts.gov/pending-mdls-0 (last visited May 16, 2014). Although relatively new to the federal bench, Judge Jackson is an extremely bright and capable jurist, and appears to be able to devote the necessary time and resources to effectively manage the Related Actions.

IV. CONCLUSION

Based on the foregoing reasons, the *LaCouture* Plaintiffs request the Panel coordinate and consolidate the Related Actions and transfer the Related Actions to Judge Scheindlin in the Southern District of New York or, alternatively, Judge Nelson in the District of Minnesota or Judge Jackson in the District of Columbia.

WHEREFORE, the *LaCouture* Plaintiffs respectfully request that the Panel enter an Order pursuant to 28 U.S.C. §1407, consolidating or coordinating for pretrial proceedings the *LaCouture* Action, the *Leeman* Action and the *Christian* Action, and transferring the Related Actions to Judge Shira A. Scheindlin in the United Stated District Court for the Southern District of New York or, alternatively, to Judge Susan Richard Nelson in the District of Minnesota or Judge Ketanji Brown Jackson in the District of Columbia.

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