

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ELAINE ROBINSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
	)	Case No.: 4:16-cv-00439-CEJ
	)	
vs.	)	
	)	
PFIZER INC.,	)	
	)	
Defendant.	)	

**PLAINTIFFS’ REPLY IN SUPPORT OF THEIR MOTION TO REMAND  
AND REQUEST FOR EXPEDITED CONSIDERATION**

For the reasons previously set forth in Plaintiffs’ Motion to Remand and Memorandum in Support thereof (CM/ECF Docs. 11-12), the Court should remand this action to the Twenty- Second Judicial Circuit, City of St. Louis, State of Missouri.

As Plaintiffs have previously articulated, their claims are properly joined as they arise out of the same series of transactions or occurrences and involve common questions of law and fact. As a result, there is no basis for federal diversity jurisdiction and this matter must be remanded. Predictably, Defendant attempts to refute this truism by relying on out-of-District, out-of-Circuit, or out-of-date (i.e., pre-*In re Prempro*) opinions, and ignores the overwhelming weight of District and Circuit authority repeatedly remanding similar cases.

While Plaintiffs will not repeat the arguments they set forth in their motion to remand and response to Defendant’s motion to dismiss<sup>1</sup>, it is important to note two

---

<sup>1</sup> To the extent that the Court finds Plaintiffs’ responses to Defendant’s motions to dismiss and stay were untimely despite having previously filed their motion to remand, Plaintiffs respectfully request the Court allow them to file said responses out of time.

critical aspects related to the issues before the Court: *first*, the lack of subject matter jurisdiction in multiple-plaintiff actions is undisputed in this District, even in the face of erroneous personal jurisdiction-based attacks. *Second*, Defendant's attempt to stay the remand process in order to "ensure consistent rulings on the jurisdictional issues raised in this motion" is particularly absurd given that the Magistrate Judge appointed to review the motions to remand in the MDL has already explicitly adopted the findings of *this Court* and categorically recommended remand. See e.g. *Sehovic, et al. v. Pfizer Inc.*, 2:14-cv-3254-RMG (D.S.C. Jan. 27, 2015, Order, CM/ECF Doc. 725) (Doc. 16, Ex. E to Pltf. Memo in Opp. re Mot. to Stay) (citing this Court's ruling in *Lovett, et al.* as "persuasive" and recommending remand to the City of St. Louis).

As previously stated, numerous District Judges have rejected the personal jurisdiction-based arguments that Defendant advocates here. These opinions include, but are not limited to:

- *Simmons v. Skechers USA, Inc.*, No. 4:15-CV-340-CEJ, 2015 WL 1604859, at \*3 (E.D. Mo. Apr. 9, 2015) (Jackson, J.) ("This Court rejects such a contorted theory of fraudulent joinder. Consequently, because defendants' only argument that the non-Missouri plaintiffs were fraudulently joined is a procedural challenge to personal jurisdiction rather than a substantive challenge to the viability of the claims, the Court concludes that the non-Missouri plaintiffs were not fraudulently joined in this action.");
- *Littlejohn, et al. v. Janssen Research & Development, LLC, et al.*, No. 4:15-cv-0194-CDP (E.D. Mo. April 13, 2015) (Perry, J.) (Memorandum and Order, CM/ECF Doc. 27) (Doc. 16, Ex. D to Pltf. Memo in Opp. re Mot. to Stay) ("Finally, even assuming the Eighth Circuit Court of Appeals had explicitly recognized fraudulent misjoinder as an exception to the complete-diversity requirement *and* that a lack of personal jurisdiction over a nondiverse defendant supported the theory that parties had been fraudulently misjoined, personal jurisdiction over the nondiverse defendants is not so improbable here to demonstrate that the parties have been 'egregiously' misjoined.") (emphasis in original);

- *Clayton, et al. v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., et al.*, No. 4:14-cv-01927-JAR (Ross, J.) (Memorandum and Order, April 16, 2015, CM/ECF Doc. 32) (Ex. A to Pltf. Reply in Support of Mot. to Remand) (“Defendants also urge the Court to rule on personal jurisdiction before addressing the issue of subject-matter jurisdiction. Plaintiffs move to remand this case to the Circuit Court for the Twenty-Second Judicial Circuit, asserting that Plaintiffs’ claims have been properly joined, and Defendants’ fraudulent misjoinder theory must be rejected. As a preliminary matter, the Court declines to rule on issues of personal jurisdiction first, as the inquiry regarding subject-matter jurisdiction is not ‘arduous.’”);
- *Clark, et al. v. Pfizer Inc.*, No. 4:15-cv-546-HEA (Autrey, J.) (Memorandum and Order, August 5, 2015, CM/ECF Doc. 24) (Doc. 16, Ex. B to Pltf. Memo in Opp. re Mot. to Stay) (following the “great weight of authority of this District . . . to grant motions to remand because diversity jurisdiction—and therefore subject matter jurisdiction—was found to be lacking.”);
- *Hebron, et al v. Abbvie Inc.*, No.: 4:14-cv-01910-ERW (Webber, J.) (Memorandum and Order of Remand, December 18, 2014, CM/ECF Doc. 28) (Doc. 13, Ex. A to Memo. in Opp. re Mot. to Dismiss) (“[I]t is within the Court’s discretion to determine whether to decide issues of personal or subject matter jurisdiction first, and here, the Court declines to rule on the personal jurisdiction issue first, as the inquiry regarding subject matter jurisdiction is not ‘arduous.’”);
- *Swann, et al. v. Johnson & Johnson, et al.*, No.: 4:14-cv-1546-CAS (Shaw, J.) (Memorandum and Order, December 3, 2014, CM/ECF Doc. 31) (Doc. 12, Ex. D to Memo. in Support of Mot. to Remand);
- *Butler, et al. v. Ortho-McNeil-Janssen Pharmaceuticals, Inc., et al.*, No.: 4:14-cv-1485-RWS (Sippel, J.) (Memorandum and Order of Remand, October 8, 2014, CM/ECF Doc. 21) (Doc. 12, Ex. E to Memo. in Support of Mot. to Remand); and
- *Morgan v. Janssen Pharms., Inc.*, No. 4:14-cv-1346-CAS, 2014 WL 6678959 (E.D. Mo. Nov. 25, 2014) (Shaw, J.).

On the other hand, the only cases Defendant relies upon from *this district* fall within one of two easily distinguishable categories: *first*, cases which involve a *single, non-*

Missouri resident bringing suit in Missouri<sup>2</sup> or, second, cases that pre-date *In re Prempro*.<sup>3</sup> Clearly, neither of these categories are relevant to present motion given that this is a multiple-plaintiff action – thereby necessitating a joinder analysis – and is bound by the court’s holding in *In re Prempro*.

Likewise, Defendant’s request that the Court disregard its own holding in *Mitchell v. Eli Lilly & Co*, 2016 WL 362441 (E.D. Mo. Jan. 29, 2016) (Jackson, J.) in favor of the Second Circuit’s decision in *Brown v. Lockheed Martin Corp.*, --- F.3d ----, 2016 WL 641392 (2d Cir. Feb. 18, 2016) is meritless considering that the Court’s well-reasoned decision in *Mitchell* was based on the Eighth Circuit’s binding decision in *Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196 (8th Cir. 1990). Furthermore, the court’s decision in *Brown* was limited to the particular language of Connecticut’s foreign corporation registration statute and has not been followed by courts outside of the circuit. See e.g., *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-MD-2591-JWL, 2016 WL 1047996, at \*3 n. 2 (D. Kan. Mar. 11, 2016) (“Syngenta relies on the Second Circuit’s recent opinion in *Brown v. Lockheed Martin Corp.*, --- F.3d ----, 2016 WL 641392 (2d Cir. Feb. 18, 2016), in which the court discussed these issues. That court declined to decide whether jurisdiction based on consent through registration was permissible, however, as it instead interpreted the particular registration statute not to require consent to general jurisdiction.”). Taken together, *Mitchell* and *Knowlton*, conclusively establish that Defendant consented to personal jurisdiction in Missouri by maintaining a registered agent, and being served on said agent.

---

<sup>2</sup> *Bartholome v. Pfizer, Inc.*, 2016 WL 366795 (E.D. Mo. Jan. 29, 2016); *Barron v. Pfizer, Inc.*, 2015 WL 5829867 (E.D. Mo. Oct. 6, 2015); *Clarke v. Pfizer Inc.*, 2015 WL 5243876 (E.D. Mo. Sept. 8, 2015); *Schwarz v. Pfizer Inc.*, No. 4:15-cv-00579-JAR, Dkt. 11 (E.D. Mo. July 30, 2015); *Keeley v. Pfizer Inc.*, 2015 WL 3999488 (E.D. Mo. July 1, 2015); *Huff v. Pfizer, Inc.*, No. 4:15-CV-787-RWS, Dkt. 14 (E.D. Mo. July 10, 2015); *Fidler v. Pfizer Inc.*, No. 4:15-CV-582-RWS, Dkt. 14 (E.D. Mo. June 25, 2015).

<sup>3</sup> *Alday v. Organon USA, Inc.*, 2009 WL 3531802 (E.D. Mo. Oct. 27, 2009); *Boschert v. Pfizer, Inc.*, 2009 WL 1383183 (E.D. Mo. May 14, 2009).

Therefore, the proper course of action is for this Court to remand this action to the Twenty-Second Judicial Circuit, City of St. Louis, State of Missouri. The subject matter jurisdiction is well-established and non-arduous. The Plaintiffs' claims are properly joined as they arise out of the same series of transactions and occurrences and involve substantial common questions of fact and law. Because there is a lack of complete diversity among the parties, the Court lacks subject matter jurisdiction. Therefore, the Court should enter an Order of Remand without further delay and prior to transfer to the MDL.

### CONCLUSION

For the foregoing reasons, this Court should remand this matter to the Twenty-Second Judicial Circuit, City of St. Louis, State of Missouri for further proceedings prior to transfer to *In Re: Lipitor (Atorvastatin Calcium) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2:14-mn-2502-RMG.

April 22, 2016

Respectfully Submitted,

/s/ Eric S. Johnson

Eric S. Johnson (MO 61680)

Andy S. Williams (MO 41947)

**SIMMONS HANLY CONROY**

One Court Street

Alton, IL 62002

Telephone: 618.259.2222

Facsimile: 618.259.2251

[ejohnson@simmonsfirm.com](mailto:ejohnson@simmonsfirm.com)

[awilliams@simmonsfirm.com](mailto:awilliams@simmonsfirm.com)

Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on April 22, 2016 the Plaintiffs' Reply in Support of their Motion to Remand and Request for Expedited Consideration was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification to all parties of record.

Mark C. Hegarty  
Douglas B. Maddock, Jr.  
SHOOK, HARDY & BACON L.L.P.  
2555 Grand Blvd.  
Kansas City, MO 64108-2613  
[mhegarty@shb.com](mailto:mhegarty@shb.com)  
[dmaddock@shb.com](mailto:dmaddock@shb.com)

Attorneys for Defendant Pfizer, Inc.

Mark Cheffo  
QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
51 Madison Avenue  
New York, New York 10010  
[markcheffo@quinnemanuel.com](mailto:markcheffo@quinnemanuel.com)

Attorneys for Defendant Pfizer, Inc.

By: /s/ Eric S. Johnson  
Eric S. Johnson (MO 61680)  
Andy S. Williams (MO 41947)  
**SIMMONS HANLY CONROY**  
One Court Street  
Alton, IL 62002  
Telephone: 618.259.2222  
Facsimile: 618.259.2251  
[ejohnson@simmonsfirm.com](mailto:ejohnson@simmonsfirm.com)  
[awilliams@simmonsfirm.com](mailto:awilliams@simmonsfirm.com)