BEFORE THE UNITED STATES JUDICIAL PANEL

ON MULTIDISTRICT LITIGATION

IN RE:

MDL DOCKET NO. 1:21-P-59

ATRIUM MEDICAL CORPORATION
PROLITE AND PROLOOP
HERNIA MESH LITIGATION

MEMORANDUM IN SUPPORT OF MOTION OF PLAINTIFFS FOR TRANSFER OF ACTIONS TO THE CENTRAL DISTRICT OF CALIFORNIA, OR OTHER JURISDICTION THAT MAY BE PROPOSED IN SUBSEQUENT BRIEFING, PURSUANT TO 28 U.S.C. § 1407, FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

Plaintiffs Jose Avila, Hazel Benhamed-Masri, Rachel Bates, Brian Benhardt, Herman Curley, Claude Daniels, Raymond Ferrell, John Langley, Betty Lewis, Raymond Maki, James Nakashian, Alan Roseman, Randy Walker and Alfredo Vega, in the Central District of California action, captioned *Avila v. Atrium Medical Corporation* (Case No. 2:21-cv-05223-CAS-MRW), and Plaintiff Clark Kolbeck, in the Western District of Wisconsin action, captioned *Kolbeck v. Atrium Medical Corporation; Getinge AB; Maquet Cardiovascular US Sales, LLC*, (Case No. 3:21-cv-00776), respectfully move this Panel, pursuant to 28 U.S.C. § 1407, for transfer of the above actions, to the Central District of California or other jurisdiction that may be proposed in subsequent briefing, for coordinated or consolidated pretrial proceedings. Specifically, the Movants have requested the Joint Panel on Multidistrict Litigation (the "Panel") to transfer for coordination or consolidation for pretrial purposes the substantially similar cases set forth in the Schedule of Related Actions filed herewith, any tag- along actions, and all other cases that may be subsequently filed that assert related or similar claims. Plaintiffs, like all of the plaintiffs in related actions, bring their actions against Atrium Medical Corporation ("Atrium"), and in some

instances related entities,[1] relating to the defective ProLite and/or ProLoop hernia mesh products. The actions for which transfer and consolidation are proposed arise out of the same uniform course of conduct and allege essentially identical "product liability" category claims.

I. SUMMARY OF ARGUMENT

Plaintiffs allege that Atrium negligently designed, manufactured, marketed, labeled, packaged and sold medical devices used for hernia repair, including multiple products in a product line known as ProLite and ProLoop hernia mesh. Plaintiffs also allege the defective design and testing which resulted in a high failure rate and frequent complications, revision surgeries and a high failure rate for patients who had ProLite or ProLoop hernia mesh implanted. Defendant Atrium denies Plaintiffs' allegations.

The Central District of California is an appropriate venue for transfer and coordination or consolidation for pretrial purposes. The *Avila* action with fourteen plaintiffs is venued in the Central District of California. The *Avila* action shares virtually identical common questions of fact with the other actions. The transfer will further "the convenience of the parties and witnesses," since each of the plaintiffs will be deposing the same witnesses and obtaining the same corporate documents to prove their respective cases.

The transfer of the cases presently pending in other districts, as well as those subsequently filed, to either of the above district courts "will promote the just and efficient conduct of [the] actions" by ensuring centralized oversight of pretrial fact development in what are likely to be identical class actions. *See* 28 U.S.C. § 1407(a).

[1] The Getinge Group is a publicly listed Swedish company that has 13,111 employees in 37 countries. Getinge holds itself out as "a leading global provider of products and services for operating rooms, intensive-care units, care units, sterilisation centres (sic), elderly care and companies and institutions that are active in the Life Science area." *Id*. Atrium is a business unit of MAQUET Cardiovascular (Maquet). *See* http://www.atriummed.com/News/atriumnews.asp?articleid=66&zoneid=1. Maquet is a subsidiary of the Getinge Group.

The Central District of California has the resources, judicial expertise and capability to promptly and efficiently conduct this case. The actions would not be unduly prejudiced by transfer.

While transfer under Section 1407 does not require a complete identity, or even majority, of common factual or legal issues as a prerequisite to transfer, each complaint here alleges ProLite or ProLoop hernia mesh designed, manufactured, marketed and sold by Atrium was surgically implanted in each of the Plaintiffs causing substantially identical plaintiffs to suffer physical injury and economic loss. Transfer under Section 1407 will have the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that (1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *see In re Joseph Smith Patent Litigation*, 407 F. Supp. 1403, 1404 (J.P.M.L. 1976); and (2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties.

All the underlying civil actions involve common questions of fact. Each of the pending actions involve allegations of defects in mesh designed, manufactured, marketed and sold by Atrium. All actions will share common factual questions concerning such matters as the design, manufacture, safety, testing, marketing and performance of the mesh. Such common questions of law and fact include the following:

(a) Whether polypropylene mesh was defective;

(b) Whether the warnings accompanying polypropylene mesh were adequate;

(c) Whether there was other material information about the risks of polypropylene mesh concealed and suppressed by Defendants;

(d) Whether polypropylene mesh was negligently manufactured and marketed;

(e) Whether Defendants breached express warranties relating to polypropylene mesh;

(f) Whether Defendants fraudulently or negligently misrepresented the true facts concerning polypropylene mesh;

(g) Whether Plaintiffs are entitled to punitive damages for Defendants' wrongful conduct;

(h) Whether the mesh devices implanted in each Plaintiff were cleared by the FDA under the 510(k) "substantial equivalence" procedure; and

(i) Whether the mesh devices implanted in each Plaintiff contained virtually identical warnings.

Centralization under Section 1407 is necessary to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary because the complaints filed by similarly situated plaintiffs in different states are based on the same fact-intensive proof and will seek the same discovery.

The application of law to the facts is also for all intents and purposes identical. Specifically, all complaints allege that Atrium was negligent in the design, manufacture, marketing, and sale of an unsafe hernia mesh product. All complaints allege that Atrium breached its duty of care by failing to exercise adequate testing and quality control and also that Atrium intentionally, knowingly, carelessly, recklessly, or negligently concealed information regarding the existence of a defect in its mesh products. Finally, all the complaints allege the Defendants negligently, recklessly, or intentionally misrepresented the quality, usefulness, and safety of Atrium hernia mesh devices.

The Panel has previously found multiple times that product liability actions involving similar claims relating to implantable hernia mesh—including hernia mesh manufactured by Atrium Medical Corporation—are proper for centralization under 28 U.S.C. § 1407. *See In Re: Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Products Liability Litigation,* MDL 2846, 316 F.Supp. 1380 (J.P.M.L. 2018); *In Re: Ethicon Physiomesh Flexible Composite Hernia Mesh Products Liability Litigation,* MDL 2782, 254 F.Supp.3d 1381 (J.P.M.L. 2017); *In Re: Atrium Medical Corp. C-Qur Mesh Products Liability Litigation*, MDL 2753, 223 F.Supp.3d 1355 (J.P.M.L. 2016); *In Re Kugel Mesh Hernia Patch Litigation,* MDL No. 1842, 493

F.Supp.2d 1371 (J.P.M.L. 2007). Here, all the salutary purposes of multidistrict litigation will be served by granting this Motion.

II. HISTORY OF THE LITIGATION

In addition to the *Avila* case, other civil actions as set forth in the accompanying Schedule of Actions have been filed in federal court alleging that their plaintiffs have incurred injuries and damages as a direct and proximate result of defective Atrium ProLite or ProLoop hernia mesh.

Submitted herewith is a Schedule of Actions that lists the related actions that are the subject of this Motion, with each complaint attached thereto. Movants seek to have the actions listed above transferred to the proposed district court and consolidated with the other actions.

III. BACKGROUND

The actions affected by this motion, as identified in the accompanying Schedule of Actions, present common questions of fact; a common Defendant – Atrium Medical Co.; and all of the actions arise from ProLite or ProLoop hernia mesh manufactured by Atrium.

A hernia, a condition affecting thousands of men and women in the United States each year, is the protrusion or projection of an organ or tissue through the abdominal wall that normally contains it. Although a hernia may form in any part of the abdominal wall, the most common site is the groin. Groin hernias are known as inguinal or femoral, depending on the location of the hernia. Another type of hernia is the ventral hernia (also sometimes called abdominal hernia). There are two types of ventral hernias. One is known as an umbilical hernia and occurs in the umbilical ring that surrounds the navel. The other is referred to as an incisional hernia which occurs around surgical incisions.

Until 1958, abdominal wall hernias were repaired without mesh. In 1958, Dr. Frances Usher published a medical journal article entitled *Marlex mesh, a new plastic mesh for replacing tissue defects*. Dr. Usher used polypropylene mesh in experimental canine work for abdominal repair. Polypropylene is a petroleum-based plastic initially used in the Hula-Hoop and for

kitchen storage applications, and also used in the manufacture of fishing line and synthetic carpets.

Heavily promoted by the medical device manufacturers, including Defendants, hernia mesh, typically made wholly or partly of polypropylene, is frequently used in hernia repair surgery. About one million hernia repair surgeries with mesh are performed globally each year. Despite the marketing push by mesh manufacturers, including Defendants, to persuade doctors to use mesh in hernia repair, many doctors steer away from polypropylene mesh and use the Shouldice technique for hernia repair. The Shouldice technique, used for decades, is a mesh-free hernia repair method.

It has been known since 1953 that any implanted device must not be physically modified by tissue fluids, be chemically inert, not incite an inflammatory or foreign body cell reaction, be non-carcinogenic, not produce allergic reactions, and be able to withstand mechanical stress. D. Ostergard, *Degradation, Infection and Heat Effects on Polypropylene Mesh for Pelvic Implantation: What Was Known and When it Was Known*, 22 INT'L UROGYNECOLOGY J. 771-774 (2011).

Polypropylene is not biologically inert in the human body, and can cause serious injury to patients, significantly impacting their quality of life. As one author stated, "[p]rosthetic meshes are … not the inert materials they are claimed to be and can expand as well as shrink." A. Coda, *Structural Alterations of Prosthetic Meshes in Humans*, 7 HERNIA 29-34 (2003).

A typical response to mesh implanted in the human body is inflammation, granuloma formation and a foreign body reaction. Scar tissue forms around the implant and causes contraction of the mesh up to 50%. This inflammation, foreign body response and scar tissue formation is a permanent condition and can result in long-term complications. U. Klinge et al., *Foreign Body Reaction to Meshes Used for the Repair of Abdominal Wall Hernias*, 165 EUR. J. SURGERY 665-73 (1999).

Despite the promotion of mesh as safe and effective by Defendants, the published medical literature contradicts this unsupported belief. One author observed that "[t]he literature suggests otherwise with reports of various degrees of degradation, including depolymerization,

cross-linking, oxidative degradation by free radicals, additive leaching, hydrolysis, stress cracking and mesh shrinkage along with infection, chronic inflammation and the stimulation of sclerosis." The author concluded, "Based on available evidence the polypropylene used for surgical treatment of various structural defects is not inert after implantation in the human body." G. Sternschuss et al., *Post-implantation Alterations of Polypropylene in the Human*, 188 J. UROL. 27-32 (2012). As the mesh degrades in the human body, small flakes of polypropylene can lead to infection and irritation, and resultant serious pain, as the body tries to rid itself of the foreign material.

Once implanted, mesh contracts as well as cracks substantially in the human body. In one study, a contracture rate of 30% to 50% was found four weeks after implantation. Another study reported an 85% contracture rate after eight years. Nerve fibers are entrapped in the contracted tissue causing severe pain.

A debilitating consequence of hernia repair with mesh is inguinodynia, or chronic groin pain. This condition results from nerves, such as the ilioinguinal, iliohypogastric and genitofemoral nerves, coming into contact with mesh, after its degradation and deformation in the body following implantation, and from the persistent and permanent foreign body reaction to the implantation of mesh. It has been reported that hernia repair with mesh results in an extraordinarily high rate of inguinodynia—in some reports approaching 50%. *See, e.g.*, J.E. Fischer, *Hernia Repair: Why Do We Continue to Perform Mesh Repair in the Face of Human Toll of Inguinodynia?* 206 AMER. J. SURG. 619-23 (2013).

Other studies have found an even higher rate of chronic pain after hernia repair with mesh. One study found that approximately 75% of patients had pain one year after hernia repair at rest, and 78% had pain when moving. B. Page, *Pain From Primary Inguinal Hernia and the Effect of Repair on Pain*, 89 BRIT. J. SURG. 1315-18 (2002).

Despite the abundance of scientific and medical information published in the literature relating to the dangerous properties and serious risks of polypropylene mesh, Atrium made a deliberate decision to ignore these dangers and began to aggressively promote polypropylene mesh to healthcare providers and consumers. Atrium misrepresented and concealed from

Plaintiffs, their physicians and consumers, the serious risks, dangers and defects associated with ProLite and ProLoop hernia mesh.

IV. ARGUMENT

A. Transfer and Consolidation of the Cases for Coordinated Pretrial Proceedings Is Appropriate under 28 U.S.C. § 1407

The purpose of the multidistrict litigation process is to "eliminate the potential for contemporaneous pretrial rulings by coordinating district and appellate courts in multidistrict related civil actions." *In re Multidistrict Private Civ. Treble Damages Litig.*, 298 F. Supp. 484, 491-92 (J.P.M.L. 1968). Consolidation is especially important in multidistrict litigations where "the potential for conflicting, disorderly, chaotic" action is greatest. *Id.* at 493. Transfer of related actions to a single district for pretrial proceedings avoids conflicting pretrial discovery and ensures uniform and expeditious treatment in the pretrial procedures. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230 (9th Cir. 2006). The Panel "considers that eliminating duplicate discovery in similar cases, avoiding conflicting judicial rulings, and conserving valuable judicial resources are sound reasons for centralizing pretrial proceedings." Hon. John G. Heyburn II, *A View from the Panel: Part of the Solution*, 82 Tul. L. Rev. 2225, 2236 (2008).

In relevant part, 28 U.S.C. § 1407(a) specifies that the Panel may transfer and consolidate two or more civil cases for coordinated pretrial proceedings upon a determination that (i) the cases "involv[e] one or more common questions of fact," (ii) transfer will further "the convenience of the parties and witnesses," and (iii) transfer will promote the just and efficient conduct of the actions." Cases interpreting this section have held that a motion for transfer, coordination and consolidation pursuant to § 1407 is appropriate when the cases are all federal civil actions, pending in different federal districts; one or more common questions of disputed fact exist among the cases; and transfer of the cases will promote efficiencies and will conserve the resources of the parties, counsel and the judiciary. *Rosenfeld v. Hartford Fire Ins. Co.,* Nos. 88-Civ-2153 & 88-Civ-2252, 1988 U.S. Dist. LEXIS 4068 at *2-3 (S.D.N.Y. May 12, 1988); *see*

also, U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, Inc., 238 F. Supp.2d 270 (D.D.C. 2002). The federal civil actions under consideration meet these criteria and should be transferred and consolidated as discussed above for pretrial proceedings. Transfer is also necessary to eliminate duplicative discovery and prevent inconsistent rulings on pretrial motions.

The complaints all name Atrium Medical Corporation as a Defendant, factually rely on similar alleged uniform conduct and practices, and advance similar claims for relief. The complaints are supported by nearly identical detailed factual allegations tending to establish ProLite and ProLoop hernia mesh was designed, produced, tested, packaged, sold, and marketed in an unsafe and defective manner by Atrium.

1. The Related Actions Involve One or More Common Questions of Fact

The first requirement of Section 1407—that the cases "involv[e] one or more common questions of fact"—is plainly met here. The cases before this Panel contain numerous common questions of fact, including, but not limited to, the following:

(a) Whether polypropylene mesh was defective;

(b) Whether the warnings accompanying polypropylene mesh were adequate;

(c) Whether there was other material information about the risks of polypropylene mesh concealed and suppressed by Defendants;

(d) Whether polypropylene mesh was negligently manufactured and marketed;

(e) Whether Defendants breached express warranties relating to polypropylene mesh;

(f) Whether Defendants fraudulently or negligently misrepresented the true facts concerning polypropylene mesh;

(g) Whether Plaintiffs are entitled to punitive damages for Defendants' wrongful conduct;

(h) Whether the mesh devices implanted in each Plaintiff were cleared by the FDA under the 510(k) "substantial equivalence" procedure;

(i) Whether the mesh devices implanted in each Plaintiff were manufactured by defendant Atrium Medical Corporation; and

(j) Whether the mesh devices implanted in each Plaintiff contained virtually identical warnings.

(k) Whether the mesh devices contained inadequate warnings relating to, for instance:

- The danger of mesh to contract, shrink, expand, swell and/or deform after implantation;
- The danger of mesh to degrade, fragment and creep after implantation;
- The danger of mesh erosion, extrusion and/or migration;
- The inability to withstand mechanical stress after implantation;
- The lack of biological inertness of polypropylene mesh;
- The danger of chronic inflammation, granuloma formation and foreign body cell reaction;
- The danger of chronic infections;
- The danger of permanent scar tissue formation and sclerosis;
- The danger of the recurrence of hernia;
- The danger of inguinodynia, or chronic groin pain;
- The danger of mesh coming into contact with nerves and nerve damage;
- The danger of organ damage;
- The danger of spermatic cord damage and testicular pain;
- The danger of pain during sexual intercourse and sexual dysfunction;
- The danger of autoimmune disease;
- The potential for revision surgery following implantation;
- Hernia repair with mesh is no more effective than other alternative hernia repair methods;
- The difficulties of removing mesh from the body following implantation;
- The danger of leaving residual mesh in the body after implantation; and
- The substantial impairment of the quality of life following mesh implantation.

(l) Whether Plaintiffs have been injured as a result of the mesh devices defects and absence of warnings.

The factual issues to be determined in each of the actions are nearly identical. *See, e.g., In re "Factor VIII or IX Concentrate Blood Prods." Prod. Liab. Litig.,* 853 F. Supp. 454, 455 (J.P.M.L. 1993) (common questions of fact existed regarding defendants' conduct); *In re Cuisinart Food Processor Antitrust Litig.,* 506 F. Supp. 651, 655 (J.P.M.I. 1981) (noting that transferred actions "share[d] numerous questions of fact concerning the existence vel non of the alleged conspiracy and its scope, participants, means of operation and effects."). Given the virtually identical allegations and issues presented, transfer and consolidation are highly appropriate and should be granted. *See, e.g., In re Alert Income Partners Sec. Litig.,* 788 F. Supp. 1230, 1231 (J.P.M.L. 1992); *In re Oil Spill by" Amoco Cadiz" Off Coast of France on March 16, 1978,* 471 F. Supp. 473, 478 (J.P.M.L. 1979) (where common questions predominate, first factor favoring consolidation is met even where some differing legal theories are present); *In re Litigation Arising From Termination of Retirement Plan for Employees of Firemen's Fund Ins. Co.,* 422 F. Supp. 287, 290 (J.P.M.L. 1976).

In all of the related cases, Plaintiffs' proof will involve the same evidence concerning defendants' allegedly misconduct that resulted in design, production, marketing, and sale of defective hernia mesh and led to Plaintiffs' injuries. Thus, the first prong of Section 1407 weighs in favor of consolidation.

2. Consolidation Will Further the Convenience of Parties and Witnesses

The second prong of Section 1407 is also satisfied because consolidation of the cases will serve "the convenience of parties and witnesses." The Plaintiffs in each of the pending actions will rely upon the same corporate policies, studies and analysis to prove the nature and extent of Atriums' wrongdoing. Plaintiffs will also depose the same core set of corporate employees and officers who are believed to have knowledge of Defendants' design, manufacture, marketing, warnings and sales practices. All of the actions will share factual questions including the design, manufacture, safety, testing, marketing and performance of the Atrium mesh that is at the center

of this litigation. Given the common factual questions raised by the parties in each of the pending actions, and the concomitant reliance of each action on substantially the same set of documents, extensive discovery will be duplicated absent consolidation of the actions. In particular, discovery requests and depositions of the executives and employees may be taken multiple times on the same subjects absent consolidation. Transfer will enable a single court to establish a pretrial plan that will minimize the inconvenience to the witnesses. Moreover, many of the same pretrial disputes are likely to arise in each case, such as issues concerning the nature and scope of discovery, motions to dismiss, and determinations regarding potential class certification. Consolidation will solve this problem by enabling a single judge to formulate a pretrial program that will minimize witness inconvenience and overall expense for all parties involved.

Consolidation will benefit the plaintiffs, the defendants and the judicial system. *See, e.g., Cuisinart Food Processor,* 506 F. Supp. at 651 (transfer would "effectuate a significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities."). Accordingly, it should be granted.

3. Consolidation Will Promote Just and Efficient Conduct of These Actions

Consolidation is also strongly favored in accordance with the third factor considered by the Panel pursuant to Section 1407 – whether consolidation will "promote the just and efficient conduct of [the] actions." First, where, as here, meaningful discovery has not been completed in the related actions, consolidation will prevent duplicative discovery and conflicting pretrial rulings and will also result in a "substantial savings of judicial time and resources." *See In re Japanese Elec. Prods. Antitrust Litig.,* 388 F. Supp. 565, 567 (J.P.M.L. 1975); *see also In re European Rail Pass Antitrust Litig.,* No. MDL 1386, 2001 WL 587855, at *1 (J.P.M.L. Feb. 7, 2001) (ordering cases transferred to a single district in order "to avoid duplicative discovery"); *In re Fine Paper Antitrust Litig*., 453 F. Supp. 118, 121 (J.P.M.L. 1978) ("Section 1407 transfer . . . is necessary in order to prevent duplicative discovery and eliminate any possibility of conflicting class and other pretrial rulings."). Without consolidation, there is a high likelihood that duplicative discovery demands and redundant depositions will occur.

4. Transfer Will Streamline Discovery and Reduce Costs

Consolidation and coordination of these similar actions will prevent the problems identified by the court in *In re Fine Paper Antitrust Litigation* by streamlining discovery and conserving resources. *See In re Universal Serv. Fund Tel. Billing Practices Litig.*, 209 F. Supp.2d 1385, 1386 (J.P.M.L. 2002); *In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979); *In re Cross – Fla. Barge Canal Litig.,* 329 F. Supp. 543, 544 (J.P.M.L. 1971) (consolidation of two actions ordered because "consolidation will eliminate the likelihood of repetitive discovery in [certain] areas, serving the convenience of the parties and witnesses and furthering the just and efficient conduct of the litigation"). For example, since the parties will be requesting and relying upon the same core set of corporate documents, medical documentation, and witnesses, coordination will avoid wasteful duplicative discovery. Moreover, to the extent the parties engage in any discovery disputes and motion practice, such issues can be *uniformly* resolved in a single proceeding, rather than multiple, separate hearings that may lead to inconsistent rulings. The corresponding savings in time and expense will benefit both parties and the courts. *See Cuisinart Food Processor,* 506 F. Supp. at 655 (transferring actions would result in "significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities").

As discussed above, the complaints in the pending related actions contain substantially identical factual allegations. Where "an analysis of the complaints reveals a commonality of factual issues," transfer "is necessary in order to prevent duplication of discovery and eliminate the possibility of conflicting pretrial rulings." *In re A.H. Robbins Co., Inc. "Dalkon Shield" IUD Prods. Liab. Litig.,* 406 F. Supp. 540, 542 (J.P.M.L. 1975). This will benefit the parties and conserve overtaxed judicial resources. *See In Re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.,* 844 F. Supp. 1553 (J.P.M.L. 1994) (centralization "necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, . . . and conserve the resources of the parties, their counsel and the judiciary"); *In re Silicone Gel Breasts Implants Prods. Liab. Litig.,* 793 F. Supp. 1098, 1100 (J.P.M.L. 1992) (same); *In re Amino Acid Lysine*

Antitrust Litig., 910 F. Supp. 696, 698 (J.P.M.L. 1995) (consolidation and coordination is appropriate to "conserve the resources of the parties, their counsel and the judiciary").

5. Transfer Will Eliminate the Likelihood of Inconsistent Rulings

Consolidation will assure that the parties to these actions are not subject to inconsistent pretrial rulings regarding these various pivotal issues – always a critical consideration in determining whether cases should be consolidated under Section 1407. *See In re Multi-Piece Rim Prods.,* 464 F. Supp. at 974 (consolidation necessary "to prevent duplication of discovery and eliminate the possibility of conflicting pretrial rulings concerning . . . common factual issues."); *In re First Nat'l Bank, Heavener Okl. (First Mortgage Revenue Bonds) Sec. Litig.,* 451 F. Supp. 995, 997 (J.P.M.L. 1978) (Transfer "necessary, even though only two actions are involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of inconsistent pretrial rulings."). Important identical issues in the instant litigation that would produce irreconcilable inconsistent rulings include choice of law questions.

6. These Actions Are Sufficiently Complex to Warrant Consolidation and Transfer

The Panel has consistently and repeatedly found medical product liability litigation sufficiently complex to warrant transfer. *See, e.g., In Re: Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Products Liability Litigation,* MDL 2846, 316 F.Supp. 1380 (J.P.M.L. 2018); *In Re: Ethicon Physiomesh Flexible Composite Hernia Mesh Producs Liability Litigation,* MDL 2782, 254 F.Supp.3d 1381 (J.P.M.L. 2017); *In Re: Atrium Medical Corp. C-Qur Mesh Products Liability Litigation*, MDL 2753, 223 F.Supp.3d 1355 (J.P.M.L. 2016); *In Re Kugel Mesh Hernia Patch Litigation,* MDL No. 1842, 493 F.Supp.2d 1371 (J.P.M.L. 2007); *In re Denture Cream Prod. Liab. Litig.,* 624 F. Supp. 2d 1379, 1403 (J.P.M.L. 2009); *In re: Human Tissue Prod. Liab. Litig.*, 435 F. Supp. 2d 1352 (J.P.M.L. 2006); *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 386 F. Supp. 909 (J.P.M.L. 2001).

The Panel has stated that where issues involved are sufficiently complex and where consolidation will prevent the duplication of discovery and pretrial rulings, it will not require large numbers of pending cases as a prerequisite to granting consolidation under Section 1407.

See, e.g., First Nat'l Bank, 451 F. Supp. at 996; *New Mexico Natural Gas*, 482 F. Supp. at 336; *California Armored Car,* 476 F. Supp. at 454; *Cross-Fla Barge Canal,* 329 F. Supp. at 544; *In re Ryder Truck Lines, Inc., Employment Practices Litig.,* 405 F. Supp. 308 (J.P.M.L. 1975). Indeed, this Panel has consolidated as few as two cases. *See In re Clark Oil & Ref. Corp. Antitrust Litig.,* 364 F. Supp. 458 (J.P.M.L. 1973).

The pending actions clearly present many factual issues relating to the hernia mesh devices, and the chemical and biological reactions of those components in the human body, and the risks and dangerous associated with the devices. Thus, these similar actions, arising from Atrium's same course of conduct, are well-suited for consolidation.

B. This Panel Should Transfer These Actions to the Central District of California

1. The Central District of California is a Convenient Forum for this Litigation

The Central District of California is a particularly convenient forum for litigation after consolidation of these actions. The Central District courthouse is conveniently located in downtown Los Angeles. The courthouse is easily accessible and a number of hotels are located nearby. The Central District courthouse is also located near the Los Angeles International airport offering direct flights on most major airlines to numerous cities across the United States and around the world.

2. The Central District of California Has the Resources and Judicial Expertise to Properly Conduct this Case

The Central District has the capacity and capability to manage a multi-district litigation case. The Central District has seasoned jurists and magistrates who can direct this litigation on a steady and expeditious course. Presently, the *Avila* case is assigned to Judge Cristina Snyder and Magistrate Judge Michael R. Wilner.

Another important factor for determining the most appropriate forum for multidistrict litigation is the speed and efficiency with which the available districts manage their respective caseloads. *See In re Laughlin Prods., Inc. Patent Litig.,* 240 F. Supp. 2d at 1359 (transfer based in part on fact that district "enjoys general caseload conditions permitting the Panel to effect the

Section 1407 assignment to a court with the present resources to devote the time to pretrial matters that this docket is likely to require."); *Preferential Drug*, 429 F. Supp. at 1029 (transferring cases based in part upon transferee court's low median time between filing and disposition in civil actions); *Corn Derivatives*, 486 F. Supp. at 932. The Central District of California efficiently manages its caseload.

The balance of convenience and efficiency favor consolidation and transfer to the Central District of California because it offers a centralized location that is easily accessible and Judge Snyder is well-suited to supervise this Multi-District litigation.

V. CONCLUSION

For the foregoing reasons, Movants respectfully request that the Panel order that the above mentioned related actions as well as any cases that may subsequently be filed asserting related or similar claims be transferred to the Central District of California, and consolidated for pretrial proceedings. Consolidation of these actions will further "the convenience of parties and witnesses and [would] promote the just and efficient conduct of [the] actions." 28 U.S.C. § 1407(a).

Plaintiffs allege Defendant Atrium negligently designed, manufactured, marketed, labeled, packaged and/or sold ProLite and ProLoop hernia mesh devices for hernia repair. All of the above factors combine to make the Central District an appropriate, capable, and efficient forum for these related actions to be transferred to for coordinated pretrial proceedings. Transfer is needed because these related actions involve common issues of fact, it will convenience the parties, witnesses and counsel, and it will provide for the efficient and consistent conduct of this litigation.

This litigation and these actions squarely fit the statutory prerequisites for transfer and consolidation. Consolidating and transferring these actions as discussed above would also best serve judicial efficiency, and avoid duplication and wasted efforts. In the absence of transfer, the very problems Section 1407 is intended to avoid will arise - duplicative fact and expert discovery and motion practice resulting in a needless waste of judicial resources in multiple federal district

courts as well as inconsistent rulings. Finally, Judge Cristina Snyder is an able jurist who can capably and efficiently handle this litigation.

Respectfully submitted,

Dated: December 9, 2021

KELLER, FISHBACK & JACKSON LLP

By: */s/ Dan C. Bolton*
Dan C. Bolton

Stephen M. Fishback
(Cal. SBN 191646)
sfishback@kfjlegal.com
Daniel L. Keller
(Cal. SBN 191738)
dkeller@kfjlegal.com
Dan C. Bolton
(Cal. SBN 104236)
dbolton@kfjlegal.com
28720 Canwood Street, Suite 200
Agoura Hills, CA 91301
Telephone: 818-342-7442
Facsimile: 818-342-7616

Attorneys for Plaintiffs Jose Avila, Hazel Benhamed-Masri, Rachel Bates, Brian Benhardt, Herman Curley, Claude Daniels, Raymond Ferrell, John Langley, Betty Lewis, Raymond Maki, James Nakashian, Alan Roseman, Randy Walker and Alfredo Vega

BRENES LAW GROUP, P.C.

By: */s/ Adam Evans*
Adam Evans

Troy Brenes
tbrenes@breneslawgroup.com
Adam Evans
avans@breneslawgroup.com

1200 Main Street, Suite 2120
Kansas City, MO 64015
Telephone: 949-397-9360
Facsimile: 949-607-4192

Attorneys for Plaintiffs Clark Kolbeck