IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FEDERAL TRADE COMMISSION, Petitioner, v. RECKITT BENCKISER PHARMACEUTICALS, INC., Respondent.	Misc. No. 3:14-mc-00005-REP

MEMORANDUM IN SUPPORT OF THE FEDERAL TRADE COMMISSION'S OPPOSITION TO RESPONDENT RECKITT BENCKISER PHARMACEUTICALS, INC'S MOTION TO TRANSFER

I. INTRODUCTION

Respondent Reckitt Benckiser Pharmaceuticals, Inc. ("Reckitt") is in an unusual posture before this Court. It is headquartered in Richmond, no more than eight miles from this courthouse. The documents sought by the FTC originate from the files of at least 34 Richmond-based Reckitt employees. Yet Reckitt, unhappy with Circuit precedent, seeks to transfer this proceeding to a forum outside the Circuit.[1] And it implausibly accuses the FTC of forum-shopping for choosing Reckitt's *own home forum*, where the conduct the FTC is investigating occurred.

These arguments are baseless and the transfer motion should be denied. Reckitt urges this Court to transfer the case to the Eastern District of

[1] *See* Respondent Reckitt Benckiser Pharmaceuticals, Inc.'s Memorandum in Support of Motion to Transfer (Dkt. 14) [hereinafter "Reckitt Mem."].

Pennsylvania, a forum foreign both to the FTC and to Reckitt, solely because private class action litigation against Reckitt is pending there. But the narrow issues raised by this process enforcement proceeding – which require no familiarity with the underlying subject matter of the private litigation – are quite distinct from those raised in that litigation, where only limited discovery has begun. Indeed, the court in that private litigation may not even address the privilege claims that are now before this Court and ripe for decision. Transfer of the case would thus achieve nothing other than delay, undermining "the important governmental interest in the expeditious investigation of possible unlawful activity." *FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977) (*en banc*); *United States v. Am. Target Adver., Inc.*, 257 F.3d 348, 354 (4th Cir. 2001).

II. BACKGROUND

The nature of the FTC's investigation is more fully presented in the FTC's memorandum supporting its CID petition. What follows is a summary.[2]

Reckitt is a Virginia corporation headquartered in Richmond, at 10710 Midlothian Turnpike. Pet. Exh. 1, ¶ 3 (Dkt. 4-1, ¶ 3). The FTC is investigating Reckitt for potentially anticompetitive conduct involving its branded drug Suboxone. As part of this investigation, the FTC is examining whether Reckitt abused certain FDA regulatory processes—including the FDA "citizen petition" process—to thwart generic competition. *Id.* ¶¶ 14-16 (Dkt. 4-1, ¶¶ 14-16).

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[2] "Pet. Exh." refers to exhibits filed with the Commission's Petition for an Order Enforcing Civil Investigative Demand. "Exh." and "Att." refer respectively to exhibits and supporting attachments thereto filed with this memorandum. "Dkt." refers to docket entries; "Dkt." page references are to ECF page numbers.

The relevant conduct relates largely to the activities of company personnel at Reckitt's Richmond headquarters. For example, in September 2012, Tim Baxter, Reckitt's Richmond-based Global Medical Director, filed a citizen's petition with the FDA concerning generic competition for Suboxone. Pet. Exh. 7 (Dkt. 2-3); Second Declaration of Daniel Butrymowicz, ¶ 4 (attached as Exh. 1). In relation to this petition, Reckitt worked with a third-party consultant, Venebio Group, LLC ("Venebio"), to prepare, among other things, an executive summary of a study that allegedly supported Reckitt's petition.[3] Pet. Exh. 1, ¶ 24 (Dkt. 4-1, ¶ 24); Exh. 1, ¶ 5. Venebio, like Reckitt, is based in Richmond. Exh. 1, ¶ 5. In February 2013, the FDA denied the petition in its entirety and referred Reckitt's conduct to the FTC "to investigate and address anticompetitive business practices." Pet. Exh. 8 at 016 (Dkt. 2-4 at 17). The FDA addressed its ruling to Mr. Baxter at his office in Reckitt's Richmond headquarters. Pet. Exh. 8 at 001 (Dkt. 2-4 at 2); Exh. 1, ¶ 8.

The FTC had already opened its investigation as of October 2012. Exh. 1, ¶ 6. On November 30, 2012, it sent a letter to Reckitt's Richmond-based general counsel disclosing its investigation and asking Reckitt to preserve all relevant documents. Exh. 1, ¶ 7 & Att. 1. On December 21, 2012, the first private class action related to Reckitt's allegedly anticompetitive conduct was filed in the District of Vermont. Ultimately, twelve separate private actions were filed against Reckitt alleging potentially anticompetitive conduct. By order dated June 6, 2013, and over Reckitt's objections, these actions were consolidated in multi-district litigation

[3] A draft of this executive summary was filed under seal with the Court as Exhibit 6 to the FTC's Petition for an Order Enforcing Civil Investigative Demand.

overseen by the Eastern District of Pennsylvania in Philadelphia.[4] With very limited exceptions, discovery has not commenced in that MDL proceeding,[5] which Reckitt has moved to dismiss.[6]

The FTC issued a CID to Reckitt on June 13, 2013. Pet. Exh. 3 at 001 (Dkt. 2-2 at 2); Exh. 1, ¶ 9. Reckitt has produced approximately 590,000 documents in response. However, it continues to withhold approximately 28,000 documents on grounds of attorney-client privilege – including drafts of documents that were intended to be published, and were in fact published. *See* Pet. Exh. 1, ¶¶ 18, 22 (Dkt No. 4-1, ¶¶ 18, 22); *cf. United States v. (Under Seal)*, 748 F.2d 871, 875 & n.7 (4th Cir. 1984) (finding such documents unprivileged as well as the "details underlying the data" discussed in the documents). The FTC filed this proceeding to enforce this CID and obtain these documents because they are non-privileged under binding Fourth Circuit precedent. *See (Under Seal)*, 748 F.2d at 875 & n.7; *see also In re*

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[4] Reckitt opposed consolidation in the Eastern District of Pennsylvania and argued that the cases should be consolidated in the District of Vermont instead. Defendants' Response in Support of Motion for Transfer and Coordination of Related Actions to the District of Vermont, Dkt. 29, *In re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litig.*, Case MDL No. 2445 [hereinafter "Reckitt MDL Brief"] (attached as Exh. 2).

[5] On October 1, 2013, the court issued a limited order directing Reckitt to produce certain documents to the private plaintiffs, including "[a]ll documents submitted to or received from the Federal Trade Commission in connection with any investigation of Defendant's conduct with respect to Suboxone." The order further provided that, with respect to "any document production in response to any ongoing or future government investigation," Reckitt shall "(a) Produce all relevant, non-confidential documents, (b) object to some or all of the production on the basis of relevance or the need for a protective order and (c) provide Plaintiffs with a proposed protective order if one is necessary." Reckitt Mem., Exh. A.

[6] A hearing on Reckitt's motion to dismiss is currently scheduled for next Wednesday, September 17.

Grand Jury Proceedings, 727 F.2d 1352, 1356 (4th Cir. 1984); *ePlus Inc. v. Lawson Software, Inc.*, 3:09CV620, 2012 WL 6562735, at *5 (E.D. Va. Dec. 14, 2012).

III. ARGUMENT

With respect to the enforcement of any CID against a person who fails to comply, section 20 of the FTC Act authorizes the Commission to file suit to enforce a CID "in the district court of the United States for any judicial district in which such person resides, is found, or transacts business." 15 U.S.C. § 57b-1(e). This district uniquely meets all three of these conditions: Reckitt resides here *and* is found here *and* transacts business here. In selecting Reckitt's home forum, the FTC has chosen not only *an* appropriate forum, but *the most* appropriate forum for its CID enforcement proceeding.

As this Court has recognized, "[t]he initial choice of forum, from among those possible under the law, is a privilege given to the plaintiff." *Koh v. Microtek Intern., Inc.*, 250 F. Supp. 2d 627, 633 (E.D. Va. 2003). "To overcome that privilege, a movant [for transfer of venue under 28 U.S.C. §1404(a)], 'bears the burden of demonstrating that the balance of convenience among the parties and witnesses is ***strongly*** in favor of the forum to which transfer is sought." *Koh*, 250 F. Supp. 2d at 633 (emphasis supplied by Court) (quoting *Medicenters of Am., Inc. v. T & V Realty & Equip. Corp.*, 371 F. Supp. 1180, 1184 (E.D. Va. 1974)). The court will also consider whether the "interests of justice" warrant transfer of the case. 28 U.S.C. §1404(a); *see also Gen. Foam Plastics Corp. v. Kraemer Exp. Corp.*, 806 F. Supp. 88, 89 (E.D. Va. 1992). A movant must make a "strong showing of inconvenience or

injustice" to justify transfer. *Gen. Foam Plastics Corp.,* 806 F. Supp. at 90. Reckitt, in its motion, has not demonstrated that it satisfies any of these criteria.

A. The FTC's selection of Reckitt's home forum should be given substantial weight.

A plaintiff's choice of venue—including the choice made by a government plaintiff—is entitled to "substantial weight." *JTH Tax, Inc. v. Lee*, 482 F.Supp.2d 731, 736 (E.D. Va. 2007).[7] Such deference is less required when the plaintiff selects a forum "where neither the plaintiff nor the defendant resides and where few or none of the events giving rise to the cause of action accrued." *Original Creatine Patent Co. v. Met-Rx USA, Inc.*, 387 F. Supp. 2d 564, 568 (E.D. Va. 2005). But that scenario is the polar opposite of this case, and full deference to the government's choice of forum is thus appropriate here.

Reckitt's U.S. headquarters and operations are located in Richmond. The vast majority of its U.S. personnel—including nearly all of the individuals that Reckitt identified as custodians of the relevant documents sought by the FTC—work or worked in Richmond.[8] Exh. 1, ¶ 10 & Att. 2. Furthermore, the FTC has learned

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[7] Reckitt disputes the level of deference given the government's choice of a forum. *See* Reckitt Mem. at 10-11 (citing, *inter alia*, *U.S. v. Klearman*, 82 F. Supp. 2d 372, 375 (E.D. Pa. 1999); *United States v. Nature's Farm Prods.*, No. 1:00cv6593 (SHS), 2004 WL 1077968, at *6 (S.D.N.Y May 13, 2004)). However, even the cases Reckitt cites confirm that the government's choice is still "properly granted significant weight" and, moreover, that the FTC's choice to bring this proceeding where Reckitt is located and where there is a strong connection to the operative facts was entirely correct. *See Klearman* 82 F. Supp. 2d at 375 (finding venue proper where all defendants resided); *Nature's Farm Prods*, 2004 WL 1077968, at *5, *7 (finding venue proper where there was a strong connection to operative facts).

[8] Reckitt produced documents from 38 custodians. Of those 38, three work overseas and 34 work or worked for Reckitt in Richmond. Exh. 1, ¶ 11.

that the critical conduct and most of the relevant decisions about activities the FTC is investigating—Reckitt's citizen petition to the FDA, its negotiations regarding the FDA's Risk Evaluation and Mitigation Strategy (REMS) requirements, and its Suboxone marketing strategy generally—were undertaken by Reckitt executives based at Reckitt's Richmond headquarters. Exh. 1, ¶ 14. Additionally, the citizen petition was largely based on an executive summary of a study prepared by Reckitt's consultant, Venebio, also a Richmond-based company. Exh. 1, ¶ 5.

Thus, Reckitt is wrong to argue that this proceeding "has no particular ties to this jurisdiction." Reckitt Mem. at 11. Reckitt's similar claim that the "locus of relevant facts" lies elsewhere (*id.* at 12-14) is likewise baseless. For example, Reckitt emphasizes that the FTC served its CID in the District of Columbia. But the FTC did so only as a courtesy to Reckitt's D.C.-based antitrust counsel (Jones Day), who accepted service *on behalf of Reckitt, in Richmond*. Exh. 1, ¶ 9. Notably, Reckitt's certification of compliance with the CID was signed by its Richmond-based general counsel and stamped with a "Commonwealth of Virginia" notary seal. Exh. 1, ¶ 12 & Att. 4. Reckitt's further assertion that many of Reckitt's privilege log entries concern communications with lawyers and consultants in other states ignores that those consultants were communicating with *Reckitt executives in Richmond*. Exh. 1, ¶¶ 10-11 & Atts. 2-3. And although Reckitt references affiliated companies in New Jersey, it previously argued—in opposing consolidation of the MDL cases in the Eastern District of Pennsylvania—that there was no evidence that these affiliates undertook "even a single specific action" related to the conduct at

issue in that antitrust litigation. *See* Reckitt MDL Brief at 10 n.9 (Exh. 2). [9]

In sum, Reckitt's strained attempts to find connections to other forums such as New Jersey or D.C. merely highlight why the present proceeding should remain here, in Reckitt's home forum. Not one of the other forums has nearly as strong a connection to this proceeding as this one, and—tellingly—Reckitt does not even suggest transfer to any of them. Finally, the FTC's investigation has no particular connection to the Eastern District of Pennsylvania, other than the fact that Reckitt sells drugs there (as it does here and throughout the country).

B. This district is most convenient to the parties and any potential witnesses.

Under Section 1404(a), the "convenience of parties and witnesses" is relevant to transfer-of-venue motions. That factor also cuts against Reckitt's transfer motion. As Reckitt's home forum, this district is clearly the most convenient to the

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[9] Reckitt is simply incorrect in asserting that it is unusual for the FTC to seek process enforcement outside the District of Columbia. Since 2011, the FTC has filed nine process enforcement proceedings in district courts around the nation, only one of which was filed in the District of Columbia. (Reckitt's Declaration of Mark R. Lentz omits three process-enforcement proceedings during that period, all of which were filed outside of D.C. *See Federal Trade Commission v. The Western Union Co., et al.*, 13-mc-0131-AKH (S.D.N.Y. Apr. 15, 2013); *Federal Trade Commission v. LabMD, Inc., et al.*, 1:12-cv-3005-WSD (N.D. Ga. Aug. 29, 2012); *Federal Trade Commission v. Clear Source Research, LLC*, 3:11-mc-9004-RED (W.D. Mo. July 19, 2011); *see also In re Application of the Federal Trade Commission for an Order Pursuant to 28 U.S.C. § 1782 to Obtain Information from Aegis Mobile LLC*, 1:13-mc-00524-MJG (D. Md. Nov. 1, 2013) (proceeding to compel production in response to subpoena issued on behalf of foreign law enforcement agency).) Indeed, in a recent opinion that Reckitt attached to its motion, the D.C. District Court dismissed an FTC subpoena enforcement action on the basis that the FTC should have brought the action in the defendants' home district, *not* the District of Columbia. Reckitt Mem., Exh. B (attaching *FTC v. Promedica Health System, Inc.*, No. 1:10-mc-586 (D.D.C. Oct. 12, 2010)).

company. As one of the two judicial districts adjacent to the District of Columbia, it is also convenient to the FTC (and to Reckitt's D.C.-based counsel).

The "convenience of the witnesses" factor is less relevant to this motion than the convenience of the parties because there are no witnesses. Indeed, the show-cause order entered in this case expressly prohibits witness testimony unless Reckitt can make an affirmative showing why such testimony would be required. Dkt. 6 at 2-3. In any event, even if Reckitt could make such a showing, this district would be quite convenient because the most likely witnesses regarding Reckitt's claims of attorney-client privilege—the sole issue in this proceeding—are located here. For example, Tim Baxter, Reckitt's Global Medical Director and nominal author of its citizen petition, and Nancy Schrom, its North American Regional General Counsel (a declarant supporting Reckitt's motion to transfer), both currently work at Reckitt's headquarters on Midlothian Turnpike. Exh. 1, ¶¶ 10, 13. And Reckitt certainly has not shown that Philadelphia is more convenient for any potential witnesses.

C. The interests of justice will be served by retaining venue in this district.

Because the other Section 1404(a) factors do not support transfer, Reckitt resorts to the "interests of justice" to argue that transfer is necessary to prevent inconsistent rulings and promote judicial economy. That argument is meritless as well.

1. Transfer would defeat, not promote, the efficient use of judicial resources.

Reckitt notes that the judge overseeing the MDL case in Philadelphia is

familiar with pharmaceutical antitrust law and the facts underlying those antitrust claims. But that observation is irrelevant here because there is no overlap between the privilege issues in this process-enforcement action and the antitrust merits of the private class action suit. The only issue presented in *this* proceeding is whether Reckitt has improperly withheld, on grounds of attorney-client privilege, materials responsive to the FTC's CID. That privilege question is squarely within this Court's competence to decide and is ripe for review. To resolve that dispute, this Court need not address the antitrust merits of any hypothetical suit the Commission might bring, nor need it make any factual findings concerning any antitrust claims.

Indeed, this process enforcement case will never involve any substantive antitrust questions; at this stage, the FTC has not made any determination as to whether it will pursue an antitrust enforcement action against Reckitt. The FTC may investigate and enforce process even though a "complaint may not, and need not, ever issue." *Texaco*, 555 F.2d at 874 & n.25 (citing, *inter alia*, *Oklahoma Press Publ'g Co. v. Walling*, 327 U.S. 186, 201 (1946)). As the court of appeals for this Circuit has explained, "[t]he process [of judicial review of administrative subpoenas] is not one for a determination of the underlying claim on its merits; Congress has delegated that function to the discretion of the administrative agency." *EEOC v. Am. & Efird Mills, Inc.*, 964 F.2d 300, 303 (4th Cir. 1992)

Further, it is uncertain when, *or even if*, the Philadelphia court will reach the privilege issue presented in this compulsory-process proceeding. Reckitt has moved to dismiss the class action suits, and most discovery has been stayed pending a

ruling on Reckitt's motions. If Reckitt prevails, the Philadelphia court will never need to address any privilege claims that Reckitt might wish to assert in that litigation. In that event, transfer to Philadelphia would serve no purpose other than delaying enforcement of the FTC's CID, undermining "the important governmental interest in the expeditious investigation of possible unlawful activity." *Texaco*, 555 F.2d at 872-873 (quoting *FMC v. Port of Seattle*, 521 F.2d 431, 433 (9th Cir. 1975), for the principle that the "'very backbone of an administrative agency's effectiveness in carrying out the congressionally mandated duties of industry regulation is the rapid exercise of the power to investigate").[10] The Eastern District of Pennsylvania, moreover, experiences greater docket congestion than this district, increasing the chances of undue delay if this proceeding were transferred.[11] *See Heinz Kettler GMBH & Co. v. Razor USA, LLC*,

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[10] Reckitt cites *Federal Housing Finance Agency v. First Tennessee Bank, N.A.* ("*FHFA*") for the principle that even subpoena enforcement proceedings may be transferred when there is pending related litigation. 856 F. Supp. 2d 186 (D.D.C. 2012). That case is inapposite because the related action was filed by *FHFA itself* and involved "five of the six securitizations that [we]re the subject of the subpoena [as] subjects of the Securities Action." *FHFA*, 856 F. Supp. 2d at 193. In other words, the court transferred venue to a court where FHFA was already in litigation with the same defendants involving the same information. Here, in contrast, the related litigation in Philadelphia was filed by private plaintiffs completely separate from the FTC; the FTC has not yet brought a law enforcement proceeding against Reckitt and, in fact, may never do so. It has merely opened an investigation. *See U. S. v. Firestone Tire & Rubber Co.*, 455 F. Supp. 1072, 1077-78 (D.D.C. 1978) (denying motion to transfer process enforcement proceedings based on convenience and interests of justice).

[11] According to March 31, 2014 statistics published by the Administrative Office of the United States Courts, the Eastern District of Pennsylvania has 515 cases pending per judge, a median time of 18.6 months from filing to trial, and a median time of 8.7 months from filing to disposition in civil cases. For the Eastern District of Virginia, the same statistics show 288 cases pending per judge, a median time of

750 F. Supp. 2d 660, 670 (E.D. Va. 2010) (docket congestion, "while not a significant factor," may militate against transfer if "statistics reflect that this district, on average, provides a speedier" proceeding than the transferee court).

Transfer would also represent an unfortunate setback for federal law enforcement. There are parallel private cases in many instances in which the FTC conducts investigations and seeks to enforce process. Routine combination of process-enforcement proceedings with large, complex litigations would undermine the FTC's ability to conduct expeditious investigations. This Court is poised to decide this proceeding: the briefing is underway and a show cause hearing has been scheduled. Derailing this proceeding might serve Reckitt's interests but would substantially disserve the public interest.

2. The putative risk of inconsistent rulings is illusory.

Finally, Reckitt argues that transfer is necessary to avoid the risk of "inconsistent" rulings on the privilege issue. That concern is specious. First, as discussed (p. 10 *supra*), the Philadelphia court may never address or resolve any privilege issues—*e.g.,* if it grants Reckitt's motion to dismiss the class action suits. Second, even if that court does address or resolve such questions, it may well defer to this Court. Third, even if the Philadelphia court differs in its resolution of such issues, Reckitt would not face mutually inconsistent legal obligations. At most, it

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11.3 months from filing to trial, and a median time of 5.5 months from filing to disposition in civil cases.
http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-march-2014.aspx (attached as Exh. 3). Reckitt itself opposed consolidation in Philadelphia based on docket congestion there, among other reasons. Reckitt MDL Brief, at 7-8 (Exh. 2).

would simply need to give the Commission access to documents that it need not give to private plaintiffs in their separate lawsuit. That outcome is hardly anomalous; the Commission has always had broad investigative powers for which private parties have no counterpart. *See*, *e.g.*, 15 U.S.C. §§ 46, 49, 57b-1; *Texaco*, 555 F.2d at 872 (analogizing the FTC to a grand jury with "powers of original inquiry"). In sum, the prospect that the Commission might obtain documents here that would be unavailable to private plaintiffs in the Philadelphia case is no basis for allowing Reckitt to avoid the applicable law of its home forum

IV. CONCLUSION

Reckitt's motion to transfer should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September, 2014, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FEDERAL TRADE COMMISSION, Petitioner, v. RECKITT BENCKISER PHARMACEUTICALS, INC., Respondent.	)	Misc. No. 3:14-mc-00005-REP

SECOND DECLARATION OF DANIEL BUTRYMOWICZ

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am an attorney employed by the U.S. Federal Trade Commission ("FTC" or "Commission") in Washington, DC. I am assigned to the FTC's investigation of Reckitt Benckiser Pharmaceuticals, Inc. ("Reckitt") for potentially anticompetitive conduct related to its Suboxone drug products.

2. I am authorized to execute a declaration verifying the facts that are set forth in the FTC's Memorandum in Support of Its Opposition to Respondent Reckitt Benckiser Pharmaceuticals, Inc.'s Motion to Transfer. I have read the memorandum and exhibits thereto (hereinafter referred to as "Exh."), and verify that Exhs. 2 and 3 are true and correct copies of the original documents or have been prepared from true and correct copies.

3. The facts set forth herein are based on my personal knowledge or information made known to be in the course of my official duties, including documents

and narrative responses submitted by Reckitt that I have reviewed. I verify that Attachments 1 to 4 to this declaration (hereinafter referred to as "Att.") are true and correct copies of the original documents or have been prepared from true and correct copies.

4. Reckitt's September 25, 2012, citizen petition, requesting that FDA impose certain restrictions on the sale of generic Suboxone products, was submitted by Tim Baxter, the Global Medical Director of Reckitt. See Pet Exh. 7 at 048 (Dkt No. 2-3 at 49). Tim Baxter is based at Reckitt's headquarters in Richmond, Virginia. *See* ¶ 10 *infra.*

5. Reckitt hired a consultant, Venebio Group LLC ("Venebio") to conduct a study of the rates of pediatric exposure to different forms of Suboxone. Reckitt's September 25, 2012, citizen petition referenced and relied on this study. Venebio is located in Richmond, Virginia.

6. The FTC opened its investigation of Reckitt's conduct in or around October 2012.

7. On November 30, 2012, FTC attorney Garth Huston, assigned to lead this investigation, sent a letter to Reckitt's General Counsel, Javier Rodriguez, requesting that Reckitt preserve all documents that may be relevant to the investigation. See Att. 1. In a prior conversation, Mr. Huston confirmed with Mr. Rodriguez via telephone that the letter should be addressed to:

> Javier Rodriguez, Esq.
> General Counsel
> Reckitt Benckiser Pharmaceutical, Inc.
> The Fairfax Building, 10710 Midlothian Turnpike, Suite 430

Richmond, VA 23235

Id.

8. On February 22, 2013, FDA denied Reckitt's citizen petition. The FDA's letter explaining its decision was addressed to:

Tim Baxter
Global Medical Director
Reckitt Benckiser Pharmaceuticals, Inc.
10710 Midlothian Turnpike, Suite 430
Richmond, VA 23235

See Pet. Exh. 8 at 001 (Dkt. No. 2-4 at 2).

9. The FTC issued a Civil Investigative Demand ("CID") to Reckitt on June 13, 2013. The FTC served the CID on Reckitt's counsel Jones Day in the District of Columbia because Jones Day agreed to accept service on behalf of Reckitt.

10. In response to the CID, Reckitt produced an employee directory. See Att. 2. Under the "Richmond" heading, the directory identifies 159 employees, including Javier Rodriguez and Tim Baxter. Under the "Corporate Field – Richmond" heading, the directory identifies an additional 16 employees. Under the "Ft. Collins" heading, the directory identifies 34 employees. The directory also identifies 13 employees in Canada. No other employees are identified. Att. 2.

11. In response to the FTC's June 13, 2013 ,CID, Reckitt identified 38 employees as custodians who were likely to have relevant documents. Att. 3. Of the 38 proposed custodians, 35 are based in the United States. Of these 35, 34 are current or former employees who worked in Richmond. Att. 2. We

understand that the remaining U.S.-based employee is listed in the employee directory under Richmond, but actually works in Arlington, Virginia. *Id.*

12. Reckitt's December 12, 2013, certification that it had complied with the FTC's CID was signed by Javier Rodriguez and bears a notary seal from the Commonwealth of Virginia. Att. 4.

13. Based on publicly available sources, it appears that Nancy Schrom, Reckitt's North American Regional General Counsel and declarant in support of its Motion to Transfer, is assigned to Reckitt's headquarters in Richmond, Virginia.

14. Information obtained by the FTC in the course of this investigation to date shows that major decisions involving Suboxone marketing, Reckitt's September 25, 2012, citizen petition, and Reckitt's REMS negotiations were made by Reckitt executives based at Reckitt's Richmond headquarters.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2014.

s/ Daniel Butrymowicz
Daniel Butrymowicz
Staff Attorney
Federal Trade Commission

ATTACHMENT 1

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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November 30, 2012

Via E-mail and U.S. Mail

Javier Rodriguez, Esq.
General Counsel
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The Fairfax Building, 10710 Midlothian Turnpike, Suite 430
Richmond, VA 23235

Re: FTC Investigation, File No. 1310036

Dear Mr. Rodriguez:

As we discussed via telephone earlier today, the Bureau of Competition of the Federal Trade Commission is conducting a nonpublic investigation into whether Reckitt Benckiser Pharmaceutical, Inc., and any associated parent companies or subsidiaries ("Reckitt Benckiser") have engaged in unfair methods of competition related to Reckitt Benckiser's opioid dependence products. Such conduct could violate Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended. Please note that neither this letter nor the existence of this nonpublic investigation indicates that the Federal Trade Commission or its staff has concluded that Reckitt Benckiser has violated the law.

To assist in this investigation, we may find it necessary to request relevant information, documents, or data from Reckitt Benckiser or third parties. Accordingly, please preserve all documents that may be relevant to this investigation pending the completion of this investigation. The destruction of documents and the interference of dealings with potential witnesses may violate 18 U.S.C. §§ 1505 and 1512, which make it unlawful for anyone to influence, obstruct, or impede the due and proper administration of the law.

We will be in further contact with you regarding this investigation. In the meantime, if you have any questions, or would like to refer us to counsel who will represent Reckitt Benckiser in this matter, please do not hesitate to contact me.

Sincerely,

Garth W. Huston

Garth W. Huston
Attorney

ATTACHMENT 2

Richmond (All Richmond extensions #s are 2 + 4 digit number)				
	Contact Name	**Department**	**Work Phone**	**Cell #**
1	Abbey Brooks	Global Product Complaint Assistant	804-423-8957	
2	Adrian Norton	Global Vice President of Sales	804-423-7079	804-334-2039
3	Alan Young	Contractor	804-423-7202	
4	Alberto Avendano	Sr. Manager, Medical Affairs	804-423-8915	804-399-9768
5	Allan Lutzic	PV Data Specialist Contractor	804-594-0887	
6	Alison Grzywinski	Financial Analyst	804-594-4677	
7	Amardeep Neburi	Lead Data Manager	804-594-0754	
8	Angela Goodrich	Paralegal	804-594-4676	
9	Angela Smith	Clinical Development Manager	804-594-4661	804-349-6156
10	Ann Maddox	HRIS/LMS Analyst	804-594-4674	804-539-7010
11	Anne Smith	PVU Specialist	804-594-4664	
12	Azmi Nasser	Dir, Clinical Pharmacology/Translational Med	804-594-1886	804-615-7889
13	Baher Mankabady	Medical Advisor	804-594-0783	804-937-3582
14	Becky Bishop	Chief Drug Safety Officer	804-423-6956	
15	Betty Davis	PV Specialist	804-423-7084	
16	Bill Dewey	Global Director of Sales Training/Dev	804-423-6963	804-539-7505
17	Bill Elsmore	Business Analyst IS	804-594-1872	973-879-6920
18	Bo Zheng	Clinical Pharmacology Scientist	804-594-0792	804-539-5779
19	Brad Ashby	Sr. Business Analytics Manager	804-423-7090	804-370-4310
20	Brandy Duso	NA Healthcare Compliance Officer	804-594-4672	804-787-3603
21	Brooks Gordon	Senior Business Analyst/Project Mgr	804-594-2020	804-658-9032
22	Brooks Pickels	HR Contractor	804-594-1371	
23	Bruce Paolella	Dir of Regulatory Strategy	804-594-1888	804-873-0066
24	Carlette Scott	Staff Accountant	804-594-4663	
25	Carol (Yun) Chen	Intern/Clinical Pharma & Translational Med	804-594-0793	330-860-0958
26	Carol Livesey	Regional Quality Systems Mgr	804-594-1870	804-873-6591
27	Carrie Long	IT Business Analyst	804-594-2032	804-402-8907
28	Chamila Karandana	Global Project & Portfolio Management	804-594-2030	804-399-2160
29	Charles O'Keefe	Consultant	804-423-6961	804-370-9469
30	Cheryl Barakey	HR Compensation Analyst Temp	804-594-4667	
31	Christian Heidbreder	Global R&D Director	804-594-4456	804-467-7974
32	Cindy Pawlik	Global Project Manager	804-594-1370	804-248-9596
33	Clara Zhang	Clinical Intern	804-594-2033	
34	Clorey Toombs	Sr. Manager, Regulatory Strategy	804-423-8965	804-615-2673
35	Cyndie Cuccia	Medical Associate	804-423-8913	804-248-6012
36	Darlene Watson	Medical Information Specialist	804-423-6958	
37	David Burket	Senior CRA	804-594-2021	804-405-1307
38	David Gattermeir	Regulatory Strategy Manager	804-594-4449	804-402-9683
39	Deb Guyer	Director, Training/Development - NA	804-594-2022	804-564-7196
40	Debbie Hickerson	A/P Associate	804-423-6960	804-229-2953
41	Debby Betz	Commercial Development Director	804-423-7082	804-370-0585
42	Dominic Neary	NA Finance Director	804-594-1874	804-937-8821
43	Doreen Stith	Clinical Project Associate	804-594-4440	804-564-3724
44	Dorothea Gibbs	Sr. CRA	804-423-8919	804-615-1723
45	Dorothy Payne	Finance Contractor	804-594-1875	
46	Doug Cobarras	Sr. Brand Manager MC	804-594-1889	804-399-2104
47	Ed Johnson	VP, Treatment & Health Policy	804-423-7089	804-690-9240
48	Eric Garmany	Manager Clinical Data Management	804-594-1885	804-402-9283
49	Eve Campan	Global Human Resources Bus Partner	804-594-1873	804-539-5427
50	Frank Preziosi	Strategic Planning Director	804-423-8967	804-332-4770
51	Fred Florence	Clinical Data Manager	804-594-0692	804-615-6228
52	Gary Massengill	Head - Global Project & Portfolio Management	804-594-1881	804-614-6816
53	George Moonsammy	Sr. Clinical Program Manager	804-594-4452	801-232-5295
54	Gina Gao	Medical Advisor	804-423-7085	804-874-6949
55	Glenn Ward	Quality Control Contractor	804-594-0784	
56	Gloria Imperial	Manager, Global Regulatory Affairs	804-594-4673	804-937-3841
57	Greg Siwiec	Compliance Consultant	804-423-8958	804-539-6729

	Contact Name	Department	Work Phone	Cell #
58	Harpreet Singh	SAS Programmer Contractor	804-594-0873	
59	Heather Lyons	Sales Coordinator	804-423-6952	804-539-7586
60	Heather McFalls	Regulatory Labeling Specialist	804-594-0702	804-399-1316
61	Heather Sutton	Clinical Development Manager	804-423-8961	804-399-9272
62	Hilary Gray	Medical Writer – Regulatory Affairs	804-594-2035	804-467-5603
63	Hongtao Zhang	Regulatory Affairs Associate	804-594-0818	804-405-8156
64	Inayat Khan	PV Medical Advisor Contract	804-594-0895	
65	Isaac Yi (Saak)	Regulatory Intern	804-594-0898	
66	Jack Spencer	Medical Information Specialist	804-594-4447	
67	James Meyerhoffer	IS Helpdesk Contractor	804-594-1880	
68	Javier Rodriguez	Global Legal Counsel	804-594-4442	804-814-2802
69	Jennifer Moore	Medical Compliance Officer	804-423-8953	804-402-5185
70	Jenny Cheng	DMPK Translational Scientist Contractor	804-594-4450	804-402-8812
71	Jessica Kinsey	PV Data Specialist Contractor	804-594-0733	
72	Jodie Yerly	PV Specialist Contractor	804-594-0755	
73	Joe Lasher	NA Finance Manager	804-594-1878	804-614-6982
74	Joel Kelly	Marketing Manager	804-594-2034	404-202-1646
75	John McFadden	Global Procurement Manager	804-594-1887	804-833-3875
76	John Pitts	Director Global Regulatory Labeling	804-423-7087	804-402-3091
77	John Song	Dir, Global Regulatory Operations	804-423-6970	804-501-6825
78	Jon Fogle	Global Director Human Resources	804-423-8928	804-787-3683
79	Ju Yang	Global Regulatory Affairs Director	804-594-4457	804-539-3196
80	Julie Riles	HR Director- NA	804-594-0749	
81	Karen Ying	SAS Programmer	804-594-0817	
82	Katie Franson	PV Specialist	804-423-8956	
83	Kim Daly	Senior Brand Manager	804-423-7083	804-615-4369
84	Kimberly Langhorne	Global Labeling Coordinator Contractor	804-594-0920	
85	Kortenay Gardiner	Compliance Coordinator Contractor	804-594-1898	
86	Kristina Gregory	Executive Assistant	804-594-1379	804-833-6789
87	LaTarsha Jones	Sr. Regulatory Operations Associate	804-594-4448	804-869-7021
88	Lauren Hudnall	Quality Systems Specialist Contractor	804-594-1893	
89	Lauren Rice	Regulatory Affairs Associate	804-423-6968	804-399-6823
90	Lin McKinnie	Finance Contractor	804-594-1876	
91	Lisa McNair	Finance Manager, Gov't Pricing/Contracting	804-423-8914	804-869-9086
92	Lisa Tapscott	Sr. Financial Analyst	804-594-1378	
93	Lisa Taylor	MIU Supervisor	804-594-2024	
94	Lori Eberhardt	Executive Assistant	804-423-6964	804-822-7212
95	Lorraine Norton	PV Specialist	804-594-4445	
96	Luzy Liu	Bioanalytical Scientist	804-594-0893	804-548-3327
97	Madhura Gurjar	PV Contractor	804-594-0896	
98	Malcolm Blakey	IT Analyst Contractor	804-594-4443	804-349-4840
99	Mark Crossley	Global Finance Director	804-594-1879	804-467-7373
100	Marsha Donovan	Global Manager, MIU	804-423-7088	804-291-7373
101	Martha Joyner	Medical Information Specialist	804-423-8912	
102	Martin Garcia	Regulatory Project Lead, RBP RegEx	804-423-8910	804-615-9926
103	Marty Lutz	National Sales Director	804-594-1377	856-220-8751
104	Marty McClain	Administrative Associate HR	804-423-7201	
105	Mary Ann Ingram	PV Specialist	804-423-8955	
106	Mary Ann Miller	PV Specialist	804-594-2023	
107	Mike Schmidt	Supply Director Manufacturing	804-594-4458	804-869-5146
108	Missy D'Antuono	Global Project Management System Specialist	804-594-4666	804-615-9230
109	Natasha Royal	Global Regulatory Labeling Specialist	804-594-1884	
110	Neil Belson	Legal Contractor	804-5941894	
111	Nimi Patel	Sr. Brand Manager	804-594-2031	804 467 6589
112	Oanh Nguyen	Clinical Development Manager	804-594-0761	
113	Pam Rivera	Compensation & Benefits Lead	804-594-1374	804.564.5214
114	Pamela Knight	Business Operations Manager	804-423-6965	804-349-6620
115	Patti Weston	Assoc Brand Mgr, New Prod Dev	804-423-8962	804-349-9017
116	Paul Fudala	Global Clinical Development Director	804-423-8911	804-512-7164

	Contact Name	Department	Work Phone	Cell #
117	Portia Moore	Executive Assistant	804-594-4669	804-426-8590
118	Rachael Olorunnisola	Global Finance Manager	804-423-7080	804-467-6696
119	Rachel Woloski	Clinical QA Specialist	804-594-0981	804-334-9205
120	Ramona Krailler	Director, Regulatory Pipeline	804-594-4662	804-248-6702
121	Ray Gabehart	Global IS Director	804-594-4444	804-399-7463
122	Rebecca Miller	Sr. Finance Analyst	804-594-0732	804-426-2462
123	Richard Miller	Master Production Scheduler	804-594-4668	804-869-6534
124	Richard Simkin	President, NA	804-594-1373	804-399-2018
125	Rixey Booth	IS Business Analyst	804-594-0734	804-564-3680
126	Rob Brown	Global Project Manager	804-594-1892	804-928-7369
127	Rob Imhof	Contractor	804-594-2034	
128	Rob Philo	Director, Commercial MC/State Gov't Affairs	804-423-8917	678-628-6210
129	Rohit Pradhan	Planning & Intelligence Manager	804-594-1375	804-426-9795
130	Rosel Cushing	Clinical Data Specialist/PVU Admin Asst	804-423-7086	
131	Ryan Preblick	Finance Controller	804-594-1376	804-405-9319
132	Sandra Sandiford	Rebate Administrator	804-594-4678	804-258-3319
133	Sanjay Mitter	Director, Biostatistics & Data Management	804-594-1882	804-467-1276
134	Scott Gephart	Sr. Financial Analyst	804-594-0874	804-625-9261
135	Seo Kelleher	Marketing Contractor	804-423-6966	804-349-6672
136	Shannon Butler	IS Business Analyst	804-423-8963	757-407-8786
137	Sharon Negron	MIU Specialist	804-594-0892	
138	Shaun Thaxter	Global CEO	804-423-7081	804-690-9241
139	Siva Paladugu	PV Specialist Contractor	804-423-6969	
140	Sonia Ouseph	Senior Business Analyst	804-423-6959	804-334-2069
141	Stephanie Strafford	CDM	804-594-1891	804-420-0938
142	Steve Hebert	Global Director Business Development	804-594-0835	804-548-6007
143	Suman John	Business Analyst	804-594-1372	804-402-9542
144	Susan Brooks	Executive Assistant	804-423-7078	804-363-7711
145	Syed Quadri	Medical Evaluator	804-423-6962	804-548-6012
146	Tammy Anderson	PV Specialist	804-423-8959	
147	Ted Smith	Sr. Global Finance Analyst	804-594-4670	804-564-6321
148	Theresa Lucas	PV Specialist	804-423-8954	
149	Theresa Ouellette	Compliance Admin Assistant	804-423-6967	
150	Tim Baxter	Global Medical Director	804-423-6951	804-291-7037/804-426-1669
151	Tom Mascher	Staff Accountant	804-594-4665	
152	Tony Goodman	Global Head, Coml Dev&Strategic Planning	804-423-8924	804-201-7962
153	Tonya Jackson	Sr. Global Clinical Operations Manager	804-594-2029	804-548-6021
154	Tracey Hawkins	Medical Information Specialist	804-423-6957	
155	Trupti Kulkarni	Global Project Manager	804-594-4675	804-426-9476
156	Vanita Dimri	RegEx Associate	804-594-0691	804-349-7609
157	Vijay Anne	Medical Affairs Manager	804-594-0748	617-909-9563
158	Vijay Nadipelli	Global Dir, Pricing, Market Access & Reimbursement	804-594-4671	804-539-3160
159	Vikki Mangano	PV Supervisor	804-594-4446	804-334-7987

Corporate Field – Richmond				
	Contact Name	**Department**		**Cell #**
1	Anthony Tommasello	Lead Field Medical Advisor		443-643-5571
2	Hampton Mansion	Field Medical Advisor		248-979-7106
3	Mark Menestrina	Field Medical Advisor		248-979-6765
4	Thomas Cargiulo	Field Medical Advisor		410-245-4597
5	Tony Traina	Field Medical Advisor		516-353-0103
6	Jane Ruby	Managed Care Medical Advisor		703-203-8802
7	Rob Philo	Director, Commercial MC/State Govt Affairs		678-628-6210
8	Keith Lockwood	Commercial MC Lead		248-895-1884
9	Justin Plunkett	Sr. Manager Trade Relations		908-528-4752
10	Paul Bragoli	Disease State Manager		619-203-3837
11	Fran Naab	Business Director - East		484-707-0839
12	Joe Harper	Business Director - Northeast		717-856-1320
13	Michael Bruno	Business Director - Central		251-509-5619
14	Mark Charles	Business Director - West		480-290-5496
15	Nick Reuter	Mgr, Treatment Health Policy/Gov't Affairs		301-529-9496
16	Vickie Seeger	Medical Utilization Manager		804.335.6941

Ft. Collins (All Ft. Collins extensions #s are 2 + 4 digit number)				
2579 Midpoint Drive, Ft. Collins, CO 80525-4417				
	Contact Name	**Department**	**Work Phone #**	**Cell #**
1	Anastasiya Kondeniko	Manufacturing Technician Temp	970-212-4874	
2	Andrew Watkins	Scientist I	970-212-4860	
3	Brent Coonts	Director, Analytical Development	970-212-4839	970-214-7760
4	Cara Van Wormer	Manufacturing Technician	970-212-4874	
5	Chris Alberico	R&D QA Specialist	970-212-4812	
6	Dan Barnhill	Scientist II	970-212-4856	
7	David Rockwell	Consultant		
8	Deanna Mueller	QA Document Control Specialist	970-212-4821	
9	Dennis Wilson	ADL Supervisor	970-212-4854	
10	Derek Bailey	QC Analyst	970-212-4412	
11	Ellen Li	Scientist II	970-212-4897	
12	Elyse Wolff	CMC, Operations, US	970-212-4855	970-492-5516
13	Gwen Park	Scientist 1	970-212-4885	
14	Jamie Burleson	QA Specialist Temp	970-212-4400	
15	Jamie Lindemann	Global Project Manager	970-212-4867	
16	Jeff Mitchell	Scientist II	970-212-4847	
17	Judy Schlachter	Exec Admin Assistant/Office Manager	970-212-4846	
18	Julie Bongianni	Scientist II	970-212-4850	
19	Julie Tripp	Senior Research Associate	970-212-4823	
20	Mark Rice	Process Development Engineer	970-212-4831	
21	Melissa Varner	Analytical Scientist – Consultant	970-212-4413	
22	Mingxing Zhou	Research Fellow	970-212-4857	
23	Moira Eagan	Research Associate II	970-212-4424	
24	Natalie Beaver	Preclinical Supervisor	970-212-4859	
25	Nelson Huang	Operations Technician	970-212-4802	
26	Newton Seitzinger	Senior Scientist	970-212-4851	
27	Paul Bordoni	Research Associate II	970-212-4412	
28	Rick Norton	Director, Formulation Development	970-212-4813	970-214-7772
29	Ryan Spangler	Research Associate I	970-212-4412	
30	Scott Moore	QC Manager	970-212-4806	
31	Shayne Castelano	Consultant	970-212-4412	
32	Steve Perich	Consultant	970-212-4413	
33	Susan Chesson	R&D Category Quality Assurance Mgr	970-212-4803	970-214-7589
34	Todd Gibson	IS Consultant	970-212-4815	

Canada (Canada extensions #s are 4 + 4 digit number)				
Ottawa office: 2 Gurdwara Road, #512, Ottawa, Ontario K2E 1A2, Canada PH: 613-274-4067 Fax: 613-274-2856				
	Contact Name	**Department**	**Work Phone #**	**Cell #**
1	Carlene Variyan	Assoc Mgr, Health Policy & Govt Affairs		613-716-2906
2	Cameron Bishop	Treatment & Health Policy Manager	613-274-4064/613-435-4208	613-790-2058
3	Joelle Robitaille	Sr. Admin Assistant/SAP Coordinator	613-274-4067	613-410-6435
4	Myriam Archambault	Regulatory Affairs Manager	613-274-4065	613-769-8216
5	VACANT	Marketing Manager	613-274-4061	613-410-8070
6	VACANT	Business Unit Director	613-274-4063	613-404-5922
7	Anna Butters	CL – Ontario E & N		613-513-5893
8	Carol Perrier	CL – Eastern Toronto & ATL		289-200-5185
9	Christine LaFave	Sales Director		438-998-1592
10	Debbie Romaniuk	CL – AB/Interior BC/SK		780-982-0954
11	Joseph Caruso	CL - Quebec		514-641-5978
12	Linda Elson	CL – Ontario North Central		647-234-6332
13	Roxanne Rapedius	CL – Golden Horse, Ontario		647-267-6329
14	VACANT	CL – British Columbia		604-217-7214
15	Yvonne Nangle	CL – SW Ontario		519-619-2143

ATTACHMENT 3

APPENDIX 1

Reckitt Benckiser Pharmaceuticals
Proposed Custodian List With Summary Position Descriptions

	Name	Title	Responsibilities
1	Shaun Thaxter	CEO, RB Pharmaceuticals	Oversees global RB pharmaceuticals business.
2	Tony Goodman	Global Strategy & Commercial Dev Director	Leads strategic analysis and planning activities related to pipeline/future products and geographic expansion.
3	Ed Johnson	VP, Treatment & Health Policy	Works to shape policy in North America relating to treatment best practices and possible indications for RB products. Also manages team of field medical advisers.
4	Adrian Norton	VP, Global Sales	Develops and leads global sales organization.
5	Frank Stier	Global Supply Director	Oversees worldwide procurement/supply of ingredients, manufacturing , and quality assurance of RB products, as well as planning for manufacturing/supply of pipeline products.
6	Mark Crossley	Global Finance Director	Oversees global finance function, including implementing corporate financial strategies, financial forecasting and analysis, and budgeting.
7	Vickie Seeger	Medical Utilization Manager	Oversees the development of risk management activities including development of REMS and risk/benefit assessments of existing RB products.
8	Ju Yang	Global Regulatory Director (US)	Directs, plans, and implements all regulatory activities for company products.
9	Bruce Paolella	Global Head Regulatory Strategy	Develops regulatory strategies and liaises with regulatory authorities to negotiate efficient product development plans that result in timely marketing approval.
10	Tim Baxter	Global Medical Director	Supervises dissemination of medical information on RB products, including overseeing outreach to provider community, pharmacovigilance and fielding inquiries regarding RB products.
11	Richard Simkin	President, NA RB Pharmaceuticals	Oversees RB North American pharmaceuticals business.
12	Dominique Neary	Finance Director, NA	Oversees North American financial strategy analysis, reporting, and forecasting . Responsible for North

	Name	Title	Responsibilities
			American tax, treasury and cash flow.
13	Martin Gibson	former Finance Director/Global Strategic Planning and Analytics director	Oversees implementation of global strategic plans. Manages global analytics and forecasting, supply logistics and development, QA, IS and procurement.
14	Robert Philo	Commercial MC/State Gov't Affairs, NA	Oversees team of account managers responsible for liaising with commercial and state-run managed care.
15	Frank Preziosi	Strategic Planning & Business Intelligence Director, NA	Leads North American strategic analysis and planning activities related to current business requirements, market dynamics and trends, supply base and supply base capabilities.
16	Marty Lutz	National Sales Director, NA	Leads overall North American sales operations including development and implementation of strategic sales plans, forecasts and sales budgets, and coordination with marketing function.
17	Rick Powers	former National Sales Director, NA	Formerly led overall North American sales operations including development of strategic sales plans and forecast, operation of sales budget and P&L, coordination with marketing function.
18	Debby Betz	Commercial Development Director, NA	Develops and executes North American new growth initiatives, including pipeline concept development, product launch strategy, and evaluation of M&A opportunities.
19	Rohit Pradham	Sr Manager/Manager Planning & Bus Intelligence	Conducts and evaluates competitive intelligence and market research for short and long term strategic planning process.
20	Brad Ashby	Business Analytics, Sr. Manager	Analyzes market data to aid in strategic planning
21	Christian Heidbreder	Global R&D Director	Oversees global R&D functions, including clinical and pre-clinical development and regulatory strategy.
22	Bill Mordan	SVP and Group General Counsel	General counsel to RB group.
23	Javier Rodriguez	Global General Counsel	General counsel to RB Pharmacueticals.
24	Mark Hulme	Global QA Manager	Oversees quality assurance program for RB products.
25	Kim Daly	Healthcare Professional Dev Marketing Mgr	Leads design, development and execution of product marketing plans.

	Name	Title	Responsibilities
26	Joel Kelly	Marketing Mgr Patient & Payor Access	Leads design, development and execution of marketing plans to increase patient awareness and to ensure affordability and access through strong managed coverage and reimbursement. Also responsible for developing marketing plans for products in development.
27	Marsha Donovan	Global Manager MIU	Manages global Medical Information team tasked with field inquiries and complaints from patients, doctors and others relating to the use of RB products.
28	John Song	Director Global Regulatory Operations	Manages global regulatory submissions to ensure quality and timeliness of submissions to regulatory authorities.
29	Clorey Toombs	Sr. Manager Reg Strategy (US)	Oversees the creation of regulatory strategies for pipeline products and supports existing product development with regulatory implementation plans.
30	John Pitts	Director, Labeling/CCDS	Responsible for ensuring labeling quality and compliance with product core datasheet and global regulations throughout drug product label life cycle. Also responsible for providing regulatory evaluations of potential M&A products.
31	Alberto Avendano	Sr Medical Affairs Manager	Responsible for medical education outreach to addiction healthcare providers and internal medical support in North America.
32	Jane Ruby	Medical Affairs Manager	Interfaces with external addiction healthcare providers to provide medical education and support services , including education meetings, workshops, advisory boards.
33	Vijay Anne	Medical Affairs Manager	Interfaces with external addiction healthcare providers to provide medical education and support services , including education meetings, workshops, advisory boards.
34	Virgilio Vinas	Global Head Pharmacovigilence	Ensures RB compliance with global regulations and RB policies regarding pharmacovigilance, including training drug safety officers, clinical safety support, and risk assessments of RB products.

	Name	**Title**	**Responsibilities**
35	Nimi Patel	Sr. Brand Manager	Responsible for the development of strategies to differentiate Suboxone Film and to encourage provider preference for Suboxone Film.
36	Patti Weston	Patient & Market Access Brand Manager	Responsible for the development of initiatives to enhance patient awareness of treatment options and to reduce stigma and stereotype related to opioid dependence.
37	Doug Cobarras	Sr. Brand Manager, Managed Care	Responsible for the development of Managed Care public and private payor strategies.
38	Steve Hebert	Global Bus. Dev. / M&A Director	Responsible for the evaluation of strategic partnership and acquisition opportunities.

ATTACHMENT 4

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700
Direct Number: (202) 879- 5553
mhknight@jonesday.com

December 17, 2013 CONFIDENTIAL

VIA HAND DELIVERY
Garth Huston, Esq.
Federal Trade Commission
Bureau of Competition
601 New Jersey Ave, NW
Room 7205
Washington, DC 20001

Re: Reckitt Benckiser Pharmaceuticals, Inc., FTC File No. 131-0036

Dear Garth:

On behalf of Reckitt Benckiser Pharmaceuticals, Inc. ("Reckitt"), we submit this letter and the enclosed hard drive, CDs, and a PDF copy of the executed Certificate of Compliance in response to the Civil Investigative Demand ("CID") issued on June 17, 2013 in the above referenced matter. This submission, in conjunction with Reckitt's previous submissions, constitutes Reckitt's complete and final response to the CID.

The enclosed CD labeled "RBP012" contains an electronic copy of Reckitt's log of privileged documents and list of names appearing on the privilege log.

The enclosed hard drive bearing the volume name "RBP009 & RBP010" contains responsive, non-privileged documents that were previously withheld for privilege review. The "RBP009" production set contains images and associated load files of responsive, nonprivileged hard copy documents from the files of Mark Crossley (Global Finance Director), Kim Daly (Marketing Manager, Healthcare Professional Development, North America), Tony Goodman (Global Strategy & Commercial Development Director), Bruce Paolella (Global Head Regulatory Strategy), John Pitts (Director, Labeling/CCDS), Frank Preziosi (Strategic Planning & Business Intelligence Director, North America), Vickie Seeger (Medical Utilization Manager), and Patti Weston (Patient & Market Access Brand Manager, North America). The "RBP010" production set contains images and associated load files of electronic documents from the files of Vijay Anne (Medical Affairs Manager), Brad Ashby (Senior Manager, Business Analytics, North America), Alberto Avendano (Sr Medical Affairs Manager), Tim Baxter (Global Medical Director), Debby Betz (Commercial Development Director, North America), Doug Cobarras (Senior Brand Manager, Managed Care, North America) Mark Crossley (Global Finance Director), Kim Daly (Marketing Manager, Healthcare Professional Development, North America), Marsha Donovan (Global Manager MIU), Martyn Gibson (former Finance Director), Tony Goodman (Global Strategy & Commercial Development Director), Steve Hebert (Global

Business Development/M&A Director), Christian Heidbreder (Global R&D Director), Mark Hulme (Global Quality Assurance Manager), Ed Johnson (VP, Treatment & Health Policy), Joel Kelly (Marketing Manager Patient & Payor Access, North America), Alex Lugovoy (former Global Bus. Dev./M&A Director), Bill Mordan (SVP and Reckitt Benckiser Group General Counsel), Dominic Neary (Finance Director, North America), Adrian Norton (VP, Global Sales), Bruce Paolella (Global Head Regulatory Strategy), Nimi Patel (Senior Brand Manager, North America), Robert Philo (Commercial MC/State Gov't Affairs, North America), John Pitts (Director, Labeling/CCDS), Rick Powers (former National Sales Director, North America), Rohit Pradhan (Senior Manager, Planning & Business Intelligence, North America), Frank Preziosi (Strategic Planning & Business Intelligence Director, North America), Javier Rodriguez (Global General Counsel), Jane Ruby (Medical Affairs Manager), Vickie Seeger (Medical Utilization Manager), Richard Simkin (President, Reckitt Benckiser Pharmaceuticals, North America), John Song (Director Global Regulatory Operations), Frank Stier (Global Supply Director), Shaun Thaxter (CEO, Reckitt Benckiser Pharmaceuticals), Clorey Toombs (Senior Manager Regulatory Strategy), Virgilio Vinas (Global Head Pharmacovigilence), Patti Weston (Patient & Market Access Brand Manager, North America), and Ju Yang (Global Regulatory Director). The enclosed CD bearing the name "RBP011" contains images and associated load files of electronic documents from the files of Ed Johnson (VP, Treatment & Health Policy), Bill Mordan (SVP and Reckitt Benckiser Group General Counsel), Javier Rodriguez (Global General Counsel), Vickie Seeger (Medical Utilization Manager).

The documents included in RBP009, RBP010, and RBP011 are being produced according to the FTC's Bureau of Competition Production Guide and bear the following Bates ranges:

RBP009

Custodian	Bates Begin	Bates End	Document Count	Page Count	Native File Count
Crossley, Mark	RBP-H-00032705	RBP-H-00032940	4	236	0
Daly, Kim	RBP-H-00032941	RBP-H-00032957	7	17	0
Goodman, Tony	RBP-H-00032958	RBP-H-00033177	6	220	0
Paolella, Bruce	RBP-H-00033178	RBP-H-00033352	7	175	0
Pitts, John	RBP-H-00033353	RBP-H-00034068	8	716	0
Preziosi, Frank	RBP-H-00034069	RBP-H-00034126	1	58	0
Seeger, Vickie	RBP-H-00034127	RBP-H-00034226	12	100	0
Weston, Patti	RBP-H-00034227	RBP-H-00034316	2	90	0
			47	**1,612**	**0**

RBP010

Custodian	Bates Begin	Bates End	Document Count	Page Count	Native File Count
Anne, Vijay	RBP-02830566	RBP-02835658	1,462	5,093	254
Ashby, Brad	RBP-02835659	RBP-02841002	794	5,344	116
Avendano, Alberto	RBP-02841003	RBP-02841816	305	814	88
Baxter, Tim	RBP-02841817	RBP-02868683	5,683	26,867	1,362
Betz, Debby	RBP-02868684	RBP-02888262	3,535	19,579	685
Cobarras, Doug	RBP-02888263	RBP-02888773	141	511	11
Crossley, Mark	RBP-02888774	RBP-02892322	578	3,549	86
Daly, Kim	RBP-02892323	RBP-02909385	3,904	17,063	1,471
Donovan, Marsha	RBP-02909386	RBP-02912247	594	2,862	74
Gibson, Martyn	RBP-02912248	RBP-02919623	1,578	7,376	223
Goodman, Tony	RBP-02919624	RBP-02941802	4,289	22,179	974
Hebert, Steve	RBP-02941803	RBP-02941847	30	45	8
Heidbreder, Christian	RBP-02941848	RBP-02945422	662	3575	203
Hulme, Mark	RBP-02945423	RBP-02945914	153	492	15
Johnson, Ed	RBP-02945915	RBP-02979803	7770	33889	1115
Kelly, Joel	RBP-02979804	RBP-02979961	64	158	10
Lugovoy, Alex	RBP-02979962	RBP-02980230	134	269	23
Lutz, Marty	RBP-02980231	RBP-02980370	49	140	0
Mordan, Bill	RBP-02980371	RBP-02981380	171	1010	15
Neary, Dominic	RBP-02981381	RBP-02983588	704	2208	353
Norton, Adrian	RBP-02983589	RBP-02986130	633	2542	85
Paolella, Bruce	RBP-02986131	RBP-02998340	1360	12210	151
Patel, Nimi	RBP-02998341	RBP-03002453	1245	4113	379
Philo, Robert	RBP-03002454	RBP-03015688	2861	13235	312
Pitts, John	RBP-03015689	RBP-03016600	93	912	14
Powers, Rick	RBP-03016601	RBP-03017002	156	402	10
Pradhan, Rohit	RBP-03017003	RBP-03017053	5	51	2
Preziosi, Frank	RBP-03017054	RBP-03022105	1428	5052	276
Rodriquez, Javier	RBP-03022106	RBP-03048455	8039	26350	2073
Ruby, Jane	RBP-03048456	RBP-03052597	611	4142	86
Seeger, Vickie	RBP-03052598	RBP-03060514	1651	7917	180
Simkin, Richard	RBP-03060515	RBP-03068101	2027	7587	924
Song, John	RBP-03068102	RBP-03075690	663	7589	47
Stier, Frank	RBP-03075691	RBP-03076047	24	357	1
Thaxter, Shaun	RBP-03076048	RBP-03084647	1979	8600	248
Toombs, Clorey	RBP-03084648	RBP-03088498	744	3851	155
Vinas, Virgilio	RBP-03088499	RBP-03088697	17	199	3
Weston, Patti	RBP-03088698	RBP-03094580	1626	5883	357
Yang, Ju	RBP-03094581	RBP-03100583	1078	6003	100
			58,840	**270,018**	**12,489**

RBP011

Custodian	Bates Begin	Bates End	Document Count	Page Count	Native File Count
Johnson, Ed	RBP-03100584	RBP-03100598	5	15	0
Mordan, Bill	RBP-03100599	RBP-03100787	38	189	0
Rodriguez, Javier	RBP-03100788	RBP-03101235	94	448	2
Seeger, Vickie	RBP-03101236	RBP-03101260	8	25	0
			145	**677**	**2**

Reckitt is submitting this highly confidential information to the Federal Trade Commission pursuant to the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended, and requests confidential treatment for these materials under all applicable statutes and regulations.

Sincerely,

Michael H. Knight

Enclosures

cc: David R. Pearl
Javier Rodriguez, Esq.

WAI-3155120v1

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title VP General Counsel for Reckitt Benckiser Pharmaceuticals

Sworn to before me this day

December 12 2013

Angela D Goodrich
Notary Public

70267H

ANGELA D. GOODRICH NOTARY PUBLIC REG # 7026711 MY COMMISSION EXPIRES 04/30/2014 COMMONWEALTH OF VIRGINIA

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

EXHIBIT 2

BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE SUBOXONE (BUPRENORPHINE HYDROCHLORIDE AND NALOXONE) ANTITRUST LITIGATION	**MDL No.: 2445**

DEFENDANTS' RESPONSE IN SUPPORT OF MOTION FOR TRANSFER AND COORDINATUON OF RELATED ACTIONS TO THE DISTRICT OF VERMONT

Defendants Reckitt Benckiser Pharmaceuticals, Inc.; Reckitt Benckiser LLC; Reckitt Benckiser, Inc.; Reckitt Benckiser Healthcare (UK) Ltd.; and Reckitt Benckiser Group plc (collectively, "Reckitt") respectfully support Plaintiff Burlington Drug Company's ("Burlington") Amended Motion For Transfer And Coordination Of Related Actions To The District Of Vermont. (Dkt. No. 2.)[1] Burlington filed its motion two and a half months after its complaint, just after new plaintiffs had filed two additional actions, in two separate judicial districts, relating to Reckitt's Suboxone® product. Now, six related class actions are pending across four districts. Centralization is necessary, and the District of Vermont is the most appropriate forum.

Centralization. All six complaints raise substantially similar factual and legal claims on behalf of the same nationwide classes. Indeed, the complaints fall into two groups of essentially verbatim allegations. Centralization would thus be more convenient for all parties. Furthermore, the need for consistent pretrial rulings across the overlapping complaints urges centralization.

Forum. The District of Vermont has the lightest civil docket of all potential fora, including the lack of any multidistrict litigation. It is the only forum in which both a direct and an indirect purchaser action were originally brought. Vermont is also the locus of the first-filed action, filed months before any other complaint subject to this motion. The advancement of the

[1] Defendants' appearance before this Panel, and listing/attachment of any complaints, does not constitute submission to any Court's jurisdiction nor waive any other Rule 12(b) defenses, including relating to service *vel non* of the complaints listed herein or attached hereto.

Vermont case has given the assigned Judge, the Honorable J. Garvan Murtha, the most time to become familiar with the claims at issue; by the time the Panel holds a hearing on this matter; Reckitt's motion to dismiss the Burlington action will be fully briefed. Moreover, Judge Murtha has pharmaceutical antitrust experience but no pending large-scale antitrust case. Finally, Vermont is the most convenient forum. It was chosen by two of the six plaintiff groups, it is the Defendants' preference, and the other plaintiffs lack forum-specific ties to the venues in which they filed suit.

For these reasons, Reckitt respectfully requests that the Panel grant Burlington's Motion and centralize all pending actions, and any potential tag-along actions, in the District of Vermont.

BACKGROUND

On December 21, 2012, Burlington Drug Company, a Vermont resident, filed the first complaint alleging that Reckitt had monopolized the market for Suboxone® in the District of Vermont. To show a violation of the Sherman Act, Burlington focused on three of Reckitt's alleged actions: (1) introducing a new and allegedly popular Suboxone® dosage form, Suboxone® film, thereby disadvantaging Suboxone® tablets and the generic copies of those tablets that plaintiffs would prefer to buy, (2) delaying approval of generic Suboxone® tablets by refusing to share its proprietary data and Risk Evaluation and Mitigation Strategy (REMS) on terms that the plaintiffs deem adequate, and (3) filing an allegedly baseless citizen petition requesting action from the FDA. *See, e.g.*, Burlington Compl., ¶ 7(i)-(iv) (Exh. A). (The FDA has since denied Reckitt's petition, but expressly refused to find that it was groundless and intended for delay. (Exh. B at 16.).) Reckitt filed a Motion to Dismiss Burlington's Complaint on March 7, 2013. Burlington's response is due April 9, and the motion will very likely be fully briefed before the Panel holds a hearing on this matter.

In February 2013, Rochester Drug Co-operative, Inc. ("Rochester") and United Food and Commercial Workers Health and Welfare Fund of Northeastern Pennsylvania ("United") also filed antitrust class-actions against Reckitt, but in the District of Delaware: These two complaints—which are almost identical—also focused on the same three actions: (1) "Reckitt develops Suboxone[®] film" and "destroys demand for Suboxone[®] tablets," (2) "Reckitt holds ANDA approvals hostage" by refusing to share its REMS, and (3) "Reckitt files a sham 'Citizen Petition.'" *See* Rochester (Del.) Compl. at 4-11 (heading capitalization altered) (Exh. C); United (Del.) Compl. at 4-11 (same) (Exh. D).

After these Delaware complaints were assigned to Judge Gregory M. Sleet, both Rochester and United took a voluntary dismissal. (*See* Exhs. E-F.) Within ten days, both refiled the same complaints in Pennsylvania (Rochester in the Eastern District on March 4; United in the Middle District on March 1). *See* Rochester (Pa.) Compl. (Exh. G); United (Pa.) Compl. (Exh. H). In the Eastern District, Rochester joined Meijer, Inc. and Meijer Distribution, Inc. (collectively, "Meijer"), which had filed essentially the same complaint on March 1, 2013, as the assignee of a direct purchaser. *See* Meijer Compl. at ¶ 10 (Exh. I).

Finally, two additional plaintiffs—both indirect purchasers—filed suit on March 11, 2013. A.F. of L.-A.G.C. Building Trades Welfare Plan ("A.F. of L.") joined Burlington in the District of Vermont, filing a complaint essentially identical to Burlington's. *Compare* A.F. of L. Compl. (Exh. J) *with* Burlington Compl. (Exh. A.). In contrast, Painters District Council No. 30 Health and Welfare Fund ("Painters") filed a complaint essentially identical to the Rochester/United/Meijer complaints in the District of New Jersey. *Compare* Painters Compl. (Exh. K) *with, e.g.*, Rochester (Pa.) Compl. (Exh. G).

ARGUMENT

The first-filer, Burlington, has moved this Panel to transfer these actions to the District of Vermont for coordinated pretrial proceedings. This Panel has the authority to transfer "civil actions involving one or more common questions of fact" from multiple districts to a single district for "coordinated or consolidated pretrial proceedings" if such a transfer "will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." 28 U.S.C. § 1407(a). Here, there can be no dispute that the complaints pending in six cases across four districts raise common questions of fact. Centralization, rather than piecemeal litigation, will ensure coordinated and convenient discovery as well as consistent and just rulings. And Vermont—the locus of the first-filed and most-advanced action—is the best forum for centralization. For the reasons below, Reckitt strongly supports Burlington's motion.

I. CENTRALIZATION IS NECESSARY TO ENSURE CONSISTENCY AND CONVENIENCE

All of the factors customarily considered by this Panel urge centralization. Indeed, all parties to have filed memoranda before the Panel at this time agree that centralization is appropriate. For at least three reasons, centralization will promote the just, convenient, and consistent resolution of the pretrial phase.

First, these six cases indisputably raise common questions of fact. All focus on the same alleged conduct by Reckitt:

Burlington Compl. at ¶ 7(i)-(iv) (Exh. A) A.F. of L Compl. at ¶ 7(i)-(iv) (Exh. J)	Rochester (Pa.) Compl. at 4-11 (Exh. G) United (Pa.) Compl. at 4-11 (Exh. H) Meijer Compl. at 15-22 (Exh. I) Painters Compl. at 4-11 (Exh. K)
(i) Introducing a new Suboxone dosage form, Suboxone Film . . . .; (ii) Intentionally and unnecessarily disadvantaging Suboxone Tablets relative to Suboxone Film . . . .;	**A. Step One: Reckitt Develops Suboxone Film** **B. Step Two: Reckitt Destroys Demand for Suboxone Tablets**

(iii) Intentionally delaying the approval and launch of generic versions of Suboxone Tablets . . . .; and	**C. Step Three: Reckitt Holds ANDA Approvals Hostage**
(iv) Filing a fraudulent, sham "Citizen Petition" ("CP") on the eve of generic approval	**D. Step Four: Reckitt Files A Sham "Citizen Petition"**

Indeed, the six complaints break down into two essentially identical groupings, as demonstrated in the chart above. Whatever differences in legal theories exist between complaints[2] are minor when weighed against these fundamental similarities. *In re Bank of Am. Wage & Hour Emp. Practices Litig.*, 706 F. Supp. 2d 1369, 1370 (J.P.M.L. 2010) ("To be sure, there are differences among the cases. However, as a general rule the similarities seem to outweigh the differences."); *see also In re Aircraft Accident at Barrow, Alaska*, 474 F. Supp. 996, 999 (J.P.M.L 1979) ("The presence of different legal theories in some of the actions . . . does not negate the existence of common questions of fact . . . .").

Second, absent centralization, these overlapping factual allegations will create the need for duplicative discovery across districts. Thus, centralization will be more convenient for all parties—particularly for the defendants who would otherwise have to travel for repetitive depositions. *See, e.g.*, *In re Multidistrict Litig. Involving Butterfield Patent Infringement*, 328 F. Supp. 513, 514 (J.P.M.L. 1970) ("Experience has shown that where, as here, common questions of fact exist in a large number of cases, it is not only expedient, but less expensive for each individual defendant [or plaintiff] to join in the selection of lead counsel to handle the consolidated discovery depositions.").

Finally, the complaints allege substantially overlapping, and sometimes identical, classes:

[2] The Painters' Complaint alleges a state-law RICO violation in addition to antitrust and unjust enrichment claims. (*See* Exh. K. at ¶¶ 138-45.) Likewise, the indirect purchaser complaints filed by United, Painters, and A.F. of L. allege violations of different states' antitrust laws. For example, only A.F. of L. raises a Hawaii claim. (Exh. J at ¶ 189(e).)

Direct Purchaser Class	**District of Vermont** All persons or entities in the United States and its territories who purchased Suboxone in any form directly from Reckitt at any time during the period January 1, 2012, through the present (the "Class"). (Exh. A at ¶ 18.)	**Eastern District of Pennsylvania** All persons or entities in the United States and its territories who purchased Suboxone in any form directly from Reckitt at any time during the period October 8, 2009 through the present (the "Direct Purchaser Class"). (Exh. I at ¶ 106.)
Indirect Purchaser Class	**District of New Jersey** All persons or entities who purchased and/or paid for some or all of the purchase price of Suboxone, in any form, in the United States and its territories for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries at any time during the period from October 8, 2009, through and until the anticompetitive effects of Defendants' unlawful conduct cease (the "Class"). (Exh. K at ¶ 54.)	**Middle District of Pennsylvania** All persons or entities who purchased and/or paid for some or all of the purchase price of co-formulated buprenorphine/naloxone, in any form, in the United States and its territories for consumption by themselves, their families, or their members, employees, insureds, participants, or beneficiaries at any time during the period October 8, 2009 through and until the anticompetitive effects of Defendants' unlawful conduct cease (the "Class"). (Exh. H at ¶ 56.)

Centralization is thus necessary to prevent conflicting class-certification rulings. *See, e.g.*, *In re Sunshine Mining Co. Sec. Litig.*, 444 F. Supp. 223, 225 (J.P.M.L. 1978) ("In particular, transfer will avoid conflicting class determinations inasmuch as the Washington action and one of the New York actions have been brought on behalf of overlapping classes.").

In sum, this case—and its procedural history—mirror the situation this Panel confronted in *In re Skelaxin (Metaxalone) Antitrust Litigation*, 856 F. Supp. 2d 1350 (J.P.M.L. 2012):

> Though only three actions were included on the motion for centralization, this litigation has grown to encompass potentially nine actions involving allegations of complex anticompetitive behavior. **The Panel has frequently centralized antitrust cases involving direct and indirect purchaser claims that arise from common factual allegations, particularly where multiple related actions are pending.** *See, e.g.*, In *re Oxycontin Antitrust Litig.*, 542 F. Supp. 2d 1359 (J.P.M.L.2008) (including actions brought on behalf of putative classes of direct and indirect purchasers of Oxycontin); *In re Pineapple Antitrust Litig.*, 342 F.Supp.2d 1348 (J.P.M.L.2004) (including actions brought on behalf of putative classes of direct and indirect purchasers of defendants' pineapples).

> These actions present nearly identical factual allegations that defendants' conduct delayed the entry of generic equivalents of Skelaxin into the market, which will likely require duplicative discovery and motion practice.

Id. at 1351-52 (emphasis added). The result should be the same here as in *Skelaxin.* "Centralizing these actions under Section 1407 will ensure streamlined resolution of this litigation to the overall benefit of the parties and the judiciary." *Id.* at 1352.

II. THE DISTRICT OF VERMONT IS THE MOST APPROPRIATE FORUM

Though the parties disagree on where to centralize these actions, all factors reflected in this Panel's precedent urge selection of the District of Vermont as the appropriate forum.

First, the District of Vermont has the lightest civil caseload, whether measured in absolute terms or cases per judge:

District	D. Vermont	E.D. Penn.	M.D. Penn.	D. New Jersey
Number of Pending Civil Cases[3]	339	23,476	2,236	5,911
Pending Civil Cases Per Judge (Active/Senior)	169.5 113	1,467.25 733.63	372.67 172	347.71 236.44

See, e.g., In re Bank of Am., 706 F. Supp. 2d at 1372 (selecting the District of Kansas in part because "[i]t has docket conditions that are significantly more favorable than the other primary contenders for this litigation"); *In re Peruvian Rd. Litig.*, 380 F. Supp. 796, 798 (J.P.M.L. 1974) ("[T]he District of Idaho has a significantly lighter civil action docket than the Southern District of Texas and, therefore, the transferee judge will be able to devote quick attention to this litigation."). To be sure, Rochester and Painters both cite statistics regarding *median* termination times to suggest that their fora adjudicate cases more rapidly than the District of Vermont. (Dkt. No. 26 at 12; Dkt. No. 27 at 17.) Not only do such arguments ignore these plaintiffs'

[3] *See* Admin. Office of U.S. Courts, *Federal Judicial Caseload Statistics: March 31, 2011*, Table C, *available at* http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2011/tables/C00Mar11.pdf

representations that these cases are sufficiently more "complex" than the average case to warrant centralization (Dkt. No. 26 at 12; Dkt. No. 27 at 14), they also overlook the fact that the District of Vermont actually is comparable to the District of New Jersey, and much better than the Eastern District of Pennsylvania, in concluding complex litigation.

District	D. Vermont	E.D. Penn.	M.D. Penn.	D. New Jersey
Civil Cases over Three Years Old[4]	6.1%	23.5%	9.3%	4.7%

Second, there are no multidistrict litigations currently pending in the District of Vermont.

District	D. Vermont	E.D. Penn.	M.D. Penn.	D. New Jersey
Number of Pending MDLs[5]	0	13	2	16

See, e.g., *In re Skelaxin*, 856 F. Supp. 2d at 1352 ("Centralization in this district also permits the Panel to assign the litigation . . . in a district in which only one other multidistrict litigation is pending."); *In re Horizon Organic Milk Plus DHA Omega-3 Mktg. & Sales Practices Litig.*, 844 F. Supp. 2d 1380, 1381 ("[T]his district is presiding over fewer MDL dockets than other proposed districts.").

Third, Vermont is also the locus of the first-filed action. That action had been pending for months before the next earliest complaint at issue here (December 21, 2012 to March 1, 2013). Moreover, the Vermont action is the most advanced, with Reckitt already having filed a motion to dismiss. *See, e.g.*, *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, 763 F. Supp. 2d 1374, 1375 (J.P.M.L. 2011) ("The first-filed action, in which a . . . motion to dismiss is currently pending, was filed in the District of Massachusetts . . ., months before the New Jersey

[4] *See* Admin. Office of U.S. Courts, *United States District Courts — National Judicial Caseload Profile* (Sept. 2012), *available at* http://www.uscourts.gov/viewer.aspx?doc=/uscourts/Statistics/FederalCourtManagementStatistics/2012/district-fcms-profiles-september-2012.pdf&page=1.

[5] *See* U.S. Jud. Panel on Multidistrict Litigation, *Panel Info: Pending MDLs as of March 5, 2013*, *available at* http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_by_District-March-5-2013.pdf.

action was filed. As we have previously held, it is appropriate to give 'the first-filed criterion some weight . . . .'"); *In re Bank of Am.*, 706 F. Supp. 2d at 1371 ("The first-filed [] action is pending in that district, with a motion for class certification currently pending.").[6]

Fourth, Vermont is unique among the potential fora in that it has both a direct and an indirect purchaser action currently pending on its docket. Both actions, moreover, are before the Honorable J. Garvan Murtha. Vermont is also the only district in which a named plaintiff has actually filed suit in its own judicial district, *i.e.*, the first-filer Burlington Drug Co. in Vermont.

Fifth, both the timing of the original Vermont action and Reckitt's motion to dismiss have afforded Judge Murtha the best opportunity to become familiar with the issues raised by these actions. *See, e.g.*, *In re Chrysler LLC 2.7 Liter V-6 Engine Oil Sludge Prods. Liab. Litigation*, 598 F. Supp. 2d 1372, 1373-74 (J.P.M.L. 2009) ("We are persuaded that the District of New Jersey is an appropriate transferee forum for this litigation, inasmuch as the District of New Jersey action has been pending longer than the other actions. Accordingly, the transferee judge has had an opportunity to become familiar with the litigation."); *In re Peruvian Rd.*, 380 F. Supp. at 798 ("Two factors, however, militate in favor of the Idaho forum. One is the familiarity of the transferee judge with the issues raised by defendants' motion to dismiss.").

Sixth, Judge Murtha has experience with antitrust cases and the complex issues they raise, including in the pharmaceutical context. *See, e.g.*, *Smugglers' Notch Homeowners Ass'n v. Smugglers' Notch Mgmt. Co.*, 2009 U.S. Dist. LEXIS 46026 (D. Vt. May 29, 2009); *Burlington Drug Co. v. VHA, Inc.*, 898 F. Supp. 257 (D. Vt. 1995). To be sure, the same could be said about

[6] Painters District Council Number 30 erroneously states that Burlington's response date has not been set. (Dkt. No. 27 at 9.) Under the District of Vermont's Local Rules, Burlington's response is due Tuesday, April 9, 2013. *See* D. Vt. Loc. R. 7(a)(3)(A). Painters also suggests that Reckitt's Motion to Dismiss may be mooted by consolidation. (Dkt No. 27 at 5 n.5) Regardless whether such a contingent future event comes to pass, the pendency of the motion will still have educated Judge Murtha regarding both sides' views of the case.

the other potential judges. But unlike Judges Goldberg[7] and Cecchi,[8] Judge Murtha is not currently slated to preside over any complex antitrust case or other multidistrict litigation. *See, e.g.*, *In re Lithium Batteries Antitrust Litig.*, MDL No. 2420, 2013 BL 60222, at *2 (J.P.M.L. Feb. 6, 2013) ("[C]entralization in this district provides us the opportunity to assign the litigation to a judge who is not presiding over other multidistrict litigation."); *In re Prudential*, 763 F. Supp. 2d at 1375 ("Judge Michael A. Ponsor, *who is not currently serving as a transferee judge*, has had an opportunity to become familiar with this litigation . . . ." (emphasis added)).

Finally, the District of Vermont is the most convenient forum. "Both defendants and several plaintiffs favor transfer there." *In re Lithium*, 2013 BL 60222, at *1; *see also In re Body Science LLC Patent Litig.*, 883 F. Supp. 2d 1344, at *1 (J.P.M.L. 2012) ("All defendants expressing a preference for a transferee district suggest centralization in this district. Additionally, . . . [a Plaintiff] . . . suggested transfer of all actions to the District of Massachusetts, so it cannot be said to have serious objections to centralization in this district now."). Reckitt's preference, in particular, contradicts Painters' repeated reliance on where two of the named Reckitt entities are located. (*E.g.*, Dkt. No. 27 at 10-11, 13, 15.)[9] There are direct

[7] Judge Goldberg is currently presiding over a series of complex pharmaceutical antitrust cases related to ProVigil®. *See, e.g.*, *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, 702 F. Supp. 2d 514 (E.D. Pa. 2010).

[8] Judge Cecchi is currently presiding over *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1663.

[9] Moreover, Painters' Complaint—like all others related to this motion—is unable to identify even a single specific action taken by the two Reckitt entities it claims to be located in New Jersey. All Painters can say is that these Defendants "manufacture[] and market[] numerous products, including pharmaceuticals subject to FDA approval, and w[ere] in whole or in part responsible for some or all of the conduct alleged above and below and attributed to Reckitt." (*E.g.*, Exh. K at ¶ 48.) Such conclusory allegations are insufficient even to plead personal jurisdiction. *See, e.g.*, *Fosen v. United Techs. Corp.*, 484 F. Supp. 490, 500 (S.D.N.Y. 1980) ("Their conclusory allegation that ANA Americas, along with ANA, was 'responsible for selling and distributing this helicopter to the Norwegian company' is not supported by the affidavits and deposition testimony submitted to the Court. . . . In short, no precise facts have

commercial flights from most fora (Philadelphia and Newark) and most plaintiffs' headquarters (Detroit, Chicago, and Philadelphia) to Burlington.[10] To be sure, the Pennsylvania and New Jersey plaintiffs argue in favor of their fora, but such objections should be given little weight. None of these plaintiffs have any particular attachment to its forum.[11] Non-party discovery can take place in other districts, as it customarily does in single-district actions. *See, e.g., In re Tribune Co. Fraudulent Conveyance Litigation*, 831 F. Supp. 2d 1371 (J.P.M.L. 2011) ("Coordination in the transferee court will not prevent any required depositions of, or any other discovery unique to, the opposing defendants from occurring in their home districts.").[12] Finally, litigating in any of the other fora would be equally inconvenient to the Vermont plaintiffs. *See, e.g., In re Peruvian Rd.*, 380 F. Supp. at 798 ("[T]he Southern District of Texas would be equally inconvenient to the Idaho defendants."). Thus, to the extent that the Panel elects to credit any such objections, it should select a forum equidistant from Pennsylvania/New Jersey and Vermont,

(continued…)

been established, *or even alleged*, that would justify this Court's exercise of jurisdiction over ANA." (emphasis added)).

[10] Contrary to Rochester's argument, Burlington's motion sought consolidation in Burlington (where A.F. of L.'s complaint is pending before Judge Murtha), not Brattleboro. (*Compare* Dkt. No. 1-1 at 7-8 *with* Dkt. No. 26 at 7-10.) Moreover, as a statutory matter, the District of Vermont is not divided into divisions, so the Panel could instruct the centralized pretrial proceedings to take place in Burlington as requested. *See* 28 U.S.C. § 126.

[11] Both United and Rochester initially filed suit in the District of Delaware, demonstrating their forum indifference. (Exhs. C-D.) Rochester, moreover, is a New York corporation located closer to Burlington than Philadelphia. (Exh. G at ¶ 47.) Likewise, Meijer is a plaintiff by choice, having received its claim by assignment, and is based in Michigan. (Exh. I at ¶ 10.) Finally, Painters is based in Aurora, Illinois. (Exh. K at ¶ 47.)

[12] This Panel should not consider Rochester's comments about live *trial* testimony (Dkt. No. 26 at 8), given that it may only centralize actions for *pretrial* proceedings. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

such as the Northern District of New York, which also has favorable docket conditions.[13]

In sum, Vermont is the best forum because it has the most favorable docket conditions; no other MDLs; the first-filed and most advanced action; simultaneous direct and indirect purchaser claims; a local plaintiff; an experienced, familiar, and available judge; and ready access via commercial transportation. The Northern District of New York is the next best alternative, though inferior to Vermont.

CONCLUSION

For these reasons, Reckitt respectfully requests that the Panel centralize all six pending actions, and any potential tag-along actions, in the District of Vermont.

Dated: March 26, 2013

Respectfully submitted,

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[13] The Northern District of New York has 1,946 civil cases pending, or 216.22 per judge (including those on senior status), no multidistrict dockets, and only 7.3% of its civil cases are more than three years old.

CERTIFICATE OF SERVICE

On March 26, 2013, I electronically filed the foregoing document using the CM/ECF system, which will send a copy of the same to all counsel of record before this Panel, as listed below:

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I further certify that I also served all counsel and Clerks of Court in the additional related case, via first-class mail, as listed below

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EXHIBIT 3

U.S. District Court — Judicial Caseload Profile

PENNSYLVANIA EASTERN

			12-Month Periods Ending						Numerical Standing Within	
			Sep 30 2009	Sep 30 2010	Mar 31 2011	Mar 31 2012	Mar 31 2013	Mar 31 2014	U.S.	Circuit
Overall Caseload Statistics	Filings [1]		48,976	49,990	55,188	41,515	11,685	12,171		
	Terminations		41,294	81,060	85,821	47,858	15,513	15,450		
	Pending		65,813	34,707	25,129	18,706	14,573	11,322		
	Percent Change in Total Filings Current Year Over Earlier Year		-75.1	-75.7	-77.9	-70.7	4.2		28	3
	Number of Judgeships		22	22	22	22	22	22		
	Vacant Judgeship Months [2]		3.7	14.0	21.9	39.0	65.9	80.1		
Actions per Judgeship	**Filings**	Total	2,226	2,272	2,509	1,887	531	553	32	4
		Civil	2,164	2,209	2,445	1,830	474	503	19	3
		Criminal Felony	45	49	49	42	41	34	88	5
		Supervised Release Hearings	17	15	15	15	16	16	75	2
	Pending Cases		2,992	1,578	1,142	850	662	515	32	5
	Weighted Filings [2]		351	385	419	393	412	406	56	4
	Terminations		1,877	3,685	3,901	2,175	705	702	16	1
	Trials Completed		19	18	15	15	16	13	72	5
Median Time (Months)	From Filing to Disposition	Criminal Felony	14.0	14.5	13.9	14.9	15.6	14.9	86	6
		Civil [2]	13.2	6.0	5.2	1.5	14.6	8.7	42	5
	From Filing to Trial [2] (Civil Only)		22.7	19.9	18.9	21.0	20.0	18.6	7	1
Other	Number (and %) of Civil Cases Over 3 Years Old [2]		8,839 13.8	8,618 26.1	7,281 31.0	5,534 32.5	3,034 23.4	2,070 21.1	89	5
	Average Number of Felony Defendants Filed per Case		1.4	1.5	1.5	1.6	1.5	1.2		
	Jurors	Avg. Present for Jury Selection	73.4	75.3	76.7	57.6	78.0	73.8		
		Percent Not Selected or Challenged	36.5	38.9	38.6	26.8	36.0	40.0		

2014 Civil Case and Criminal Felony Defendant Filings by Nature of Suit and Offense

Type of	Total	A	B	C	D	E	F	G	H	I	J	K	L
Civil	11,061	447	2,533	2,681	6	88	447	899	951	314	1,585	103	1,007
Criminal [1]	740	1	232	52	73	203	41	46	16	17	6	8	45

NOTE: Criminal data in this profile count defendants rather than cases and therefore will not match previously published numbers.

[1] Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings by "Nature of Offense" do not.

[2] See "Explanation of Selected Terms."

U.S. District Court — Judicial Caseload Profile

VIRGINIA EASTERN

			12-Month Periods Ending						Numerical Standing Within	
			Sep 30 2009	Sep 30 2010	Mar 31 2011	Mar 31 2012	Mar 31 2013	Mar 31 2014	U.S.	Circuit
Overall Caseload Statistics	Filings [1]		5,225	5,183	5,438	5,324	5,134	5,005		
	Terminations		5,030	4,989	5,157	5,344	5,007	5,005		
	Pending		3,117	3,297	3,346	3,298	3,326	3,163		
	Percent Change in Total Filings Current Year Over Earlier Year		-4.2	-3.4	-8.0	-6.0	-2.5		56	5
	Number of Judgeships		11	11	11	11	11	11		
	Vacant Judgeship Months [2]		12.0	12.0	12.5	5.3	0.0	0.2		
Actions per Judgeship	**Filings**	Total	475	471	494	484	467	455	55	6
		Civil	295	298	312	304	306	302	56	5
		Criminal Felony	135	127	130	130	113	107	35	5
		Supervised Release Hearings	46	46	52	51	48	46	24	4
	Pending Cases		283	300	304	300	302	288	81	9
	Weighted Filings [2]		463	476	497	483	509	451	43	4
	Terminations		457	454	469	486	455	455	56	5
	Trials Completed		35	33	32	31	24	26	18	3
Median Time (Months)	From Filing to Disposition	Criminal Felony	5.1	4.8	4.7	4.9	5.1	5.0	6	1
		Civil [2]	4.6	4.9	5.0	5.4	5.0	5.5	3	1
	From Filing to Trial [2] (Civil Only)		10.2	9.3	11.5	12.6	10.2	11.3	1	1
Other	Number (and %) of Civil Cases Over 3 Years Old [2]		29 1.7	59 3.1	59 3.1	72 3.8	27 1.4	30 1.5	4	2
	Average Number of Felony Defendants Filed per Case		1.2	1.3	1.3	1.3	1.3	1.3		
	Jurors	Avg. Present for Jury Selection	50.2	41.0	50.8	51.1	54.4	60.8		
		Percent Not Selected or Challenged	33.3	37.4	41.5	39.5	43.9	48.0		

2014 Civil Case and Criminal Felony Defendant Filings by Nature of Suit and Offense

Type of	Total	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3,322	125	38	1,193	13	94	234	328	242	213	370	3	469
Criminal [1]	1,174	18	321	221	107	239	30	83	14	29	24	33	55

NOTE: Criminal data in this profile count defendants rather than cases and therefore will not match previously published numbers.

[1] Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings by "Nature of Offense" do not.

[2] See "Explanation of Selected Terms."