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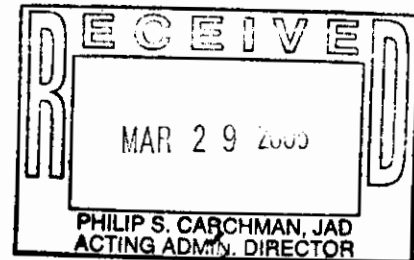
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March 28, 2005



VIA FEDERAL EXPRESS

Hon. Philip S. Carchman, J.A.D.
Administrative Director of the Courts
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625

Re: Opposition to Mass Tort Designation of Cases Involving Accutane

Dear Judge Carchman:

Please allow this letter to supplement the March 10, 2005 letter brief submitted by Hoffmann-La Roche Inc. and Roche Laboratories Inc. ("Roche") in opposition to the January 25, 2005 application by the Accutane Litigation Group¹ for mass tort designation of New Jersey cases involving Accutane. Following service of the Roche submission, the Seeger Weiss law firm submitted a letter, dated March 15, 2005, purporting to update the Court as to the number of cases currently pending in New Jersey. The letter advised the court of the additional 27 cases filed in Atlantic County and specifically highlighted two additional cases recently filed in Atlantic County that involve claims of psychiatric injury. The referenced cases are Lake v.

¹ In addition to the Seeger Weiss firm as New Jersey counsel, according to correspondence received from the law firm of Michael Hook, The Accutane Litigation Group consists of Krupnick Campbell; Paul Smith and Associates; Beggs & Lane; Hook, Bolton, Kirkland & McGhee; Levin, Papantonio; Thomas, Mitchell, Echsner & Proctor; Campbell, Waller & Poer; and the McNulty firm.

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Hoffmann-La Roche Inc., Docket No. ATL-L-1276-05 and Fernuik v. Hoffmann-La Roche Inc.,
Docket No. ATL-L-1753-05.

Roche submits that the filing of the additional matters in Atlantic County provides no basis to approve the Mass Tort Designation Application, particularly since, as stated in Roche's original opposition, the majority of those cases likely are time-barred and their viability questionable. Moreover, for the reason set forth in our original opposition papers, the matters alleging psychiatric adverse events are more appropriately venued in Essex County. Accordingly, concomitant with the filing of this letter, Defendants are moving to transfer the venue of the recently-filed Lake and Fernuik cases to Essex County.

As stated more fully in the transfer of venue moving papers, copies of which are enclosed herewith, Defendants in those cases seek a change of venue in the interests of justice and judicial economy. Five other cases that allege claims involving the ingestion of Accutane® and alleged psychiatric adverse effects are pending before the Honorable Francine A. Schott in Essex County. These actions involve the same complex issues of liability and medical causation, and discovery on the issues involves multiple experts and fact witnesses specific to the claimed psychiatric effects, as well as a significant amount of documents. Because the cases are complex and allege similar causes of action and allege similar injuries as matters pending in Essex County, it makes plain and practical sense that, like the others, the Lake and Fernuik actions should be managed by Judge Schott in Essex County.

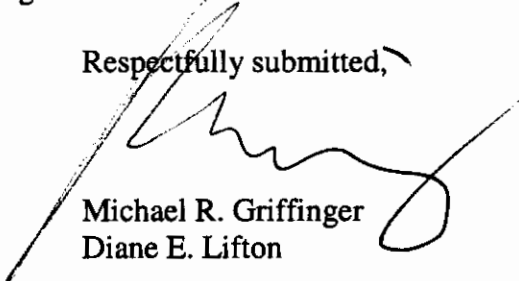
GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

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In addition, Roche recently filed a motion for summary judgment in Turney v. Hoffmann-La Roche Inc., Docket No. ESX-L-5143-02, one of the psychiatric matters pending in Essex County. As indicated by the filing of that motion, and by the pre-trial schedule recently issued by Judge Schott in Palazzolo v. Hoffmann-La Roche Inc., ESX-L-5498-99, the matters pending in Essex County are ready for disposition and, therefore, should not be transferred to Atlantic County pursuant to a Mass Tort designation. Such a transfer will only delay a resolution of these matters on the merits.

For these and the other reasons outlined in the March 10, 2005 letter, Roche respectfully requests that the application for Mass Tort Designation be denied.

Respectfully submitted,



Michael R. Griffinger
Diane E. Lifton

DEL/cag
Enclosures

cc: The Honorable Francine Schott (via overnight delivery)
The Honorable Carol E. Higbee (via overnight delivery)
Michelle V. Perone, Esq. (via overnight delivery)

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BRANDI MARIE LAKE,

Plaintiff,

v.

HOFFMAN-LA ROCHE, INC., ROCHE
LABORATORIES, INC., F. HOFFMAN-
LA ROCHE, LTD., and ROCHE
HOLDING, LTD.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

DOCKET NO. ATL-L-001276-05

Civil Action

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO CHANGE VENUE**

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<u>Robert Rowe v. Hoffmann-La Roche Inc.,</u> Docket No. ESX-L-2971-01	2
<u>Ronald Andrew Fernuik v. Hoffman-La Roche, Inc. et al.,</u> Docket No. ATL-L-001753-05	3
<u>State of N.J., Dep't of Env'tl. Prot. v. Middlesex County Bd. of Chosen Freeholders,</u> 206 N.J. Super. 414 (Super. Ct. Ch. Div. 1985)	5
<u>Turney et al. v. Hoffmann-La Roche Inc. et al.,</u>	3, 7
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PRELIMINARY STATEMENT

Defendants Hoffmann-La Roche Inc. and Roche Laboratories Inc. ("Defendants") submit this memorandum of law in support of their motion pursuant to Rule 4:3-3 of the New Jersey Rules of Court seeking an order changing the venue of this pharmaceutical product liability action involving the prescription drug Accutane® and allegations of psychiatric injury from the Superior Court of New Jersey, Atlantic County, to the Superior Court of New Jersey, Essex County. Defendants seek this change in the interests of justice and judicial economy. Five other cases that allege claims involving the ingestion of Accutane® and alleged psychiatric adverse effects are pending before the Honorable Francine A. Schott in Essex County. These actions involve similar complex issues of liability and medical causation, and discovery on these issues involves multiple experts and fact witnesses specific to the claimed psychiatric effects, as well as a significant amount of documents. Because the cases are complex, allege similar causes of action, and allege similar injuries, it makes plain and practical sense that, like the others, this action should be managed by Judge Schott in Essex County. Moreover, Defendants' principal place of business is in Essex County, as are their witnesses and documents, while Plaintiff does not even reside in the State of New Jersey. Therefore, Defendants submit that in this matter, as between Essex County and Atlantic County, the proper venue is Essex County.

RELEVANT STATEMENT OF FACTS

In this pharmaceutical drug product liability action, Plaintiff Brandi Marie Lake ("Plaintiff"), a resident of the state of Illinois, filed a complaint against Defendants for injuries she alleges stem from her ingestion of Accutane® (isotretinoin), a prescription drug indicated for treatment of severe recalcitrant nodular acne. Specifically, the Complaint alleges that, as a result of taking Accutane®, Plaintiff suffers from "severe injury manifesting itself in psychological injury including but not limited to depression, thoughts of suicide, suicidal ideation, emotional instability, uncontrollable impulse, delirium, frenzy, rage, aggressive behavior, acting without conscious volition and other psychological and/or emotional injury." See Complaint, annexed to the Certification of Shira Rosenman ("Rosenman Cert.") at Exhibit A, ¶ 21.

Essex County Actions

Beginning six years ago, seven other actions were commenced against Defendants in Essex County, each of which allege psychiatric claims similar to those in the instant matter. Each of these cases alleged that, as a result of their ingestion of Accutane®, plaintiffs suffered from psychiatric injuries including depression, attempted suicide, suicide ideation and suicide. Each involve similar complex issues of liability and causation, including whether the Accutane® package insert, which contained information regarding depression for over twenty years, adequately warned the prescribing physicians of potential psychiatric adverse events and whether there is a causal link between the ingestion of Accutane® and psychiatric injuries. These actions are: Virginia Palazzolo et al. v. Hoffmann-La Roche Inc., Docket No. ESX-L-5498-99¹; Robert Rowe v. Hoffmann-La Roche Inc., Docket No. ESX-L-2971-01²; Casey Balsham v. Hoffmann-La Roche Inc., Docket No. ESX-L-5808-01; Donna Cheek v. Hoffmann-La Roche Inc. et al., Docket No. ESX-L-7983-01; Douglas Hoefs v. Hoffmann-La Roche Inc. et al., Docket No. ESX-

¹ Plaintiffs Jessica Boers, Arie Boers, and Jane Boers voluntarily dismissed their claims against Defendants following a ruling on Arie and Jane Boers' motion for a protective order regarding the discoverability of their mental health histories for purposes of addressing alternate causation.

² The Court granted summary judgment in Defendants' favor in Rowe, finding that Michigan law precluded plaintiff's product liability claims for psychiatric injuries.

L-8357-01³; Matthew M. Turney et al. v. Hoffmann-La Roche Inc. et al., Docket No. ESX-L-5143-02; and Nicholas E. Pampell v. Hoffmann-La Roche Inc. et al., Docket No. ESX-L-5144-02. See Complaints attached to Rosenman Cert. at Exhibit B. The five remaining actions are pending before the Honorable Francine A. Schott in Essex County.

But for expert discovery and related motion practice, and in some instances depositions of case specific witnesses, these five cases are trial-ready or nearly so. Indeed, Plaintiffs have indicated that they already have evidence of liability and an expert on the issue of causation, thereby demonstrating their readiness to proceed to trial. Thus, at the most recent Case Management Conference on March 21, 2005, Judge Schott set these cases on the path to trial, and ordered, inter alia, that (i) Plaintiffs are to designate experts by July 11, 2005 and provide expert reports by August 22, 2005; (ii) Defendants are to designate experts by July 18, 2005 and provide expert reports by September 19, 2005; (iii) expert depositions by both parties shall be completed by October 31, 2005; and (iv) the trial will proceed in January 2006.

Atlantic County Actions

Until this action and Ronald Andrew Fernuik v. Hoffman-La Roche, Inc. et al., Docket No. ATL-L-001753-05, were filed, there were no cases before this Court in Atlantic County alleging that Accutane® caused psychiatric injuries. To date, actions involving alleged gastrointestinal adverse events as a result of the ingestion of Accutane® have been filed in or transferred to Atlantic County, and are pending before this Court. The first of these actions was only recently filed, in late 2003. Most of the actions alleging gastrointestinal adverse events are in their infancy, having only just begun the discovery process.

Plaintiffs' Application for Mass Tort Designation

Despite the clear centralization of each of the psychiatric and gastrointestinal actions filed in Essex County and Atlantic County, respectively, the plaintiffs in all of these actions recently

³ Plaintiff Douglas Hoefs voluntarily dismissed his claims against Defendants following a ruling on Defendants' motion to compel the plaintiff to appear in New Jersey for a deposition.

sought mass tort designation of all of the Accutane® cases, regardless of injury, only one week after Judge Schott stated that the psychiatric cases would be set for trial forthwith.

On March 10, 2005, Defendants opposed the application, arguing that (i) the cases are already centralized by injury before this Court and Judge Schott and (ii) the legal issues attendant to each injury are so distinct as to render them unfit for mass tort designation. Defendants also argued that because the psychiatric and gastrointestinal actions are at such different stages in discovery, mass tort designation would only serve to unnecessarily delay the psychiatric actions.

This action is a pharmaceutical product liability actions that involves complex issues of liability and medical causation and shares similar claims and injuries with the five other psychiatric actions pending in Essex County. In the interests of justice and judicial economy, if this matter remains in New Jersey,⁴ Defendants submit that the appropriate venue for this action is Essex County.

⁴ Defendants reserve the right to challenge the appropriateness of a New Jersey forum for this action.

ARGUMENT

IN THE INTERESTS OF JUSTICE AND JUDICIAL ECONOMY, THE PROPER NEW JERSEY VENUE FOR THIS ACTION IS ESSEX COUNTY

The Rules Governing the Courts of the State of New Jersey require venue to be laid by the plaintiff in accordance with the provisions of Rule 4:3-2. However, “[v]enue requirements are not jurisdictional...they are rules of practice designed to place litigation at a location convenient to parties and witnesses...Accordingly, an action may be changed from one venue to another where the convenience of parties and witnesses is not served by strict application of venue rules.” State of N.J., Dep’t of Env’tl. Prot. v. Middlesex County Bd. of Chosen Freeholders, 206 N.J. Super. 414, 420 (Super. Ct. Ch. Div. 1985) (citing R. 4-3:3(a)(3)); Diodato v. Camden County Park Comm’n, 136 N.J. Super. 324, 327-328 (App. Div. 1975); Doyle v. Schroeter, 191 N.J. Super. 120, 123, 126-28 (Super. Ct. Law Div. 1983); Engel v. Gosper, 71 N.J. Super. 573 (Super. Ct. Law Div. 1962)). Thus, notwithstanding a plaintiff’s discretion to select the place of venue in the first instance, the Rules expressly permit change of venue “for the convenience of parties and witnesses in the interest of justice.” R. 4:3-3(a).

As noted above, five other cases alleging psychiatric injuries are pending before Judge Schott in Essex County. Like this case, the five Essex County cases are pharmaceutical product liability actions alleging that plaintiffs’ ingestion of Accutane® caused psychiatric adverse events. Like this case, the five Essex County cases each involve the same complex issues of liability and medical causation, including whether the product warnings regarding potential psychiatric injuries are adequate and whether Accutane® is capable causing psychiatric injuries. Like this case, the five Essex County cases assert causes of action for failure to warn, negligence, misrepresentation, and violations of the New Jersey Product Liability Act. Given the obvious similarities between the Essex County cases and the instant matter, it makes economic and practical sense for this case to be managed by Judge Schott in Essex County.

Change of venue will undoubtedly serve the interests of judicial economy. Having all cases alleging psychiatric injuries located in Essex County before one judge will conserve judicial resources by having only one judge become familiar with and adjudicate the complex scientific and medical issues germane to the alleged psychiatric adverse events.

For the last six years, the aforementioned psychiatric cases have been efficiently and effectively managed in Essex County. Since the filing of the first Essex County action alleging that Accutane® caused plaintiffs to suffer from psychiatric injuries, massive amounts of discovery, including document production and depositions, have taken place in the Essex County psychiatric cases. Additionally, many orders have been entered in the psychiatric actions, all of which create the law of these cases. The prior presiding judge in the Accutane® psychiatric cases pending in Essex County, the Honorable Mary C. Jacobson, alone entered nine consecutive Case Management Orders that, inter alia, defined the scope of discovery. In the last year, Judge Schott has decided key discovery issues unique to the psychiatric actions, such as permitting Defendants to obtain plaintiffs' parents' records relating to their mental health histories pertinent to the issue of whether Accutane®, or other factors such as genetics, caused each plaintiff's psychiatric problems. A number of the psychiatric cases pending before her are now proceeding to expert discovery. Judge Schott's hands-on approach to managing the psychiatric cases to the advanced stage at which they are today ensures that she will be intimately familiar with the complex issues regarding whether the product warnings are adequate and whether Accutane® is capable causing psychiatric injuries. Therefore, Judge Schott is uniquely qualified to manage the instant action.

This Court, in connection with the pending gastrointestinal cases, will address whether, as a matter of law, the Accutane® package insert, which has contained information regarding gastrointestinal symptoms for more than twenty years, provided adequate information to the prescribing physicians. Meanwhile, Judge Schott has been and continues to be immersed in the legal, factual and scientific details of the actions alleging psychiatric injuries. In the cases

pending before Judge Schott, the issue will be whether the package insert adequately warned the prescribing physicians of potential psychiatric adverse events and whether there is a causal link between the ingestion of Accutane® and psychiatric injuries - issues that are factually and scientifically distinct from those in the gastrointestinal action.

In addition to addressing these issues in the trial set cases, currently pending before Judge Schott is a motion for summary judgment in Turney et al. v. Hoffmann-La Roche Inc. et al., which motion seeks a determination that the package insert was adequate as a matter of law. Clearly, changing the venue of the instant action from Atlantic County to Essex County, where the issues in this case are advanced and being actively adjudicated, will serve the interests of judicial economy.

Finally, Plaintiff cannot assert prejudice by a change in venue. Plaintiff is a resident of the State of Illinois and, therefore, it is of no consequence to her in which county in New Jersey this matter will proceed.⁵ Meanwhile, Defendants' principal place of business is in Nutley, New Jersey, which city is in Essex County.

Therefore, in the interests of judicial economy and justice, Defendants respectfully request that venue be changed to Essex County.

⁵ Although a plaintiff has discretion to choose his or her forum, courts disapprove of inappropriate forum shopping or, in this case, venue-shopping, particularly where, as here, it appears the foreign Plaintiff's ties to the forum are tenuous.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that, pursuant to Rule 4:3-3, the Court change the venue in this matter from the Law Division, Atlantic County to the Law Division, Essex County.

Respectfully submitted,

**GIBBONS, DEL DEO, DOLAN,
GRIFFINGER & VECCHIONE**
A Professional Corporation
Attorneys for Defendants
Hoffmann-La Roche Inc. and
Roche Laboratories Inc.

By: 

Diane E. Lifton

Dated: March 28, 2005

RONALD ANDREW FERNUIK,
 Plaintiff,
 v.
 HOFFMAN-LA ROCHE, INC., ROCHE
 LABORATORIES, INC., F. HOFFMAN-
 LA ROCHE, LTD., and ROCHE
 HOLDING, LTD.,
 Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: ATLANTIC COUNTY

DOCKET NO. ATL-L-001753-05

Civil Action

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
 MOTION TO CHANGE VENUE**

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 GRIFFINGER & VECCHIONE**
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 Roche Laboratories Inc.

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PRELIMINARY STATEMENT

Defendants Hoffmann-La Roche Inc. and Roche Laboratories Inc. ("Defendants") submit this memorandum of law in support of their motion pursuant to Rule 4:3-3 of the New Jersey Rules of Court seeking an order changing the venue of this pharmaceutical product liability action involving the prescription drug Accutane® and allegations of psychiatric injury from the Superior Court of New Jersey, Atlantic County, to the Superior Court of New Jersey, Essex County. Defendants seek this change in the interests of justice and judicial economy. Five other cases that allege claims involving the ingestion of Accutane® and alleged psychiatric adverse effects are pending before the Honorable Francine A. Schott in Essex County. These actions involve similar complex issues of liability and medical causation, and discovery on these issues involves multiple experts and fact witnesses specific to the claimed psychiatric effects, as well as a significant amount of documents. Because the cases are complex, allege similar causes of action, and allege similar injuries, it makes plain and practical sense that, like the others, this action should be managed by Judge Schott in Essex County. Moreover, Defendants' principal place of business is in Essex County, as are their witnesses and documents, while Plaintiff does not even reside in the State of New Jersey. Therefore, Defendants submit that in this matter, as between Essex County and Atlantic County, the proper venue is Essex County.

RELEVANT STATEMENT OF FACTS

In this pharmaceutical drug product liability action, Plaintiff Ronald Andrew Fernuik ("Plaintiff"), a resident of the state of Texas, filed a complaint against Defendants for injuries he alleges stem from his ingestion of Accutane® (isotretinoin), a prescription drug indicated for treatment of severe recalcitrant nodular acne. Specifically, the Complaint alleges that, as a result of taking Accutane®, Plaintiff suffers from "severe injury manifesting itself in psychological injury including but not limited to depression, thoughts of suicide, suicidal ideation, suicide attempts, emotional instability, uncontrollable impulse, delirium, frenzy, rage, aggressive behavior, acting without conscious volition, other psychological and/or emotional injury".¹ See Complaint, annexed to the Certification of Shira Rosenman ("Rosenman Cert.") at Exhibit A, ¶ 21.

Essex County Actions

Beginning six years ago, seven other actions were commenced against Defendants in Essex County, each of which allege psychiatric claims similar to those in the instant matter. Each of these cases alleged that, as a result of their ingestion of Accutane®, plaintiffs suffered from psychiatric injuries including depression, attempted suicide, suicide ideation and suicide. Each involve similar complex issues of liability and causation, including whether the Accutane® package insert, which contained information regarding depression for over twenty years, adequately warned the prescribing physicians of potential psychiatric adverse events and whether there is a causal link between the ingestion of Accutane® and psychiatric injuries. These actions are: Virginia Palazzolo et al. v. Hoffmann-La Roche Inc., Docket No. ESX-L-5498-99²; Robert

¹ Plaintiff also includes "gastrointestinal problems" as an alleged injury in his Complaint. *Id.* However, unlike his alleged psychiatric injuries, Plaintiff fails to articulate with any specificity what those "gastrointestinal problems" might be. Indeed, Plaintiffs' counsel characterized this action as a psychiatric injury action in their supplemental letter brief in support of their application for Mass Tort designation. See Plaintiffs' Supplemental Letter Brief, annexed to Rosenman Cert. at Exhibit B. Defendants submit that the inclusion of the phrase "gastrointestinal problems" is merely an attempt by Plaintiff to keep this action in Atlantic County.

² Plaintiffs Jessica Boers, Arie Boers, and Jane Boers voluntarily dismissed their claims against Defendants following a ruling on Arie and Jane Boers' motion for a protective order regarding the discoverability of their mental health histories for purposes of addressing alternate causation.

Rowe v. Hoffmann-La Roche Inc., Docket No. ESX-L-2971-01³; Casey Balsham v. Hoffmann-La Roche Inc., Docket No. ESX-L-5808-01; Donna Cheek v. Hoffmann-La Roche Inc. et al., Docket No. ESX-L-7983-01; Douglas Hoefs v. Hoffmann-La Roche Inc. et al., Docket No. ESX-L-8357-01⁴; Matthew M. Turney et al. v. Hoffmann-La Roche Inc. et al., Docket No. ESX-L-5143-02; and Nicholas E. Pampell v. Hoffmann-La Roche Inc. et al., Docket No. ESX-L-5144-02. See Complaints attached to Rosenman Cert. at Exhibit C. The five remaining actions are pending before the Honorable Francine A. Schott in Essex County.

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Atlantic County Actions

Until this action and Brandi Marie Lake v. Hoffman-La Roche, Inc. et al., Docket No. ATL-L-001276-05, were filed, there were no cases before this Court in Atlantic County alleging that Accutane® caused psychiatric injuries. To date, actions involving alleged gastrointestinal adverse events as a result of the ingestion of Accutane® have been filed in or transferred to Atlantic County, and are pending before this Court. The first of these actions was only recently

³ The Court granted summary judgment in Defendants' favor in Rowe, finding that Michigan law precluded plaintiff's product liability claims for psychiatric injuries.

⁴ Plaintiff Douglas Hoefs voluntarily dismissed his claims against Defendants following a ruling on Defendants' motion to compel the plaintiff to appear in New Jersey for a deposition.

filed, in late 2003. Most of the actions alleging gastrointestinal adverse events are in their infancy, having only just begun the discovery process.

Plaintiffs' Application for Mass Tort Designation

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On March 10, 2005, Defendants opposed the application, arguing that (i) the cases are already centralized by injury before this Court and Judge Schott and (ii) the legal issues attendant to each injury are so distinct as to render them unfit for mass tort designation. Defendants also argued that because the psychiatric and gastrointestinal actions are at such different stages in discovery, mass tort designation would only serve to unnecessarily delay the psychiatric actions.

This action is a pharmaceutical product liability actions that involves complex issues of liability and medical causation and shares similar claims and injuries with the five other psychiatric actions pending in Essex County. In the interests of justice and judicial economy, if this matter remains in New Jersey,⁵ Defendants submit that the appropriate venue for this action is Essex County.

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ARGUMENT

IN THE INTERESTS OF JUSTICE AND JUDICIAL ECONOMY, THE PROPER NEW JERSEY VENUE FOR THIS ACTION IS ESSEX COUNTY

The Rules Governing the Courts of the State of New Jersey require venue to be laid by the plaintiff in accordance with the provisions of Rule 4:3-2. However, “[v]enue requirements are not jurisdictional...they are rules of practice designed to place litigation at a location convenient to parties and witnesses...Accordingly, an action may be changed from one venue to another where the convenience of parties and witnesses is not served by strict application of venue rules.” State of N.J., Dep’t of Env’tl. Prot. v. Middlesex County Bd. of Chosen Freeholders, 206 N.J. Super. 414, 420 (Super. Ct. Ch. Div. 1985) (citing R. 4-3:3(a)(3)); Diodato v. Camden County Park Comm’n, 136 N.J. Super. 324, 327-328 (App. Div. 1975); Doyley v. Schroeter, 191 N.J. Super. 120, 123, 126-28 (Super. Ct. Law Div. 1983); Engel v. Gosper, 71 N.J. Super. 573 (Super. Ct. Law Div. 1962)). Thus, notwithstanding a plaintiff’s discretion to select the place of venue in the first instance, the Rules expressly permit change of venue “for the convenience of parties and witnesses in the interest of justice.” R. 4:3-3(a).

As noted above, five other cases alleging psychiatric injuries are pending before Judge Schott in Essex County. Like this case, the five Essex County cases are pharmaceutical product liability actions alleging that plaintiffs’ ingestion of Accutane® caused psychiatric adverse events. Like this case, the five Essex County cases each involve the same complex issues of liability and medical causation, including whether the product warnings regarding potential psychiatric injuries are adequate and whether Accutane® is capable causing psychiatric injuries. Like this case, the five Essex County cases assert causes of action for failure to warn, negligence, misrepresentation, and violations of the New Jersey Product Liability Act. Given the obvious similarities between the Essex County cases and the instant matter, it makes economic and practical sense for this case to be managed by Judge Schott in Essex County.

Change of venue will undoubtedly serve the interests of judicial economy. Having all cases alleging psychiatric injuries located in Essex County before one judge will conserve judicial resources by having only one judge become familiar with and adjudicate the complex scientific and medical issues germane to the alleged psychiatric adverse events.

For the last six years, the aforementioned psychiatric cases have been efficiently and effectively managed in Essex County. Since the filing of the first Essex County action alleging that Accutane® caused plaintiffs to suffer from psychiatric injuries, massive amounts of discovery, including document production and depositions, have taken place in the Essex County psychiatric cases. Additionally, many orders have been entered in the psychiatric actions, all of which create the law of these cases. The prior presiding judge in the Accutane® psychiatric cases pending in Essex County, the Honorable Mary C. Jacobson, alone entered nine consecutive Case Management Orders that, inter alia, defined the scope of discovery. In the last year, Judge Schott has decided key discovery issues unique to the psychiatric actions, such as permitting Defendants to obtain plaintiffs' parents' records relating to their mental health histories pertinent to the issue of whether Accutane®, or other factors such as genetics, caused each plaintiff's psychiatric problems. A number of the psychiatric cases pending before her are now proceeding to expert discovery. Judge Schott's hands-on approach to managing the psychiatric cases to the advanced stage at which they are today ensures that she will be intimately familiar with the complex issues regarding whether the product warnings are adequate and whether Accutane® is capable causing psychiatric injuries. Therefore, Judge Schott is uniquely qualified to manage the instant action.

This Court, in connection with the pending gastrointestinal cases, will address whether, as a matter of law, the Accutane® package insert, which has contained information regarding gastrointestinal symptoms for more than twenty years, provided adequate information to the prescribing physicians. Meanwhile, Judge Schott has been and continues to be immersed in the legal, factual and scientific details of the actions alleging psychiatric injuries. In the cases

pending before Judge Schott, the issue will be whether the package insert adequately warned the prescribing physicians of potential psychiatric adverse events and whether there is a causal link between the ingestion of Accutane® and psychiatric injuries - issues that are factually and scientifically distinct from those in the gastrointestinal action.

In addition to addressing these issues in the trial set cases, currently pending before Judge Schott is a motion for summary judgment in Turney et al. v. Hoffmann-La Roche Inc. et al., which motion seeks a determination that the package insert was adequate as a matter of law. Clearly, changing the venue of the instant action from Atlantic County to Essex County, where the issues in this case are advanced and being actively adjudicated, will serve the interests of judicial economy.

Finally, Plaintiff cannot assert prejudice by a change in venue. Plaintiff is a resident of the State of Texas and, therefore, it is of no consequence to him in which county in New Jersey this matter will proceed.⁶ Meanwhile, Defendants' principal place of business is in Nutley, New Jersey, which city is in Essex County.

Therefore, in the interests of judicial economy and justice, Defendants respectfully request that venue be changed to Essex County.

⁶ Although a plaintiff has discretion to chose his or her forum, courts disapprove of inappropriate forum shopping or, in this case, venue-shopping, particularly where, as here, it appears the foreign Plaintiff's ties to the forum are tenuous.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that, pursuant to Rule 4:3-3, the Court change the venue in this matter from the Law Division, Atlantic County to the Law Division, Essex County.

Respectfully submitted,

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By: 
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