

BURSOR & FISHER, P.A.

Andrew J. Obergfell
888 Seventh Avenue
New York, NY 10019
Telephone: (212) 989-9113
Facsimile: (212) 989-9163
E-Mail: aobergfell@bursor.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DOMINIC STIMMA, MARGOTH STRAND, and
JYNONA GAIL LEE, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

TORRENT PHARMA, INC., HETERO USA INC.,
CAMBER PHARMACEUTICALS INC., THE
KROGER CO., QUALITY FOOD CENTERS,
INC., CVS HEALTH CO. f/k/a CVS CAREMARK,
and WAL-MART STORES, INC.,

Defendants.

Civil Action No. 2:18-cv-14318

Hon. Judge Freda L. Wolfson

Hon. Mag. Judge Lois H. Goodman

**NOTICE OF MOTION TO
CONSOLIDATE**

**Oral Argument Requested If Opposition
Is Filed**

To:

Ruben Honik
David J. Stanoch
Golomb & Honik, P.C.
1835 Market Street, Suite 2900
Philadelphia, PA 19103
Tel.: 215-965-9177
rhonik@golombhonik.com
dstanoch@golombhonik.com

Allan Kanner
Conlee S. Whiteley
Layne Hilton
Kanner and Whiteley, LLC
701 Camp Street
New Orleans, Louisiana 70115

Tel.: 504-524-5777
a.kanner@kanner-law.com
c.whiteley@kanner-law.com
l.hilton@kanner-law.com

Michael L. Slack
John R. Davis
Slack Davis Sanger, LLP
2705 Bee Cave Road, Suite 220
Austin, TX 78746
Tel.: 512-795-8686
mslack@slackdavis.com
jdavis@slackdavis.com

Seth Goldberg
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103
215-979-1000
sagoldberg@duanemorris.com

Stefanie Colella-Walsh
Stark and Stark
993 Lenox Drive
Lawrenceville, New Jersey 08648
(609) 219-7416
scolellawalsh@stark-stark.com

George A. Barton
Law Offices of George A. Barton, P.C.
7227 Metcalf Avenue, Suite 301
Overland Park, Kansas 66204
(913) 563-6255
gab@georgebartonlaw.com

Rachel H. Bob
Abrams, Gorelick, Friedman & Jacobson, LLP
One Battery Park Plaza
New York, NY 10004
(212)-422-1200
rbob@agfjlaw.com

Kenneth Marc Klemm
Baker Donelson Bearman Caldwell &
Berkowitz, P.C.
201 St. Charles Avenue 36th fl.

New Orleans, LA 70170
(504) 566-5258
kklemm@bakerdonelson.com

David E. Sellinger
Greenberg Traurig, LLP
500 Campus Drive
Suite 400
P.O. Box 677
Florham Park, NJ 07932-0677
(973) 360-7900
sellingerd@gtlaw.com

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on November 19, 2018 at 9 a.m. or as soon thereafter as counsel may be heard, the undersigned attorneys for Plaintiffs Dominic Stimma, Margoth Strand, and Jynona Gail Lee shall move in the District Court of New Jersey for consolidating this case with *Duffy, et al. v. Solco Healthcare U.S., LLC, Erwin v. Princeton Pharmaceutical Inc., et al.*, No. 18-cv-13447 (D.N.J.), and *O'Neill v. Solco Healthcare U.S. Inc., et al.*, No. 18-cv-14841 (D.N.J.).

The undersigned intends to rely upon the annexed Brief and exhibits thereto.

The undersigned requests oral argument in the event that timely opposition papers are filed.

Dated: October 26, 2018

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Andrew J. Obergfell

Andrew J. Obergfell
888 Seventh Avenue
New York, NY 10019
Telephone: (212) 989-9113
Facsimile: (212) 989-9163
E-Mail: aobergfell@bursor.com

Attorneys for Plaintiff

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MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CONSOLIDATION

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New York, NY 10019
Telephone: (212) 989-9113
Facsimile: (212) 989-9163
E-Mail: aobergfell@bursor.com

Attorneys for Plaintiff

I. INTRODUCTION AND PRELIMINARY STATEMENT

Plaintiffs Dominic Stimma, Margoth Strand, and Jynona Gail Lee (the “Stimma Plaintiffs”) move this Court for an order consolidating the four related class action lawsuits (the “Actions”) presently pending in this district: *Duffy, et al. v. Solco Healthcare U.S. Inc., et al.*, No. 3:18-cv-15076 (D.N.J.) (the “Duffy action”), *Stimma, et al. v. Torrent Pharma Inc., et al.*, No. 18-cv-14318 (D.N.J.) (the “Stimma action”), *Erwin v. Princeton Pharmaceutical Inc., et al.*, No. 18-cv-13447 (D.N.J.) (the “Erwin action”), and *O’Neill v. Solco Healthcare U.S. Inc., et al.*, No. 18-cv-14841 (D.N.J.) (the “O’Neill action”).

Each of these actions relate to the same subject matter, are based on virtually identical factual allegations, and are against overlapping pharmaceutical defendants: Solco Healthcare U.S., LLC (“Solco”), Princeton Pharmaceutical Inc. (“Princeton”), Huahai U.S. Inc. (“Huahai”), Teva Pharmaceutical Industries, LTD and Teva Pharmaceuticals USA, Inc. (collectively “Teva”), Torrent Pharmaceuticals, Inc. (“Torrent”), and Camber Pharmaceuticals, Inc. (“Camber”) (collectively “Pharmaceutical Defendants”), and retailers Walgreen Co. (“Walgreen”), Throggs Neck Pharmacy, The Kroger Co. (“Kroger”), Quality Food Centers, Inc. (“QFC”), Wal-Mart Stores, Inc. (“Walmart”), and CVS Health Co. (“CVS”) (collectively, the “Retail Defendants”). Each of these matters relate to contaminated valsartan medication sold by the Pharmaceutical Defendants to consumers in the United States. With the possible exception of Defendants Camber and Hetero, the contaminated valsartan medication at issue derives from a common source, Zhejiang Huahai Pharmaceuticals, an active pharmaceutical ingredient supplier in China.

This motion is brought on the grounds that consolidation is necessary to protect the interests of the proposed class and progress towards class certification and trial. Additionally, this motion is brought on the grounds that consolidation will promote efficiency and conserve judicial resources. Counsel for plaintiffs in the *Duffy* and *O’Neill* actions have consented to consolidation.

For all these reasons, and as detailed more fully below, the Stimma Plaintiffs respectfully request that the Court grant their motion to consolidate the *Duffy*, *Stimma*, *Erwin*, and *O’Neill* actions.

II. FACTUAL BACKGROUND

The Stimma Plaintiffs bring this action on behalf of themselves and others similarly situated against Defendants Torrent Pharma, Inc., Hetero USA Inc., Camber Pharmaceuticals Inc., The Kroger Co., Quality Food Centers, Inc., CVS Health Co. f/k/a CVS Caremark, and Wal-Mart Stores, Inc. (collectively, “Defendants”). In particular, Defendants Torrent, Hetero, and Camber manufactured and distributed valsartan-containing generic prescription medications contaminated with N-nitrosodimethylamine (“NDMA”), a carcinogenic and liver-damaging impurity. In turn, Defendants Kroger., QFC, CVS, and Walmart sold this contaminated generic medication to Plaintiffs and other similarly situated consumers. Compl. at ¶ 1. Accordingly, Plaintiffs bring claims against Defendants for equitable relief and to recover damages and restitution for: (i) breach of express warranty; (ii) breach of the implied warranty of merchantability; (iii) violation of the Connecticut Unfair Trade Practices Act; (iv) violation of the Texas Deceptive Trade Practices-Consumer Protection Act; (v) violation of the Washington Consumer Protection Act; (vi) unjust enrichment; (vii) fraudulent concealment; (viii) fraud; (ix) conversion; (x) strict products liability; (xi) gross negligence; (xii) negligence; and (xiii) battery. *Id.* at ¶ 16.

Similarly, Plaintiffs Elizabeth and John Duffy brought the Duffy brought the first of these actions against Defendants Solco, Prinston, Walgreens, and Throggs Neck Pharmacy. That case began in the Southern District of New York and has since been transferred to this Court. Richard O’Neill brought the O’Neill Action against Defendants Solco and Prinston. Plaintiff Eric Erwin brought the Erwin Action against Defendants Solco, Huahai, and Teva. Plaintiffs Dominic Stimma, Margoth Strand, and Jynona Gail Lee brought the Stimma Action against Defendants Torrent, Hetero, Camber, Kroger, QFC, CVS, and Walmart. The Duffy, O’Neill, Erwin, and

Stimma actions are based on virtually identical factual allegations and involve many of the same defendants.

III. ARGUMENT

Pursuant to Fed. R. Civ. P. 42(a), cases should be consolidated where they involve common questions of law or fact. This Court has broad discretion under this rule to consolidate cases within this district even when cases are pending before different judges. *See Brady v. New Jersey Building Laborers State-Wide Funds*, 250 F.R.D. 171, 176 (D.N.J. 2008). In exercising that discretion, the court should weigh the benefits of judicial economy against the potential for new delays, expense, confusion and prejudice. *Id.* In the absence of an articulated basis to assert confusion or prejudice, consolidation is generally appropriate. *Salem Steel North America LLC v. Shanghai Shangshang Stainless Steel Pipe Co., Ltd.*, 2009 WL 2169243 at *2 (D.N.J. 2009). Further, the decision to consolidate is left to the sound discretion of the Court and will not be reversed absent clear error. *See* Schwarzer, Tashima & Wagstaffe, RUTTER GROUP PRAC. GUIDE: FED. CIV. PRO BEFORE TRIAL (The Rutter Group 2010) § 16:151.

Courts have recognized that class actions are particularly well-suited for consolidation because unification expedites pretrial proceedings, reduces case duplication, avoids the need to contact parties and witnesses for multiple proceedings, and minimizes the expenditure of time and money for all parties involved. *In re Cendant Corp. Litig.*, 182 F.R.D. 476, 478 (D.N.J. 1998); *Owen v. Labor Ready Inc.*, 146 Fed.Appx. 139, 141 (9th Cir. 2005). Consolidation also reduces the confusion and delay that may result from prosecuting related class actions separately. *Id.*

Here, the *Duffy*, *O'Neill*, *Erwin*, and *Stimma* actions involve substantially similar, if not identical, factual issues such that consolidation would serve the interests of judicial economy.

For example, the cases contain the following factual similarities:

- The cases assert similar causes of action for breach of express warranty; breach of the implied warranty of merchantability; violation of state consumer protection laws; unjust enrichment (*Duffy*, *Erwin*, and *Stimma* actions); fraud (*Duffy*, *Erwin*, and *Stimma* actions); negligence (*Duffy*, *Erwin*, and *Stimma* actions); fraudulent

concealment (*Duffy, Erwin, and Stimma* actions); conversion (*Duffy, Erwin, and Stimma* actions); strict products liability (*Duffy, Erwin, and Stimma* actions); gross negligence (*Duffy, Erwin, and Stimma* actions), and battery (*Duffy, Erwin, and Stimma* actions).

- The cases name many of the same defendants, including Solco and Princeton.
- Plaintiffs are all individuals who purchased valsartan-containing medications contaminated with NDMA manufactured by the Pharmaceutical Defendants and sold by the Retail Defendants.
- The cases are all pending before Judge Wolfson in the District of New Jersey.

Accordingly, consolidation of the *Duffy, O'Neill, Erwin, and Stimma* actions is appropriate here. Consolidation will simplify discovery motions, other pretrial motions, class certification issues, and clerical and administrative case management duties. Consolidation will also reduce the confusion and delay that may result from prosecuting related putative class actions separately. Additionally, counsel for plaintiffs in the *Duffy* and *O'Neill* matters consent to consolidation.

To effectuate consolidation, the Stimma Plaintiffs request that the Court set a schedule for briefing applications for the appointment of interim class counsel pursuant to Federal Rule of Civil Procedure 23(g), then grant leave to file a consolidated complaint with the Court on or before thirty days from the date of such order. Entry of the contemporaneously-filed Proposed Order will assist the Court by providing for the orderly, cost effective and timely prosecution of these cases.

IV. CONCLUSION

In the interest of judicial economy and for the reasons set forth above, Plaintiffs Dominic Stimma, Margoth Strand, and Jynona Gail Lee respectfully request that the Court order consolidation of the *Duffy, Stimma, Erwin* and *O'Neill* actions.

Dated: October 26, 2018

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Andrew J. Obergfell

Andrew J. Obergfell
888 Seventh Avenue
New York, NY 10019
Telephone: (212) 989-9113
Facsimile: (212) 989-9163
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CERTIFICATION OF SERVICE

ANDREW J. OBERGFELL hereby certifies as follows:

1. I am an associate with the law firm of Bursor & Fisher, P.A., attorneys for Plaintiffs Dominic Stimma, Margoth Strand, and Jynona Gail Lee (collectively "Plaintiffs"). I am also the attorney for Plaintiffs Elizabeth and John Duffy in the *Duffy, et al. v. Solco Healthcare U.S. Inc., et al.*, No. 3:18-cv-15076 (D.N.J.) matter, also currently pending before the Honorable Freda L. Wolfson U.S.D.J.
2. On October 26, 2018, I electronically filed via ECF: 1) Notice of Motion for Consolidation; 2) Memorandum of Law in Support of Motion for Consolidation; 3) Proposed Order.
3. On October 26, 2018, all counsel were served via the ECF system.
4. Plaintiffs will also be sending a courtesy copy of the above-mentioned documents to the Honorable Freda L. Wolfson U.S.D.J. pursuant to her Individual Rules of Practice.

I certify that the foregoing statements made by me are true and correct. I am aware that if

any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: /s/ Andrew J. Oberfell
Andrew J. Oberfell

Dated: October 26, 2018

**UNITED STATES DISTRICT COURT
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Hon. Judge Freda L. Wolfson

Hon. Mag. Judge Lois H. Goodman

**[PROPOSED] ORDER GRANTING
MOTION TO CONSOLIDATE**

THIS MATTER having been opened to the Court by Bursor & Fisher, P.A., attorneys for Plaintiffs Dominic Stimma, Margoth Strand, and Jynona Gail Lee, on notice to all counsel, and with the consent of counsel for plaintiffs in the *O'Neill v. Solco Healthcare U.S. Inc., et al.* and *Duffy, et al. v. Solco Healthcare U.S., LLC, et al.* matters, and the Court having considered the parties' papers and argument of counsel and for good cause shown;

IT IS THIS ____ day of November, 2018

ORDERED as follows:

1. The actions captioned *Duffy, et al. v. Solco Healthcare U.S., LLC, et al.*, No. 18-cv-15076 (D.N.J.), *Stimma, et al. v. Torrent Pharma Inc., et al.*, No. 18-cv-14318 (D.N.J.), *Erwin v. Princeton Pharmaceutical Inc., et al.*, No. 18-cv-13447 (D.N.J.), and *O'Neill v. Solco Healthcare U.S. Inc., et al.*, No. 18-cv-14841 (D.N.J.) ("the Actions") are hereby consolidated pursuant to Rule 42(a) of the Federal Rules of Civil Procedure are under Civil Action No. 2:18-cv-14318.

2. All future pleadings pertaining to either of the Actions shall be filed under Civil Action No. 2:18-cv-14318, under the caption *In re Valsartan Litigation*.

3. All actions filed in the future in this District or transferred to this District that allege claims arising out of the same or substantially similar facts as alleged in the Actions will be, until further order of this Court, consolidated with Case No. 2:18-cv-14318.

4. If any other case alleging claims arising out of the same or substantially similar facts as alleged in the Actions is filed in this Court or transferred from here or another court (a "related case"), the clerk shall: (a) file a copy of this Order in the separate file for the related case; (b) mail a copy of this Order to counsel for the plaintiff(s) in the related case; (c) mail a copy of this Order to counsel for each defendant in the related case not already a party to any case then included in Case No. 2:18-cv-14318; and (d) make an appropriate entry in the Master Docket.

5. The Court requests the assistance of counsel in calling to the attention of the Clerk the filing or transfer of any case which might be properly consolidated as part of Case No. 2:18-cv-14318 pursuant to the provisions of this Order.

6. Applications for the appointment of interim class counsel pursuant to Federal Rule of Civil Procedure 23(g) are due on or before _____, 2018. Plaintiffs shall file their consolidated complaint on or before thirty days from the date of such order appointing interim class counsel.

IT IS SO ORDERED.

DATED: _____, 2018

Hon. Freda L. Wolfson
United States District Judge