BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: Philips Recalled CPAP, Bi-Level PAP, and Ventilator Litigation	**MDL No. _____**

MOTION FOR TRANSFER AND COORDINATION OR CONSOLIDATION UNDER 28 U.S.C. §1407

Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Movant-Plaintiff Thomas R. Starner ("Starner"),[1] respectfully moves the Judicial Panel on Multidistrict Litigation ("Panel") to transfer and centralize the actions listed in the Schedule of Actions, and subsequent tag-along actions, to the Honorable Timothy J. Savage, United States District Court Judge for the Eastern District of Pennsylvania, who currently presides over the action brought by Starner, for coordinated or consolidated pretrial proceedings.

Transfer and centralization of these actions is appropriate for the following reasons:

1. On June 14, 2021, Defendants Koninklijke Philips N.V. ("Royal Philips"), Philips North America LLC; and Philips RS North America LLC (collectively, "Philips") issued a nationwide recall of certain Continuous Positive Airway Pressure ("CPAP"), Bi-Level Positive Airway Pressure ("Bi-Level PAP"), and mechanical ventilator devices manufactured by Philips prior to April 26, 2021.[2]

2. The recalled devices contain polyester-based polyurethane sound abatement foam that may degrade or off-gas under certain circumstances, including when cleaned with ozone, or in high humidity and high temperature environments, which puts users at risk of suffering from:

[1] *See Starner, and all others similarly situated v. Koninklijke Philips, N.V., et al.*, Civil Action No. 2:21-cv-2925 (E.D. Pa.) (TJS), *filed* July 1, 2021.

[2] *See* Recall Notice, attached as Exhibit "B" to the accompanying Brief filed herewith.

"[i]rritation (skin, eye, and respiratory tract), inflammatory response, headache, asthma, adverse effects to other organs (e.g., kidneys and liver) and toxic carcinogenic affects."[3]

3. Defendants have admitted that lab analysis of the degraded foam in these devices reveals the presence of harmful chemicals, including: Toluene Diamine, Toluene Diisocyanate, and Diethylene Glycol, and "based on lab testing and evaluations, it may be possible that these potential health risks could result in a wide range of potential patient impact, from transient potential injuries, symptoms and complications, as well as possibly serious injury which can be life-threatening or cause permanent impairment, or require medical intervention to preclude permanent impairment."[4]

4. Movant purchased and used two of the recalled devices, a Philips Respironics Remstar Pro CPAP device and a Philips DreamStation Auto CPAP device, prior to June 14, 2021, to treat sleep apnea.

5. The manuals accompanying Movant's recalled devices did not contain any language or warnings of health risks associated with use of the device, and had Defendants informed Movant of these risks, he would not have purchased or used the recalled devices.

6. There are approximately 3-4 million devices affected by the Philips recall.[5]

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[3] *Id.*; *see also* Medical Device recall notification (U.S. only) / field safety notice (International Markets), PHILIPS RESPIRONICS (June 14, 2021), https://www.usa.philips.com/healthcare/e/sleep/communications/src-update#section_2 (accessed June 27, 2021); Royal Philips Update on the recall notification, https://www.philips.com/a-w/about/news/archive/standard/news/press/2021/20210614-philips-issues-recall-notification-to-mitigate-potential-health-risks-related-to-the-sound-abatement-foam-component-in-certain-sleep-and-respiratory-care-devices.html (accessed June 27, 2021).

[4] Philips *Sleep and Respiratory Care Update – Clinical information for physicians*, June 14, 2021, philips-recall-clinical-information-for-physicians-and-providers.pdf (accessed June 27, 2021).

[5] Associated Press, *Philips recalls ventilators, sleep apnea machines due to health risks*, NBC NEWS, https://www.nbcnews.com/business/consumer/philips-recalls-ventilators-sleep-apnea-machines-due-health-risks-n1270725 (accessed June 27, 2021).

7. The facts surrounding Philips' manufacture, sale, testing, and recall of its CPAP, Bi-Level PAP, and mechanical ventilator devices are uniform among all purchasers and users of the devices.

8. To date, nine additional actions seeking similar relief in federal court have been filed (referred to collectively, with the Movant's Action, as the "Schedule of Actions").[6] In total, there are ten actions pending in five different districts: one in the Eastern District of Pennsylvania; six in the District of Massachusetts; one in the District of Delaware; one in the Middle District of Florida; and one in the Middle District of Georgia.

9. In light of the fact there are millions of Plaintiffs impacted by Defendants' conduct and the recall of Philips' CPAP, Bi-Level PAP, and mechanical ventilator devices, and that awareness of the recall is ongoing, more cases will likely be filed.

10. The Actions and any additional tag-along actions, pending against Defendants will involve similar if not identical questions of fact, and will involve common discovery and pretrial motion practice, and will have numerous overlapping class claims. Accordingly, there is the

[6] *See*: (1) *Manna, and all others similarly situated v. Koninklijke Philips, N.V., et al.*, Civil Action No. 1:21-cv-11017 (DJC) (D. Mass.), *filed* June 17, 2021; (2) *Shelton, and all others similarly situated v. Koninklijke Philips, N.V., et al.*, Civil Action No. 1:21-cv-11076 (DJC) (D. Mass.), *filed* June 29, 2021; (3) *Griffin, and all others similarly situated v. Koninklijke Philips, N.V., et al.*, Civil Action No. 1:21-cv-11077 (DJC) (D. Mass.), *filed* June 29, 2021; (4) *Oldigs, and all others similarly situated v. Philips North America LLC, et al.*, Civil Action No. 1:21-cv-11078 (DJC) (D. Mass.), filed June 29, 2021; (5) *Schuckit, and all others similarly situated v. Philips North America LLC, et al.*, Civil Action No. 1:21-cv-11088 (DJC) (D. Mass.), *filed* June 30, 2021; (6) *Boudreau, and all others similarly situated v. Koninklijke Philips, N.V., et al.*, Civil Action No. 1:21-cv-11095 (DJC) (D. Mass.), *filed* July 1, 2021; (7) *Emmino v. Koninklijke Philips, N.V., et al.*, Civil Action No. 8:21-cv-1609 (M.D. Fla.) (MSS), *filed* July 2, 2021; (8) *Heller v. Koninklijke Philips, N.V., et al.*, Civil Action No. 4:21-cv-0111 (M.D. Ga.) (CDL), *filed* July 2, 2021; and (9) *Shrack, individually and on behalf of all others similarly situated v. Koninklijke Philips, N.V., et al.*, Civil Action No. 1:21-cv-00989 (D. Del.) (unassigned), *filed* July 2, 2021. All cases are listed on the Schedule of Actions filed with the accompanying Brief as Exhibit "A." The Complaints (without exhibits) in the Actions and their related docket sheets are attached to the Brief as Exhibits "A-1" through "A-10."

potential for inconsistent pretrial rulings if the cases are not transferred for coordinated or consolidated proceedings pursuant to 28 U.S.C. § 1407.

11. Movant seeks to create an MDL with respect to the recall of Philips' CPAP, Bi-Level PAP, and mechanical ventilator devices by centralizing the Actions in the Eastern District of Pennsylvania along with any subsequent tag-along actions. As explained in more detail in the supporting Brief, such centralization will eliminate duplicative discovery, prevent inconsistent rulings, and conserve judicial resources.

12. The convenience of the courts, witnesses, parties, and counsel will all be served by transferring these cases to the Eastern District of Pennsylvania and specifically to the Honorable Timothy J. Savage, United States District Judge, Eastern District of Pennsylvania, for coordinated or consolidated pretrial proceedings. For the reasons set forth in the supporting Brief, the Eastern District of Pennsylvania and Judge Savage would be excellent choices to shepherd this litigation.

13. In support of the motion, Movant relies upon:

(a) the Brief describing the background of the litigation and Movant's factual and legal contentions;

(b) the Schedule of Actions providing: (1) the complete name of each action involved, listing the full name of each party included; (2) the district court and division where each action is pending; (3) the civil action number of each action; and (4) the name of the Judge assigned to each action, if available;

(c) a copy of all complaints (without exhibits) and docket sheets for all actions listed on the Schedule of Actions (attached as Exhibits A-1 through A-10 in the accompanying Brief);

(d) the Statement Regarding Oral Argument; and,

(e) the Proof of Service.

WHEREFORE, Movant respectfully request that the Panel grant his motion and transfer all of the Actions, for coordinated or consolidated pretrial proceedings, to the Eastern District of Pennsylvania and assign them to the Honorable Timothy J. Savage.

Dated: July 7, 2021

Respectfully submitted,

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