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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **IN RE INCRETIN-BASED**  
12 **THERAPIES PRODUCTS**  
13 **LIABILITY LITIGATION**

14 *As to All Related and Member Cases*

Case No. 13-md-2452-AJB (MDD)

**MDL 2452**

**MEMORANDUM IN SUPPORT OF**  
**AMYLIN PHARMACEUTICALS,**  
**LLC'S BILL OF COSTS**

Date: January 4, 2016

Time: 10:00 a.m.

Judge: Hon. Anthony J. Battaglia

1 **I. INTRODUCTION**

2 Pursuant to Fed. R. Civ. P 54 and Local Rule 54.1 prevailing party Amylin  
3 Pharmaceuticals, LLC (“Amylin”) respectfully submits this Memorandum in  
4 Support of Amylin’s Bill of Costs with Supporting Schedules and the Declaration  
5 of Amy J. Laurendeau (“Laurendeau Declaration”) in support thereof. Amylin’s  
6 allowable costs total \$163,210.72, which are correctly stated in the supporting  
7 documents and were necessarily incurred in this action.

8 This Court’s Order Directing Clerk of Court to Enter Judgment, filed on  
9 November 30, 2015, Doc. No. 1572, granted Defendants’ Motion for Summary  
10 Judgment Based on Preemption and denied Plaintiffs’ Cross-Motion for Summary  
11 Judgment, and directed the Clerk of Court to enter judgment in favor of Defendants  
12 and against Plaintiffs in the MDL proceedings and each member case.

13 The Ninth Circuit has concluded that “[a]s a general rule, costs and fees  
14 should be awarded to the prevailing party” in accordance with 28 U.S.C. § 1920.  
15 *Resnick v. Netflix, Inc. (In re Online Dvd-Rental Antitrust Litig.)*, 779 F.3d 914 (9th  
16 Cir. 2015); *see also Kalitta Air L.L.C. v. Cent. Texas Airborne Sys. Inc.*, 741 F.3d  
17 955, 958 (9th Cir. 2013) (“costs should be awarded to the prevailing party in a civil  
18 action.”). Consistent with the Federal Rules of Civil Procedure, the Local Rules of  
19 the Southern District of California, and federal case law, Amylin respectfully  
20 requests that the Clerk of Court tax as costs the totals in the attached Bill of Costs,  
21 filed herewith, and detailed in the attached Supporting Schedules A through C and  
22 the Laurendeau Declaration.

23 **II. ARGUMENT**

24 Amylin seeks to recover fees paid for (1) court reporters and deposition  
25 transcripts, (2) the cost of providing discovery sought by Plaintiffs, and (3) costs  
26 incurred by Amylin in California State court cases prior to their removal to this  
27 Court, all of which are recoverable pursuant to Federal Rule 54(d). As explained  
28

1 below, these costs are specifically enumerated in 28. U.S.C. § 1920 and in Local  
2 Rule 54.1 and such awards have been upheld by courts in the Ninth Circuit.

3 **A. Fees for Deposition Transcripts**

4 Section 1920(2) allows a court to tax fees for “printed or electronically  
5 recorded transcripts necessarily obtained for use in the case[,]” and for the  
6 reasonable expenses of the court reporter. 28 U.S.C. § 1920(2); L.R. 54.1(b)(3)  
7 (the clerk may tax as costs “[t]he cost of an original and one copy of any  
8 deposition” and “[t]he reasonable expenses of the deposition reporter . . . including  
9 travel and subsistence.”).

10 Amylin was responsible for various recoverable costs associated with the  
11 depositions of fifty-five (55) witnesses before the Court entered judgment in favor  
12 of Defendants. See 7/29/2014 Order on Jt. Mot. for Deposition Protocol at 11 (“the  
13 parties shall pay for their own copies of transcripts” of depositions). These  
14 depositions included Rule 30(b)(6) depositions of company witnesses, *in extremis*  
15 depositions of certain Plaintiffs in the MDL, and depositions of Plaintiffs’ and  
16 Defendants’ expert witnesses on the issues of preemption and general causation.  
17 The costs associated with obtaining each transcript and one additional copy of each  
18 transcript, whether “paper or electronic[,]” may be taxed because at the time these  
19 depositions were taken “it could be reasonably expected that the deposition would  
20 be used for trial preparation, rather than mere discovery.” L.R. 54.1(b)(3)(a) (“The  
21 cost of an original and one copy of any deposition . . . necessarily obtained for use  
22 in the case is allowable.”); *Ancora Techs., Inc. v. Apple, Inc.*, 2013 WL 4532927, at  
23 \*6 (N.D. Cal. Aug. 26, 2013) (because the rules allow for the recovery of costs of  
24 “two versions of the deposition transcript. . . . the Court finds no reason to deny  
25 costs which conform to this rule, even if the second copy is a rough ASCII or a  
26 video.”). Not all court reporter companies offer the same services. Therefore, in  
27 terms of the cost of the additional copy of the transcript that is recoverable, this  
28 charge may be reflected in an invoice as an ASCII rough or diskette, a condensed

1 manuscript, or an LEF file. The costs associated with these depositions are detailed  
2 in Schedule A to the Bill of Costs, and described in full in the concurrently filed  
3 Laurendeau Declaration.

4 **B. Fees for Production of Discovery Requested By Plaintiffs**

5 Amylin also seeks to recover the costs associated with the copying of  
6 information to comply with the required voluminous production of electronic  
7 documents in this case. Section 1920(4) allows for the recovery of costs where “the  
8 copies were obtained to be produced pursuant to Rule 34 or other discovery rules.”  
9 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 914, 927 (9th Cir. 2015). “To  
10 the extent that a party is obligated to produce (or obligated to accept) electronic  
11 documents in a particular format or with particular characteristics intact (such as  
12 metadata, color, motion, or manipulability), the costs to make duplicates in such a  
13 format or with such characteristics preserved are recoverable as ‘the costs of  
14 making copies ... necessarily obtained for use in the case.’” *Id.* at 928 (quoting  
15 *CBT Flint Partners, LLC v. Return Path, Inc.*, 737 F.3d 1320, 1328 (Fed. Cir.  
16 2013)). Therefore, the costs of creating these document productions, including the  
17 “technical processes necessary to copy” electronically stored information are  
18 recoverable in this action because those copies were “necessarily obtained [or  
19 created] for use in the case.” *Id.*; see also *Alzheimer's Inst. of Am., Inc. v. Elan*  
20 *Corp. PLC*, 2013 U.S. Dist. LEXIS 31952, at \*16-17 (N.D. Cal. Jan. 30, 2013)  
21 (awarding costs in e-discovery for “TIFF and OCR conversion, Bates stamping,  
22 load file and other physical media generation”). Moreover, Amylin may also  
23 recover fees for work done by its e-discovery consultants to the extent those labor  
24 costs are incurred for “the physical preparation and duplication of documents, not  
25 the intellectual effort involved in their production.” *Online DVD-Rental*, 779 F.3d  
26 at 932. Amylin seeks only the costs associated with the creation of production-  
27 appropriate copies of its data.  
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1 In total, Amylin seeks to recover the costs associated with converting several  
2 hundred gigabytes of raw data into production appropriate formats based on  
3 Plaintiffs’ requests for production. Amylin seeks to recover only the necessary  
4 costs in copying that data into the formatting requested by Plaintiffs. These  
5 electronic discovery costs are detailed in Schedule B to the Bill of Costs, and  
6 described in full in the Laurendeau Declaration.

7 **C. Fees Incurred in State Court Prior to Removal**

8 Local Rule 54.1(b)(10) provides that, “[i]n a case removed from state court,  
9 costs incurred in the state court prior to removal must be recovered by the  
10 prevailing party in federal court to the extent they are covered in this rule or  
11 otherwise permitted by state law.” L.R. 51.4(b)(10); *see also Gordon v. Prudential*  
12 *Fin. Inc.*, 2009 U.S. Dist. LEXIS 5166, at \*13 (S.D. Cal. Jan. 23, 2009) (“the Court  
13 agrees with defendants’ argument that denying a prevailing defendant the fees they  
14 paid in state court connected with the removal of a case would cause an inequitable  
15 result.”). California state law specifically allows for the recovery of filing fees  
16 under California’s Rules of Civil Procedure. *See* Cal. Civ. Proc. Code  
17 § 1033.5(a)(1) (allowing recovery of “[f]iling, motion, and jury fees.”).

18 Amylin therefore seeks to recover state court filing fees—specifically, the  
19 fees in connection with filing an answer—for three cases that were originally filed  
20 in California state court and later removed to this proceeding. Those filing fees  
21 total \$1,340.79 and are detailed in Schedule C to the Bill of Costs, and described in  
22 full in the Laurendeau Declaration.

23 **III. CONCLUSION**

24 Based on the foregoing, the Supporting Schedules to the Bill of Costs, and  
25 the correctly filed Laurendeau Declaration, Amylin respectfully requests that the  
26 Clerk of Court grant Amylin’s request for costs in the amount of \$ 163,210.72.

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Dated: December 14, 2015

Respectfully submitted,

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AMY J. LAURENDEAU  
O'MELVENY & MYERS LLP

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