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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: INCRETIN MIMETICS
PRODUCTS LIABILITY
LITIGATION

) MDL Case No.13md2452 AJB (MDD)

) As to all related and member cases

) ORDER DENYING PLAINTIFFS'
) MOTION FOR RECONSIDERATION

) (Doc. No. 878)

) *Briggs*, Case No. 14cv1677 AJB
) (MDD) (Doc. No. 45)

) *Kelly*, Case No. 14cv2066 AJB (MDD)
) (Doc. No. 31)

) *Johnson*, Case No. 14cv2070 AJB
) (MDD) (Doc. No. 30)

) *Martinez*, Case No. 14cv2071 AJB
) (MDD) (Doc. No. 30)

) *Kreis*, Case No. 14cv2072 AJB (MDD)
) (Doc. No. 30)

Before the Court is Plaintiffs' motion for reconsideration of the Court's December 23, 2014 Order, (Doc. No. 871), denying Plaintiffs' motion to remand the above cases to state court. Upon review of Plaintiffs' motion, the Court finds reconsideration is unwarranted.

1 As an initial matter, in finding that the Plaintiffs proposed a joint trial within the
2 meaning of the mass action provision of CAFA, the Court did not rely on the initial
3 petition for coordination of the JCCP. The Court acknowledged that the original petition
4 for coordination was filed by Defendant Eli Lily and Co. and instead relied on Plaintiffs’
5 subsequent representations and actions to conclude there was a *proposal* to try claims
6 jointly.

7 This includes affirmative actions with respect to four of the five cases at issue. In
8 *Kelly, Kreis, and Johnson*, Plaintiffs represented to the Court that the cases would be
9 transferred to the JCCP. Plaintiffs represented the same outcome would occur in *Briggs*
10 upon remand. With respect to *Martinez*, the Court concluded that by filing the case in
11 San Diego Superior Court, along with the other four actions, Plaintiffs implicitly
12 proposed the claims in *Martinez* be joined with the claims of plaintiffs in the four other
13 cases. Despite Plaintiffs’ current non-position, it was clearly anticipated at the time
14 Plaintiffs filed *Martinez* in San Diego state court, having subsequently argued similar
15 cases would be transferred to the JCCP “for all purposes,” that *Martinez* would also be
16 transferred to the JCCP. Further, although the validity of the add-on petitions filed in
17 *Kreis* and *Johnson* is disputed by Plaintiffs, the Court did not find these petitions
18 dispositive in reaching its conclusion. Instead, in consideration of the totality of the
19 circumstances, the Court concluded the mass action requirements were satisfied. The
20 Court’s order denying remand is not meant to divest Plaintiffs of their right to choose a
21 forum. Plaintiffs remain the masters of their complaints, as Plaintiffs can choose to file
22 pancreatic cancer cases in the MDL or structure their complaints so as to avoid trigger-
23 ing jurisdiction under CAFA. The Court’s order is limited to the particular facts and
24 proceedings of the five cases at issue.

25 Similarly, in reaching its conclusion, the Court did not equate the occurrence of a
26 bellwether trial or the implementation of a bellwether scheme with a proposal for a joint
27 trial. The discussion of bellwether trials in the order denying remand provided context
28 for the arguments advanced by Plaintiffs, namely that the JCCP was coordinated solely

1 for pretrial proceedings and that Plaintiffs intended to seek individual trials for every
2 plaintiff. Despite acknowledging the likelihood of a bellwether scheme, the Court did
3 not conflate the occurrence of bellwether trials with a proposal for a joint trial.

4 Finally, Plaintiffs request reconsideration on the grounds that they were not
5 permitted the opportunity to supplement their remand motions with briefing on recent
6 Ninth Circuit authority, presumably *Corber v. Xanodyne Pharmaceuticals, Inc.* After the
7 Ninth Circuit's issuance of *Corber*, the Court declined the parties' offer to provide
8 additional briefing on that case and the pending motions to remand. Having found the
9 analysis and outcome of *Corber* clear, the Court concluded additional briefing was
10 unnecessary. Additionally, Plaintiff's motion for reconsideration discusses *Corber* in
11 detail and sets forth Plaintiffs' position on the application of *Corber* to the instant
12 matters. Having thoroughly considered *Corber* in the order denying remand, and in
13 review of Plaintiffs' motion for reconsideration, the Court is not persuaded additional
14 briefing would clarify the issues before the Court with respect to either motion.¹

15 To the extent Plaintiffs' motion for reconsideration is predicated on the issues set
16 forth above, Plaintiffs have not established the existence of new law, new facts, or clear
17 error in the order denying remand. For these reasons, the Court declines to exercise its
18 discretion and reconsider the order denying remand; Plaintiffs' motion for reconsidera-
19 tion is **DENIED**.

20
21 **IT IS SO ORDERED.**

22
23 DATED: January 9, 2015

24 
25 Hon. Anthony J. Battaglia
26 U.S. District Judge

27
28 ¹ For these same reasons, the Court does not find oral argument regarding
Plaintiffs' reconsideration motion necessary. See Local Rule 7.1.d.1.