**BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

**IN RE: BABY FOOD MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION**

**MDL NO. 2997**

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**INTERESTED PARTY RESPONSE IN PARTIAL SUPPORT OF MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Pursuant to Rule 6.2(e) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, Plaintiffs AG, HG, and XG in the matter of *AG, et al. v. Plum, PBC, et al.*, Case No. 3:21-cv-01600-YGR, respectfully submit this response to Plaintiffs Lori-Anne Albano, Myjorie Philippe, Rebecca Telaro and Alyssa Rose's ("Albano Plaintiffs") motion to transfer actions to the Eastern District of New York. [D.E. 1].

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## INTRODUCTION

These lawsuits follow recent revelations that baby foods sold to unknowing parents and vulnerable infants within the U.S. contain astronomical quantities of toxic heavy metals, namely arsenic, lead, mercury, and cadmium. The vast majority of the related cases are class actions alleging economic injuries, whereas there are only three personal injury actions filed alleging that exposure to defendants' baby foods caused neurodevelopmental disorders in small children, with two of the cases specifically alleging autism spectrum disorder ("ASD") and Attention Deficit Hyperactivity Disorder ("ADHD"). It is not often that opposing parties agree, but this is one of the rare instances where plaintiffs and defendants concur: that the personal injury actions do not warrant centralization. However, should the Court centralize all related actions, Plaintiffs submit that the Northern District of California is the most appropriate venue for this MDL.

*First*, this Court has in the past repeatedly denied centralization of a small number of actions where parties can efficiently manage cases through cooperation of counsel, coordination, and other alternatives to centralization. *See In re First Am. Fin. Corp. Customer Data Sec. Breach Litig.*, 396 F. Supp. 3d 1372, 1373 (J.P.M.L. 2019). That is the case here. There have only been three personal injury actions filed to date—pending in just two courts—compared to over eighty putative class actions pending in district courts through the country. The same constellation of counsel represent the parties, with two out of the three personal injury actions being represented by the same counsel and pending before the same court in the Northern District of California. Accordingly, the interests of efficiency, convenience of parties and witnesses, and judicial resources militate against centralizing the personal injury actions.

*Second*, notwithstanding some factual overlap between the personal injury and class actions, there are issues unique to the personal injury claims—such as medical causation, certain aspects of liability, and punitive damages—not relevant to the class actions, which are not concerned with medical causation or any specific personal injury. Conversely, the class actions will focus on how to estimate class-wide economic damages, i.e., price premium or full-refund. This entails different experts and evidence for the personal injury claims compared with the class

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