

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

In re: Compensa Herbicide

MDL-____

**MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407 FOR
COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Defendants Sharda USA LLC (“Sharda”) and CJB Industries, Inc. (“CJB”) (together, the “Moving Defendants”) respectfully request, pursuant to 28 U.S.C. § 1407(a) and Rule 6.2 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, that this Panel issue an order for transfer and consolidation for the three civil actions listed in the Schedule of Actions (the “Actions”) filed concurrently herewith.

For the reasons set forth in the accompanying Brief in Support, Moving Defendants respectfully submit that it is appropriate and necessary pursuant to Section 1407 for the Panel to issue an order transferring and consolidating the Actions listed in the accompanying Schedule of Actions as well as any subsequently filed related actions, to the District of South Dakota, Southern Division for coordinated or consolidated pretrial proceedings.

Respectfully submitted this 7th day of October, 2026.

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FISHER, BREN & SHERIDAN, LLP

Matthew P. Lawlyes (with express permission)

Steven J. Sheridan
(ssheridan@fisherbren.com)
Matthew P. Lawlyes
(mlawlyes@fisherbren.com)
Abigail J. Moser (amoser@fisherbren.com)
920 Second Avenue South, Suite 975
Minneapolis, MN 55402

EVANS, HAIGH & ARNDT, LLP

Ryan W.W. Redd (with express permission)

Ryan W.W. Redd
(rredd@ehalawyers.com)
225 East 11th Street, Suite 201
P.O. Box 2790
Sioux Falls, SD 57101

Attorneys for Defendant CJB Industries, Inc.

BOYCE LAW FIRM, LLP

/s/ Gregory H. Wheeler (with express permission)

Gregory H. Wheeler
(ghwheeler@boycelaw.com)
Molly R. Helstad
(mrhelstad@boycelaw.com)
300 S. Main Avenue
Sioux Falls, SD 57104

McGEE, HANKLA & BACKES, P.C.

/s/ Jason R. Vendsel

Jason R. Vendsel (ID No 04912)
(jvendsel@mcgeelaw.com)
Erich M. Grant (ID No 07593)
(egrant@mcgeelaw.com)
2400 Burdick Expy East, Suite 100
P.O. Box 998
Minot, ND 58702-0998

Attorneys for Defendant Sharda USA LLC

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FISHER, BREN & SHERIDAN, LLP

Steven J. Sheridan
(ssheridan@fisherbren.com)
Matthew P. Lawlyes
(mlawlyes@fisherbren.com)
Abigail J. Moser
(amoser@fisherbren.com)
920 Second Avenue South, Suite 975
Minneapolis, MN 55402

EVANS, HAIGH & ARNDT, LLP

Ryan W.W. Redd
(rredd@chalawyers.com)
225 East 11th Street, Suite 201
P.O. Box 2790
Sioux Falls, SD 57101

BOYCE LAW FIRM, LLP

Gregory H. Wheeler
(ghwheeler@boycelaw.com)
Molly R. Helstad
(mrhelstad@boycelaw.com)
300 S. Main Avenue
Sioux Falls, SD 57104

McGEE, HANKLA & BACKES, P.C.

Jason R. Vendsel (ID No 04912)
(jvendsel@mcgeelaw.com)
Erich M. Grant (ID No 07593)
(egrant@mcgeelaw.com)
2400 Burdick Expy East, Suite 100
P.O. Box 998
Minot, ND 58702-0998

Attorneys for Defendant CJB Industries, Inc.

Attorneys for Defendant Sharda USA LLC

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	2
ARGUMENT	5
I. Transfer is Appropriate Under 28 U.S.C. § 1407.	5
A. Common Questions of Fact.....	6
B. Convenience of Parties and Witnesses	6
C. Just and Efficient Conduct of the Actions	8
D. Outsource’s Jurisdictional Challenge Does Not Undermine Centralization.....	10
II. The Actions Are Sufficiently Numerous and Complex to Warrant Consolidation.....	11
III. The District of South Dakota, Southern Division, is the Most Appropriate Transferee Forum.....	11
CONCLUSION.....	12

INTRODUCTION

Defendants Sharda USA LLC (“Sharda”) and CJB Industries, Inc. (“CJB”) (together, the “Moving Defendants”) respectfully submit this brief in support of their motion, pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, for the transfer of certain actions to the United States District Court, District of South Dakota, Southern Division (Sioux Falls, South Dakota) for coordinated or consolidated pretrial proceedings.

Moving Defendants seek transfer and assignment of all pending actions listed in the Schedule of Actions (the “Actions”), as well as any subsequently filed action related to the allegations of defects in Sharda’s Compensa herbicide product related to the 2024 crop year. There are presently three substantially similar Actions, filed by 37 plaintiffs (collectively, “Plaintiffs”) in two different federal district courts (in three divisions) alleging similar wrongful conduct.¹ Either the District of North Dakota or the District of South Dakota would be an appropriate location for consolidation. That said, Moving Defendants request that the Actions be consolidated in the District of South Dakota, Southern Division, in furtherance of the purposes of 28 U.S.C. § 1407 relating to convenience and efficiency.

The Actions are identical in almost all material respects and involve nearly identical questions of law and fact that arise from the alleged application of an incorrectly formulated (and thus allegedly mislabeled) selective herbicide to various crops in 2024. The Actions seek redress on behalf of growers of soybeans and other crops who allegedly purchased and applied such

¹ There is additional, separate action pending in the Sixth Judicial Circuit Court for the State of South Dakota, in the County of Hughes, styled *Lower Brule Farm Corporation, a tribal corporation; and Lucky Seven, Inc., a South Dakota corporation v. Sharda USA LLC; CJB Industries, Inc.; and Outsource Logistics, LLC*, No. 32CIV25-000336.

defective Compensa herbicide product and supposedly experienced reduced yield (or in some cases, unsalvageable crops). The Actions involve common questions of fact relating to the allocation of fault (if any) among the Defendants, the causation of Plaintiffs' alleged damages, and the extent and calculation of the alleged damages. Accordingly, Moving Defendants seek consolidation and transfer of the Actions to the District of South Dakota, Southern Division.

BACKGROUND

Plaintiffs are farmers located within South Dakota and North Dakota. Defendant Sharda holds the EPA registration for Compensa, a selective herbicide formulated for control of broadleaf and sedge weeds in soybeans and other crops.² Defendant Outsource Logistics, LLC ("Outsource") is a public warehouse company that provides warehousing services. Defendant CJB provides toll formulation services whereby it mixes chemicals based on recipes and ingredients supplied by or on behalf of its customers.

Plaintiffs allege that they purchased Compensa from various retailers in 2024. The active ingredients of Compensa are Imazethapyr 6.67 and Sulfentrazone 33.33. Plaintiffs allege the product they received did not contain Imazethapyr, but instead it contained an active ingredient that was not disclosed on the label, namely Imazapyr. Plaintiffs allege that when they applied the Compensa product at issue on their planted and growing crops, it damaged the crops, impacting their yields and marketability.

² Sharda Cropchem Limited ("Cropchem") was recently added as a Defendant in the *Speten* case pending in the District of North Dakota. Cropchem's answer or other responsive pleading is due on October 16, 2026. Cropchem is the sole member of Sharda. Cropchem is incorporated under the Indian Companies Act and is publicly traded on the National Stock Exchange of India Limited, having its principal place of business in Mumbai, India. While CJB and Outsource's purported crossclaims name Cropchem, Cropchem has not been served with those Crossclaims.

On May 8, 2025, eleven plaintiffs filed an action in the District of North Dakota (the “North Dakota Action”).³ Subsequently, two nearly identical actions were filed in the U.S. District Court for the District of South Dakota: on December 22, 2025, twenty plaintiffs filed an action in the District of South Dakota, Central Division,⁴ and on June 23, 2026, six plaintiffs filed an action in the District of South Dakota, Southern Division.⁵ The Actions all assert claims for strict products liability, negligence, failure to warn, breach of express and implied warranties, deceit, and/or unfair sales or advertising practices.

Additionally, CJB, Outsource, and Sharda have all filed competing crossclaims against each other regarding who bears responsibility for the alleged incorrect formulation and mislabeling of the Compensa product. In all three actions, Sharda has asserted crossclaims against Outsource and CJB. Sharda alleges that Outsource received approximately 46 bags of Imazapyr at its Valdosta warehouse to be stored and handled for the benefit of Sharda. Sharda alleges the bags were properly labeled upon receipt, but at some point during the storage and handling of the Imazapyr by Outsource, Outsource employees or agents mislabeled these bags as Imazethapyr, adding “Imazethapyr Tech 98%” stickers on the wrapping around the pallets – even with the original “Imazapyr Tech 98% Min” stickers still visible. When Outsource received an order to ship

³ Plaintiffs Nathan Speten, Troy Speten, Gary Speten, Steven Heger, Katherine Heger, Ben Heger, Wesley Doepke, Colin Hanneman, Adam Larson, Eric Larson, and Brent Bachmeier.

⁴ Plaintiffs Curtis Mundt and Craig Mundt d/b/a Mundt Brothers, a South Dakota general partnership; Diamond Lazy M Farm, Inc., HC Farm Inc., Milford Farms, Inc., and Mundt Farm Inc. d/b/a Mundt Farm Partnership, a South Dakota general partnership; K & S Grain, Inc.; Colin Nachtigal, Jason Nachtigal, Andrew Nachtigal, Charles Nachtigal, Bill Nachtigal, and Jesse Nachtigal d/b/a Cuz Partnership, a South Dakota general partnership; Colin Nachtigal, Donald Nachtigal, David Nachtigal, and Jason Nachtigal d/b/a River View Partnership, a South Dakota general partnership; Dickson Bast; Allen Veskrna; and Michael Veskrna.

⁵ Plaintiffs Ryan Thyen; John Kittelson Farms, Inc.; Curt Luken; Leiseth Farms Inc.; Dustin Leiseth; and Jerry Kiihl.

Imazethapyr to CJB for purposes of mixing or manufacturing Compensa, Outsource's shipment included some of the Imazapyr that had been contra-labeled as "Imazethapyr Tech 98%." CJB then tolled one or more batches of Compensa using the contra-labeled Imazapyr, and neither CJB nor Outsource notified Sharda of any mistake in the shipment or manufacture of any product labeled "Compensa." On these facts, Sharda asserts crossclaims for indemnity, contribution, breach of contract and/or warranty, negligence, and breach of bailment and also seeks fees and prejudgment interest.

In the North Dakota Action and *Mundt* matter, CJB and Outsource have asserted crossclaims against each other and Sharda. They have also asserted crossclaims against Cropchem in the North Dakota Action (as Cropchem is not a party to the other two actions). CJB alleges that it formulated the Compensa product utilizing the components and constituents delivered by Sharda and/or Outsource, including those labelled as "Imazethapyr Tech 98%," and CJB performed quality control testing on the Compensa product, which passed Sharda's prescribed quality control testing specifications. CJB asserts that any damages sustained by Plaintiffs or any other parties are the direct result of acts, omissions, fault, negligence, assumption of risk, breach of contract, breach of warranty, failure to instruct, failure to warn, misuse or other wrongful or improper conduct by Sharda and/or Outsource. CJB also claims it is entitled to contribution and/or equitable indemnification from Sharda and/or Outsource, to the extent CJB is found liable and obligated to pay any sums.

Finally, Outsource alleges that it stored and released products pursuant to instructions from Sharda, CJB, or E-Shipping (a transportation broker). Outsource also alleges that the product presented for storage at Outsource as Imazethapyr was in reality Imazapyr, and Sharda and CJB provided faulty instructions and inaccurate information regarding the product sent to Outsource

for storage. Outsource asserts crossclaims against Sharda and CJB (and Cropchem, in the North Dakota Action) for indemnity, contribution and negligence.

Much of the common questions of fact center on how – if true – the subject Compensa came to contain Imazapyr instead of Imazethapyr, whether the allegedly defective Compensa caused Plaintiffs’ damages, and if so, how to calculate the damages. The three cases are all in relatively early stages. The Courts have recently ruled on various jurisdictional defenses, and some motions are still pending in the *Thyen* matter. The *Speten* Court recently issued a scheduling order and discovery has just begun. A Joint Discovery Report has also been recently filed in the *Mundt* matter and discovery has just begun.

ARGUMENT

The Actions, and any subsequently filed related actions, should be transferred to the District of South Dakota, Southern Division, for coordinated pretrial proceedings. As discussed fully below, the Actions – which involve the same allegedly defective product and same Defendants – involve common questions of fact, and transfer will benefit the parties, the witnesses, and the Courts. Further, transfer to the District of South Dakota, Southern Division, is most appropriate for the convenience of the parties and their witnesses.

I. Transfer is Appropriate Under 28 U.S.C. § 1407.

Pursuant to 28 U.S.C. § 1407(a), transfer is appropriate where: (1) the cases “involv[e] one or more common questions of fact;” (2) transfer and consolidated or coordinated proceedings will further “the convenience of parties and witnesses;” and (3) transfer and consolidated or coordinated proceedings “will promote the just and efficient conduct of [the] actions.” All three prongs are met here.

A. Common Questions of Fact

As an initial matter, centralization is warranted because the Actions involve nearly identical factual allegations and legal issues “against identical defendants based upon similar transactions and events....” *In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974). There is substantial overlap of the factual and legal theories alleged in each complaint: all Actions are premised on the same alleged theory that the Compensa product Plaintiffs bought was misrepresented and defective as sold. The Actions will require adjudication of common factual issues, including: whether there was any defect in the Compensa product Plaintiffs bought, whether Defendants knew or should have known of the alleged defect, whether Compensa was rendered unreasonably dangerous such that Defendants are liable under strict product liability theories, whether the alleged omission of Imazethapyr and the inclusion of Imazapyr was the result of Defendants’ negligence, whether Defendants had a duty to warn regarding the alleged presence and effects of Imazapyr, whether Defendants breached any warranties, and whether Defendants knowingly engaged in deceitful conduct or in unfair sales and advertising practices.

To the extent the legal claims in each case differ slightly due to the differing state laws invoked, *all* plaintiffs seek damages for the same alleged conduct and the same alleged defect in the Compensa product at issue. Any differences in the legal claims are of no effect here. *See, e.g., In re BPS Direct, LLC, & Cabela's, LLC, Wiretapping Litig.*, 677 F. Supp. 3d 1363, 1364–65 (J.P.M.L. 2023) (“[The JPML] routinely ha[s] centralized actions asserting similar claims under different state statutes where they involve common questions of fact.”). Accordingly, coordination is appropriate.

B. Convenience of Parties and Witnesses

Transfer and consolidated or coordinated proceedings will further the convenience of parties and witnesses. First, across the Actions, there are 37 plaintiffs located in North Dakota and

South Dakota and 4 defendants with representatives across the country – and even overseas, in the case of Cropchem.

Additionally, in the North Dakota Action, the parties have exchanged Rule 26 Initial Disclosures in which they have identified no less than 19 individuals (collectively, the “Potential Witnesses”) “likely to have discoverable information” relating to the case, e.g., information related to the labeling, formulation, testing, shipping or other distribution of Imazapyr, Imazethapyr, and Compensa. To be clear, these 19 Potential Witnesses are in addition to the Plaintiffs and exclude any identification of corporate entities, and these Potential Witnesses are located in India, Georgia, Texas, Pennsylvania, Minnesota, South Dakota, and North Dakota. These Potential Witnesses are geographically dispersed, but that dispersion weighs in favor of coordinated proceedings rather than against them. While initial disclosures have not been made in the *Mundt* and *Thyen* matters, it is anticipated that many (if not all) of the Potential Witnesses will be identified in those cases pending in South Dakota.

Absent centralization, witnesses with knowledge of the common issues (e.g., the labeling, formulating, and shipment of the alleged defective Compensa) will potentially be required to sit for multiple depositions and address substantially identical issues in cases pending in different districts. Centralization will permit the parties to coordinate discovery concerning these witnesses and avoid requiring the same individuals to participate repeatedly in separate proceedings and requiring the parties’ counsel to make repeated trips to where these witnesses are located. Thus, although no single district is geographically convenient for every witness, centralization provides the most efficient means of minimizing the aggregate burden imposed on witnesses and parties throughout the litigation. Further, Plaintiffs’ counsel in each of the Actions are different, hindering

the ability to reach an agreement on informal coordination of discovery that might otherwise mitigate these concerns without the need for formal transfer.

C. Just and Efficient Conduct of the Actions

Absent transfer for pretrial proceedings, the Parties (and the Potential Witnesses) will incur excessive costs due to duplicative discovery from courts in North Dakota and South Dakota and will face the risk of inconsistent rulings on a variety of matters. Because the Actions are in their procedural infancy, consolidation will maximize efficiencies and expedite the resolution of the issues in each case. *See In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 220 F. Supp. 3d 1356, 1358 (J.P.M.L. 2016) (granting consolidation where nearly all of the actions were filed within a six month period). Indeed, the Actions will involve many of the same pretrial issues, such as those concerning the nature and scope of fact discovery, resolution of expert discovery issues and *Daubert* motions, and resolution of legal issues, affirmative defenses at summary judgment, and claims arising out of the Defendants' crossclaims.

Specifically, the Actions present common factual and legal questions concerning the same underlying events and Defendants' respective responsibility for the alleged mislabeling, shipment, and formulation of the allegedly defective Compensa. The Plaintiffs' claims and the Defendants crossclaims for contribution and indemnity arise from a common sequence of alleged events—the alleged placement of an Imazethapyr label on the outside of shrink-wrapped pallets of Imazapyr, shipment of Imazapyr by Outsource to CJB based on the outside Imazethapyr label, and formulation by CJB of Compensa in purported reliance on the outermost Imazethapyr label (as opposed to the allegedly underlying Imazapyr label)—and require determination of the parties' respective responsibility for those events. Those common issues bear directly on who (if anyone) is liable to Plaintiffs – and Defendants, insofar as their crossclaims for contribution and indemnity. Without centralization, different courts could reach conflicting pre-trial conclusions concerning

the same conduct, evidence, and allocation of responsibility. A single transferee court can instead resolve these common pretrial issues consistently and avoid duplicative discovery and motion practice.

The Actions also present substantially overlapping pretrial issues concerning Plaintiffs’ proof of causation and damages. For example, the mode of action of Imazapyr in soybeans and in the soil will likely be a key causation question that will determine if the Plaintiffs that grew soybeans in 2024 experienced any yield loss proximately caused by the alleged Imazapyr application. Additionally, Plaintiffs’ claims for lost expected profits, for example, will require discovery and expert analysis concerning common categories of evidence, including crop-insurance records, historical and comparable yields, soil types and fertility, pesticide use, weather and irrigation data, commodity prices, and crop production expenses. The parties will likewise confront overlapping questions concerning the proper methodology and evidentiary basis for establishing crop losses. *See Bang v. Cont’l Res., Inc.*, 2025 ND 131, ¶¶ 48–49, 23 N.W.3d 895, 911–12; *Rumpza v. Zubke*, 2017 S.D. 49, ¶ 21, 900 N.W.2d 601, 609; *Atyeo v. Paulsen*, 319 N.W.2d 164, 166 (S.D. 1982). Centralization will allow a single court to coordinate discovery and expert proceedings, including *Daubert* issues, and resolve common questions consistently rather than requiring three courts to address the same evidence, experts, and legal issues independently.

In sum, centralization will “eliminate duplicative discovery, prevent inconsistent pretrial rulings . . . and conserve the resources of the parties, their counsel and the judiciary.” *In re M3Power Razor Sys. Mktg. & Sales Pracs. Litig.*, 398 F. Supp. 2d 1363, 1364 (J.P.M.L. 2005). This is especially true in light of the parties’ unfruitful efforts at informal coordination regarding discovery. For example, in an attempt to streamline depositions and limit the number of times witnesses need to appear for depositions, counsel for Sharda proposed inviting plaintiffs’ attorneys

from different actions to take part in the same sets of depositions. However, counsel for the North Dakota Plaintiffs have stated that they are opposed to joint depositions across the different actions.

D. Outsource's Jurisdictional Challenge Does Not Undermine Centralization

To the extent Outsource contends transfer is inappropriate given its pending motion to dismiss for lack of personal jurisdiction in the *Thyen* matter, the Panel has consistently recognized that transfer may be appropriate even where there is a motion pending in a transferor court. *In re 3M Combat Arms EarPlug Products Liability Litigation*, MDL No. 2885, ECF No. 2051, at 2 (J.P.M.L. Apr. 2, 2026) (“The pendency of motions to dismiss and jurisdictional motions are not an impediment to Section 1407 transfer.”) (citing *In re Ford PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018) and *In re Procter & Gamble Co. “Protect, Grow and Restore” Mktg. & Sales Pracs. Litig.*, 796 F. Supp. 3d 1373, 1374 (J.P.M.L. 2025)). In fact, Outsource's personal jurisdiction arguments overlap substantially across the *Speten*, *Mundt*, and *Thyen* actions and have already resulted in duplicative motion practice, requiring multiple courts to resolve substantially similar issues and thereby reinforcing the need for centralization.

What is more, even if Outsource were successful in obtaining dismissal from the *Thyen* action, that result would not eliminate the substantial overlap among the Actions. At most, it would affect the forum in which claims against Outsource proceed; it would not eliminate the common factual questions, overlapping discovery, or fault-allocation issues that predominate across the Actions. The parties would still be required to litigate the same underlying events surrounding the labeling, shipment, formulation, and distribution of Compensa and the respective responsibilities of Sharda, CJB, and Outsource for those events. Accordingly, Outsource's opposition provides no basis to deny transfer and instead demonstrates that coordinated proceedings are necessary to promote convenience, eliminate duplicative motions and discovery, and ensure the just and efficient conduct of these Actions.

II. The Actions Are Sufficiently Numerous and Complex to Warrant Consolidation

While the Panel has held that a proponent of centralization sometimes bears a heavier burden to demonstrate centralization’s appropriateness “[w]here only a minimal number of actions are involved,” that burden is met where, as here, the issues involved are sufficiently complex and centralization would prevent duplicative pretrial proceedings and rulings. *See, e.g., In re All-Clad Metalcrafters, LLC, Cookware Mktg. & Sales Pracs. Litig.*, 532 F. Supp. 3d 1411, 1412 (J.P.M.L. 2021). The Panel has ordered transfer in such circumstances even when there are as few as two cases. *See, e.g., In re First Nat’l Bank, Heavener, Okla. (First Mortgage Revenue Bonds) Sec. Litig.*, 451 F. Supp. 995, 997 (J.P.M.L. 1978) (centralization was “necessary, even though only two actions are involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of inconsistent pretrial rulings”); *In re Edward H. Okun I.R.S. § 1031 Tax Def. Exch. Litig.*, 609 F. Supp. 2d 1380 (J.P.M.L. 2009) (centralizing two actions); *In re Payless ShoeSource, Inc., Cal. Song Beverly Credit Card Act Litig.*, 609 F. Supp. 2d 1372 (J.P.M.L. 2009) (same); *In re Aetna, Inc., Out-of-Network UCR Rates Litig.*, 609 F. Supp. 2d 1370 (J.P.M.L. 2009) (same); *In re Respimat Pharms. Antitrust Litig.*, 796 F. Supp. 3d 1369, 1370 (J.P.M.L. 2025) (same). The Panel should similarly order transfer here.

III. The District of South Dakota, Southern Division, is the Most Appropriate Transferee Forum.

Moving Defendants request that the Actions be transferred to the District of South Dakota, Southern Division (i.e., Sioux Falls, South Dakota). First, 26 of 37 Plaintiffs are based in South Dakota, making South Dakota generally a more favorable forum. All the South Dakota Plaintiffs’ counsel and Sharda’s defense counsel are based in Sioux Falls, and Sioux Falls is also the closest location for CJB’s counsel in Minneapolis, Minnesota, and Outsource’s counsel in Chicago, Illinois. Additionally, Sioux Falls provides materially greater air access than the other potential

South Dakota and North Dakota venues. Sioux Falls Regional Airport offers substantially more nonstop destinations than either Pierre Regional Airport or Bismarck Airport, including direct service to major connecting hubs such as Atlanta, Chicago, Dallas/Fort Worth, Denver, and Minneapolis. By comparison, Pierre offers limited nonstop service, principally to Denver, while Bismarck offers nonstop service to a smaller number of major hubs. This broader air connectivity will facilitate travel for the parties, counsel, witnesses, and experts who are dispersed across multiple jurisdictions and will further promote the convenience and efficient conduct of coordinated pretrial proceedings in Sioux Falls.

CONCLUSION

For the foregoing reasons, Moving Defendants respectfully request that the Panel enter an order consolidating for pretrial proceedings the Actions filed, as well as any other related actions that may subsequently be filed, to the United States District Court for the District of South Dakota, Southern Division.

Respectfully submitted this 7th day of October, 2026.

[Signatures to Follow on Next Page]

FISHER, BREN & SHERIDAN, LLP

Matthew P. Lawlyes (with express permission)

Steven J. Sheridan
(ssheridan@fisherbren.com)
Matthew P. Lawlyes
(mlawlyes@fisherbren.com)
Abigail J. Moser (amoser@fisherbren.com)
920 Second Avenue South, Suite 975
Minneapolis, MN 55402

EVANS, HAIGH & ARNDT, LLP

Ryan W.W. Redd (with express permission)

Ryan W.W. Redd
(rredd@ehalawyers.com)
225 East 11th Street, Suite 201
P.O. Box 2790
Sioux Falls, SD 57101

Attorneys for Defendant CJB Industries, Inc.

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/s/ Gregory H. Wheeler (with express permission)

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(ghwheeler@boycelaw.com)
Molly R. Helstad
(mrhelstad@boycelaw.com)
300 S. Main Avenue
Sioux Falls, SD 57104

McGEE, HANKLA & BACKES, P.C.

/s/ Jason R. Vendsel

Jason R. Vendsel (ID No 04912)
(jvendsel@mcgeelaw.com)
Erich M. Grant (ID No 07593)
(egrant@mcgeelaw.com)
2400 Burdick Expy East, Suite 100
P.O. Box 998
Minot, ND 58702-0998

Attorneys for Defendant Sharda USA LLC