

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DANIEL WEIBEL

Plaintiff,

v.

HORIZON PHARMACEUTICALS, INC.,

Defendant.

Civil Action No. 1:22-cv-4518

Judge Harry D. Leinenweber
Magistrate Judge Gabriel A. Fuentes

**HORIZON THERAPEUTICS USA, INC.’S
MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Defendant Horizon Therapeutics USA, Inc. (“Horizon”), incorrectly named as Horizon Pharmaceuticals, Inc.,¹ hereby moves to dismiss Plaintiff’s claims alleging a hearing impairment injury from his use of TEPEZZA® to treat his symptoms of Thyroid Eye Disease. Plaintiff asserts negligence and strict liability claims for failure to warn and design defect. All of Plaintiff’s claims fail as preempted by federal law. Plaintiff’s warning-based claims are preempted because he fails to allege facts that, if proven, would be sufficient to demonstrate that Horizon could have added desired warnings consistent with the “changes being effected” regulation, which is the only way that Horizon could have unilaterally changed the TEPEZZA® label after the FDA approved it. *See* 21 C.F.R. § 314.70(c)(6)(iii). Plaintiff’s design defect claims are preempted because any change to TEPEZZA®’s design to conform with state tort law obligations as advocated by Plaintiff would conflict with federal law, which precludes any change in formulation absent prior FDA approval.

¹ Horizon Therapeutics USA, Inc. does not waive defenses relating to insufficiency of process and insufficiency of service of process over the proper entity by filing this Motion.

As separate grounds for dismissal, Plaintiff fails to state plausible claims for failure to warn and design defect under Arizona law, which applies to this case. Simply put, the Complaint does not allege facts sufficient to render his negligent warnings and design claims plausible under the *Twombly-Iqbal* standard. Finally, punitive damages are not allowed under Arizona law because TEPEZZA® is FDA-approved. Further grounds and support for this Motion are set forth in the attached Memorandum of Law.

Respectfully Submitted,

/s/Daniel W. McGrath

Daniel W. McGrath #6183311

Thomas L. O'Carroll #6243593

HINSHAW & CULBERTSON LLP

151 North Franklin Street, Suite 2500

Chicago, Illinois 60606

Phone: (312) 704-3000

dmcgrath@hinshawlaw.com

tocarroll@hinshawlaw.com

Eric Riegner # 6340664

FROST BROWN TODD LLC

201 North Illinois Street, Suite 1900

Indianapolis, Indiana 46204

Phone: (317) 237-3800

eriegner@fbtlaw.com

Lori E. Hammond #85910

FROST BROWN TODD LLC

400 West Market Street, 32nd Floor

Louisville, KY 40202-3363

Phone: (502) 589-5400

lhammond@fbtlaw.com

Counsel for Defendant Horizon Therapeutics USA, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of this Motion was filed via the Court's E-Filing System and sent electronically on October 25, 2022, which will send an electronic copy to e-filers.

Timothy J. Becker, MN#256663
Stacy K. Hauer, MN#317093
JOHNSON BECKER, PLLC
444 Cedar Street, Suite 1800
St. Paul, MN 55101
tbecker@johnsonbecker.com
shauer@johnsonbecker.com

Ed Wallace
WALLACE MILLER
150 N. Wacker Dr., Suite 1100
Chicago, IL 60606
eaw@wallacemiller.com

Counsel for Plaintiff

/s/Daniel W. McGrath
Counsel for Defendant Horizon Therapeutics USA, Inc.