

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DONNA WALKER,)	
)	
Plaintiff,)	Civil Action No. 1:22-cv-6375
)	
v.)	Judge Nancy L. Maldonado
)	
HORIZON THERAPEUTICS USA, INC.,)	
)	
Defendant.)	
_____)	

JOINT INITIAL STATUS REPORT

Plaintiff, Donna Walker, and Defendant Horizon Therapeutics USA, Inc. (“Horizon”), hereby submit this Initial Status Report as follows:

I. Nature of the Case

A. Identify (names and contact information) for all attorneys of record for each party, including the lead trial attorney.

Counsel for Plaintiff Donna Walker:

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Mr. Becker will serve as lead counsel in this matter for Plaintiff.

Counsel for Defendant Horizon Therapeutics USA, Inc.:

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Mr. Riegner will serve as lead counsel in this matter for Horizon.

B. Briefly describe the nature of the claims asserted in the complaint and any counterclaims and/or third-party claims.

This is a products liability action in which Plaintiff alleges that she was prescribed and received TEPEZZA® infusions from June through November 2020 and subsequently suffered from permanent hearing loss and/or tinnitus. Complaint, Dkt. No. 1 at ¶¶ 10 and 12. As a result of her alleged injuries, Plaintiff asserts causes of action for Strict Liability – Failure to Warn, Negligent Failure to Warn, Strict Liability – Design Defect, and Negligent Design.

C. Briefly identify the major legal and factual issues in the case.

The major legal issue in this case relates to whether Plaintiff has asserted any claims for relief pursuant to Fed. R. Civ. P. 8(a) and 12(b)(6). Specifically, in January 2020, the U.S. Food and Drug Administration approved TEPEZZA®, a prescription biologic, as a safe and effective

treatment for Thyroid Eye Disease. As such, Horizon asserts that plaintiff's claims are preempted by federal law. Horizon further asserts that Plaintiff has failed to state plausible warnings and design defect claims against Horizon and for that additional reason, her claims must also fail.

D. State the relief sought by any of the parties.

Plaintiff seeks actual and punitive damages, as well as attorney's fees.

II. Jurisdiction: Explain why the Court has subject matter jurisdiction over Plaintiff's claims.

A. Identify all federal statutes on which federal question jurisdiction is based.

Plaintiff's complaint does not allege federal question jurisdiction.

B. If jurisdiction over any claims is based on diversity or supplemental jurisdiction:

1. State whether/why the amount in controversy exceeds the jurisdictional threshold or whether there is a dispute regarding the amount in controversy (and, if so, the basis of that dispute).

Plaintiff makes the following allegations as to the amount in controversy for diversity jurisdiction: "This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy as to Plaintiff exceeds \$75,000.00, exclusive of interest and costs, and because Defendant is incorporated and has their principal place of business in this District, in a state other than Arizona, where Plaintiff is a citizen." *Id.* at ¶ 22. Horizon denies that Plaintiff has sustained any damages or that Horizon is liable to Plaintiff under any theory or in any amount.

2. Identify the state of citizenship of each named party. For unincorporated associations, LLC's, partnerships and other business entities that are not corporations, the state(s) in which any individual members of the business unit are citizens must be identified.

Plaintiff makes the following allegations as to citizenship:

- "Plaintiff, **Donna Walker**, at all times relevant hereto, was a resident and a citizen of the state of Arizona..." *Id.* at ¶ 9.
- "Defendant Horizon Therapeutics USA, Inc. f/k/a Horizon Pharma USA, Inc. f/k/a Horizon Pharmaceutical Corporation (hereinafter "Defendant" or

“Horizon”) is a corporation organized under the laws of Illinois with its principal place of business at 1 Horizon Way, Deerfield, IL 60015.” *Id.* at ¶ 15.

- Horizon Therapeutics USA, Inc. is a wholly-owned subsidiary of Horizon Therapeutics PLC organized under the laws of Ireland with a principal place of business located at 70 St. Stephen’s Green, Dublin 2, D02 E2X4, Ireland. *Id.* at ¶ 16.

Defendant Horizon states that it is a Delaware company with its principal place of business in Illinois.

III. Status of Service: Identify any defendants that have not been served.

A copy of the Complaint against Horizon Pharmaceuticals, Inc. was delivered to Horizon at its corporate headquarters on November 21, 2022.

IV. Consent to Proceed Before a United States Magistrate Judge: Confirm that counsel have advised the parties that they may proceed before a Magistrate Judge if they consent unanimously and advise whether there is, or is not, unanimous consent. Do NOT report whether individual parties have so consented.

There is not unanimous consent to proceed before a Magistrate Judge.

V. Motions:

A. Briefly describe any pending motions.

Horizon filed a Motion to Dismiss on January 9, 2023. Plaintiff will either file an Amended Complaint pursuant to Rule 15 or respond.

B. State whether the defendant(s) anticipate responding to the complaint by filing an Answer or by means of motion.

Horizon filed a Motion to Dismiss in response to the Complaint.

VI. Case Plan

Plaintiff’s counsel in this matter has approximately six cases filed in this District alleging injuries following use of Defendant’s product, Tepezza.¹ On December 21, 2022, Plaintiff’s

¹ There are approximately three other complaints filed in the District by other counsel of record, making the number of Tepezza cases on file approximately 10.

counsel filed a motion in the first filed case, *Weibel v. Horizon*, Case No. 1:22-cv-4518, seeking reassignment of the Tepezza cases to a single judge under L/R/ 40.4 or IOP 13(e). *See* ECF Nos. 23 and 24. Given the similar issues involved in these actions, Plaintiff maintains that assignment to a single district judge is appropriate to conserve party resources as there is likely to be substantial overlap in motion practice and discovery.

Horizon's response to the motion is due January 13, 2023. Horizon denies that these cases are "related" for purposes of Local Rule 40.4 because they involve different underlying medical conditions, infusion dates, infusion dosage and administration, learned intermediaries, treatment facilities, adverse events, and the operative state law product liability standards are different in each jurisdiction. Nonetheless, Defendant agrees that coordinated pretrial proceedings may be warranted pursuant to IOP 13 (e) to address coordination of certain aspects of discovery.

Judge Leibenweber has scheduled a hearing on the Motion for February 14, 2023. The parties propose delaying discussion of discovery and a case management plan until the motion for reassignment is ruled upon by Judge Leibenweber in *Weibel v. Horizon*, Case No. 1:22-cv-4518.

VII. Status of Settlement Discussions:

A. Indicate whether any settlement discussions have occurred;

No settlement discussions have occurred.

B. Describe the status of any settlement discussions; and

Not applicable as no settlement discussions have occurred to date.

C. Whether the parties have requested a settlement conference.

The parties do not request a settlement conference at this time.

Dated: _____

Respectfully Submitted,

/s/ Eric A. Riegner

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AND

/s/ Stacy K. Hauer (with permission)

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