BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: Tepezza Products Liability Litigation MDL No. _____

BRIEF IN SUPPORT OF MOTION FOR TRANSFER AND COORDINATION OR CONSOLIDATION UNDER 28 U.S.C. § 1407

Pursuant to 28 USC § 1407 and Rule 7.2(a) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiff Kimberly Exton respectfully submits this memorandum of law in support of her motion for transfer and coordination for pretrial purposes of all currently filed Tepezza cases identified in the Schedule of Actions ("Actions")[1], as well as any Tepezza cases subsequently filed involving similar facts or claims ("tag-along cases"), to the United States District Court for the Northern District of California.

There are currently at least 18 Tepezza actions pending in five different judicial districts in the United States alleging similar wrongful conduct on the part of Defendant that resulted in similar injuries. Given the nationwide scope of Defendant's sale of Tepezza, coupled with its aggressive direct-to-consumer marketing campaign, it is likely that hundreds or thousands of additional actions will be filed in jurisdictions throughout the United States. Transfer for consolidation and coordination is proper because each of these Actions and tag-along cases arise out of the same or similar nucleus of operative facts, arise out of the same or similar alleged wrongful conduct, will involve the resolution of the same or similar questions of fact and law, and discovery will be substantially similar and involve many of the same documents and witnesses.

[1] Schedule of Actions is attached as Exhibit A. The Complaints (without exhibits) in the Actions and their related docket sheets are attached as Exhibits A-1 through A-18.

I. FACTUAL BACKGROUND

Tepezza is a biologic that was approved by the United States Food and Drug Administration ("FDA") as an "Orphan Drug" in January 2020 for the treatment of thyroid eye disease. "Orphan Drugs" are "[d]rugs that are not developed by the pharmaceutical industry for economic reasons but which respond to public health need."[2] Defendant, Horizon Therapeutics USA, Inc., ("Horizon") ostensibly designed Tepezza to treat thyroid eye disease ("TED") (including conditions also called Graves' eye disease, Graves' ophthalmopathy, or Graves' orbitopathy), which is a condition in which the eye muscles, eyelids, tear glands, and fatty tissues behind the eye become inflamed. This condition can cause the eyes and eyelids to become red, swollen, and uncomfortable and the eyes can push forward such that they look like they are bulging ("proptosis"). Since its launch, however, Horizon has not remotely treated Tepezza as an "Orphan Drug." Instead, Tepezza has generated nearly $5 billion in sales largely achieved through a massive direct-to-consumer and physician-directed marketing campaign.

TED and Graves' disease impacts roughly 15,000 to 20,000 people each year in the United States. The European Group on Graves' Orbitopathy ("EUGOGO") on Management of Graves' Orbitopathy, however, notes the disease "is often mild and self-limiting, with only 3–5% of cases posing a threat to eyesight."[3] Notwithstanding the exceedingly small number of people impacted by acute TED, in 2022, it was reported, "[a] recent internal market analysis also confirmed the size of the market at more than 100,000 addressable TED patients in the U.S., supporting the Company's expectation to general global peak annual net sales of more than $3.5 billion."[4] The stunning growth

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[2] https://www.orpha.net/consor/cgi-bin/Education_AboutOrphanDrugs.php?lng=EN (last visited Mar. 4, 2023).

[3] Bartalena, et al., *Consensus statement of the European Group on Graves' orbitopathy (EUGOGO) on management of Graves' Orbitopathy*, THYROID, Vol. 18, No. 3 (Mar. 14, 2008) (available at https://www.liebertpub.com/doi/10.1089/thy.2007.0315) (last visited Mar. 21, 2023).

[4] https://www.biospace.com/article/releases/horizon-therapeutics-plc-reports-second-quarter-2022-financial-results-and-revises-full-year-2022-net-sales-and-adjusted-ebitda-guidance/ (last visited Mar.

of Tepezza was fueled by Horizon's direct-to-consumer marketing campaign designed to capture potential users whose condition were not even arguably classified as acute.

Lost in Horizon's marketing efforts was the fact that Tepezza—which the company was positioning as a cosmetic treatment—can and does result in *permanent* hearing loss and tinnitus. Before Tepezza's approval in 2020, Defendant conducted pre-approval clinical studies. The studies included a mere 171 participants—84 in the Tepezza arm and 87 in the placebo arm.[5] Ultimately, the clinical trials revealed that approximately ten percent of all users in the Tepezza arm experienced hearing loss associated with their use of Tepezza.[6] Of those eight patients, one continued to experience hearing loss at the end of the study and a second was lost to follow-up.[7] Upon approval, FDA mandated that Horizon include these clinical trial results and provide a reference in the Clinical Trials Experience section of the label noting hearing loss occurred in the clinical trials. But there is no warning in Section 5 of the label related to hearing loss, and worse, *nothing* in the label notes that hearing loss may be permanent and irreversible.[8] Additionally, *nothing* in the label recommends—let alone requires—prescribers obtain baseline audiology before and during administration of Tepezza.

Following Tepezza's approval in 2020, Horizon immediately began to receive hundreds of Adverse Event Reports ("AERs"), detailing injuries associated with the drug, including serious permanent hearing loss and tinnitus, but Defendant did nothing with those AERs.[9] Beginning in or about the spring of 2021, medical reports and findings were published by reputable medical clinics

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4, 2023).

[5] *See Weibel v. Horizon Therapeutics USA, Inc.*, Am. Compl., No. 1:22-cv-04518 (N.D. Ill. Nov. 28, 2022), Dkt. 20 at ¶45.

[6] *Id.* at ¶47.

[7] *Id*. at ¶62.

[8] *Id.* at ¶77.

[9] https://ir.horizontherapeutics.com/news-releases/news-release-details/new-post-marketing-safety-analysis-shows-rate-hearing-related (visited Feb. 28, 2023).

calling the safety of the drug into question. These reports and findings all strongly support that Tepezza use can cause permanent hearing loss and tinnitus.[10]

Despite adverse event information obtained during Tepezza's clinical trials, the AERs received after Tepezza was approved by FDA, and the body of research and literature discussed above, Defendant has thus far failed to utilize the Changes Being Effected ("CBE") regulations, 21 C.F.R. § 314.07(c)(3), *as it is required to do. See Merck Sharp & Dohme Corp. v. Albrecht,* 139 S.Ct. 1668, 1673 (2019). Specifically, it has refused to update the Tepezza label to include a warning regarding hearing loss and/or tinnitus or to recommend initial and periodic audiological screening before, during, and following Tepezza use. It is increasingly clear that Defendant neglected to provide sufficient warnings of the adverse events associated with Tepezza. Furthermore, Defendant's marketing of Tepezza as a safe and effective medication to relieve the pain and discomfort associated with TED—without proper warnings—was negligent and irresponsible given that the dangers associated with Tepezza far outweighed any purported benefit patients can receive from the drug.

While Defendant continues to delay amending its label to reflect the dangers associated with Tepezza, it is likely that a label change related to hearing impairment—with or without Defendant's consent—is finally forthcoming. In Horizon's recent Form 10-K filing the company noted the following:

> While our post-marketing studies and pharmacovigilance reporting data have shown similar rates of hearing impairment as compared to the TEPEZZA pivotal clinical trials, which is reflected in the FDA-approved label, *there have been third party reports that have purported to show higher rates of hearing impairment*. In addition, *a recent analysis of safety data* as part of our ongoing pharmacovigilance program *indicated a signal of hearing impairment events of greater severity, in limited*

[10] *See e.g.*, Chern A., Gudis DA, Dagi Glass LR. *Teprotumumab and hearing loss: hear the warnings.* Orbit. 2021 Aug;40(4):355-356 (E-pub Feb. 2021); Chern A, Dagi Glass LR, Gudis DA. *Thyroid eye disease, teprotumumab, and hearing loss: an evolving role for otolaryngologists*. Otolaryngol Head Neck Surg. 2021 Dec;165(6):757-758 (E-pub Mar. 30, 2021); Highland J, Gordon S, Reddy D, Patel N. *Ototoxicity and teprotumumab.* Ann. Otol. Rhinol. Laryngol. 2022 Aug; 131(8):910-913) (E-pub Aug. 27, 2021).

> *cases, than those observed in the TEPEZZA pivotal clinical trials*. Based on this analysis, *we are discussing with the FDA potential updates to the TEPEZZA label to further characterize the range of events reported.*[11]

Defendant's failure to adequately warn of the potential dangers associated with Tepezza prevented the medical community and the general public from making informed decisions about prescribing and/or using Tepezza, and, as a result, it is believed that thousands of individuals suffered adverse events due to their use of Tepezza. Many of these injured individuals have filed or will file lawsuits against Defendant. Specifically, to date, there are 18 cases pending across at least five district courts in the country alleging that Tepezza caused permanent hearing loss and/or tinnitus.

II. ARGUMENT

A. The Standard for Transfer and Coordination

This Panel considers the following factors when determining whether to authorize transfer and consolidation of multidistrict actions: (1) one or more common questions of fact are pending in different districts; (2) a transfer would serve the convenience of parties and witnesses; and (3) a transfer would promote the just and efficient conduct of the actions. 28 U.S.C. § 1407(a). The purpose of the multidistrict litigation process is to "eliminate the potential for contemporaneous pretrial rulings by coordinating district and appellate courts in multidistrict related civil actions." *In re: Multidistrict Private Civ. Treble Damages Litig.*, 298 F. Supp. 484, 491–92 (J.P.M.L. 1968). Consolidation is especially important in multidistrict litigations where "the potential for conflicting, disorderly, chaotic" action is greatest. *Id*. at 493.

Multidistrict litigation is designed "to 'promote the just and efficient conduct' of 'civil actions involving one or more common questions of fact' that are pending in different districts." *In re*

[11] Horizon Therapeutics Form 10-K, p. 75 (submitted Mar. 1, 2023) (available at https://ir.horizontherapeutics.com/static-files/ecd55c43-52e4-4fca-b907-3c2bd81ad985)(emphasis added).

Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1229 (9th Cir. 2006) (quoting 28 U.S.C. § 1407(a)). Upon a motion for transfer, the Panel "analyzes each group of cases in light of the statutory criteria and the primary purposes of the MDL process to determine whether transfer is appropriate." *In re PPA Prods. Liab. Litig.*, 460 F. 3d at 1230. To that end, it considers factors including "the progress of discovery, docket conditions, familiarity of the transferee judge with the relevant issues, and the size of the litigation." *Id.* (citing *Multidistrict Litigation Manual* § 5.16). On the specific issue of whether to centralize litigation in a single district, the Panel considers the convenience of the parties and witnesses, the number of related actions, and the complexity of common questions of fact.

In this instance, transfer, coordination, and consolidation is appropriate because many common questions of fact and law exist, including but not limited to the following: (1) whether Tepezza was defectively designed; (2) whether Tepezza has been marketed with inadequate warnings concerning hearing loss and tinnitus; (3) whether adequate testing has been conducted by Defendant on Tepezza prior to it being made available for use; and (4) whether Defendant engaged in negligent conduct resulting in Plaintiffs' injuries.

1. Transfer and Coordination of the Actions is Appropriate and Necessary.

The Tepezza cases are well suited for centralization under Section 1407. Though filed in different jurisdictions within the federal court system, these cases are all closely related in that they share the same basic theory of liability namely:

- Despite its knowledge of the danger and its ability to significantly reduce it, Defendant has failed to adequately warn physicians and consumers about the risk of permanent hearing loss and/or tinnitus caused by the use of Tepezza; and
- Defendant has failed to adequately test Tepezza in order to fully elucidate the risk of permanent hearing loss and/or tinnitus with Tepezza use.

These cases also share the same basic factual allegations: *e.g.*, Defendant has known for years that Tepezza causes *permanent* hearing loss and tinnitus in a substantial number of patients that use the drug. The cases also involve the same signature injuries—hearing loss and tinnitus—and the same factual questions regarding general causation, including the biological mechanism of the alleged injury. All the cases will involve the same core discovery, fact witnesses, and general liability and causation experts. Moreover, none of these cases have made any substantial progress toward trial, making this the ideal time to order transfer. Most of the cases on the attached Schedule of Actions are either in the early stages of discovery or have not yet commenced discovery. As such, transfer and coordination would promote efficiency, avoid duplicative and inconsistent motions and rulings, and allow one judge to advance this litigation in ways that are useful and convenient to all parties.

Transferring these cases pursuant to 28 U.S.C. § 1407 would enhance the convenience and efficiency of this litigation. Failing to transfer would almost certainly lead to inconsistent and conflicting rulings, particularly with respect to discovery, and squander judicial resources in several judicial districts.

Evidencing this concern, there are approximately 14 cases pending in the Northern District of Illinois. On December 22, 2021, the Plaintiffs moved to consolidate the cases under Rule 40.4, or in the alternative asked the Court to utilize Intra-Operating Procedure 13(e) which, like 28 U.S.C. § 1407, establishes a mechanism for pre-trial coordination of cases pending in the Northern District of Illinois. *See Plaintiffs' Memorandum in Support of Motion to Relate and Reassign Cases*, *Weibel v. Horizon Therapeutics USA, Inc.,* No. 1:22-cv-04518, Dkt. No. 24 (attached as Exhibit B). Defendant opposed the Rule 40.4 motion. *See Defendant's Objection and Response to Plaintiffs' Motion*, Dkt. No. 34 (attached as Exhibit C). While Defendant tacitly endorsed the notion of "coordinating discovery" under IOP 13(e)—*for discovery aimed exclusively at Horizon*—it made clear that "coordination" should *only* occur "in the event that any of the cases survive the pending Rule 12 dispositive motions." *Id.* at 13. A

cursory review of the Rule 12 motions pending in the Northern District of Illinois reveals that Horizon's motions to dismiss are virtually identical—particularly as they relate to whether Section 6 of the Tepezza label's post-marketing reference to "hearing impairment" provided a sufficient warning.[12] Nonetheless, and notwithstanding the fact the motions—at least as they relate to the sufficiency-of-the-label claims—*are identical,* it appears Horizon intends to litigate the Rule 12 motions in *every individual case* filed throughout the Northern District of Illinois.[13] There is no reason to believe Horizon will take a different tack as it relates to cases pending in other jurisdictions. Additionally, there is no reason to believe Horizon will change course as it relates to resolution of future motions seeking to exclude expert testimony under Rule 702 and/or for summary judgment under Rule 56. Transferring the cases to one judge to adjudicate the factual underpinnings of Rules 12, 56, and 702 is a more efficient use of judicial resources than the serial litigation Horizon intends to conduct on these issues. Accordingly, the Panel should issue an order transferring all the Tepezza actions to one judicial district for pretrial coordination or consolidation.

[12] *Compare, e.g.*, Horizon's nearly identical memoranda in support of its respective motions to dismiss in three cases pending in the Northern District of Illinois: *Weibel v. Horizon Therapeutics USA, Inc.*, No. 1:22-cv-04518, Dkt. No. 33 (filed Jan. 9, 2023) (attached as Exhibit D); *Lucci v. Horizon Therapeutics USA, Inc.*, No. 1:22-cv-07351, Dkt. No. 13 (filed Jan. 27, 2023) (attached as Exhibit E); and *Snyder v. Horizon Therapeutics USA, Inc.*, No. 1:22-cv-06747, Dkt. No. 20 (filed Jan. 25, 2023) (attached as Exhibit F).

[13] The same is true as it relates to Horizon's broader preemption argument. Specifically, the motions to dismiss effectively argue that it did not possess "Newly Acquired Information" so as to trigger its CBE obligations. Irrespective of whether or not that is true, the *timing* as to *when* Horizon possessed "Newly Acquired Information"—if at all—will *uniformly impact* its preemption defense, leading to a conclusion that its preemption motions should be resolved once. Not surprisingly, the Manual for Complex Litigation endorses this outcome noting, "Centralization serves judicial economy by avoiding . . . *inconsistent or repetitive rulings,* and conserving the financial resources of the parties, their counsel, and the judiciary." *See Manual for Complex Litig.*, (Fourth) at § 22.33:367 (emphasis supplied). Put another way, resolution of Rules 12, 56, and 702 motions *in a single forum* satisfies one of the primary rationales for pre-trial centralization.

2. The Tepezza Cases Involve Common Questions of Fact.

The threshold requirement of Section 1407 is that there be questions of fact common to the cases for which MDL treatment is sought. This requirement is satisfied here. The claims in the Tepezza cases each arise from the same course of conduct. Among the numerous common questions of fact are:

a. When Defendant first learned of the connection between the use of Tepezza and auditory adverse events, including hearing loss and tinnitus;

b. Whether Tepezza is defective in design because of its propensity to cause auditory adverse events, including hearing loss and tinnitus;

c. Whether Tepezza was defective and unreasonably dangerous when used by Plaintiffs because any benefits associated with the product are significantly outweighed by the risks associated with its use;

d. Whether Defendant failed to adequately warn physicians and consumers about the increased risk of auditory injuries, including hearing loss and tinnitus, with Tepezza use; and

e. Whether and to what extent Tepezza is capable of causing auditory injuries, including hearing loss and tinnitus.

Given the commonality of factual issues in each of the related cases, MDL treatment is appropriate. *See e.g., In re Fosamax Prods. Liab. Litig.*, 444 F. Supp. 2d 1347, 1349 (J.P.M.L. 2006). Notably, "[t]ransfer under Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer. Centralization will permit all actions to proceed before a single transferee judge who can structure pretrial proceedings to consider all parties' legitimate discovery needs, while ensuring that common parties and witnesses are not subjected to duplicative discovery demands." *In re Katz Interactive Call Processing Patent Litig.*, 481 F. Supp. 2d 1353, 1355 (J.P.M.L. 2007); *see also In re Nat'l Prescription Opiate Litig.*, 290 F. Supp. 3d 1375, 1379 (J.P.M.L. 2017) ("Although individualized factual issues may arise in each action, such issues do not – especially at this early stage of litigation – negate the efficiencies to be gained by centralization. The transferee judge might find it useful, for example, to establish different tracks for the different types of parties or claims. The alternative of allowing the various cases to proceed

independently across myriad districts raises a significant risk of inconsistent rulings and inefficient pretrial proceedings.").

3. Pretrial Centralization Will Enhance the Litigation as a Whole.

Transfer is appropriate when it would enhance the convenience of the litigation. *See e.g., In re Library Editions of Children's Books*, 297 F. Supp. 385, 386 (J.P.M.L. 1968) ("[T]he Panel must weigh the interests of all the plaintiffs and all the defendants, and must consider multiple litigation as a whole in the light of the purposes of the law."). Here, pretrial transfer will undoubtedly ease the burdens on all involved.

As an initial matter, it is important to note all these cases are in their early stages—little motion practice has taken place and to the best of the undersigned's knowledge, and no discovery has occurred. In fact, the very first case (*Weibel*) was filed less than seven months ago. Therefore, it is the optimal time for transfer.

Additionally, both Defendant and Plaintiffs stand to benefit from pretrial centralization. Pretrial transfer will reduce the burdens of discovery and costs significantly for Defendant. Similarly, consolidation will permit the moving Plaintiff's counsel to coordinate efforts and share the pretrial workload amongst the various Plaintiffs' counsel. The Panel has previously endorsed this rationale noting, "prudent counsel will combine their forces and apportion the workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of case and a minimum of inconvenience to all concerned." *See e.g. In re Baldwin-United Corp. Litig*., 581 F. Supp 739, 741 (J.P.M.L. 1984). Consolidation of these cases will effectuate this purpose.

Pretrial centralization will also allow Defendant to concentrate its attention and energy on one forum, rather than numerous federal jurisdictions throughout the country. As a result, Plaintiff anticipates that Defendant will be able to move quickly and effectively through discovery, enhancing

the overall efficiency of the litigation. *See In re Apple iPhone 3G Prod. Liab. Litig*., 630 F. Supp. 2d 1382, 1383 (J.P.M.L. 2009) (noting efficiency obtained through MDL process).

Given that each of the cases arise from a common core set of factual allegations, counsel for Plaintiffs will invariably seek discovery from the same witnesses relating to the development, testing, manufacture, marketing, and sale of Tepezza. MDL treatment will enable a single court to establish a pretrial program that will minimize the inconvenience and expenses of redundant and duplicative discovery, which is precisely the purpose of transfer and coordination under Section 1407. *See e.g., In re Accutane*, 343 F. Supp. 2d at 1383 ("Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent rulings, and conserve the resources of the parties, their counsel, and the judiciary."). In short, transferring the Tepezza cases for pretrial coordination or consolidation will make this litigation far more efficient and convenient for all involved.

4. Pretrial Centralization Will Promote the Just and Efficient Conduct of These Cases.

Fairness and efficiency will be furthered in this litigation by a single centralized and coordinated pretrial program, which will avoid duplicative discovery and inconsistent pretrial rulings, and will conserve the resources of the parties, their counsel and the judiciary. *See In re Levaquin Prods. Liab. Litig.*, 560 F. Supp. 2d 1384 (J.P.M.L. 2008); *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.,* 398 F. Supp. 2d 1371 (J.P.M.L. 2005). This risk is very real and will likely occur as motions are filed and courts set trial and discovery schedules. Here, there are already currently 18 cases pending in five district courts involving multiple different Plaintiffs' law firms.

Coordinated discovery will benefit both Plaintiffs and Defendant. Rather than conducting general discovery in 18 different actions in at least five different district courts, depositions of key witnesses can be coordinated and completed once. Additionally, document productions can be reduced to a single coordinated, central location where all Plaintiffs can have access. Being able to streamline the work and coordinate efforts amongst Plaintiffs' counsel will serve the interests of justice. *See In re*

PPA Prods. Liab. Litig., 173 F. Supp. 2d at 1379 ("it is most logical to assume that prudent counsel will combine their forces and apportion their workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating and overall savings of cost and minimum of inconvenience to all concerned"). One court overseeing these actions instead of at least five different courts will allow the judiciary to preserve its resources.

Coordinated discovery will also help the Plaintiffs in these cases. Instead of different law firms pursuing different strategies for the litigation and engaging in duplicative discovery and motion practice, a coordinated team of attorneys can pursue the claims in one court, before one judge, preserving the Plaintiffs' resources and allowing the attorneys to work together in common to further these cases.

If transfer is denied in this litigation, these cases will proceed on independent tracks, requiring duplicative discovery, including repeated depositions of the same corporate personnel and expert witnesses. Both Plaintiffs and Defendant would benefit from centralization and the economies of scale that it would bring. Transfer would also avoid that danger of inconsistent rulings and will result in economy of judicial resources. Taken collectively, these factors establish that the Tepezza claims are appropriately suited for centralization under 28 U.S.C. § 1407.

B. The Northern District of California is the Most Suitable Venue for this MDL.

Should the Panel determine transfer is proper, it should centralize these cases in the United States District Court for the Northern District of California before the Honorable Jon S. Tigar. Once the Panel determines that centralization is appropriate it then "looks for an available and convenient transfer forum." *Manual for Complex Litig.* § 22.33, at 367 (4th Ed. 2011). Transfer of the Tepezza cases to the Northern District of California would best serve the purposes of 28 U.S.C. §1407. At this moment, there is no one jurisdiction where the litigation is significantly further advanced than another. Given that fact, the Northern District of California is a suitable venue for the pretrial proceedings of

the Tepezza litigation. The Panel generally selects a forum that "i) is not currently overtaxed with other multidistrict dockets, and ii) possesses the necessary resources and expertise to be able to devote the time and effort to pretrial matters that this docket is likely to require." *In re Gator Corp. Software Trademark & Copyright Litig.*, 259 F. Supp. 2d 1378, 1380 (J.P.M.L. 2003).

The Northern District of California is not overtaxed with other MDL cases. At the time of filing this motion, although there are 17 active MDLs pending in the Northern District of California spread among the 21 district judges, the two largest MDLs—*In re: Roundup Products Liability Litigation* (MDL 2741) and *In re: Juul Labs, Inc., Marketing, Sales Practices, and Products Liability Litigation* (MDL 2913)—are very mature with partial or full settlements having been achieved in both. Additionally, there are only 753 individual actions pending across the 15 remaining MDLs. There is currently one related Tepezza action filed in the Northern District of California. The related case is presently assigned to Magistrate Judge Susan van Keulen with no Article III Judge having been assigned to the case at this point.

Based on the absence of any particular Article III judge, and recognizing there are many capable jurists in the Northern District, Petitioner recommends the Panel tap Judge Jon S. Tigar to oversee this litigation. Judge Tigar is an ideal judge for this MDL for multiple reasons. He is an experienced jurist, having served as a judge of the Superior Court of California, County of Alameda from 2002 to 2012 and having served as a district judge in the Northern District of California from 2012 to present. Judge Tigar also has MDL experience, presiding over MDL 1917, *In re: Cathode Ray Tube (CRT) Antitrust Litigation.*

In terms of convenience to the parties, while Horizon Therapeutics USA, Inc's. United States headquarters is located in Lake Forest, Illinois, the company was recently purchased by Amgen Inc. which is headquartered in Thousand Oaks, California.[14] It is thus anticipated that many relevant

[14] https://www.amgen.com/newsroom/press-releases/2022/12/rule-2-7-announcement-amgen-inc-to-acquire-horizon-therapeutics-plc (visited Mar. 20, 2023).

witnesses for the Defendant will be located both in California and in Illinois. The San Francisco Bay area is also equipped with multiple large airports and has numerous hotels near its federal courthouse. In sum, the Northern District of California is a convenient location for this MDL.

Another factor in favor of the Northern District of California is its large and diverse population. San Francisco and the surrounding counties within the Northern District of California are racially and ethnically diverse. To the extent the MDL Court conducts bellwether trials, the Northern District of California will provide for a large and diverse jury pool, adequately representative of the country.

Although Section 1407 does not specify criteria for selecting a transferee forum, the predominant goal is to find a court that will advance "the convenience of the parties and will promote the just and efficient conduct" of the transferred cases. To that end, the Panel generally favors districts in which a number of constituent cases are pending. *See, e.g.*, 15 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3864 (2007); David H. Herr, *Multidistrict Litigation Manual*, § 6 (2016). As of the date of filing this motion, the Northern District of California has a pending Tepezza case and it is anticipated that additional cases will be filed there in the near future. *See* Exhibit A. The Panel has also favored courts that are convenient and accessible, have favorable docket conditions, and districts for which the parties have stated a preference. *See, e.g.*, Wright, Miller & Cooper, *supra* at § 3864; Herr, *supra* at § 6. In the context of this litigation, the district that best satisfies these criteria is the Northern District of California.

For the above reasons, Plaintiff requests the Actions and tag-along cases be transferred and consolidated before the Honorable Jon S. Tigar, United States District Judge for the Northern District of California. Alternatively, Plaintiff requests the Actions and tag-along cases be transferred and consolidated in front of another available jurist in the Northern District of California.

III. CONCLUSION

For the foregoing reasons, Plaintiff Kimberly Exton respectfully requests that the Panel transfer the Tepezza cases listed in the attached Schedule of Actions and tag-along cases, to the United States District Court for Northern District of California before the Honorable Jon S. Tigar, or alternatively before any available judge in the Northern District of California, for coordinated or consolidated pretrial proceedings under 28 U.S.C. § 1407.

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Respectfully submitted,

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