

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

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

MDL No.: 3079

**INTERESTED PARTY AMARILIS POLANCO'S RESPONSE AND MEMORANDUM
IN SUPPORT OF MOTION TO TRANSFER RELATED CASES FOR CENTRALIZED
PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

Interested Party Polanco submits the following Response in support of Movant Kimberly Exton's Motion for Centralization. Polanco joins in the arguments of the Movant that this litigation should be centralized. The Actions assert the same or similar claims based on common factual allegations and will involve common legal theories. Centralized or coordinated pretrial treatment under § 1407 will assist the parties and the courts in avoiding duplicative rulings on the common issues of both fact and law in dispute, promote just and efficient resolution of the litigation, and serve the convenience of the parties, the witnesses, counsel, and the court. Polanco supports transfer and centralization of all actions claiming personal injury, economic loss, and equitable remedies regarding the adverse events caused by Tepezza.

Centralization is appropriate where common questions of fact and law are shared among all cases sought to be centralized, as they are here. Polanco echoes Movant's arguments that the United States District Court for the Northern District of Illinois or, in the alternative, the Northern District of California is the proper Court to manage this litigation given both Courts advance the overall interests of the Judicial Panel on Multidistrict Litigation (JPML).

I. INTRODUCTION

This action involves claims for injuries related to and resulting from Defendant Horizon Therapeutics USA, Inc.'s ("Horizon") wrongful conduct in connection with the development,

manufacturing, labeling, promotion, advertising, marketing, distribution, and selling of Tepezza. Tepezza was created to address symptoms affecting approximately .25% percent of the population, equating to about 20,000 people each year in the United States.¹ Horizon stated previously that only 10% of Tepezza users experience adverse effects, citing the number as low if not nominal, but this is hardly the case.² Applying Horizon's own statements about their product, approximately 12,000 individuals have used Tepezza, and an estimated 1,200 individuals have suffered significant and/or permanent hearing loss as a result of their use of Tepezza.³ This number is likely on the low end given a press release from the Endocrine Society in March 2021 reported, that findings from a new study finding hearing loss occurred in *65% of all users*.⁴ Considering the scope of Horizon's reach and the duration it has been on the market, the two dozen cases which were filed to date are only a harbinger of the hundreds of individuals who will file lawsuits as a result of Tepezza-related injuries.

Due to the widespread nature of the harms caused by Horizon's failure to adequately warn, Polanco supports the centralization of her claim, and all others similarly situated, in the United States District Court for the Northern District of Illinois or, in the alternative, the Northern District of California.

II. ARGUMENT

A. Transfer and Centralization Pursuant to 28 U.S.C. §1407(a) is Appropriate.

"The purpose of § 1407. . . is to eliminate the potential for conflicting contemporaneous pretrial rulings by coordinating district and appellate courts in multidistrict related civil actions."

¹ See Defendant Horizon Therapeutics Response in Opposition to Plaintiff's Motion for Transfer and Coordination or Consolidation at 10.

² *Id.* at 4.

³ *Id.* at 10.

⁴ <https://www.endocrine.org/news-and-advocacy/news-room/featured-science-from-endo-2021/increased-risk-of-hearing-impairment-with-new-thyroid-eye-disease-treatment> (last visited May 8, 2023).

In re Plumbing Fixture Cases, 298 F. Supp. 484, 491-92 (J.P.M.L. 1968). Centralization is meant to “eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel, and the judiciary.” *In re Ethicon Physiomesher Flexible Composite Hernia Mesh Products Liability Litigation*, 254 F. Supp. 3d 1381, 1382 (J.P.M.L. 2017). §1407(a) authorizes the transfer of civil actions pending in different federal district courts to a single federal district court for coordinated or centralized pretrial proceedings so long as the JPML determines that: (1) the cases involve common questions of fact; (2) the transfer will serve the convenience of the parties and witnesses; and (3) the transfer will promote the just and efficient conduct of the litigation. Here, all three requirements are met.

The actions before the JPML all stem from the same core nucleus of facts, to-wit, a patient being prescribed Tepezza intravenously that resulted in complete permanent or partial hearing loss. Due to the almost identical core facts and injuries, the Actions, as well as those that will follow, raise (or will raise) the same legal arguments and invoke substantially similar damages. The legal claims and defenses applicable to Horizon’s conduct are grounded in product liability. The defenses available to Horizon in each of the current and future Actions are similar if not identical regardless of where the claims are geographically located.

Horizon in their response and filings in the District Courts conceded there are factual and legal issues common to this litigation. Differences in state laws do not overcome, nor are barriers to, centralizing this matter. Differences in state product liability law are present in almost all product liability cases centralized by the JPML. *See* MDL No. 3060 *In Re Hair Relaxer Marketing, Sales Practices, and Prod. Liab. Litig.*; MDL No. 3047 *In Re Social Media Adolescent Addiction*; and MDL No. 3044 *In Re Exactech Polyethylene Orthopedic Prods. Liab. Litig.*

Centralizing these actions will promote efficiency and convenience for the parties. The Action involves cases which fit the commonality concerns as set forth in the *Manual for Complex Litigation*. As these cases involve one key defendant, one key product, the same injury – hearing loss – similar damages and implicate the same claims and defenses. In fact, Horizon has filed over a dozen separate yet virtually identical motions to dismiss throughout the Country. Its practice will likely continue in that there is no indication Horizon will not file additional motions to dismiss – all in separate courts across the nation. Horizon’s motions to dismiss⁵ all assert preemption as a defense. As a result, numerous judges, across six different districts, will be forced to dispense with each of these repetitive motions. That practice will continue with respect to Horizon’s conduct as it relates to future Rule 702 and Rule 56 motions. But in that context Courts throughout the Country, as well as with the Northern District (where there are nearly twenty cases pending) will be forced to individually wade through *Daubert* and all its complexities. This is precisely the inefficient use of judicial resources that § 1407 seeks to address.

The rationale underlying the JPML’s determination in *In re Belviq (Lorcaserin HCI) Products Liability Litigation*, 555 F.Supp 3d (J.P.M.L. 2021) is absent in this matter. In *Belviq*, the Panel expressed concern over *both* the limited number of cases (less than 20) *and* the fact there were so few cases filed nearly 18 months *after* a label change. Here, rather than just a mere possibility of future filings, there is a substantial likelihood that a considerable number of cases will be filed. Equally important, unlike *Belviq* there is no label change meaning people—with viable claims—continue to be injured to this day. Further, this case is also distinguishable from *Belviq* because unlike as in *Belviq*, which implicated multiple forms of alleged cancer injuries, this case presents a singular injury – namely the impairment of hearing of hundreds of individuals. The

⁵ Per Defendant’s Statement in their Response in Opposition to Plaintiff’s Motion for Transfer and Coordination or Consolidation.

Plaintiffs in these Actions all incurred the same injury from their use of Tepezza— hearing loss. Lastly, due to there being a similar injury, the array of districts and judges present within this case, and the minimal differences in cases, centralization is the most efficient path for this litigation, wholly distinguishing these cases from *Belviq*.

Each of the Actions, and the many additional actions soon to follow, will benefit from having a single transferee judge address and adjudicate the issues related to discovery and pretrial motion procedures. By preventing needlessly repetitive briefing and arguments across different jurisdictions with the same parties, one Court will allow for efficiency and the preservation of judicial resources.

B. The Northern District of Illinois, and In the Alternative the Northern District of California, is the Most Appropriate Transferee Venue.

Once the JPML decides that centralization is appropriate, it must then decide which forum is the most suitable for centralization. Interested Party Polanco requests that the JPML transfer all related actions to the United States District Court for the Northern District of Illinois for centralized pretrial proceedings before the Honorable Judge Matthew Kennelly.

In the alternative, Interested Party Polanco seeks centralization in the Northern District of California before the Honorable Judge John S. Tigar.

III. CONCLUSION

Interested Party Polanco respectfully requests that the JPML transfer the Actions and all subsequently filed cases for coordinated and centralized pretrial proceedings in the United States District Court for the Northern District of Illinois before Judge Kennelly, and in the alternative, the Northern district of California before Judge John S. Tigar.

Dated: May 8, 2023

Respectfully submitted,

/s/ Mark Abramowitz

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

IN RE: Tepezza Marketing, Sales Practices, and
Products Liability Litigation

MDL No. 3079

SCHEDULE OF ACTIONS

	Case Caption	Court	Civil Action No.	Judge	Counsel for Plaintiff
1	<i>Plaintiff(s):</i> Daniel Weibel <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-04518	Harry D. Leinenweber	Johnson Becker, PLLP
2	<i>Plaintiff(s):</i> Lisa Christian Nethery <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-05005	Harry D. Leinenweber	Johnson Becker, PLLP
3	<i>Plaintiff(s):</i> Donna Walker <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-06375	Nancy L. Maldonado	Johnson Becker, PLLP
4	<i>Plaintiff(s):</i> Gloria Pledger <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-06562	John Robert Blakey	Peiffer, Wolf, Carr
5	<i>Plaintiff(s):</i> Kimberly Perez <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-06718	Andrea R. Wood	Simmons Hanly Conroy
6	<i>Plaintiff(s):</i> Rachel Snyder <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-06747	Thomas M. Durkin	Dicello Levitt LLC
7	<i>Plaintiff(s):</i> John Ingram <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-06836	Jorge L. Alonso	Johnson Becker, PLLP

8	<i>Plaintiff(s):</i> Andrea Leeds <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-06837	Nancy L. Maldonado	Johnson Becker, PLLP
9	<i>Plaintiff(s):</i> Cynthia Williams <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-06838	Matthew F. Kennelly	Johnson Becker, PLLP
10	<i>Plaintiff(s):</i> Karen Lucci <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:22-cv-07351	John Robert Blakey	Simmons Hanly Conroy
11	<i>Plaintiff(s):</i> Lenda Krone <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-00069	Steven C. Seeger	Johnson, Becker, PLLP
12	<i>Plaintiff(s):</i> Karen Scott <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-00803	Mary M. Rowland	Johnson Becker, PLLP
13	<i>Plaintiff(s):</i> John Fisher <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-00805	Manish S. Shah	Johnson Becker, PLLP
14	<i>Plaintiff(s):</i> Norma Perez Diaz <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-00896	Thomas M. Durkin	Peiffer, Wolf, Carr
15	<i>Plaintiff(s):</i> Margaret Lukowski <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of California	5:23-cv-01159	Susan van Keulen	Simmons Hanly Conroy, LLC
16	<i>Plaintiff(s):</i> Kimberly Exton <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of New York	6:23-cv-00282	David N. Hurd	Levin, Papantonio, Rafferty
17	<i>Plaintiff(s):</i> Geri Kanesta-Rychner <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Western District of Washington	3:23-cv-05221	Robert S. Lasnik	Peiffer Wolf Carr

18	<i>Plaintiff(s):</i> Angela Simpson <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Middle District of Georgia	4:23-cv-00055-CDL	Clay D. Land	Childers, Schlueter & Smith, LLC
19	<i>Plaintiff(s):</i> Maria Lemire <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Eastern District of California	2:23-cv-00724	Kimberly J. Mueller	Kershaw Talley Barlow, PC
20	<i>Plaintiff(s):</i> Deborah Welch Klostermann <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-02160	John T. Tharp, Jr.	Peiffer, Wolf, Carr
21	<i>Plaintiff(s):</i> William Jett <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-02662	Jorge L. Alonso	Johnson Becker, PLLP
22	<i>Plaintiff(s):</i> Joseph Ford <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-02703	Steven C. Seeger	Johnson Becker, PLLP
23	<i>Plaintiff(s):</i> John Gardner <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-02705	John T. Tharp, Jr.	Johnson Becker, PLLP
24	<i>Plaintiff(s):</i> Roxann Kranstover <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-02708	Jorge L. Alonso	Johnson Becker, PLLP
25	<i>Plaintiff(s):</i> Shawna Rene <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-02834	Sharon Johnson Coleman	Johnson Becker, PLLP
26	<i>Plaintiff(s):</i> Denis Swisher <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-02863	Matthew Kennelly	Johnson Becker, PLLP

27	<i>Plaintiff(s):</i> Amarilis Polanco <i>Defendant(s):</i> Horizon Therapeutics USA, Inc.	Northern District of Illinois	1:23-cv-02503	Nancy L. Maldonado	Dicello Levitt LLC
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Dated: May 8, 2023

Respectfully submitted,

/s/ Mark M. Abramowitz

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MDL No. 3079

PROOF OF SERVICE

Pursuant to Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, I hereby certify that on May 8, 2023, the foregoing was electronically filed with the Clerk of Court using the JPML CM/ECF filing system, which provides electronic service upon all counsel of record:

Amarilis Polanco v. Horizon Therapeutics USA, Inc. No. 1:23-cv-02503 (N.D. Ill.)

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Dated this 8th day of May, 2023

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