

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

**IN RE: GLUCAGON-LIKE PEPTIDE-1
RECEPTOR AGONISTS (GLP-1 RAS)
PRODUCTS LIABILITY LITIGATION**

MDL No. 3094

**INTERESTED PARTY'S RESPONSE IN SUPPORT OF TRANSFERRING NOVO
NORDISK CASES TO THE EASTERN DISTRICT OF PENNSYLVANIA AND IN
OPPOSITION TO PLAINTIFF JACLYN BJORKLUND'S MOTION TO TRANSFER
ALL ACTIONS TO THE WESTERN DISTRICT OF LOUISIANA**

Pursuant to Rule 6.2(e) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, Laura Marrero (*hereinafter* "Plaintiff")¹ submits this response in opposition to Jacklyn Bjorklund *et al.*'s Motion for Transfer of Actions to the United States District Court for the Western District of Louisiana ("W.D. La.") pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings (Dkt. No. 1) (*hereinafter* "the Motion").

Plaintiff agrees with the Responses in Opposition to the Motion to Transfer ("the Oppositions") filed by Kelly Miller and Michelle Gray, who advocate for a multidistrict litigation involving only the Novo Nordisk Defendants ("Novo Nordisk") in the Eastern District of Pennsylvania ("E.D. Pa."). *See* Dkt. Nos. 80 and 89; *See also* Dkt. No. 78 at 3-9 (defendant Eli Lilly and Company also oppose a combined MDL). Accordingly, Plaintiff respectfully requests that the Panel deny the Motion insofar as it seeks to create a multi-defendant MDL in the W.D. La. and instead select the E.D. Pa. for a Novo Nordisk Semaglutide MDL² before the Honorable

¹ *See Marrero v. Novo Nordisk A/S, et al.*, 2:23-cv-05036 (E.D. Pa. Dec. 19, 2023)

² Plaintiff takes no position as to whether the W.D. La. is an appropriate venue for an MDL involving Eli Lilly and Company and its GLP-1 RA drug, Mounjaro. However, to the extent that the Panel is inclined to create a multi-defendant, multi-product MDL, despite the important differences between the products at issue, Plaintiff submits that the E.D. Pa. would still be the most appropriate forum for same.

Wendy Beetlestone, whom is presently presiding over Plaintiff’s action against Novo Nordisk. As explained below and in the Oppositions filed by Kelly Miller and Michelle Gray, the E.D. Pa. has a clear geographic nexus to the allegedly tortious conduct by Novo Nordisk with the capability to oversee and manage a large MDL involving domestic and foreign Defendants. *See* Dkt. Nos. 80 and 89. The alternative forums proposed by other Plaintiffs, as well as Defendants, including the W.D. La., the Middle District of North Carolina (“M.D. N.C.”), the Southern District of California (“S.D. Cal.”), and the Southern District of Indiana (“S.D. Ind.”) do not.

I. ARGUMENT

A. The Eastern District of Pennsylvania is the most appropriate forum for claims involving Novo Nordisk given its proximity to the Defendants’ headquarters and the location of their allegedly tortious conduct.

Considering all the proposed forums, the E.D. Pa. offers the most appropriate forum with a clear geographic nexus that would further “the convenience of parties and witnesses[.]” *See* 28 U.S.C. § 1407(a). Because the E.D. Pa.’s Philadelphia division is located approximately 50 miles from the U.S. headquarters for Novo Nordisk,³ Defendants’ corporate representatives and witnesses will be geographically subject to subpoena under the Federal Rules. Additionally, the E.D. Pa. also offers an experienced court with a long-standing history of effectively managing MDLs of this nature, as well as the capacity and judicial resources to oversee this matter. *See* Dkt. No. 80 at 1-6, 14-16; *see also*, Dkt. No. 89 at 3-7. The E.D. Pa. is currently home to the second largest docket of filed cases, with just two fewer pending cases than the W.D. La.. Further, Movant’s reply confirms that approximately 14 plaintiffs currently live in the Northeast within an approximately 2–3-hour drive of the E.D. Pa. Dkt. No. 91 at 1-2 (including those residing in the

³ As Eli Lilly and Company has stressed in its papers, the Panel has previously utilized locations near a defendant’s headquarters when consolidating nationwide cases. Dkt. No. 55 at 9.

E.D. Pa., the Southern District of New York (“S.D.N.Y.”) and the Eastern District of New York (“E.D.N.Y.”).

The geographic center of the case against Novo Nordisk in the United States is in the vicinity of Philadelphia, where the E.D. Pa. sits. Movants and Novo Nordisk readily admit that Novo Nordisk’s U.S. headquarters is in Plainsboro, New Jersey⁴—which is approximately 50 miles from the Philadelphia division of the E.D. Pa.,⁵ and even Novo Nordisk admits that the E.D. Pa. would be a convenient location for this litigation.⁶ To be clear, the allegations against Novo Nordisk are predicated on its failure to warn and incredibly aggressive marketing tactics with respect to Ozempic and Wegovy. Thus, Novo Nordisk’s headquarters – *and not the location of its manufacturing facilities* – is likely to be where the relevant witnesses and documents are located. Additionally, Novo Nordisk has undertaken significant relevant conduct in Philadelphia relating to this matter, including targeting Philadelphia for several marketing campaigns. *See* Dkt. No. 80 at 5-6.

Unquestionably, Novo Nordisk’s U.S.-based⁷ witnesses who possess knowledge relevant to this litigation are most likely to be found in the vicinity of the E.D. Pa.⁸ Additionally, to the extent that witnesses from Novo Nordisk’s Denmark location are required, Philadelphia

⁴ *See* Dkt. No. 55 at 9; Dkt. No. 91 at 8.

⁵ Google Maps, Directions from Novo Nordisk to E.D. PA., <https://www.google.com/maps/dir/Novo+Nordisk+Inc.,+800+Scudders+Mill+Rd,+Plainsboro+Township,+NJ+08536/601+Market+Street,+Philadelphia,+PA/@40.3363974,-74.6081044,1283m/data=!3m1!1e3!4m14!4m13!1m5!1m1!1s0x89c3e75b18b8cfb5:0x7fa975af5883c718!2m2!1d-74.6030149!2d40.3376679!1m5!1m1!1s0x89c6c9b5193c44bd:0x77b2655b16f141c0!2m2!1d-75.1510998!2d39.9510006!3e0?entry=ttu> (last accessed Jan. 18, 2024).

⁶ Dkt. No. 55 at 9, n. 17.

⁷ Novo Nordisk A/S is in Denmark.

⁸ In addition, at least three of Novo Nordisk’s counsel in this matter are located in Philadelphia. *See* Dkt. No. 55 at 21 (listing three individuals from DLA Piper LLP’s Philadelphia’s office as counsel for the Novo Nordisk entities).

International Airport and its location on the east coast would make overseas travel relatively easy. This is particularly true as compared to those districts on the west coast and those that districts that lack a nearby international airport.

Because Philadelphia provides an obvious nexus for this litigation and a large city with a variety of transportation and lodging options, the E.D. Pa. is the most logical choice for this MDL. For these reasons, and those mentioned in the Oppositions filed by Kelly Miller and Michelle Gray, the E.D. Pa. is the most appropriate and convenient district.

B. The other proposed districts lack a nexus to this litigation and/or are less suited than the Eastern District of Pennsylvania

1. Western District of Louisiana

Presently, there are twelve related cases filed in the W.D. La. (only two more cases than E.D. Pa.) and no significant discovery has occurred in those cases. Additionally, beyond these twelve plaintiffs, Louisiana does not have a meaningful connection to this case, and it will not offer the benefit of the location of defendants' witnesses and documents. To make matters worse, Lake Charles, Louisiana is a highly inconvenient location⁹ for travel since direct flights are only offered from **two** locations, Dallas and Houston, Texas.¹⁰ Given the distance from Defendants' headquarters and the relative difficulty of traveling to Lake Charles, it will not be as convenient for the parties and witnesses. Instead, particularly as compared to Philadelphia, an MDL in the W.D. La. will increase the time and cost of travel for most of the parties and witnesses. In short, the W.D. La. is not a suitable forum because, it would not serve "the convenience of [most] parties and witnesses[.]" *See* 28 U.S.C. § 1407(a).

accommodations that will satisfy travelers' needs and budgets.") (last visited Jan. 10, 2024).

¹⁰ Lake Charles Regional Airport, Airlines and Destinations, <https://flylakecharles.com/airlines-and-destinations/> (last visited Jan. 11, 2024).

Additionally, while Movants suggest that many more plaintiffs may be in the W.D. La., that remains to be seen. Movants argue that Louisiana ranks highly with respect to the prevalence of obesity, but the actual difference between Louisiana and Pennsylvania is a mere 7%.¹¹ Furthermore, the prevalence of obesity does not necessarily dictate the prevalence of treatment for same, nor the prevalence of viable cases. Movants argue that Louisiana Medicaid covers drugs like Semaglutide, but other jurisdictions do as well—including Pennsylvania.¹² Movants also argue that the rates of prescriptions reimbursed by Medicaid are higher in Louisiana but fail to account for persons with Medicare, private insurance, or self-pay.¹³

Finally, the number of civil cases that are pending over three years in the W.D. La. has **quadrupled since 2018** and the average caseload per judge is **715 cases**.¹⁴ A judge in the W.D. La. has, on average, **two times** the caseload as a judge in the E.D. Pa.¹⁵ Indeed, Movant's chart of weighted filings per judgeship confirms that the E.D. Pa. has a far lower number of cases per judge as compared to the W.D. La. *See* Dkt. 91 at 2.

2. Middle District of North Carolina

Importantly, there are no related cases currently pending in the M.D.N.C. Despite this, Defendants suggest that the M.D.N.C. is an appropriate forum because they have manufacturing

¹¹ *See* Dkt. No. 91 at 2, n. 4

¹² Ozempic and Wegovy are listed on the preferred drug list for Pennsylvania Medicaid. *See* Pennsylvania Department of Human Services Statewide Preferred Drug List (PDL), at 32, 41 available at <https://papdl.com/sites/default/files/ghs-files/Penn%20Statewide%20PDL%202024.pdf> (last visited Jan. 10, 2024).

¹³ This is significant since only 21% of Pennsylvania's population is on Medicaid. KFF, Pennsylvania Medicaid (as of June 1, 2023), at 1, available at <https://files.kff.org/attachment/fact-sheet-medicaid-state-PA> (last visited Jan. 10, 2024).

¹⁴ *See e.g.*, U.S. J.P.M.L., MDL Statistic Report – Distribution of Pending MDLs by District, at 31 (Nov. 26, 2023), available at https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-November-16-2023.pdf (last visited Jan. 17, 2024).

¹⁵ *See id.* at 16, 31.

facilities in North Carolina and a named entity, Novo Nordisk Pharmaceuticals LP, is present there. Dkt. No. 55 at 11-13; Dkt. No. 78 at 13-14. However, this is a red herring. First, Novo Nordisk Pharmaceutical Industries LP is **not** specifically identified on the Ozempic and Wegovy labels—instead Novo Nordisk, Inc. (located in New Jersey) is listed. Second, and importantly, the cases at bar do not allege a *manufacturing defect*¹⁶—instead, these cases are focused on the Defendants’ *failure to warn* and their highly aggressive marketing tactics. Conduct relating to the drugs’ labels and associated marketing likely did not occur at the manufacturing facilities in North Carolina (and Defendants do not claim that they did).

Instead, the decisions made by Defendants as to the warnings in the label would ordinarily be made at headquarters, along with decisions related to marketing practices. Indeed, as described herein, Novo Nordisk is currently looking to fill marketing, regulatory, and pharmacovigilance positions at their Plainsboro, New Jersey headquarters—and has no such jobs available in North Carolina.¹⁷ Additionally, the Ozempic and Wegovy labels confirm that Novo Nordisk, Inc. (the entity headquartered in Plainsboro, New Jersey) engages in marketing in the United States and is the entity who receives reports regarding suspected adverse reactions to these drugs.¹⁸ Furthermore, this Panel regularly consolidates MDLs in districts in proximity to the Defendant’s

¹⁷ Novo Nordisk’s website reveals a host of manufacturing-related jobs in North Carolina, but none under the categories of “Commercial & Marketing” or “Reg Affairs & Safety.” *See generally*, Novo Nordisk, Careers, Find a job available at <https://www.novonordisk.com/careers/find-a-job.html> (last visited Jan. 11, 2024).

¹⁸ *See* Novo Nordisk, Ozempic Label (rev. 9/2023), at 1, 4, 12, 24, 25, 36, available at https://www.accessdata.fda.gov/drugsatfda_docs/label/2023/209637s020s021lbl.pdf (last visited Jan. 10, 2024); *see also*, Novo Nordisk, Wegovy Label (rev. 6/2021), at 1, 25, 34, available at https://www.accessdata.fda.gov/drugsatfda_docs/label/2021/215256s000lbl.pdf (last visited Jan. 10, 2024). Additionally, the FDA points consumers to Novo Nordisk, Inc. with respect to Ozempic. *See* FDA, Ozempic Drug Trial Snapshot, available at <https://www.fda.gov/drugs/drug-approvals-and-databases/drug-trial-snapshot-ozempic> (last visited Jan. 10, 2024).

headquarters, or where they are “based,” with no reference to its manufacturing facilities. *See In Re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, 637 F.Supp.3d 1377 (J.P.M.L. 2022) (consolidating cases in the Northern District of California because “...several Defendants are headquartered in or near this district.”); *see also In Re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation*, 513 F. Supp.3d 1406 (J.P.M.L. 2020) (centralizing cases in the District of New Jersey because “...several Defendants are based in New Jersey and relevant witnesses and documents likely will be found there.”).

Given its proximity to the relevant conduct, the E.D. Pa. is a far more convenient forum. In addition, the median time to trial in civil cases in the M.D.N.C. is longer than the E.D. Pa. by approximately 18 months, making the E.D. Pa. a far better choice in terms of efficiency, too.¹⁹ Accordingly, the M.D.N.C. is clearly not the best choice “for the convenience of parties and witnesses [nor] will [it] promote the just and efficient conduct of such actions.” *See* 28 U.S.C. § 1407.

3. Southern District of California

Defendants also argue that transfer to the S.D. Cal. would be appropriate, even though there are no related cases, witnesses, parties, or documents located there. The S.D. Cal. is also inconveniently located: the geographic center of gravity for this matter is found on the other side of the country—in the vicinity of Philadelphia. The S.D. Cal. is over 2,700 miles from Novo Nordisk’s headquarters in New Jersey and over 5,500 miles from their location in Denmark. It would require extensive air travel for nearly every single party and witness, which would only add

¹⁹ *See* U.S. District Courts – National Judicial Caseload Profile, at 16, 22 (Sept. 30, 2023), available at https://www.uscourts.gov/sites/default/files/fcms_na_distprofile0930.2023.pdf (indicating that median time to trial in a civil case is 42.7 months in the Middle District of North Carolina while it is merely 24.9 in the E.D. PA.) (last visited Jan. 10, 2024).

to the cost and time involved in litigating this matter. The S.D. Cal. also lacks any nexus to this matter and, given the distance, it would be a highly inconvenient forum for most parties and witnesses. These considerations should weigh against selecting the S.D. Cal.

Defendants' sole reason for advocating for the S.D. Cal. is their misplaced reliance on *In Re: Incretin Mimetics Products Liability Litigation* ("*Incretin Mimetics*"), which also concerned diabetes medications. But, the commonalties between *Incretin Mimetics* and this MDL stop there. *Incretin Mimetics* involved substantially different drugs, with different chemical compositions, approval histories, marketing, labeling, and injuries from the drugs in this MDL. Also, *Incretin Mimetics* involved claims relating to pancreatic cancer—an injury which (to the undersigned's knowledge) has not been alleged by any plaintiff in any related matter.

Considering the lack of any nexus to the facts of these cases, the inconvenience posed by the S.D. Cal. to the parties, the fact that there are no related cases pending there, and the stark differences in the products at issue, the Hon. Anthony J. Battaglia's prior experience in *Incretin Mimetics* should be of no moment to the Panel. Indeed, a judge's prior experience with a certain class of drugs is not dispositive when the Panel is faced with a § 1407 motion. Instead, the location of the parties and defendants' headquarters, where relevant documents and witnesses are located remains an important part of the calculus.

For example, in the *Eliquis (Apixaban)* litigation, certain plaintiffs requested that the *Eliquis* litigation be transferred to the Eastern District of Louisiana ("E.D. La."), where an MDL involving Xarelto was pending, because of the similarities of the drugs and experience of the judge. *See In re Eliquis (Apixaban) Prods. Liab. Litig.*, MDL No. 2754, Dkt. No. 17, at 14-15 (Nov. 4, 2016); *see also, In re Eliquis (Apixaban) Prods. Liab. Litig.*, MDL No. 2754, Dkt. No. 26, at 13 (Nov. 8, 2016). Ultimately, the Panel did not transfer those cases to the E.D. La. *See In re Eliquis*

(*Apixaban Prods. Liab. Litig.*, 282 F. Supp. 3d 1354 (J.P.M.L. Feb. 7, 2017)). Instead, the Panel chose to transfer the cases to the location of the defendants' headquarters. *Id.*

Here, the same result is warranted. The Panel should transfer these cases to the E.D. Pa., which is in the vicinity of Novo Nordisk's headquarters and provides the parties convenient access to the relevant documents and witnesses. While the undersigned respects the Hon. Anthony J. Battaglia's experience, the cases at bar are not similar enough such that the factors related to convenience should be outweighed. Additionally, statistics regarding the S.D. Cal. that it is not the most efficient district. Indeed, the median time to trial in civil cases in the S.D. Cal. is longer than the E.D. Pa. by approximately 18 months.²⁰

4. Southern District of Indiana

Plaintiff takes no position as to whether the S.D. Ind. is an appropriate venue for a MDL that solely includes claims against Eli Lilly and Company. However, to the extent the Panel orders a joint, multi-defendant MDL, Plaintiff submits that the S.D. Ind. is not the most appropriate forum. First, there are no related cases in Indiana. Second, while Eli Lilly and Company is headquartered in Indiana, the vast majority of pending cases are filed against Novo Nordisk. Even Eli Lilly and Company agrees that it is the allegations against Novo Nordisk that "are driving this

²⁰ See U.S. District Courts – National Judicial Caseload Profile, at 16, 69 (Sept. 30, 2023), available at https://www.uscourts.gov/sites/default/files/fcms_na_distprofile0930.2023.pdf (indicating that median time to trial in a civil case is 42 months in the S.D. Cal. while it is merely 24.9 in the E.D. Pa.) (last visited Jan. 10, 2024).

litigation.” Dkt. No. 78 at 5. Given the larger number of Novo Nordisk claims, it seems logical to accord more weight to Novo Nordisk’s headquarters than Eli Lilly’s.

II. CONCLUSION

For the foregoing reasons, the Panel should deny the Motion under 28 U.S.C. §1407 to the extent it seeks to create a multi-Defendant MDL and to the extent it seeks to transfer these cases to the W.D. La. The Panel should instead create an MDL limited only to those actions involving Novo Nordisk and transfer those cases to the E.D. Pa. to be overseen by the Hon. Wendy Beetlestone.

Dated: January 18, 2024

Respectfully submitted,

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

**IN RE: Glucagon-like Peptide-1 Receptor Agonists
(GLP-1 RAs) Products Liability Litigation**

MDL No. 3094

PROOF OF SERVICE

In compliance with Rule 4.1(a) of the Rules and Procedure for the United States Judicial Panel on Multidistrict Litigation, I hereby certify that the within Interested Party's Response in Support of Transferring Novo Nordisk Cases to the Eastern District of Pennsylvania and in Opposition to Plaintiff Jaclyn Bjorklund's Motion to Transfer All Actions to the Western District of Louisiana on behalf of Plaintiff, Laura Marrero, was electronically filed with the Clerk of the Panel using the CM/ECF system, which send notice of the filing to all parties of record in the related action *Marrero v. Novo Nordisk A/S, et al.* (E.D. Pa., 2:23-cv-05036) as follows:

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Counsel for the following Defendants in the related action have not entered an appearance and will be served via U.S. mail at each of the Defendants' last known address indicated as follows:

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Dated: January 18, 2024

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