IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: TEPEZZA MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION	No. 1:23−cv−03568 MDL No. 3079
This Document Relates to:	Judge Thomas M. Durkin
No. 1:23-cv-02714 (*Merriweather*)	Magistrate Judge M. David Weisman

DEFENDANT HORIZON THERAPEUTICS USA, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS ALL CLAIMS OF INITIAL BELLWETHER DISCOVERY PLAINTIFF *MERRIWEATHER* PURSUANT TO FED. R. CIV. P. 12(b)(6)

Horizon Therapeutics USA, Inc. ("Horizon") moves this Court to dismiss plaintiff Merriweather's First Amended Complaint ("FAC") (ECF No. 10) in its entirety for failure to state a claim upon which relief can be granted under Michigan law pursuant to Federal Rule of Civil Procedure 12(b)(6).

Michigan law clearly bars plaintiff's product liability claims. *See* Mich. Comp. Laws Ann. § 600.2946(5) (repealed Feb. 13, 2024) (barring product liability actions against a manufacturer of an FDA-approved drug).[1] The PLC has conceded that the law of the states where plaintiffs reside and were allegedly injured applies. At this point, only one plaintiffs' counsel (who is not on the PLC) contends that the law of a state other than the place of treatment and injury applies. Michigan resident plaintiff Merriweather's transparent attempt to salvage her non-viable product liability claims by incorrectly asserting that Illinois law applies cannot be squared with applicable case law and her claims must, therefore be dismissed.

[1] As shown below, the statute governs plaintiff's claims notwithstanding the repealed provision.

BACKGROUND

I. Plaintiff's Allegations

Michigan resident Cherl Merriweather asserts five product liability claims, all related to her use of Horizon's FDA-approved biologic, Tepezza®: (1) strict liability failure-to-warn; (2) negligent failure-to-warn; (3) strict liability design defect; (4) negligent design defect; and (5) punitive damages.[2] Tepezza® is the first FDA-approved medication to treat thyroid eye disease ("TED"), a complex disease that causes bulging eyes (eyes "protrude outward of the eye socket"), pain, and vision impairment, among other debilitating symptoms. *See* FAC ¶¶ 31, 40, 42 (Ex. A). Tepezza® revolutionized TED treatment—it was the first therapeutic treatment ever available for these painful symptoms. *See id.* Plaintiff alleges personal injury in the form of "permanent hearing loss and/or tinnitus" as a result of her Tepezza® use. *Id.* ¶¶ 12-13.

According to plaintiff, all conduct relevant to her alleged injuries took place in Michigan. Plaintiff is a Michigan resident. *See id.* ¶ 9. She was diagnosed with thyroid eye disease in Michigan. *Id.* ¶ 10. She received a series of Tepezza® infusions in Michigan. *Id.* Plaintiff alleges that Horizon "transacted and conducted business" within Michigan and "derived substantial revenue from goods and products disseminated and used throughout Michigan." *Id.* ¶ 18. Plaintiff further alleges that "[a]t all relevant times, Horizon was . . . involved in the manufacturing, research, development, marketing, distribution, sale, and release for use to the general public of pharmaceuticals, including Tepezza, in Michigan." *Id.* ¶ 20.

Despite being a Michigan resident who alleges she was prescribed Tepezza® in Michigan, infused with Tepezza® in Michigan, and alleged injury in Michigan, plaintiff brings her claims under Illinois law. *See* Email from T. Becker to C. Thurman (June 27, 2024) (Ex. B). Plaintiff's

[2] "Punitive damages are not an independent cause of action" and are contingent on other claims. *Dr. Franklin Perkins Sch. v. Freeman*, 741 F.2d 1503, 1524 (7th Cir. 1984).

sole allegation relating to Illinois is that Horizon is headquartered in Deerfield, Illinois. *See* FAC ¶¶ 14, 17 (Ex. A).

II. Procedural History

Plaintiff Merriweather filed a complaint in the Northern District of Illinois on May 1, 2023, alleging injury from Tepezza® and asserting claims of failure to warn and design defect under both strict liability and negligence theories, as well as a claim for punitive damages. *See generally* Compl. (ECF No. 1). On June 2, 2023, the Judicial Panel for Multidistrict Litigation centralized eighteen actions alleging permanent hearing loss and tinnitus associated with the use of Tepezza® in the Northern District of Illinois before the Honorable Thomas M. Durkin. *See generally* Transfer Order, In re Tepezza Mktg., Sales Pracs., & Prods. Liab. Litig., No. 1:23-cv-03568 (N.D. Ill. June 7, 2023), ECF No. 1. This case was subsequently reassigned to the MDL. *See* Executive Committee Order (ECF No. 8). Plaintiff filed the instant FAC (ECF No. 10) on February 29, 2024, asserting the same five claims.

Merriweather is one of twelve Initial Bellwether Discovery cases in the Tepezza® MDL and the only plaintiff who disputes that her claims arise under the law of the state where each plaintiff resides. *See* Order Identifying Twelve Bellwether Disc. Cases, *In re Tepezza*, No. 1:23-cv-03568 (N.D. Ill. March 19, 2023), ECF No. 126; Email from T. Becker to C. Thurman (July 10, 2024) (Ex. B); June 10, 2024 Status Hr'g Tr. 6:8-7:4 (Ex. C) (PLC explaining that "[n]o more than 12" states—*i.e.*, the states of plaintiff's residences—are implicated in the Motions to Dismiss). On June 5, 2024, Horizon requested voluntary dismissal of five plaintiffs' claims not cognizable under the state law applicable to each plaintiff. *See* Email from C. Thurman to T. Becker (June 11, 2024) (Ex. B). Plaintiffs agreed to voluntary dismiss those claims for all cases except *Merriweather*. *See* Email from T. Becker to C. Thurman (June 27, 2024) (Ex. B) (agreeing to drop the strict liability design defect claims asserted under the relevant states' laws by plaintiffs

Egger (CA), *Meyers* (UT), and *Kanesta-Rychner* (WA), as well as the strict liability design defect and failure-to-warn claims asserted by plaintiff *Ford* (PA)). Despite the PLC's concession that the law where plaintiffs reside and were allegedly injured applies to most of the Initial Bellwether Discovery plaintiffs' claims, plaintiff's counsel here claimed that *Merriweather*, a Michigan resident, brings her claims under Illinois law. *See id.*

LEGAL STANDARD

A complaint must be dismissed when it fails to state a cognizable claim or prayer for relief under applicable law. Fed. R. Civ. P. 12(b)(6); *Neitzke v. Williams*, 490 U.S. 319, 326–27 (1989) (courts authorized to dismiss a claim under Rule 12(b)(6) on the basis of a dispositive issue of law, which "streamlines litigation by dispensing with needless discovery and factfinding"); *Echo, Inc. v. Whitson Co., Inc.*, 121 F.3d 1099, 1105-06 (7th Cir. 1997) (affirming dismissal of "a claim which cannot be made under Illinois law").

ARGUMENT

Under Illinois choice-of-law rules,[3] the Illinois Supreme Court has directed courts to assess (1) whether there is an outcome determinative conflict, (2) whether Illinois choice-of-law rules instruct that a presumptive choice applies in this suit, and (3) whether the contacts and policies of the relevant states as laid out under Sections 6 and 145 of the Restatement (Second) of Conflicts of Law (1971) favor application of the law of one state. *See Townsend v. Sears, Roebuck & Co.*, 879 N.E.2d 893, 898 (Ill. 2007).

[3] Federal courts sitting in diversity apply the choice-of-law rules of the forum state (here, Illinois). *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941).

I. Plaintiff's Claims Are Barred by Michigan Law, Creating a Conflict with Illinois Law.

A. Michigan law bars plaintiff's claims.

Michigan statute § 600.2946(5), in effect at the time of plaintiff's alleged injury and the filing of her complaint, bars "a product liability action" against a manufacturer of an FDA-approved drug. Mich. Comp. Laws Ann. § 600.2946(5) (repealed Feb. 13, 2024); *see also Taylor v. SmithKline Beecham Corp.*, 658 N.W.2d 127, 130-31 (Mich. 2003) ("[A] drug manufacturer or seller that has properly obtained FDA approval of a drug product has acted sufficiently prudently so that no tort liability may lie.").

All of plaintiff's claims against Horizon, the manufacturer of an FDA-approved drug, are based on a theory of product liability. *See* Mich. Comp. Laws Ann. § 600.2945(h) (defining a "product liability action" as "an action based on a legal or equitable theory of liability brought for the death of a person or for injury to a person or damage to property caused by or resulting from the production of a product."). Plaintiff alleges injuries "as a direct result of infusion of Defendant's biological product Tepezza" under failure-to-warn and design defect theories. *See* FAC ¶ 9 (Ex. A). Plaintiff alleges that Tepezza® is an FDA-approved product. *See id.* ¶ 42. As such, Horizon is protected by what the Michigan Supreme Court has described as an "absolute defense" to these product liability claims. *See Taylor*, 658 N.W.2d at 130-31.

By statute, the applicable Michigan law acknowledges only two exceptions to this absolute bar on tort liability for pharmaceutical manufacturers: where a plaintiff alleges "the federal government has established that the drug manufacturer either committed fraud against the FDA or bribed an FDA official." *White v. SmithKline Beecham Corp.*, 538 F. Supp. 2d 1023, 1027-29 (W.D. Mich. 2008) (explaining the exceptions under § 600.2946(5)); *see also* Mich. Comp. Laws Ann. § 600.2946(5)(a)-(b) (recognizing only bribery and fraud exceptions to the statute's absolute

bar on liability). Plaintiff alleges no federal findings of fraud or bribery,[4] nor do any such federal findings against Horizon exist. *See generally* FAC (Ex. A).

Michigan statute § 600.2946 was amended in February 2024 to eliminate subsection (5) (the provision that barred product liability actions against manufacturers of FDA-approved medications), but that subsection was in effect at the time of plaintiff's alleged injury and at the time she filed her lawsuit on May 1, 2023. *See* Compl. (ECF No. 1); *see also* FAC ¶¶ 9-10 (Ex. A) (alleging dates of use from September 2022 to May 2023). Section 600.2946(5) is thus applicable to plaintiff's claims. *See Schilling v. City of Lincoln Park*, No. 342448, 2019 WL 2146298, at *9 (Mich. Ct. App. May 16, 2019) (considering the governing law as the law in effect on the date of plaintiff's alleged injury, even where a plaintiff files suit *after* the effective date of the amended statute).

Under Michigan law, plaintiff's complaint must be dismissed in its entirety as the Michigan statute clearly applies and plaintiff failed to (and cannot) plead an exception. *See Lebby v. Proctor & Gamble Co.*, No. 18-13711, 2019 WL 1989205, at *1 (E.D. Mich. May 6, 2019) (granting motion to dismiss complaint as barred under § 600.2946(5) where plaintiff failed to allege an exception); *White*, 538 F. Supp. 2d at 1031 (same).

B. A conflict exists between Michigan and Illinois law.

The applicable Michigan statute bars plaintiff's claims, while Illinois has no analogous statute. *E.g.*, *Townsend*, 879 N.E.2d at 898-99 (finding a conflict between Michigan and Illinois

[4] Plaintiff is federally preempted under *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 348 (2001), from alleging fraud where the FDA itself has not found fraud. *See White*, 538 F. Supp. 2d at 1027-29; *In re Aredia & Zometa Prods. Liab. Litig.*, No. 3:06-MD-1760, 2008 WL 913087, at *2 (M.D. Tenn. Apr. 2, 2008), *aff'd*, 352 Fed. App'x 994 (6th Cir. 2009) (granting summary judgment for the defendant because the plaintiffs' claims were "precluded by Michigan law; and Plaintiffs are precluded, by federal preemption law, from attempting to prove that either exception applies"); *Ammend v. BioPort, Inc.*, Nos. 5:03-CV-31, 1:03-CV-254, 2006 WL 1050509, at *3 (W.D. Mich. April 19, 2006) (granting summary judgment for the defendant because the plaintiff did not show "the FDA has made its own determination of fraud or bribery").

product liability law because Michigan does not recognize strict liability design defect claims, while Illinois does); *see also In re Abbott Lab'ys Preterm Infant Nutrition Prods. Liab. Litig.*, No. 22 C 71, 2023 WL 4273701, at *2 (N.D. Ill. June 29, 2023) (finding a conflict between New Jersey and Illinois products liability law because New Jersey's product liability statute abrogates common law tort remedies for product liability claims, and "Illinois has no analogous statute").

II. Michigan Law Presumptively Applies to Plaintiff's Claims.

Illinois adopts a "*strong* presumption" that "the law of the place of injury . . . governs the substantive issues." *Townsend*, 879 N.E.2d at 904 (emphasis in original) (quoting Restatement (Second) of Conflict of Laws § 146 (1971)). Michigan law therefore applies to plaintiff's claims unless plaintiff "can demonstrate that Michigan bears little relation to the occurrence and the parties, or put another way, that Illinois has a more significant relationship to the occurrence and the parties with respect to a particular issue." *Id.*

Plaintiff is a Michigan resident. *See* FAC ¶ 9 (Ex. A). She was diagnosed with TED in Michigan, and was prescribed and administered Tepezza® in Michigan. *See id.* ¶ 10. Plaintiff alleges her injury occurred in Michigan, and she continues to reside in Michigan. *See id.* ¶¶ 9-10, 13. Accordingly, there is a "*strong* presumption" that Michigan law governs plaintiff's claims. *See Townsend*, 879 N.E.2d at 904-05 (emphasis in original). Plaintiff has made no allegation regarding Illinois' relationship to her injury or this lawsuit, alleging only that Horizon has its principal place of business in Illinois. *See* FAC ¶¶ 14, 17 (Ex. A).

Courts applying Illinois choice-of-law principles have repeatedly held that products liability claims are governed by the law of the alleged place of injury. *See, e.g.*, *Robinson v. McNeil Consumer Healthcare*, 615 F.3d 861, 866-67 (7th Cir. 2010) (applying Virginia law to product liability claim where plaintiff lived in Virginia, ingested drug in Virginia, and alleged initial injury in Virginia). In particular, courts applying Illinois-choice-of-law rules have relied on the alleged

place of injury to determine the choice of law on motions to dismiss. *See In re Abbott Lab'ys*, 2023 WL 4273701, at *5 (applying New Jersey law where plaintiffs alleged injury in New Jersey); *Paulsen v. Abbott Lab'ys*, No. 15-cv-4144, 2018 WL 1508532, at *12-13 (N.D. Ill. Mar. 27, 2018) (applying Georgia law to product liability claims where plaintiff was Georgia resident, injected Lupron in Georgia, and alleged injury in Georgia).

Even where Michigan law will bar plaintiff's claims in their entirety, MDL courts in Illinois have applied Michigan law to product liability claims brought by Michigan residents. *See In re Depakote*, No. 12-CV-52-NJR-SCW, 2017 WL 4348052, at *1-2 (S.D. Ill. Sept. 28, 2017) (applying Michigan law to Michigan plaintiffs' product liability claims and granting summary judgment to defendant in all MDL cases involving Michigan residents); *In re Testosterone Replacement Therapy Prods. Liab. Litig.*, No. 14 C 1748, 2014 WL 7365872, at *10-11 (N.D. Ill. Dec. 23, 2014) (under Illinois choice-of-law rules, applying law of each MDL plaintiff's state of residence, including Michigan law to Michigan plaintiffs' product liability claims and dismissing those claims); *see also In re Prempro Prods. Liab.*, Nos. 4:03CV1507-WRW, 4:04CV01202, 2008 WL 1699211, at *2-4 (E.D. Ark. Apr. 9, 2008) (applying Michigan law to and dismissing product liability claims under Illinois choice-of-law rules where plaintiffs alleged injury in Michigan).

III. The Contacts of the Respective States Favor Application of Michigan Law.

Under Illinois law, courts next "examine the contacts of the respective states to determine which has a superior connection with the occurrence and thus would have a superior interest in having its policy or law applied." *Townsend*, 879 N.E.2d at 905. Illinois courts must identify and consider four contacts: "(a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties

is centered." *See Townsend*, 879 N.E.2d at 901 (quoting Restatement (Second) Conflicts of Law § 145 (1971)). Under this analysis, Michigan has the most contacts with the present lawsuit.

A. Michigan as the place of alleged injury favors application of Michigan law.

Plaintiff alleges she was injured in Michigan. *See* FAC ¶¶ 9-10 (Ex. A) (alleging she is a resident of Michigan, was diagnosed in Michigan, and received treatment with Tepezza® in Michigan), ¶ 13 (alleging her injury occurred in Michigan). Therefore, the place where the injury occurred clearly weighs in favor of Michigan law. *In re Testosterone*, 2014 WL 7365872, at *11 (finding this factor weighed in favor of applying the law of plaintiffs' residences—including Michigan to Michigan residents' claims—because "[i]t is reasonable to infer that defendants' drugs caused injury in each plaintiff's state of residence").

B. The location of the conduct that allegedly caused the alleged injury occurred in Michigan, favoring the application of Michigan law.

The second factor weighs in favor of Michigan because, according to the FAC, all conduct causing the injury took place in Michigan. *See* FAC ¶ 10 (Ex. A) (plaintiff diagnosed with TED and received Tepezza® infusions in Michigan); *id.* ¶ 18 (Horizon disseminated Tepezza® in Michigan); *id.* ¶ 20 (Horizon was "a pharmaceutical company involved in the manufacturing, research, development, marketing, distribution, sale, and release for use to the general public of pharmaceuticals, including Tepezza, in Michigan"). Under an Illinois choice of law analysis, this factor encompasses "all conduct from any source contributing to the injury." *Townsend*, 879 N.E.2d at 906. Such conduct includes plaintiff's treating physician's diagnosis, prescribing decision, and treatment of plaintiff with Tepezza®. Courts have found that the place of the prescribing decision outweighs the defendant's principal place of business in the pharmaceutical context. *See, e.g.*, *In re Abbott*, 2023 WL 4273701, at *4 (finding this factor "does not strongly favor the application of Illinois law" despite defendant's principal place of business being located

in Illinois because the decision to administer defendant's products occurred in New Jersey and plaintiffs and healthcare providers would have been exposed in New Jersey to defendant's advertising). The second factor, therefore, favors the application of Michigan law.

C. Plaintiff's residence and Horizon's place of incorporation and principal place of business is a neutral factor.

The third factor is neutral because the parties are domiciled in different states. Horizon is incorporated in Delaware with its principal place of business in Illinois, and plaintiff resides in Michigan. *See* FAC ¶¶ 9, 14 (Ex. A); *Townsend*, 879 N.E.2d at 906 (calling this factor a "wash" when the parties were domiciled in different states); *Paulsen*, 2018 WL 1508532, at *12 (finding domicile neutral where the plaintiffs resided in Georgia and the defendant resided in Illinois).

D. Michigan is the place where the relationship, if any, between the parties is centered.

The fourth factor favors application of Michigan law because the relationship between plaintiff and Horizon arose from plaintiff's treatment with Tepezza® in Michigan. *See* FAC ¶ 10 (Ex. A) (plaintiff diagnosed with TED and received Tepezza® infusions in Michigan); *id.* ¶ 18 (Horizon disseminated Tepezza® in Michigan); *id.* ¶ 20 (Horizon was "a pharmaceutical company involved in the manufacturing, research, development, marketing, distribution, sale, and release for use to the general public of pharmaceuticals, including Tepezza, in Michigan"). In product liability cases, Illinois courts find that the relationship between the parties is centered where the plaintiff used the product. *See Townsend*, 879 N.E.2d at 906 (concluding relationship was centered in state where product was used); *Paulsen*, 2018 WL 1508532, at *12 (finding parties' relationship centered in Georgia because "this is where Plaintiff was injected with Lupron").

The four contacts thus favor the application of Michigan law or cut neither way; no factor supports applying Illinois law.

IV. The Policies of the Respective States Favor Application of Michigan Law.

As a final step in its choice-of-law analysis, Illinois "test[s] the presumptive choice" against the contacts previously identified to ensure that each contact is meaningful in light of the policies sought to be vindicated by the conflicting laws." *See Townsend*, 879 N.E.2d at 905. To ensure that courts do not "merely count contacts," Illinois courts consider whether the contacts are meaningful under three principles: the relevant policies of the forum, the relevant policies and interests of other interested states in the determination of the particular issue, and the basic policies underlying the particular field of law. *See id.* at 906-07. The relevant policy factors weigh in favor of applying the law of the plaintiff's state of residence and the state with the most significant contacts, Michigan. The "most relevant considerations are the relevant policies and interests of the states at issue." *In re Abbott*, 2023 WL 4273701, at *5 (citing *Townsend*, 879 N.E.2d at 907).

These policies weigh in favor of Michigan law because "that state has a significant interest in having the personal injury claims of its citizens litigated under its laws." *In re Testosterone*, 2014 WL 7365872, at *11. The Michigan Legislature has made a substantive determination of liability: "that a drug manufacturer or seller that has properly obtained FDA approval of a drug product has acted sufficiently prudently so that no tort liability may lie." *Taylor*, 658 N.W.2d at 131. The statute "uses independently significant decisions of the FDA as a measuring device to set the standard of care for manufacturers and sellers of prescription drugs in Michigan." *Id.* at 137. Michigan enacted this immunity statute to make "prescription drugs more available to its residents," recognizing that Michigan residents benefit when prescription drugs are accessible and costs are lower. *See Rowe v. Hoffman-La Roche, Inc.*, 917 A.2d 767, 774-75 (N.J. 2007) (discussing Michigan's interest in having its statute applied); *id.* at 775 (quoting *Henderson v. Merck & Co.*, No. 04-CV-05987-LDD, 2005 WL 2600220, at *7 (E.D. Pa. Oct. 11, 2005) ("Michigan has a strong interest in applying its law to ensure that Michigan residents . . . are not

burdened with excessively high payments for prescription drugs, . . . even if that means immunizing *non-resident pharmaceutical companies* who do business in Michigan.")).

As the highest court in New Jersey determined when engaged in a similar choice-of-law analysis: "To allow a life-long Michigan resident who received an FDA-approved drug in Michigan and alleges injuries sustained in Michigan to by-pass his own state's law and obtain compensation for his injuries in this State's courts completely undercuts Michigan's interests, while overvaluing our true interest in this litigation." *Rowe*, 917 A.2d at 776; *see also In re Prempro*, 2008 WL 1699211, at *4 ("[W]hen a plaintiff is injured in his or her state of domicile, because of an activity centered in that state, a defendant's domicile in another state does not create a relationship that is so pivotal as to overcome the presumption favoring the law of the state of injury."). Michigan's strong policy interests favor the application of Michigan law. Plaintiff cannot overcome Illinois' strong presumption in applying the law of the place of injury.

In sum, these policy factors will be advanced by applying Michigan law. *See Townsend*, 879 N.E.2d at 907. Both states have the same interest in deterring alleged injury-causing conduct, but Michigan is the only state with an interest in regulating the compensation of its residents. Illinois' adoption of strict liability reflects a consumer protective policy that has minimal applicability to a non-Illinois resident. And applying the law of Illinois will encourage forum shopping by plaintiffs from states like Michigan that bar plaintiff's claims. Michigan law should, therefore, govern liability.

CONCLUSION

For the foregoing reasons, the Court should grant this motion and dismiss plaintiff Merriweather's First Amended Complaint in its entirety for failure to state a claim under Michigan

law because Michigan law plainly exempts prescription drug manufacturers of FDA-approved drugs from liability.[5]

Dated: July 19, 2024

Respectfully Submitted,

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[5] If the Court finds that plaintiff rebutted the presumption that Michigan law applies to plaintiff Merriweather's claims, plaintiff's claims still fail under Illinois law for the reasons set forth in Horizon's simultaneously-filed omnibus motions to dismiss. *See* Horizon's Motion to Dismiss Nine Initial Bellwether Discovery Complaints Pursuant to Fed. R. Civ. P. 12(b)(6), *In re Tepezza*, No. 1:23-cv-03568 (N.D. Ill. July 19, 2024), ECF No. 177; Horizon's Motion to Dismiss the Design Defect Claims in Eleven Initial Bellwether Discovery Complaints Pursuant to Fed. R. Civ. P. 12(b)(6), *In re Tepezza*, No. 1:23-cv-03568 (N.D. Ill. July 19, 2024), ECF No. 180.