

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: HYDROXYCUT MARKETING AND SALES  
PRACTICES LITIGATION**

Shirley Clark La Blanche v. Iovate Health Sciences USA, Inc.,     )  
et al., S.D. Texas, C.A. No. 4:11-4503                                     )     MDL No. 2087

**TRANSFER ORDER**

**Before the Panel:**\* Pursuant to Panel Rule 7.1, plaintiff in this action (*La Blanche*), who is proceeding *pro se*, moves to vacate our order conditionally transferring the action to MDL No. 2087. Defendants<sup>1</sup> oppose the motion.

In opposing transfer, plaintiff argues, *inter alia*, that transfer would be inconvenient, given her serious health conditions, and that her action is unique because there are no other wrongful death actions pending in this MDL. While we are sympathetic to arguments regarding plaintiff's health conditions, such arguments are best addressed by the transferee judge.<sup>2</sup> Transfer of *La Blanche* will facilitate plaintiff's access to the discovery already produced in the MDL. Moreover, we note that there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise. *See, e.g.*, Fed.R.Civ.P. 45(c). Further, plaintiff is incorrect as to her second argument, since at least two currently pending MDL actions are wrongful death actions arising from the ingestion of Hydroxycut products. *See Harris v. Kerr Investment Holding Corp., et al.*, S.D. California, C.A. No. 11-cv-146 (transferred to MDL No. 2087 in January 2011); and *Thompson v. GNC Corporation, et al.*, S.D. California, C.A. No. 11-cv-660 (transferred in March 2011).

After considering all argument, we find that *La Blanche* involves common questions of fact with actions in this litigation previously centralized in this MDL, and that transfer of the action to the Southern District of California for inclusion in the centralized proceedings will serve the convenience

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\* Judge Kathryn H. Vratil did not participate in the decision of this matter.

<sup>1</sup> Iovate HC 2005 Formulations, Ltd, Iovate Health Sciences International, Inc., Iovate Health Sciences Research, Inc., Iovate Health Sciences USA, Inc, Kerr Investment Holding Corp. f/k/a Iovate Health Sciences Group Inc., Muscletech Research and Development Inc.

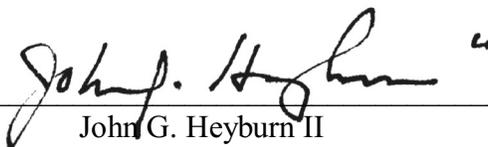
<sup>2</sup> We note that plaintiff argues that she has several health conditions that make transfer of her action to the MDL No. 2087 proceedings particularly inconvenient for her and for which she requests reasonable accommodation under the Americans with Disabilities Act. We are unwilling, based on the record before us, to make a determination with respect to this issue; instead, we dedicate the matter to the transferee judge, who can more fully explore plaintiff's arguments. Should the transferee judge deem remand of this or any other actions appropriate, then he may accomplish this by filing a suggestion of remand to the Panel. *See* Panel Rule 10.1.

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of the parties and witnesses and promote the just and efficient conduct of the litigation. Similar to plaintiffs in other previously-centralized actions, the *La Blanche* plaintiff alleges wrongful death caused by the decedent's ingestion of Hydroxycut products. See *In re Hydroxycut Mktg. & Sales Pracs. Litig.*, 655 F. Supp. 2d 1357 (J.P.M.L. 2009).

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of California, and, with the consent of that court, assigned to the Honorable Barry Ted Moskowitz for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "John G. Heyburn II", is written above a horizontal line. The signature is cursive and includes a small mark at the end.

John G. Heyburn II  
Chairman

W. Royal Furgeson, Jr.  
Paul J. Barbadoro  
Charles R. Breyer

Barbara S. Jones  
Marjorie O. Rendell