

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

**IN RE: FRESENIUS GRANUFLO/NATURALYTE  
DIALYSATE PRODUCTS LIABILITY LITIGATION**

MDL No. 2428

**TRANSFER ORDER**

**Before the Panel:** Plaintiffs in the *Aquino* action listed on Schedule A move under Panel Rule 7.1 to vacate our order that conditionally transferred *Aquino* to the District of Massachusetts for inclusion in MDL No. 2428. Defendants Fresenius USA, Inc., Fresenius USA Manufacturing, Inc., Fresenius Medical Care Holdings, Inc., d/b/a Fresenius Medical Care North America, and Fresenius USA Marketing, Inc. (collectively, Fresenius), oppose the motion.

In support of their motion to vacate, plaintiffs contend that transfer is inappropriate because *Aquino* was improperly removed from California state court. The Panel, though, has held that such jurisdictional issues generally do not present an impediment to transfer.<sup>1</sup> *See, e.g., In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). Plaintiffs can present their remand arguments to the transferee judge.<sup>2</sup>

After considering the argument of counsel, we find that *Aquino* involves common questions of fact with the actions previously transferred to MDL No. 2428, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that the District of Massachusetts was an appropriate Section 1407 forum for actions sharing factual questions arising out of allegations that plaintiffs suffered injury or death caused by the use of GranuFlo Acid Concentrate or NaturaLyte Liquid Acid Concentrate during hemodialysis and that such use of these

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<sup>1</sup> Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so. Plaintiffs in *Aquino* have not yet filed a remand motion.

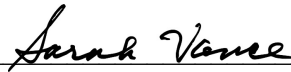
<sup>2</sup> Plaintiffs also ask the Panel to order defendants to produce proof of their jurisdictional residence. Section 1407, though, “does not empower the MDL Panel to decide . . . issues relating to a motion to remand.” *In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990). Accordingly, plaintiffs’ request should be directed to the transferee court.

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products may cause metabolic alkalosis in patients resulting in low blood pressure, hypokalemia, hypoxemia, hypercapnia, cardiac arrhythmia, or cardiopulmonary arrest. *See In re Fresenius GranuFlo/NaturaLyte Dialysate Prods. Liab. Litig.*, 935 F. Supp. 2d 1362, 1362-63 (J.P.M.L. 2013). *Aquino* involves similar allegations that plaintiffs' decedent suffered metabolic alkalosis as a result of the use of GranuFlo or NaturaLyte during hemodialysis. This action thus involves factual questions relating to whether these products were defectively designed or manufactured, whether Fresenius knew or should have known of these products' alleged propensity to cause injury, and whether Fresenius provided adequate instructions and warnings with these products.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of Massachusetts and, with the consent of that court, assigned to the Honorable Douglas P. Woodlock for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Lewis A. Kaplan  
R. David Proctor  
Karen K. Caldwell

Ellen Segal Huvelle  
Catherine D. Perry  
Nathaniel M. Gorton

**IN RE: FRESENIUS GRANUFLO/NATURALYTE  
DIALYSATE PRODUCTS LIABILITY LITIGATION**

MDL No. 2428

**SCHEDULE A**

Central District of California

AQUINO, ET AL. v. FRESENIUS USA, INC., ET AL., C.A. No. 2:18-09987