

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

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IN RE: LIPITOR (ATORVASTATIN	)	
CALCIUM) MARKETING, SALES	)	<b>MDL No. 2:14-mn-02502-RMG</b>
PRACTICES AND PRODUCTS	)	
LIABILITY LITIGATION	)	<b>CASE MANAGEMENT ORDER NO. 31</b>
	)	
	)	<b>This Order relates to cases:</b>
	)	
	)	<b>2:14-cv-0523</b>
	)	<b>2:14-cv-0632</b>
	)	<b>2:14-cv-1382</b>
	)	<b>2:14-cv-1500</b>
	)	

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**Pfizer’s Motions to Dismiss (Dkt. Nos. 763, 764, 765, 766)**

**A. Background**

Pfizer moved to dismiss the claims of four Plaintiffs without prejudice but with the conditions specified in Case Management Order No. 12 because Plaintiffs have not complied with their discovery obligations and this Court’s Orders. (Dkt. Nos. 763-766). Each of these plaintiffs have failed to serve a Plaintiff Fact Sheet or provided accompanying medical authorizations in accordance with this Court’s orders. (*Id.*). In each of these cases, Plaintiffs’ counsel have moved to withdraw because counsel was unable to reach or obtain responses from Plaintiffs. (Dkt. Nos. 319, 320, 323, 329).

**B. Legal Standard**

A defendant may move to dismiss any claim against it if the plaintiff fails to prosecute the claim, fails to comply with the Federal Rules of Civil Procedure, or fails to comply with a Court order. Fed. R. Civ. P. 41(b). The Court may also dismiss an action for failure to obey a discovery order under Fed. R. Civ. P. 37(b)(2). In determining whether dismissal is appropriate,

the Court should consider “(i) the degree of personal responsibility of the plaintiff; (ii) the amount of prejudice caused the defendant; (iii) the existence of a history of deliberately proceeding in a dilatory fashion, and (iv) the existence of a sanction less drastic than dismissal.” *Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989). However, these four factors “are not a rigid four-prong test,” and “the propriety of a dismissal . . . depends on the particular circumstances of the case.” *Ballard*, 882 F.2d at 95.

Furthermore, “[r]igid application of these factors is unnecessary if the district court provided an ‘explicit and clear’ warning that the failure to comply with the order would result in dismissal of the case.” *Bailey v. Edwards*, 573 Fed. App’x 268, 269 (4th Cir. 2014); *see also Coles v. Northcutt*, 574 F. App’x 268, 269 (4th Cir. 2014) (“[G]enerally, a district court does not abuse its discretion in dismissing an action when a party fails to comply with a reasonable court order after being warned of the consequences of neglecting the court’s direction.”).

Courts are given broad discretion in managing an MDL docket with thousands of cases. *See, e.g., In re Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*, 496 F.3d 863, 867 (8th Cir. 2007). Because MDLs were created by Congress to encourage efficiency, “MDL courts must be able to establish schedules with firm cutoff dates if the coordinated cases are to move in a diligent fashion toward resolution by motion, settlement, or trial.” *Id.* (internal quotations omitted). Thus, MDL courts have “greater discretion to organize, coordinate and adjudicate its proceedings, including the dismissal of cases for failure to comply with its orders.” *Id.*

### **C. Discussion**

The Court finds that dismissal is warranted under the circumstances here. By Court order, these Plaintiffs’ completed Plaintiff Fact Sheet was due on June 2, 2014. (*See* CMO 5 , Dkt. No. 110). In CMO 6, the Court explicitly stated that

Any Plaintiff who fails to comply with any discovery obligations imposed by CMO 5 or by this Order within the time periods set forth herein — including provision of a PFS or required authorizations and other Mandatory Disclosures — may be subject to having her claims, as well as any derivative claim(s), dismissed if good cause is shown. Good cause shall exist where there is a material deficiency in responding to the required discovery, i.e., one that prejudices Pfizer through a failure to provide necessary information, thereby impeding Pfizer’s access to material and relevant evidence.

(Dkt. No. 148 at 6).<sup>1</sup>

In all of these cases, Pfizer provided notice of Plaintiffs’ failure to provide a Fact Sheet and allowed time for Plaintiffs to cure the deficiencies. In all cases, Pfizer received no response, and counsel cannot even reach Plaintiffs.

The basic facts that Plaintiffs have failed to provide to Pfizer are needed for Pfizer to assess the quality of their cases, and failure to provide such information prejudices Pfizer in this litigation. *See In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217, 1234 (9th Cir. 2009) (“[T]he purpose of the Plaintiff’s Fact Sheet was to give each defendant the specific information necessary to defend the case against it, and that without this device, a defendant was unable to mount its defense because it had no information about the plaintiff or the plaintiff’s injuries outside the allegations of the complaint.”); *In re Guidant Corp.*, 496 F.3d at 867 (“Given the time pressure on a defendant that must investigate the claims of nearly 1,400 plaintiffs, we consider the danger of prejudice substantial.”). Plaintiffs’ delay also impacts the other plaintiffs in this litigation “by unfairly diverting the time and attention of the court away from their timely claims to that of [this plaintiff].” *In re Guidant Corp.*, 496 F.3d at 867.

The information requested should be readily available to Plaintiffs. Plaintiffs bear responsibility for their failure to adequately supply such information, and they have provided no reason for their failure to comply with this Court’s order. This behavior is at least “a blatant

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<sup>1</sup> Plaintiffs agreed and consented to this Order.

disregard for the deadlines and procedure imposed by the court.” *In re Guidant Corp.*, 496 F.3d at 867. Therefore, the Court finds that dismissal is appropriate.

#### **D. Conclusion**

For the reasons stated above, Pfizer’s Motions to Dismiss (Dkt. Nos. 763, 764, 765, 766) are **GRANTED**. The actions *Gladys Board v. Pfizer, Inc.*, No. 2:14-cv-0523, *Cynthia Shelley v. Pfizer, Inc.*, No. 2:14-cv-632, and *Jeanette Anderson v. Pfizer, Inc.*, No. 2:14-cv-1382 are **DISMISSED WITHOUT PREJUDICE** but with the following conditions:

If Plaintiffs seeks to refile their actions against Pfizer,

- (1) They must do so in the United States District Court for the District of South Carolina or other federal district court;
- (2) They must file a “Single-Plaintiff Complaint.” A “Single-Plaintiff Complaint” is a complaint filed: (1) by an individual plaintiff; (2) by a plaintiff and family member plaintiffs; or (3) on behalf of the estate of a deceased individual, together with any family members and/or beneficiaries of such estate;
- (3) They must not oppose transfer to this MDL proceeding;
- (4) They must not name a defendant that defeats federal diversity jurisdiction; and
- (5) They must serve a completed Plaintiff Fact Sheet and accompanying disclosures and medical authorizations on Pfizer in accordance with CMO 5 and Amended CMO 6 *before* filing suit and attach a certificate of service reflecting that she has done so to her complaint.

The claims of Julie Williams in *Gunawan, et. al., v. Pfizer, Inc.*, No. 2:14-cv-1500<sup>2</sup> are **DISMISSED WITHOUT PREJUDICE** but with the following conditions:

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<sup>2</sup> This action has multiple plaintiffs.

If Plaintiff seeks to refile her action against Pfizer,

- (1) She must do so in the United States District Court for the District of South Carolina or other federal district court;
- (2) She must file a "Single-Plaintiff Complaint." A "Single-Plaintiff Complaint" is a complaint filed: (1) by an individual plaintiff; (2) by a plaintiff and family member plaintiffs; or (3) on behalf of the estate of a deceased individual, together with any family members and/or beneficiaries of such estate;
- (3) She must not oppose transfer to this MDL proceeding;
- (4) She must not name a defendant that defeats federal diversity jurisdiction; and
- (5) She must serve a completed Plaintiff Fact Sheet and accompanying disclosures and medical authorizations on Pfizer in accordance with CMO 5 and Amended CMO 6 *before* filing suit and attach a certificate of service reflecting that she has done so to her complaint.

Plaintiffs are advised that if they attempt to refile their suits without complying with the above conditions, the Court may dismiss their second suit with prejudice.

**AND IT IS SO ORDERED.**



Richard Mark Gergel  
United States District Court Judge

March 23, 2015  
Charleston, South Carolina