

addresses Pfizer's motion with regard to the remaining Plaintiffs at issue in Pfizer's motion who have not been granted a further extension by CMO 57. None of the Plaintiffs at issue here have complied with CMOs 5 & 6 or provided any meaningful response to Pfizer's motion.

B. Legal Standard

A defendant may move to dismiss any claim against it if the plaintiff fails to prosecute, 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 F. App'x 268, 269 (4th Cir. 2014); *see also Coles v. Northcutt*, 574 F. App'x 268 (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

Three Plaintiffs (Ann & Louis Jennings, Case No. 2:15-cv-0973; Danna Cavnar, Case No. 2:15-cv-1573; and Deborah Arnold, Case No. 2:15-cv-1793) have not responded to Pfizer’s motion to dismiss and have not provided the required PFS. Nine other Plaintiffs received an extension to October 26, 2015, to provide PFSs and an extension until October 31, 2015, to respond to Pfizer’s motion to dismiss. (CMO 46, Dkt. No. 1160; CMO 52, Dkt. No. 1236; Dkt. No. 1229-2). Yet, these nine Plaintiffs (Mildred Leary, Jean McKenzie, Margie Oliver, Cyntia Rathe, Katherine Sass, Francis Tinker, and Sandra Williams in Case No. 2:15-cv-1911 and Annie Sanchez and Joeann Phillips in Case No. 2:15-cv-1912) still did not respond to Pfizer’s motion and have still not provided the required PFS.

One Plaintiff (Diane & Robert Jogerst, Case No. 2:15-cv-1572) requested a thirty-day extension on September 11, 2015. (Dkt. No. 1118). This Plaintiff has now had an additional 90 days to provide this information and supplement her response to Pfizer’s motion, but has not done so. Four other Plaintiffs (Margaret & John Dabrowski, Case No. 2:15-cv-1134; Eva & John Haltiner, Case No. 2:15-cv-1407; Nancy Mason, Case No. 2:15-cv-0799; and Peggy Canalori, Case No. 2:15-cv-1499) filed essentially meaningless responses. (*See* Dkt. Nos. 1065, 1066, 1067, 1068). These four Plaintiffs state without any further explanation that, “[a]t this time,” they “are not in possession of the requisite information necessary to complete the Plaintiff Fact Sheet.” (*Id.*). At least some of the information requested by the PFS is in certainly known

to Plaintiffs at this time, such as Plaintiff's name, date of birth, highest level of education, spouse's name, residences, employment history, etc. Yet these Plaintiffs have provided none of the information requested on the PFS or made any attempt whatsoever to comply with their discovery obligations.

The Court finds that dismissal with prejudice is warranted under the circumstances here. By Court order, completed Plaintiff Fact Sheets were due in these cases months ago. (*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).¹

The Order goes on to state that when a Plaintiff fails to materially comply with her obligations under CMO 5, Pfizer's counsel must send a notice of the material deficiency to Plaintiff's counsel and allow Plaintiff fourteen days to cure the alleged material deficiency. (*Id.*) If the deficiency is not cured within that time or within an agreed extension, Pfizer may move for dismissal with prejudice, as it has done here. (*Id.*)

These Plaintiff Fact Sheets are basic facts needed for Pfizer to assess the quality of these 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

¹ Plaintiffs agreed and consented to this Order.

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 thousands of plaintiffs in this litigation "by unfairly diverting the time and attention of the court away from their timely claims to that of [these plaintiffs]." *In re Guidant Corp.*, 496 F.3d at 867.

The information requested should be readily available to Plaintiffs, and Plaintiffs bear responsibility for their failure to adequately supply such information. Plaintiffs have failed to provide such information despite multiple warnings from the Court, and *Plaintiffs have provided no reason whatsoever for their failure to comply with this Court's order.* This behavior is at least "a blatant 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 with prejudice is appropriate. *See In re Phenylpropanolamine*, 460 F.3d at 1233-34 (affirming district court's dismissal of actions with prejudice for failure to cure deficiencies in Plaintiff Fact Sheets by the deadlines in the Court's case management order); *In re Guidant Corp.*, 496 F.3d at 867-68 (affirming district court's refusal to set aside dismissal with prejudice for failure to serve Plaintiff Fact Sheets as required by court order).

D. Conclusion

Pfizer's Motion to Dismiss (Dkt. No. 1052) is **GRANTED IN PART.**²

² This Order does not address Pfizer's motion with regard to the Plaintiffs granted an extension by CMO 57.

The claims of the following Plaintiffs are **DISMISSED WITH PREJUDICE**:

Plaintiff	Case No.
Nancy Mason	2:15-cv-0799
Ann Jennings	2:15-cv-0973
Louis Jennings	2:15-cv-0973
Margaret Dobrowski	2:15-cv-1134
John Dabrowski	2:15-cv-1134
Eva Haltiner	2:15-cv-1407
John Haltiner	2:15-cv-1407
Peggy Canalori	2:15-cv-1499
Diane Jogerst	2:15-cv-1572
Robert Jogerst	2:15-cv-1572
Donna Cavnar	2:15-cv-1573
Deborah Arnold	2:15-cv-1793
Mildred Leary	2:15-cv-1911
Jean McKenzie	2:15-cv-1911
Margie Oliver	2:15-cv-1911
Cynthia Rathe	2:15-cv-1911
Katherine Sass	2:15-cv-1911
Francis Tinker	2:15-cv-1911
Sandra Williams	2:15-cv-1911
Joeann Phillips	2:15-cv-1912
Annie Sanchez	2:15-cv-1912

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

December 17, 2015
Charleston, South Carolina