



2:15-cv-1911, *Galstain, et. al., v. Pfizer, Inc.*, Case No. 2:15-cv-1912 and *Ayrapetyan, et. al. v. Pfizer, Inc.*, Case No. 2:15-cv-1913.

### **A. Background**

These three multi-plaintiff cases were transferred to this MDL on May 1, 2015. (Dkt. No. 866). Thus, under CMO 5 and Amended CMO 6, the Plaintiffs in these three cases were required to serve Plaintiff Fact Sheets and accompanying disclosures by June 1, 2015. (Dkt. Nos. 110, 148). Plaintiffs did not provide any information by this deadline, and Pfizer wrote counsel about the failure on July 14, 2015. (Dkt. No. 1052-9). Pfizer stated that it would seek dismissal of the claims if Plaintiffs did not provided the required information by July 28, 2015. (*Id.*). Plaintiffs failed to respond to Pfizer's letter and failed to provide any of the required information. Thus, Pfizer filed the instant motion to dismiss on August 24, 2015. (Dkt. No. 1052).

After Pfizer filed its motion, the parties stipulated to an extension of time to provide the required information. (Dkt. No. 1122). On October 1, 2015, the Court approved the stipulation in CMO 46, which gave Plaintiffs until October 26, 2015, to provide the required information. (Dkt. No. 1160). Again, Plaintiffs failed to meet this deadline, and the parties agreed to another extension. (Dkt. No. 1229). On November 4, 2015, the Court approved the stipulation in CMO 52, which gave Plaintiffs until December 14, 2015, to provide the required information. (Dkt. No. 1236).

Plaintiffs failed to meet the December 14, 2015 deadline, and the parties agreed to yet another extension. (Dkt. No. 1286). The Court approved this stipulation in CMO 57, which gave Plaintiffs until January 28, 2016, to provide the required information. (Dkt. No. 1287). CMO 57 provided that the motion to dismiss would proceed as to any plaintiffs "who fail to

provide complete and compliant PFSs and other mandatory disclosures by January 28, 2016.” (*Id.* at 2). Plaintiffs’ time to respond to the motion was extended to February 4, 2016. (*Id.*).

Eighty (80) of these Plaintiffs have still provided no information whatsoever in accordance with CMOs 5 and 6. (*See* Dkt. No. 1385-1).<sup>1</sup> These eighty Plaintiffs have also filed no response to Pfizer’s motion. Twenty-five (25) Plaintiffs have provided some information, but these Plaintiffs’ PFSs and mandatory disclosures are materially deficient. (Dkt. No. 1385-2). With the exception of one Plaintiff, Melva Bowman, the disclosures were woefully deficient with extensive information missing. (*See id.*). For example, Plaintiff Edna Robertson provided a PFS with her name and *no* other information. A number of these Plaintiffs did not provide signed medical authorizations, which were clearly required by the Court’s orders. (*Id.*).

#### **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.

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<sup>1</sup> This exhibit lists eighty-one (81) Plaintiffs. Plaintiff Dorothy Bender was erroneously listed on Exhibit A, rather than Exhibit B. (Dkt. No. 1394 at 2 n.3; Dkt. No. 1430 at 2 n.1).

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. Non-responsive Plaintiffs**

With regard to the eighty (80) Plaintiffs that have failed to provide any response, the Court finds dismissal with prejudice appropriate. The Court also finds that Plaintiff Edna Robertson, who provided no information other than her name, failed to make any attempt to comply with the Court’s orders and dismisses her claims with prejudice. By Court order, completed Plaintiff Fact Sheets were due in these cases almost 10 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).<sup>2</sup>

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 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 approximately 5,000 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 follow-up by Pfizer, and

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<sup>2</sup> Plaintiffs agreed and consented to this Order.

*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. Other Plaintiffs**

With regard to the remaining twenty-four Plaintiffs, the Court dismisses the claims of all but one of these Plaintiffs without prejudice and with the conditions stated below. Plaintiffs argue that they did not have notice of the listed deficiencies until Pfizer's renewal of its motion, and that dismissal is too harsh a sanction. (Dkt. No. 1394). However, with the exception of Plaintiff Melva Bowman, the deficiencies are obvious and blatant. (Dkt. No. 1385-2). Plaintiffs cannot credibly argue, and do not attempt to argue, that these disclosures are adequate, but argue they should have yet additional time to cure deficiencies. Plaintiffs have had ample time. The Court dismisses their claims without prejudice, such that they may rejoin the MDL once they have complied with the Court's orders.

The Court denies the motion as to Melva Bowman. Her PFS only has two material deficiencies: it fails to provide the dates of treatment for identified healthcare providers and fails to provide dates of use for identified pharmacies. Plaintiff is ordered to provide an Amended

PFS with this information within fourteen (14) days of the date of this order. If she does not do so, Pfizer may renew its motion as to Plaintiff Bowman.

#### E. Conclusion

Pfizer's Motion to Dismiss (Dkt. No. 1052) is **GRANTED IN PART**. The claims of the following Plaintiffs are **DISMISSED WITH PREJUDICE**:

<b>Plaintiff</b>	<b>Case No.</b>
Lee, Jewell D.L.	2:15-cv-01911
Lindsley, Chondella	2:15-cv-01911
Lively, Beverly	2:15-cv-01911
Major, Mary	2:15-cv-01911
Marron, Monica	2:15-cv-01911
Martin, Mary	2:15-cv-01911
Mayo, Lena	2:15-cv-01911
Mills, Darlene	2:15-cv-01911
Mitchell, Lillie Elizabeth	2:15-cv-01911
Moore, Mary	2:15-cv-01911
Morgan, Ruby	2:15-cv-01911
Muradyan, Marieta	2:15-cv-01911
Murry, Luevina	2:15-cv-01911
Orlovski, Alta May	2:15-cv-01911
Ovrebo, Louis	2:15-cv-01911
Rivers, Evangeline	2:15-cv-01911
Robertson, Grace	2:15-cv-01911
Ruppel, Salvacion	2:15-cv-01911
Russell, Annie	2:15-cv-01911
Sancic, Linda	2:15-cv-01911
Sanders, Gwendolyn	2:15-cv-01911
Scott, Beatrice	2:15-cv-01911
Smalls, Barbara	2:15-cv-01911
Smith, Dorothy	2:15-cv-01911
Terlizzi, Ellen	2:15-cv-01911
Thomas, Joyce	2:15-cv-01911
Walker, Ruby	2:15-cv-01911
Williams, Darlene	2:15-cv-01911
Williams-Hall, Joyce	2:15-cv-01911
Wyne, Barbara	2:15-cv-01911
Boone, Carolyn	2:15-cv-01912
Chavis, Joyce	2:15-cv-01912
Evans, Marjorie	2:15-cv-01912
Faulkner, Delores	2:15-cv-01912

Fiedler, Susan	2:15-cv-01912
Forbes, Deborah	2:15-cv-01912
Gustafson, Susie	2:15-cv-01912
Hughes, Rosie	2:15-cv-01912
Ingram, Brenda	2:15-cv-01912
Ivery, Melva	2:15-cv-01912
Jacobs, Chermorrow	2:15-cv-01912
Jemison, Vanessa	2:15-cv-01912
Johnson, Mary	2:15-cv-01912
Jones, Ethel	2:15-cv-01912
Jones, Regina	2:15-cv-01912
Knoll, Connie	2:15-cv-01912
Lopez, Libertad	2:15-cv-01912
Obialko, Florence	2:15-cv-01912
Paulk, Viola	2:15-cv-01912
Russell, Anna	2:15-cv-01912
Sherman, Lorna	2:15-cv-01912
Wheeler, Melody	2:15-cv-01912
Williams, Clara	2:15-cv-01912
Williams, Jimmie	2:15-cv-01912
Wilson, Gracie	2:15-cv-01912
Wright, Margie	2:15-cv-01912
Agnew, Susan	2:15-cv-01913
Alexander, Mary	2:15-cv-01913
Benton, Mable	2:15-cv-01913
Bowman, Patsy	2:15-cv-01913
Brown, Bertha	2:15-cv-01913
Brown, Sandra	2:15-cv-01913
Buscy, Roylene	2:15-cv-01913
Cloud, Debra	2:15-cv-01913
Coleman, Beverly	2:15-cv-01913
Coleman, Hiwatha	2:15-cv-01913
Cross, Joyce	2:15-cv-01913
De La Rosa, Leonora	2:15-cv-01913
Dewitt, Pamela	2:15-cv-01913
Dupree, Gardenia	2:15-cv-01913
Ellis, Marion	2:15-cv-01913
Green, C.A.	2:15-cv-01913
Hudson, Raynell	2:15-cv-01913
Jackson, Lueirether	2:15-cv-01913
Jernigan, Willa	2:15-cv-01913
Jones, Minnie Lee	2:15-cv-01913
Lyons, Yvette	2:15-cv-01913
Robertson, Edna	2:15-cv-01913
Rodgers, Deborah	2:15-cv-01913

Stokes, Linda	2:15-cv-01913
Tehrani, Fatemeh	2:15-cv-01913

The claims of the following Plaintiffs

<b>Plaintiff</b>	<b>Case No.</b>
Parks, Ruby	2:15-cv-01911
Perkins, Sheryl	2:15-cv-01911
Tan, Nina	2:15-cv-01911
Walker Sandra	2:15-cv-01911
Ware, Sheila	2:15-cv-01911
Williams, Beverly A.	2:15-cv-01911
Bender, Dorothy	2:15-cv-01912
Birtch, Holly	2:15-cv-01912
Brown, Margo	2:15-cv-01912
Douthett, Patricia	2:15-cv-01912
Goodson, Stephanie	2:15-cv-01912
Hayes, Wanda	2:15-cv-01912
Hixon, Frances	2:15-cv-01912
Jackson, Louversia	2:15-cv-01912
Padilla, Victoria	2:15-cv-01912
Reeves, Carrie	2:15-cv-01912
Robbins, Kelly Denease	2:15-cv-01912
Toney, Carrie	2:15-cv-01912
Ayrapetyan, Seda	2:15-cv-01913
Baskin, Deborah	2:15-cv-01913
Bracey, Barbara	2:15-cv-01913
Jackson, Tracee	2:15-cv-01913
Simmons, Deloris	2:15-cv-01913

are **DISMISSED WITHOUT PREJUDICE** but with the following conditions:

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.

The motion is **DENIED WITHOUT PREJUDICE** as to Plaintiff Melva Bowman in Case No. 2:15-cv-01913. Plaintiff Bowman must serve a compliant PFS within fourteen (14) days of the date of this Order. If she does not, Pfizer may renew its motion to dismiss.

**AND IT IS SO ORDERED.**



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Richard Mark Gergel  
United States District Court Judge

March 30, 2016  
Charleston, South Carolina