

medical conditions, healthcare providers, alcohol and tobacco use, exercise and physical activity, diet and nutrition, and communications with Pfizer were all left entirely blank. (Dkt. No. 1495-2).

After Pfizer filed a motion to dismiss for failure to provide a PFS, Plaintiffs provided an updated PFS that included some additional information but still did not provide Ms. Peters' employment history, health and medical history, disability history, medical conditions, family medical history, or details regarding her health care providers. Plaintiffs also did not provide information regarding Ms. Peters' alleged injuries and damages. In CMO 78, the Court found this updated PFS "still materially deficient," but noted that the Peters Plaintiffs were "attempting to attain the necessary information but have to seek it from various sources as Ms. Peters is deceased." (Dkt. No. 1520 at 6). Therefore, the Court ordered the Peters Plaintiffs to provide a material complete PFS within 45 days of the date of CMO 78, and, if they did not do so, Pfizer could renew its motion to dismiss. (*Id.*).

On June 22, 2016, Plaintiffs served an amended PFS. On July 26, 2016, Pfizer renewed its motion to dismiss, complaining that "Plaintiffs have provided inconsistent dates for Ms. Peters' alleged diabetes diagnosis," "Plaintiffs have failed to provide the dates of Ms. Peters' alleged Lipitor use," and "it is unclear whether [Ms. Peters] took Lipitor prior to any diabetes diagnosis." (Dkt. No. 1590 at 2). Pfizer also complains that other sections regarding Ms. Peters' medical history and prescription history "do not provide the complete information required." (*Id.* at 4).

Plaintiffs argue that the records they have provided show that their mother was prescribed 20 mg of Lipitor at least as far back at 1999, and that the medical records show she was being treated for diabetes. (Dkt. No. 1604 at 2-3). Plaintiffs stated that they have provided Pfizer with

“a signed HIPPA” and that they are in the process of requesting additional medical records. (*Id.* at 3).

The Court finds dismissal unwarranted in this situation. Fed. R. Civ. P. 26(g) requires Plaintiffs to make a reasonable inquiry in responding to discovery requests. They have done so and provided what information is within their knowledge and what documents are currently in their custody and control. Plaintiffs have an obligation to continue to supplement their discovery responses as they learn of new information and obtain new records. Fed. R. Civ. P. 26(e). If Plaintiffs ultimately cannot prove that Ms. Peters took Lipitor prior to her diagnosis of diabetes, this may prove fatal to their claim on summary judgment. However, their failure to do so is not a willful failure to comply with discovery obligations or this Court’s orders. Therefore, Pfizer’s motion is denied.

For the reasons stated below, Pfizer’s Renewed Motion to Dismiss (Dkt. No. 1590) is **DENIED.**

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

November 3-2, 2016
Charleston, South Carolina