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

IN RE: LIPITOR (ATORVASTATIN) CALCIUM) MARKETING, SALES)	MDL No. 2:14-mn-02502-RMG
PRACTICES AND PRODUCTS)	CASE MANAGEMENT ORDER NO. 101
LIABILITY LITIGATION)	
)	This Order relates to all cases.
)	
)	
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)	

ORDER TO SHOW CAUSE WHY SUMMARY JUDGMENT SHOULD NOT BE GRANTED ON ALL REMAINING CLAIMS

The Court has excluded Plaintiffs' expert testimony on general causation with respect to dosages of less than 80 mg. (*See* CMO 49, Dkt. No. 1197; CMO 68, Dkt. No. 1469). The Court has also excluded the expert testimony of Dr. David Handshoe and Dr. Elizabeth Murphy, the two specific causation experts in the bellwether cases. (CMO 55; Dkt. No. 1283; CMO 76, Dkt. No. 1517). Because the two bellwether Plaintiffs had no evidence of general or specific causation, the Court granted summary judgment to Defendant in those cases. (CMO 96, Dkt. No. 1790; CMO 97, Dkt. No. 1791).

On January 25, 2016, the Court issued an order to show cause, requiring any plaintiff who asserted that her claim could survive summary judgment on specific causation if the Court's ruling in CMO 55, excluding the specific causation testimony of Dr. Murphy, was correct to provide notice to the Court. (CMO 65, Dkt. No. 1352). No Plaintiff came forward, and the Court ultimately granted summary judgment in all cases pending in the MDL as of January 25, 2016, on that ground. (CMO 99, Dkt. No. 1796; CMO 100, Dkt. No. 1797). In cases where the

Plaintiff ingested dosages of Lipitor of less than 80 mg prior to diagnosis of diabetes, the Court also granted summary judgment on the ground that these Plaintiffs had no evidence that created a genuine issue of material fact as to general causation. (CMO 100, Dkt. No. 1797).

The only cases now remaining in the MDL are cases that became a part of the MDL after the Court's January 25, 2016 order to show cause. The Court's analysis in CMO 99 and CMO 100 appears to apply to the remaining cases pending in this MDL. Therefore,

IT IS ORDERED THAT

- A. All remaining Plaintiffs in this MDL are **ORDERED TO SHOW CAUSE** why the Court should not grant summary judgment to Defendant(s) for the reasons stated in CMO 99 and CMO 100;
- B. If any Plaintiff believes that she could produce expert testimony on specific causation that would survive *Daubert* should the Court's ruling in CMO 55 be upheld on appeal, she shall provide notice to the Court within 15 days of the date of this Order and set forth with specificity how her case is distinguished from the Court's ruling in CMO 55. The Court will then promptly set a schedule in each such case for identifying expert witnesses, submitting expert reports, deposing identified experts and briefing on *Daubert* and dispositive motions;
- C. If any Plaintiff believes that she could survive summary judgment based on non-expert evidence of general or specific causation *not previously raised by the PSC and*addressed by the Court in CMO 99 and CMO 100, she must file a response within thirty (30) days of the date of this order. Pfizer may file a reply within fifteen (15) days of any response;

¹ The arguments previously raised by the PSC are preserved to the extent the CMO 99 and/or CMO 100 are vacated or reversed on appeal.

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D. For any new action docketed in this MDL on or after the date of this Order, the Clerk shall immediately provide a copy of this Order to Plaintiffs in said action, and the Plaintiffs shall comply with Paragraph B above within fifteen (15) days of the date that they are served with this Order and comply with Paragraph C above within thirty (30) days of the date they are served with this Order;

E. In cases where a motion to remand is filed, this Order to Show Cause is stayed pending resolution of the motion to remand.

AND IT IS SO ORDERED.

Richard Mark Gergel

United States District Court Judge

January <u>3</u>, 2017 Charleston, South Carolina