

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. 12</b>
	)	<b>This Order relates to cases:</b>
	)	<b>2:14-0491</b>
	)	<b>2:14-0611</b>
	)	<b>2:14-0625</b>
	)	<b>2:14-0631</b>
	)	<b>2:14-0679</b>
	)	<b>2:14-0693</b>
	)	<b>2:14-0695</b>
	)	<b>2:14-0754</b>
	)	<b>2:14-0800</b>
	)	<b>2:14-0810</b>
	)	<b>2:14-0841</b>
	)	<b>2:14-0867</b>
	)	<b>2:14-0905</b>
	)	<b>2:14-0954</b>
	)	<b>2:14-1257</b>
	)	<b>2:14-1352</b>
	)	<b>2:14-1365</b>
	)	<b>2:14-1569</b>
	)	<b>2:14-1729</b>

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**Plaintiffs' Motions to Dismiss Without Prejudice**

Certain Plaintiffs have moved to dismiss their cases without prejudice under Rule 41(a). (Dkt. Nos. 248-253, 270-276, 278-280, 282). Pfizer asks that the dismissals be with prejudice or, in the alternative, with certain conditions. (Dkt. Nos. 277, 297, 308, 326, 327). Pfizer argues that Plaintiffs have asked to dismiss the case weeks after Plaintiff Fact Sheets were due and after Pfizer expended resources tracking deficiencies, sending letters and speculating about whether the case remained eligible for discovery pool selection.

“The purpose of Rule 41(a)(2) is to permit the plaintiff to dismiss the action while avoiding prejudice to the defendant through the imposition of curative conditions.” 8 James Wm. More et al., Moore’s Federal Practice ¶ 41.40[1]. Rule 41(a)(2) “empowers district courts to exercise discretion over voluntary dismissals.” *GO Computer, Inc. v. Microsoft Corp.*, 508 F.3d 170, 177 (4th Cir. 2007). District courts should “focus primarily” on the interest of defendants but may weigh other considerations. *Id.*

A Rule 41(a)(2) motion for dismissal without prejudice “should not be denied absent substantial prejudice to the defendant.” *Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986). Substantial prejudice does not result from “the prospect of a second lawsuit” or “the possibility that the plaintiff will gain a tactical advantage over the defendant in future litigation.” *Davis v. USX Corp.*, 819 F.2d 1270, 1274-75 (4th Cir. 1987). District courts should consider factors such as “the opposing party’s effort and expense in preparing for trial, excessive delay and lack of diligence on the part of the movant, and insufficient explanation of the need for a voluntary dismissal, as well as the present stage of litigation.” *Miller v. Terramite Corp.*, 114 F. App’x 536, 539 (4th Cir. 2004).

Rule 41 “allows the district court to dismiss the plaintiff’s action without prejudice but with conditions that the plaintiff must satisfy.” *Choice Hotels Int’l, Inc. v. Goodwin and Boone*, 11 F.3d 469, 471 (4th Cir. 1993). The purpose of allowing the district court to impose terms and conditions on an order granting a voluntary dismissal is to protect the defendant. 8 James Wm. More et al., Moore’s Federal Practice ¶ 41.40[10][a]. For example, the court may condition dismissal on the payment of costs and attorneys’ fees, the production of documents and evidence or the refiling in a particular forum. *Id.* at ¶ 41.40[10][d].

The Court finds that, at this point in the litigation, Pfizer is not substantially prejudiced from the voluntary dismissals. The dismissals do not affect Pfizer's legal rights, and the amount that Pfizer has expended in defense of these individual cases so far is not unreasonable or extreme. However, Pfizer has expended effort in getting individual cases transferred to this MDL since its creation and in tracking and attempting to cure Plaintiffs' failure to comply with their discovery obligations. Plaintiffs are currently subject to the Case Management Orders filed in this case and should not be allowed to skirt their obligations under those orders by refile in a different forum.

Therefore, the Court **GRANTS** Plaintiffs' Motions to Dismiss, (Dkt. Nos. 248-253, 270-276, 278-280, 282), with certain conditions. Plaintiffs' actions<sup>1</sup> are **DISMISSED WITHOUT PREJUDICE BUT WITH THE FOLLOWING CONDITIONS:**

If Plaintiffs seek to refile their action 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

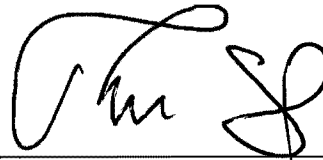
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<sup>1</sup> To the extent that these Plaintiffs are in multi-plaintiff suits, only the Plaintiffs seeking dismissal by motion are dismissed.

(5) They must serve completed Plaintiff Fact Sheets and accompanying disclosures on Pfizer in accordance with CMO 5 and Amended CMO 6 *before* filing suit and attach a certificate of service reflecting that they have done so to their complaint.

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

**AND IT IS SO ORDERED.**



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Richard Mark Gergel  
United States District Court Judge

July 18, 2014  
Charleston, South Carolina