

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE: LIPITOR (ATORVASTATIN
CALCIUM) MARKETING, SALES
PRACTICES AND PRODUCTS
LIABILITY LITIGATION

)
) **MDL No. 2:14-mn-02502-RMG**
)
) **CASE MANAGEMENT ORDER NO.**
) **107**
)
) **This Order relates to:**
)
) *Elisabeth Jacoby, et al., v. Pfizer, Inc.,*
) *et al., Case No. 2:16-cv-00717-RMG*
)

Motion to Remand

For the reasons stated below, Plaintiffs’ Motion to Remand (Dkt. No. 1816) is

GRANTED.

A. Background

This case was originally filed in California state court against Defendants Pfizer, Inc. (“Pfizer”) and McKesson Corp. (“McKesson”). Plaintiffs allege that Lipitor caused them to develop Type II diabetes and that, among other things, Defendants did not properly disclose the risks associated with Lipitor. Defendants removed this action to a federal district court in California, asserting (1) diversity jurisdiction and (2) federal jurisdiction under the Class Action Fairness Act of 2005 (CAFA). While complete diversity is lacking on the face of the Complaints, Pfizer contends that (a) McKesson was fraudulently joined and should be disregarded for the purposes of determining whether diversity jurisdiction exists and (b) that non-California Plaintiffs are fraudulently misjoined and that their claims should be severed.

After removal, this case was transferred to this MDL by the JPML, and Plaintiffs' filed a motion to remand. In addition to lack of subject matter jurisdiction, Plaintiffs also argue that the Court should remand the cases to California federal courts in accordance with CAFA.

B. Discussion

This Court has previously addressed all issues raised by this motion in CMO 87, Dkt. No. 1726. In CMO 87, the Court found that Defendant McKesson was not fraudulently joined as to the California Plaintiffs, that non-California Plaintiffs were not fraudulently misjoined, and that, therefore, the Court lacked diversity jurisdiction over the California actions at issue. (*Id.*) Because the only possible basis for federal jurisdiction was CAFA, the Court suggested to the JPML that the actions be remanded to their transferor court for further proceedings. (*Id.*)

The exact same issues are present here, and the parties submit substantially identical briefing on them. Indeed, Pfizer simply incorporates its prior briefing. (*See* Dkt. No. 1836). The Court finds no reason that CMO 87 should not apply to the actions at issue here. Therefore, the Court incorporates CMO 87 by reference and suggests that this case be remanded to its transferor court.

C. Conclusion

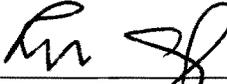
For the reasons stated above and in CMO 87, the Court **GRANTS** Plaintiffs' Motion to Remand (Dkt. No. 1816). The Court finds that it lacks diversity jurisdiction over this action and that the only possible basis for federal jurisdiction is CAFA. Therefore, the Court **SUGGESTS** to the JPML that this action be remanded to its transferor court for further proceedings.

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AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

January 3 1, 2017
Charleston, South Carolina