

IN THE UNITED STATES DISTRICT COURT RECEIVED CLERK'S OFFICE  
FOR THE DISTRICT OF SOUTH CAROLINA

2016 DEC -6 A 9 54

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

MDL No. 2:14-mn-02502-RMG  
DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON, SC  
CASE MANAGEMENT ORDER NO. 93

**This Order relates to cases:**

- ) 2:14-cv-03044      2:15-cv-00751
- ) 2:14-cv-03881      2:15-cv-00766
- ) 2:14-cv-04022      2:15-cv-00811
- ) 2:14-cv-04074      2:15-cv-00878
- ) 2:14-cv-04118      2:15-cv-00912
- ) 2:14-cv-04443      2:15-cv-00918
- ) 2:14-cv-04708      2:15-cv-00922
- ) 2:15-cv-00061      2:15-cv-00933
- ) 2:15-cv-00172      2:15-cv-00949
- ) 2:15-cv-00196      2:15-cv-01085
- ) 2:15-cv-00251      2:15-cv-01688
- ) 2:15-cv-00254      2:15-cv-01811
- ) 2:15-cv-00335      2:15-cv-01848
- ) 2:15-cv-00340      2:15-cv-03856
- ) 2:15-cv-00374      2:15-cv-03890
- ) 2:15-cv-00399      2:15-cv-03895
- ) 2:15-cv-00403      2:15-cv-03904
- ) 2:15-cv-00420      2:15-cv-03910
- ) 2:15-cv-00426      2:15-cv-04080
- ) 2:15-cv-00429      2:15-cv-04162
- ) 2:15-cv-00454      2:15-cv-04241
- ) 2:15-cv-00463      2:15-cv-04573
- ) 2:15-cv-00474      2:16-cv-03140
- ) 2:15-cv-00478

**Dismissal for Lack of Jurisdiction**

“Subject-matter jurisdiction cannot be conferred by the parties, nor can a defect in subject-matter jurisdiction be waived by the parties.” *Brickwood Contractors, Inc. v. Datamet Eng’g, Inc.*, 369 F.3d 385, 390 (4th Cir. 2004). Therefore, questions of subject-matter jurisdiction “may (or, more precisely, must) be raised sua sponte by the court.” *Id.*; see also *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 593 (2004) (“[I]t is the obligation of

both district court and counsel to be alert to jurisdictional requirements.”); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) (“[E]very federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review, even though the parties are prepared to concede it.”) (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)).

In most of the cases at issue here, Plaintiffs allege that this Court has diversity jurisdiction over their claims. (*See, e.g.*, Case No. 2:15-cv-01085, Dkt. No. 1).<sup>1</sup> “A party seeking to invoke diversity jurisdiction has the burden of showing complete diversity of citizenship.” *Hardaway v. Checkers Drive-In Restaurants, Inc.*, 483 F. App’x 854, 854 (4th Cir. 2012). “The presence of a defendant who is a citizen of the same state as the plaintiff destroys complete diversity and, therefore, federal jurisdiction.” *Id.*

Here, Plaintiffs fail to allege facts sufficient to establish diversity jurisdiction. All Plaintiffs, through incorporation of the Master Complaint, allege that Pfizer is a resident of New York. (Dkt. No. 160 at 7). Each of the Plaintiffs here also alleges that she is a resident of New York.<sup>2</sup> (*See, e.g.*, Case No. 2:15-cv-01085, Dkt. No. 1). Therefore, diversity jurisdiction is lacking on the face of the Complaints.

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<sup>1</sup> Except as where otherwise stated, all references to the docket refer to MDL 2502, Case No. 2:14-mn-2502.

<sup>2</sup> One Plaintiff, Aimee Strier, fails to allege the state of which she is a resident, though she alleges that she ingested Lipitor in New York and was diagnosed with diabetes in New York. (Case No. 2:15-cv-01811, Dkt. No. 1 at 2, 3). Because she has failed to allege a state of residence, she has failed to plead facts sufficient to show the existence of diversity jurisdiction. The Court also notes that, in CMO 4, this Court ordered that “[e]ach complaint filed directly in the MDL proceedings must . . . allege the current state of residence of the plaintiff(s).” (Dkt. No. 101 at 13).

Some of the Plaintiffs allege that federal jurisdiction is based on “Direct Filing pursuant to Case Management Order No. 4.” (*See, e.g.*, Case No. 2:14-cv-04443, Dkt. No. 1 at 2).

However, CMO 4 does not create federal jurisdiction. It provides that

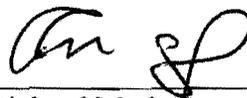
In order to eliminate delays associated with transfer to this Court of cases filed in or removed to other federal district courts, any plaintiff whose case would be subject to transfer to these MDL proceedings may file his or her case directly in the District of South Carolina, in accordance with the procedures in this Order.

(Dkt. No. 101 at 12). Only cases that could be filed in or removed to federal district courts, i.e., only cases for which federal subject matter jurisdiction exists, may be directly filed in this MDL pursuant to CMO 4. Thus, these Plaintiffs have failed to allege any basis for subject matter jurisdiction.

None of the Plaintiffs at issue here have alleged any other basis for federal subject matter jurisdiction. In each of these cases, federal subject matter jurisdiction is lacking on the face the Complaints, and the Court cannot ignore this fact. Therefore, the Court dismisses these cases for lack of subject matter jurisdiction.

For the reasons stated above, these cases are **DISMISSED** for lack of subject matter jurisdiction.

**AND IT IS SO ORDERED.**



Richard Mark Gergel  
United States District Court Judge

December 5, 2016  
Charleston, South Carolina