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**COUGHLIN DUFFY LLP**
Lorna A. Dotro, Esq. – ID No. 031351997
350 Mount Kemble Avenue
P.O. Box 1917
Morristown, New Jersey 07962-2075
Telephone: (973) 267-0058
Facsimile: (973) 267-6442
*Attorney for Defendant Bayer HealthCare Pharmaceuticals Inc.*

FILED
JAN 0 6 2015
BRIAN R. MARTINOTTI
J.S.C.

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| NICOLE MITCHELL,<br><br>Plaintiff,<br><br>v.<br><br>BAYER HEALTHCARE PHARMACEUTICALS INC. and JOHN DOES 1–10,<br><br>Defendants. | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION<br>BERGEN COUNTY<br><br>DOCKET NO.: BER-L-7665-13<br><br>Civil Action<br><br>In Re: Mirena Litigation<br>Case No. 297<br><br>**ORDER ON MOTION TO DISMISS FOR FAILURE TO PROVIDE A PLAINTIFF FACT SHEET CONTAINING ALL CORE CRITERIA** |

THIS MATTER having been brought before the Court by way of motion of Coughlin Duffy LLP, counsel for defendant Bayer HealthCare Pharmaceuticals Inc. ("Defendant"), for an Order dismissing Plaintiff's Complaint for failure to provide a Plaintiff Fact Sheet containing all Core Criteria pursuant to Case Management Orders No. 3 and 24; and the Court having considered the papers submitted; and the Court having heard the arguments of counsel, if any; and for good cause shown;

IT IS, on this 6th day of January, ~~2014~~ 2015;

~~ORDERED that the Complaint of Plaintiff Nicole Mitchell is hereby dismissed without~~ prejudice; and it is further

ORDERED that Plaintiff Nicole Mitchell shall have 90 days from the date of this Order to serve upon Defendant a Completed Plaintiff Fact Sheet containing all Core Criteria, and move

before this Court for reinstatement of the Complaint and payment of the appropriate fee; and it is further

ORDERED that if Plaintiff Nicole Mitchell fails to provide a Completed Plaintiff Fact Sheet containing all Core Criteria within 90 days from the date of this Order, Defendant may file a Motion to Dismiss this action with prejudice; and it is further

ORDERED that a signed copy of this Order be served upon all counsel within seven (7) days of the date hereof.

_____, J.S.C.
HONORABLE BRIAN R. MARTINOTTI, J.S.C.

[ ] Opposed

[X] Unopposed

**SUPERIOR COURT OF NEW JERSEY**
**LAW DIVISION: BERGEN COUNTY**

**CASE NO. 297**

**IN RE MIRENA LITIGATION**

**CIVIL ACTION**

FILED

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J.S.C.

**MEMORANDUM DESCISION**

Before this Court are 18 Motions to Dismiss for Failure to Provide a Plaintiff Fact Sheet. Please see Exhibit A for a list of the 18 Plaintiffs affected by this motion.

## I. Procedural Background

On May 13, 2013, the Supreme Court designated litigation involving the Mirena contraceptive device be consolidated as a multicounty litigation in Bergen County, New Jersey before Superior Court Judge Brian R. Martinotti. Since then, 33 Case Management Orders, in addition to the initial Case Management Order, have been issued in the pending litigation. Case Management Order #3, dated August 23, 2013, regarded the Plaintiff Fact Sheet. Paragraph 3 explains that the Plaintiff Fact Sheet (hereinafter 'PFS') is a convenient form of interrogatories and requests for document production. It is governed by the standards applicable to written discovery under Rules Governing the Courts of the State of New Jersey. Paragraph 7 requires every Plaintiff to provide Defendants' Counsel with a PFS that is "substantially complete in all respects." This means all applicable questions must be answered, there must be a signed Declaration by the Plaintiff included, duly executed release Authorizations must be provided, and responsive documents requested in the PFS must be produced to the extent they are in Plaintiff's possession.

Paragraph 17 of CMO #3 addresses non-compliance with the aforementioned requirements. Specifically, any Plaintiff who fails to comply with their PFS obligations as outlined in CMO #3 may have their claims dismissed. If Defendants have not received a PFS that is substantially complete, as previously described, from a Plaintiff within 30 days following the prescribed due date, Defendants

must send a Notice of Overdue Discovery to Plaintiff's counsel identifying the discovery overdue and explaining that unless Plaintiff complies with the Court's discovery order, the case may be dismissed. If Defendants have still not received a completed PFS within 30 days of the notice, Defendants were allowed to move before this Court for an Order dismissing the Complaint without prejudice. Upon filing, Plaintiff had 30 days to file a response either (1) certifying Plaintiff has served Defendants with a completed PFS and Defendants have received it and attaching appropriate documentation of that receipt or (2) opposing the motion.

If this Court grants Defendants' motion to dismiss without prejudice, Plaintiff has 90 days to serve Defendants with a completed PFS or move to vacate the dismissal. If Plaintiff fails to do so within 90 days after the entry of the Order of Dismissal without Prejudice, the Order will be converted to a Dismissal with Prejudice upon Defendants' motion.

## II. The Present Motion

Defendants filed a Motion to Dismiss the claims of 18 Plaintiffs without prejudice for failure to provide a Plaintiff Fact Sheet. Attached as Exhibit A to the Motion is a list of each individual Plaintiff, their Attorney, and the Date the Notice of Overdue Discovery was sent. These 18 Defendants, as listed in Exhibit A of this Memorandum Decision, have failed to respond to repeated requests by Defense Counsel for their PFS. All pending motions were unopposed.

The time allowed to cure has lapsed. Plaintiffs had ample notice of their outstanding discovery, as well as the consequences of failing to cure their deficiencies. For those reasons, in accordance with CMO #3, paragraph 17, this Court GRANTS Defendants' Motion to Dismiss Without Prejudice these 18 complaints for failure to provide PFS. Plaintiffs have 90 days from entry of this order to serve Defendants with a completed PFS or this dismissal without prejudice will be converted to a dismissal with prejudice upon Defendants' motion.

EXHIBIT A

Motion to Dismiss for Failure to Provide Plaintiff Fact Sheet: January 6, 2015

| Plaintiff | Plaintiff's Attorney | Notice Sent |
|---|---|---|
| LaToya Averhart | Matthews & Associates | 14-Apr-14 |
| Ashley Batty | Sanders, Viener, Grossman, LLP | 10-Apr-14 |
| Carol Cearley | Michael Brady Lynch Firm | 4-Apr-14 & 19-Aug-14 |
| Jovita De La Cruz | The Webster Law Firm | 11-Jul-14 |
| Jacoby Gibson | Michael Brady Lynch Firm | 25-Feb-14 & 6-Aug-14 |
| Courtney Gilmete | Rheingold, Valet, Rheingold, McCartney & Giuffra LLP | 23-Jul-14 |
| Juton Hanks | Bohrer Law Firm | 10-Apr-14 & 25-Jun-14 |
| Crystal Ingram | Bernstein Liebhard LLP | 11-Sep-14 |
| Rebecca Isaiah-Green | Michael Brady Lynch Firm | 16-May-14 |
| Gretchen Kubnick | Kirkendall Dwyer, LLP | 22-Sep-14 |
| Rosemary Kuffour | The Webster Law Firm | 11-Jul-14 |
| Jacqueline Marshall | The Webster Law Firm | 14-Jul-14 |
| Amanda Messinger | Meyers & Flowers, LLC | 22-Sep-14 |
| Nicole Mitchell | Matthews & Associates | 13-Dec-14 & 3-Jul-14 |
| Kimmia Montgomery | The Orlando Firm | 5/22/2014 |
| Bonnie Smith | Meyers & Flowers, LLC | 9/22/2014 |
| Maricela Solis | The Webster Law Firm | 7/11/2014 |
| Shequilla Viliere | Michael Brady Lynch Firm | 9/22/2014 |