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BRIAN R. MARTINOT
J.S.C

MONTANA POWELL, Plaintiff, v. BAYER HEALTHCARE PHARMACEUTICALS INC., Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION BERGEN COUNTY DOCKET NO.: BER-L-4685-13-MCL Civil Action In Re: Mirena Litigation Case No. 297 **ORDER ON MOTION TO DISMISS WITH PREJUDICE FOR FAILURE TO PROVIDE A PLAINTIFF FACT SHEET**

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 with prejudice for failure to provide a Plaintiff Fact Sheet pursuant to Case Management Order No. 3; 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 7 day of August, 2014;

ORDERED that the Complaint of Plaintiff Montana Powell is hereby dismissed 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

MEMORANDUM DESCISION

Before this Court are 8 Motions to Dismiss for Failure to Provide a Plaintiff Fact Sheet. Please see Exhibit A for a list of the 8 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, 12 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 Defendant's 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 releases Authorizations must be provided, and responsive documents requested in the PFS must be produced to the extend 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 Defendant has not received a PFS that is substantially complete, as previously described, from a Plaintiff within 30 days following the prescribed due date, Defendant 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 Defendant has still not received a completed PFS within 30 days of the notice, Defendant was 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 Defendant with a completed PFS, that Defendant has received it, and attaching appropriate documentation of that receipt or (2) opposition to the motion.

If this Court grants Defendant's motion to dismiss without prejudice, Plaintiff has 90 days to serve Defendant with a completed PFS or moves 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 Defendant's motion.

II. The Present Motion

Defendants filed a Motion to Dismiss the claims of 8 Plaintiffs with 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 their Complaint was dismiss without prejudice. These 8 Defendants, as listed in Exhibit A of this Memorandum Decision, have failed to respond to repeated requests by Defense Counsel for their PFS. Their Complaints had previously been dismissed without prejudice and now, under CMO #3, Defendant is moving to dismiss with prejudice. All motions have been unopposed.

The time allowed to cure has lapsed. Defendants had ample notice of their outstanding discovery, as well as the consequences to failing to cure their deficiencies. For those reasons, in accordance with CMO #3, paragraph 17, this Court GRANTS Defendant's motion to dismiss with prejudice these 8 complaints for failure to provide PFS.

EXHIBIT A

Motion to Dismiss for Failure to Provide Plaintiff Fact Sheet containing all Core Criteria

Plaintiff	Plaintiff's Attorney	Date Dismiss Without Prejudice
Sabrina Brinkman	Parker Waichman	28-Mar-14
Ebony Henderson	Meyers & Flowers / Park Waichman	28-Mar-14
Elizabeth Roman	Rheingold Valet	28-Mar-14
Patricia Dominguez	Matthews & Associates / D'Arcy Johnson Day	28-Mar-14
Samantha Farley	Matthews & Associates / D'Arcy Johnson Day	28-Mar-14
Montana Powell	Parker Waichman	28-Mar-14
Amanda Fisher	Parker Waichman	28-Mar-14
Kayla Holland	Parker Waichman	28-Mar-14