

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

**CASE NO. 291**

**CIVIL ACTION**

**MEMORANDUM DECISION**

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**IN RE GYNECARE  
LITIGATION**

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**Motion to Dismiss without Prejudice for Failure to Provide a Plaintiff Fact Sheet**

Before this Court are 131 Motions to Dismiss for Failure to Provide a Plaintiff Fact Sheet. Please see Exhibit A for a list of the Plaintiffs affected by this motion.

**I. Procedural Background**

On September 13, 2010, the Supreme Court designated litigation involving Johnson & Johnson as a multicounty litigation in Atlantic County, New Jersey before Superior Court Judge Carol E. Higbee. On December 10, 2010, Judge Higbee entered an Order centralizing all cases involving products manufactured by Ethicon, Inc., Ethicon Women's Health & Urology, Gynecare, and/or Johnson & Johnson under the name "In Re Pelvic Mesh / Gynecare Litigation." By Order dated October 31, 2014, the Supreme Court transferred the In Re Pelvic Mesh / Gynecare Litigation to Bergen County, New Jersey before Superior Court Judge Brian R. Martinotti. In total, 15 Case Management Orders, in addition to the initial Case Management Order, have been issued in the pending litigation. Case Management Order #5 ("CMO #5"), dated September 15, 2011, regards the Plaintiff Fact Sheet (hereinafter "PFS").

This Court acknowledges the PFS is a convenient form of interrogatories and requests for document production. Pursuant to CMO #5, Paragraph 1, Plaintiff shall provide a "completed"

PFS within the applicable time frame. Paragraph 8 explains any missing information, whether substantive or technical, must be provided within a reasonable time frame after service of the deficient PFS. Examples of “technical” deficiencies include a missing telephone number or economic information.

Any Plaintiffs who fail to comply with their PFS obligations as outlined in CMO #5 may have their claims dismissed. For all claims filed after September 15, 2011, Plaintiffs must file a completed PFS within 45 days of filing their Complaint. Thereafter, Defendants have 45 days from service of the PFS to file a Defendants’ Fact Sheet (“DFS”). Pursuant to Paragraph 6, reasonable requests for an extension of the time to serve a completed PFS or DFS may be granted on a case-by-case basis. A PFS is governed by the standards applicable to written discovery under Rules Governing the Courts of the State of New Jersey. If a Plaintiff fails to provide a completed PFS within the time allowed, Defendants are allowed to move before this Court for an Order dismissing the Complaint without Prejudice. R. 4:23-5(a)(1).

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 131 Plaintiffs without prejudice for failure to provide a Plaintiff Fact Sheet. Attached as Exhibit A to the Motion is a chart listing each individual Plaintiff, assigned Docket Number, each Plaintiff’s Attorney, and the Date the Complaint was filed. These Plaintiffs, as listed in Exhibit A of this Memorandum Decision, have

failed to respond to repeated requests by Defense Counsel for their PFS. Fourteen pending motions were opposed.<sup>1</sup> All other 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 the deficiencies. For those reasons, in accordance with CMO #5, this Court GRANTS Defendants' Motion to Dismiss Without Prejudice these complaints for failure to provide a 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.

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<sup>1</sup> The following motions were opposed: *Broadway v. Ethicon, Inc., et al.* (Docket No. BER-L-15398-14); *Fuller v. Ethicon, Inc., et al.* (Docket No. BER-L-15393-14); *Tucker v. Ethicon, Inc., et al.* (Docket No. BER-L-15404-14); *Martin v. Ethicon, Inc., et al.* (Docket No. BER-L-13575-14); *Houchens v. Ethicon, Inc., et al.* (Docket No. BER-L-13586-14); *Kazmierski v. Ethicon, Inc., et al.* (Docket No. BER-L-15633-14); *Richie v. Ethicon, Inc., et al.* (Docket No. BER-L-15408-14); *Rowland v. Ethicon, Inc., et al.* (Docket No. BER-L-15771-14); *Rutledge v. Ethicon, Inc., et al.* (Docket No. BER-L-10689-14); *Busby v. Ethicon, Inc., et al.* (Docket No. BER-L-15423-14); *Fichot v. Ethicon, Inc., et al.* (Docket No. BER-L-14999-14); *Guidry v. Ethicon, Inc., et al.* (Docket No. BER-L-11228-14); *Preston v. Ethicon, Inc., et al.* (Docket No. BER-L-12983-14); and, *Taylor v. Ethicon, Inc., et al.* (Docket No. BER-L-14897-14).