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FILED
JAN 25 2008
Judge Jamie D. Happs

IN RE RISPERDAL/SEROQUEL/
ZYPREXA LITIGATION

:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: MIDDLESEX COUNTY
:
: Case No. 274
:
: CIVIL ACTION
:
: **CASE MANAGEMENT ORDER NO. 4A**
:
: **Amendment to Case Management Order No. 4**
: **Regarding Service and Completion of Plaintiff**
: **Fact Sheets, Initial Case-Specific Discovery,**
: **Case Selection for Initial Trial Settings and**
: **Completion of Case-Specific Discovery**
:
:

This matter having come before the Court at case management conferences on October 10, 2007, and December 17, 2007, and the parties having conferred with the Court regarding the provisions of Case Management Order No. 4 as they concern service and completion of plaintiff fact sheets, and certain provisions concerning the case-specific discovery schedule, and the Court having requested an amendment to CMO4 concerning the dismissal process for plaintiff's failure to serve Short and Long Form PFSs and an extension of certain discovery deadlines, and all parties having agreed to the within amended Order, and for good cause shown;

IT IS ON THIS 25 DAY OF JANUARY, 2008,

ORDERED that Sections II.H and I. of CMO4 shall be amended as follows:

II. SHORT FORM PLAINTIFF FACT SHEET

H. FAILURE TO SERVE COMPLETED SHORT FORM PFS

1. Dismissal Without Prejudice

(a) In the event a plaintiff fails to serve a materially Completed Short Form PFS (which must include properly executed Authorizations and Acknowledgement) within thirty (30) days from the date the Complaint is filed, defendants may file a motion to dismiss the Complaint without prejudice on sixteen (16) days notice to plaintiff's counsel.

(b) Upon being served with the order of dismissal without prejudice, plaintiff's counsel shall forthwith serve a copy of the order on the client by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-F of the New Jersey Rules of Court, specifically explaining the consequences of failure to serve a materially Completed Short Form PFS (which must include properly executed Authorizations and Acknowledgement) and to file and serve a timely motion to restore. Plaintiff's counsel may move on notice for vacation of the dismissal order at any time before the entry of an order of dismissal with prejudice. The motion shall be supported by affidavit reciting that the materially Completed Short Form PFS, including properly executed Authorizations and Acknowledgement, has been provided to defendants.

(c) Plaintiff shall serve and file opposition to any such motion to dismiss without prejudice at least eight (8) days prior to the return date of the motion. In the event plaintiff does oppose such motion and the Court determines that plaintiff has failed to serve a materially completed Short Form PFS, the Court shall determine the terms and conditions with which plaintiff must comply in order to avoid the dismissal of the Complaint with prejudice.

2. Dismissal With Prejudice

If an order of dismissal without prejudice has been entered pursuant to this section and not thereafter vacated, defendant may, after the expiration of ninety (90) days from the order of dismissal without prejudice, file a motion to dismiss the Complaint with prejudice on sixteen (16) days notice to plaintiff's counsel. Plaintiff's counsel shall, not later than eight (8) days prior to the return date of the motion, file and serve an affidavit reciting that the client was previously served as required by subparagraph 1(b) above, and has been served with an additional notification, in the form prescribed by Appendix II-G, of the pendency of the motion to dismiss with prejudice. In lieu thereof, plaintiff's counsel may certify that despite diligent inquiry, which shall be detailed in the affidavit, the client's whereabouts have not been able to be determined and such service on the client was therefore not made. The motion to dismiss with prejudice shall be granted unless a motion to vacate the previously entered order of dismissal without prejudice has been filed by the plaintiff and either the demanded and fully responsive discovery has been provided or exceptional circumstances are demonstrated.

I. DEFICIENT SHORT FORM PFS

1. Notice of Deficiencies

In the event a plaintiff fails to serve a Completed Short Form PFS with all requested information, documents, attachments and executed authorizations, defendants shall notify plaintiff's counsel in writing of such failure with a specification of the alleged material deficiencies, and advise that if the deficiencies are not cured within forty-five (45) days, a motion to dismiss may be filed. All of plaintiff's supplemental answers

correcting the material deficiencies shall be certified as permitted under New Jersey court rules or will be accompanied by a signed and dated Acknowledgement.

2. Dismissal Without Prejudice

(a) If by forty-five (45) days after the service of such notification, plaintiff has not cured the material deficiencies, defendants may file a motion to dismiss the Complaint without prejudice on sixteen (16) days notice to plaintiff's counsel. In the event plaintiff does not oppose such motion, the Complaint will be dismissed without prejudice.

(b) Upon being served with the order of dismissal without prejudice, plaintiff's counsel shall forthwith serve a copy of the order on the client by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-F of the New Jersey Rules of Court, specifically explaining the consequences of failure to comply with the discovery obligation and to file and serve a timely motion to restore. Plaintiff's counsel may move on notice for vacation of the dismissal order at any time before the entry of an order of dismissal with prejudice. The motion shall be supported by affidavit reciting that the discovery asserted to have been withheld and/or incomplete has been fully and responsively provided to defendants.

(c) Plaintiff shall serve and file opposition to any such motion to dismiss without prejudice at least eight (8) days prior to the return date of the motion. In the event plaintiff does oppose such motion and the Court determines that plaintiff has failed to cure the subject deficiencies, the Court shall determine the terms and conditions with which plaintiff must comply in order to avoid the dismissal of the Complaint with prejudice.

3. Dismissal With Prejudice

(a) If an order of dismissal without prejudice has been entered pursuant to this section and not thereafter vacated, defendant may, after the expiration of ninety (90) days from the order of dismissal without prejudice file a motion to dismiss the Complaint with prejudice on sixteen (16) days notice to plaintiff's counsel. Plaintiff's counsel shall, not later than eight (8) days prior to the return date of the motion, file and serve an affidavit reciting that the client was previously served as required by subparagraph 2(b) above, and has been served with an additional notification, in the form prescribed by Appendix II-G, of the pendency of the motion to dismiss with prejudice. In lieu thereof, plaintiff's counsel may certify that despite diligent inquiry, which shall be detailed in the affidavit, the client's whereabouts have not been able to be determined and such service on the client was therefore not made. The motion to dismiss with prejudice shall be granted unless a motion to vacate the previously entered order of dismissal without prejudice has been filed by the plaintiff and either the demanded and fully responsive discovery has been provided or exceptional circumstances are demonstrated; and it is further **ORDERED** that Sections III.D, E and F of CMO4 shall be amended as follows:

III. LONG FORM PLAINTIFF FACT SHEET

D. On or before August 1, 2007, plaintiffs shall have served on defendants Completed Long Form PFSs for Group 1. On or before May 1, 2008, plaintiffs shall serve on defendants Completed Long Form PFSs for Group 2. Plaintiffs shall serve on defendants Completed Long Form PFSs for each successive Group in six-month intervals thereafter until they have served Completed Long Form PFSs for each plaintiff. For example, the Completed Long Form PFS shall be served on or before November 1, 2008, for Group 3 and on or before May 1, 2009, for Group 4.

E. FAILURE TO SERVE COMPLETED LONG FORM PFS

1. Dismissal Without Prejudice

(a) In the event a plaintiff fails to serve a materially Completed Long Form PFS within fifteen (15) days of the applicable deadline set forth herein, defendants may file a motion to dismiss the Complaint without prejudice on sixteen (16) days notice to plaintiff's counsel.

(b) Upon being served with the order of dismissal without prejudice, plaintiff's counsel shall forthwith serve a copy of the order on the client by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-F of the New Jersey Rules of Court, specifically explaining the consequences of failure to serve a materially Completed Long Form PFS (which must include properly executed Authorizations and Acknowledgement) and to file and serve a timely motion to restore. Plaintiff's counsel may move on notice for vacation of the dismissal order at any time before the entry of an order of dismissal with prejudice. The motion shall be supported by affidavit reciting that the materially completed Long Form PFS, including properly executed Authorizations and Acknowledgement, has been provided to defendants.

(c) Plaintiff shall serve and file opposition to any such motion to dismiss without prejudice at least eight (8) days prior to the return date of the motion. In the event plaintiff does oppose such motion and the Court determines that plaintiff has failed to serve a materially completed Long Form PFS, the Court shall determine the terms and conditions with which plaintiff must comply in order to avoid the dismissal of the Complaint with prejudice.

2. Dismissal With Prejudice

If an order of dismissal without prejudice has been entered pursuant to this section and not thereafter vacated, defendant may, after the expiration of ninety (90) days from the order of dismissal without prejudice file a motion to dismiss the Complaint with prejudice on sixteen (16) days notice to plaintiff's counsel. Plaintiff's counsel shall, not later than eight (8) days prior to the return date of the motion, file and serve an affidavit reciting that the client was previously served as required by subparagraph 1(b) above, and has been served with an additional notification, in the form prescribed by Appendix II-G, of the pendency of the motion to dismiss with prejudice. In lieu thereof, plaintiff's counsel may certify that despite diligent inquiry, which shall be detailed in the affidavit, the client's whereabouts have not been able to be determined and such service on the client was therefore not made. The motion to dismiss with prejudice shall be granted unless a motion to vacate the previously entered order of dismissal without prejudice has been filed by the plaintiff and either the demanded and fully responsive discovery has been provided or exceptional circumstances are demonstrated.

F. DEFICIENT LONG FORM PFS

1. Notice of Deficiencies

In the event a plaintiff fails to serve a Completed Long Form PFS with all requested information, documents, attachments and executed authorizations, defendants shall notify plaintiff's counsel in writing of such failure with a specification of the alleged deficiencies, and advise that if the deficiencies are not cured within forty-five (45) days, a motion to dismiss may be filed. All of plaintiff's supplemental answers addressing the

deficiencies shall be certified as permitted under New Jersey court rules or will be accompanied by a signed and dated Acknowledgement.

2. Dismissal Without Prejudice

(a) If by forty-five (45) days after the service of such notification, plaintiff has not cured the deficiencies, defendants may file a motion to dismiss the Complaint without prejudice on sixteen (16) days notice to plaintiff's counsel. In the event plaintiff does not oppose such motion, the Complaint will be dismissed without prejudice.

(b) Upon being served with the order of dismissal without prejudice, plaintiff's counsel shall forthwith serve a copy of the order on the client by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-F of the New Jersey Rules of Court, specifically explaining the consequences of failure to comply with the discovery obligation and to file and serve a timely motion to restore. Plaintiff's counsel may move on notice for vacation of the dismissal order at any time before the entry of an order of dismissal with prejudice. The motion shall be supported by affidavit reciting that the discovery asserted to have been withheld and/or incomplete has been fully and responsively provided to defendants.

(c) Plaintiff shall serve and file opposition to any such motion to dismiss without prejudice at least eight (8) days prior to the return date of the motion. In the event plaintiff does oppose such motion and the Court determines that plaintiff has failed to cure the subject deficiencies, the Court shall determine the terms and conditions with which plaintiff must comply in order to avoid the dismissal of the Complaint with prejudice.

3. Dismissal With Prejudice

If an order of dismissal without prejudice has been entered pursuant to this section and not thereafter vacated, defendant may, after the expiration of ninety (90) days from the order of dismissal without prejudice file a motion to dismiss the Complaint with prejudice on sixteen (16) days notice to plaintiff's counsel. Plaintiff's counsel shall, not later than eight (8) days prior to the return date of the motion, file and serve an affidavit reciting that the client was previously served as required by subparagraph 2(b) above, and has been served with an additional notification, in the form prescribed by Appendix II-G, of the pendency of the motion to dismiss with prejudice. In lieu thereof, plaintiff's counsel may certify that despite diligent inquiry, which shall be detailed in the affidavit, the client's whereabouts have not been able to be determined and such service on the client was therefore not made. The motion to dismiss with prejudice shall be granted unless a motion to vacate the previously entered order of dismissal without prejudice has been filed by the plaintiff and either the demanded and fully responsive discovery has been provided or exceptional circumstances are demonstrated; and is further

ORDERED that Sections IV. A and B of CMO4 shall be amended as follows:

IV. INITIAL CASE-SPECIFIC DISCOVERY WITH RESPECT TO EACH GROUP

A. With respect to Group 1, on or before July 1, 2008, defendants may depose each plaintiff in that Group from whom they have received a Completed Long Form PFS, each of such plaintiff's physicians who prescribed and/or provided to that plaintiff any medication at issue in this litigation that was manufactured by a defendant in that case; and the physician who was principally responsible for the diagnosis and treatment of such plaintiff's claimed injury or injuries (collectively, "Initial Case-Specific Discovery"). Nothing herein shall preclude the plaintiffs from seeking to stay the depositions of physicians until discovery of the defendants that

may be relevant to physician depositions has been completed; and defendants reserve the right to oppose such a stay request on any ground.

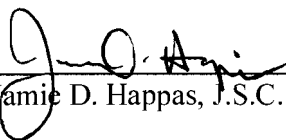
B. Initial Case-Specific Discovery for each successive Group may commence thirty (30) days after the Completed Long Form PFSs are due for each respective Group, and shall be completed within seven (7) months of that Group's deadline for the service of Completed Long Form PFSs as set forth herein. Nothing herein shall preclude the plaintiffs from seeking to stay the depositions of physicians until discovery of the defendants that may be relevant to physician depositions has been completed; and defendants reserve the right to oppose such a stay request on any ground; and it is further

ORDERED that Sections V. A. and C. of CMO4 shall be amended as follows:

V. CASE SELECTION FOR INITIAL TRIAL SETTINGS AND COMPLETION OF CASE-SPECIFIC DISCOVERY IN THE SELECTED CASES

A. Within two weeks of the completion of Initial Case-Specific Discovery in the Group 1 cases (*i.e.*, by no later than July 14, 2008), the parties shall meet and select twenty (20) cases from that Group for the initial trial settings, ten (10) from the AstraZeneca subgroup and ten (10) from the Janssen subgroup.

C. No later than August 1, 2008, the Court will determine the trial sequence of the 20 cases selected by the parties.



Jamie D. Happs, J.S.C.