

IN RE TAXOTERE LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY

MCL CASE TYPE: 628

CIVIL ACTION

MASTER DOCKET NO.:

MID-L-4998-18-CM

FILED

AUG 07 2019

Judge James F. Hyland

**PLAINTIFF FACT SHEET AND DEFENDANT FACT SHEET
IMPLEMENTATION ORDER**

This Multicounty Litigation (“MCL”) having been assigned to the Honorable James F. Hyland, J.S.C., pursuant to the Supreme Court’s Order of July 17, 2018, and the Parties having met and conferred regarding the implementation of the Plaintiff Fact Sheet (“PFS”) (attached hereto as Exhibit 1) and Defendant Fact Sheet (“DFS”) (attached hereto as Exhibit 2); and the Court having reviewed the joint submission by counsel and for good cause shown;

IT IS on this 7th day of August, 2019, ORDERED THAT:

1. This Order governs the form and schedule for service of PFS and DFS in cases that were: (1) transferred to this Court by the Supreme Court’s Order of July 17, 2018, and (2) originally filed in this Court or transferred to this Court.

2. Considering the nature of the case and the difficulty of identifying the exact manufacturer, each side shall be given reasonable flexibility with the timeframes set forth herein. Accordingly, the Parties may agree to extensions of the below deadlines for the completion and service of the PFSs, executed authorizations, and DFSs. If the Parties cannot agree on an extension of time after meeting and conferring, the requesting Party may apply to the Court for such relief upon a showing of good cause.

PLAINTIFF FACT SHEET

3. Plaintiffs shall each complete and serve upon Defendants a PFS and Authorizations for Release of Records of all healthcare providers and other sources of information and records (*e.g.* pharmacies, employers, etc.) using MDL Centrality in the form set forth in the PFS. In addition, any Plaintiff asserting a claim for lost wages must complete an authorization for release of employment records. Those Plaintiffs shall also produce with their PFS all documents responsive to the document requests contained therein.

4. A complete and verified¹ PFS, signed and dated Authorizations, and all responsive documents in Plaintiff's possession shall be submitted to the Defendants using MDL Centrality on the following schedule: (a) within seventy-five (75) days from the date of this Order for any Plaintiff whose case has been docketed in this MCL on or before the date of this Order; (b) within seventy-five (75) days of the date the Complaint is filed in, or transferred to, the MCL. The Authorizations are set forth at the end of the PFS.

5. Plaintiffs who fail to provide a complete and verified PFS, signed and dated Authorizations, and all responsive documents requested in the PFS within the time periods set forth herein shall be given a notice of deficiency² via MDL Centrality within forty-five (45) days of service of the PFS,³ and shall be given thirty (30) additional days from the date the notice of

¹ Plaintiffs may verify a PFS by their handwritten signature or through the use of an electronic signature using an application such as DocuSign, and all subsequent amendments or supplements to the PFS may be verified by signature of the plaintiff's attorney.

² Each party shall bring any and all deficiencies rendering a Fact Sheet substantially incomplete to the attention of the opposing counsel in one letter however, parties may raise any additional deficiencies with opposing counsel at a later time, including those arising from the response to/cure of the deficiency.

³ Service of a completed Fact Sheet and Records Authorizations shall be deemed to occur when the submitting party has performed each of the steps required by the MDL Centrality System to execute the online submission of the materials, and the submitting party has received confirmation

deficiency is sent through Centrality and generates an email to cure such deficiency. After the thirty (30) days have passed and there is no deficiency cure, the Defendants shall provide to Plaintiffs' Liaison Counsel a Notice of Non-Compliance in excel formation which includes the name, case number, plaintiff's law firm, and the detailed nature of the outstanding deficiencies for any Plaintiff who failed to cure deficiencies within the thirty-day cure period.. Plaintiffs shall have an additional thirty (30) days from service of a Notice of Non-Compliance to cure the deficiencies identified thereon. Afterwards, Defendants may add the name and case number of any Plaintiff who fails to cure the deficiencies to the agenda for the next Case Management Conference.⁴ No briefing is required. Any Plaintiff who remains deficient at the time of that Case Management Conference shall appear (including telephonically) and respond to an Order to Show Cause why her Complaint should not be dismissed with prejudice. Failure to timely comply may result in a dismissal of Plaintiff's claim.

6. Authorizations shall be dated and signed. Defendants may use the Authorizations for all healthcare providers and other sources of information and records (e.g., pharmacies, employers, etc.) identified in the PFS, without further notice to Plaintiff's counsel. Within twenty (20) days of receipt of records by Defendants, Defendants' Liaison Counsel shall make said records received pursuant to the Authorizations available to Plaintiffs' Liaison Counsel and Plaintiff's counsel by uploading a copy to MDL Centrality at the same cost to the requesting Plaintiff of

on screen that the materials have been successfully submitted, and the receiving party has received notification of the submission via the MDL Centrality System.

⁴ An initial list of the Plaintiffs who do not cure the deficiencies and are thus subject to the Order to Show Cause will be filed with the Court not less than 14 days prior to the Case Management Conference at which such cases will be addressed. A final list will be provided to the Court the evening before the Case Management Conference. The format for the lists which go to the Court shall be prepared in accordance with the Court's instructions.

electronically reproducing records received by Defendants as set forth in the Multi-District Litigation.

7. If Defendants wish to use an Authorization to obtain medical records from a source that is not identified in the PFS, Defendants shall provide the Plaintiff's counsel for that particular case with fourteen (14) days written notice (email) of the intent to use an authorization to obtain records from that source. If Plaintiff's counsel fails to object to the request within fourteen (14) days, Defendants may use the authorization to request the medical records from the source identified in the notice. If Plaintiff's counsel objects to the use of the authorization to obtain records from the source identified in the notice within said fourteen (14) day period, Plaintiff's counsel and Defendants' counsel shall meet and confer in an attempt to resolve the objection. If counsel are unable to resolve the objection, Plaintiff shall file a motion for a protective order within thirty (30) days of the Defendants' notice of intent to use the authorization. If Plaintiff fails to file a motion for a protective order within this thirty (30) day period, Plaintiff shall be deemed to have waived the right to object to Defendant's use of the authorization.

8. Plaintiffs' responses to the PFS shall be treated as answers to interrogatories under N.J. Ct. R. 4:17-4 and responses to requests for production of documents under N.J. Ct. R. 4:18-1 and shall be supplemented in accordance with N.J. Ct. R. 4:17-7 and N.J. Ct. R. 4:18-1(b)(3).

9. Defendants' use of the PFS and Authorizations shall be without prejudice to Defendants' right to serve additional discovery.

DEFENDANT FACT SHEETS:

10. Because of the naming of multiple defendants in individual cases and questions of product identification, the following limitations shall apply to which Defendant(s) serve DFSs, in the form set forth in DFS, in which cases:

a. ***Before 2011 – Sanofi Defendants only:***

- i. If the first treatment date and last treatment date identified by a Plaintiff in PFS Section V(12)(c-d) is before 2011 and the PFS is submitted with the documentation required by PFS Section IX, only Defendants Sanofi S.A., Aventis Pharma S.A., Sanofi-Aventis U.S. LLC d/b/a Winthrop US and Sanofi U.S. Services Inc. (collectively “Sanofi Defendants”) must complete and serve a corresponding DFS. Sanofi Defendants need not complete and serve a DFS in any case where it has not been properly served either with process and summons consistent with the Court Rules or by service through procedures for streamlined service as approved by Orders in this MCL.
- ii. Sanofi S.A. and/or Aventis Pharma S.A., shall only be obligated under Section 10(a)(i) in those cases in which Sanofi S.A. and/or Aventis Pharma S.A. are listed as named parties.

b. ***2011 or Later with Product Identification – That Defendant Only:***

- i. If the first treatment date and last treatment date the Plaintiff identified in PFS Section V(12)(c-d) is 2011 or later; Plaintiff has provided the information requested by PFS Section VI(12-14); and the PFS is submitted with the documentation required by PFS Section IX;
- ii. Only the Defendant(s) whose product the Plaintiff identified in PFS Section III(2-3) and for whom documentation required by PFS Section IX was provided must complete and serve a DFS. No Defendant must complete and serve a DFS in any case where it has not been properly

served either with process and summons consistent with the Court Rules or by service through procedures for streamlined service as approved by Orders in this MCL.

c. ***2011 or Later without Product Identification – Named, Served Defendants But Limited DFS Only:***

- i. If the first treatment date and last treatment date the Plaintiff identified in PFS Section V(12)(c-d) is 2011 or later; Plaintiff has provided the information requested by PFS Section VI(12-14); and the PFS is submitted with the documentation required by PFS Section IX; and
- ii. If the Plaintiff selects “unknown” or does not identify the product allegedly taken in PFS Section III(2-3) and certifies in PFS Section III(4) that reasonable, good faith efforts were made to identify the manufacturer of Docetaxel; then
- iii. Each Defendant named by Plaintiff in her Complaint and properly served (either with process and summons consistent with the Court Rules or by service through procedures for streamlined service as approved by Orders in this MCL) is not required to serve a DFS as no affirmative product identification has been provided.
- iv. Notwithstanding the requirements of this Paragraph, no Defendant must complete and serve any DFS, including DFS Sections I – II, if their Docetaxel product was not FDA approved until after the last treatment date identified by the Plaintiff in PFS Section V(12)(c-d).
- v. Defendants subject to the provisions of this paragraph need not complete any remaining DFS sections unless and until the product used in the

Plaintiff's care is identified by supplementation of PFS Section III(2-3); Plaintiff has provided the information requested by PFS Section VI(12-14); and the PFS is submitted with the documentation required by PFS Section IX. However, once the above-stated conditions are met, Defendant must complete and submit a DFS in accordance with the time period and requirements set forth herein.

11. Subject to the limitations set forth in Paragraph 10, Defendants shall submit a DFS to the Plaintiff using MDL Centrality within seventy-five (75) days of the date the Defendants receive a substantially completed PFS from a Plaintiff. Solely for the purpose of triggering the DFS submission deadline, the term "substantially completed" in this Order and in the DFS is defined as service on Defendants of the PFS with Plaintiff's signed verification and the documentation required by PFS Section IX, i.e., prescription and/or pharmacy records demonstrating use of Taxotere (or Docetaxel), as well as medical records in Plaintiff's possession demonstrating alleged injury or photographs showing Plaintiff's hair before and after treatment with Taxotere (Docetaxel) along with the dates the photographs were taken.

12. If Defendants fail to provide a complete and verified DFS within the time period set forth hereinabove, Defendants shall be given notice of the deficiency⁵ via MDL Centrality within forty-five (45) days of service of the DFS and shall be given thirty (30) additional days from the date the notice of deficiency is received through MDL Centrality to cure such deficiency. Afterwards, Plaintiffs may add the name and case number of any cases in which Defendants failed to cure deficiencies within the thirty-day cure period to the Agenda for the next Case Management

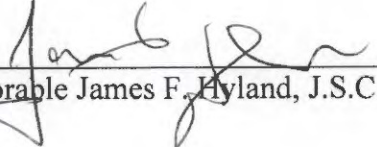
⁵ Each party shall bring any and all deficiencies to the attention of the opposing counsel in one letter, and shall be barred from raising any additional deficiencies that were apparent at the time, absent good cause shown, except those arising from the response to/cure of the deficiency.

Conference. No briefing is required. Any Defendant who remains deficient at the time of that Case Management Conference will be subject to an Order to Show Cause, returnable at the following Case Management Conference, which will require Defendant to show cause why its defenses should not be stricken in that case. Failure to timely comply may result in an Order striking defenses.

13. Defendants' responses on a DFS shall be treated as answers to interrogatories under N.J. Ct. R. 4:17-4 and responses to requests for production of documents under N.J. Ct. R. 4:18-1 and shall be supplemented in accordance with N.J. Ct. R. 4:17-7 and N.J. Ct. R. 4:18-1(b)(3).

14. It will be the responsibility of the counsel for the particular Plaintiffs or Defendants involved, as well as in coordination with Liaison Counsel for Plaintiffs and Defendants, to attempt to cure deficiencies and get a PFS/DFS served prior to raising the issue with the Court.

15. Plaintiffs' use of the DFS shall be without prejudice to the right of the Plaintiffs in a specific case to serve additional discovery, if authorized in further Orders of the Court.



Honorable James F. Hyland, J.S.C.