SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

CASE NO. 297

IN RE MIRENA LITIGATION

CIVIL ACTION

FILED

MAR 2 8 2014

BRIAN R. MARTINOTTI
J.S.C.

MEMORANDUM DESCISION

Before this Court are 13 motions[i] for summary judgment on Plaintiffs Heather Lee Besler, Amanda Kelly Fisher, Kayla Holland, Sarah Marie Kelly, Brittany Patterson, Donna Shatto, Montana Powell, Patricia Dominguez, Samantha Farley, Deanna Moore, Elizabeth Roman, Sabrina Brinkman, and Ebony Henderson,

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 18 separate claims by various defendants. Attached as Exhibit A to the Motion is a list of each individual Plaintiff, their Attorney, the PFS Due Date, and the Date the Notice of Overdue Discovery was sent. 5 of these motions were withdrawn. The remaining 13 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, with Plaintiff Elizabeth Roman's Attorney submitting a letter explaining that Ms. Roman has failed to respond to their repeated requests for the Fact Sheet and, therefore, they cannot object to the motion.

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 without prejudice these 12 complaints for failure to provide PFS. Plaintiffs have 90 days from

entry of this order to serve Defendant with a completed PFS or this dismissal without prejudice will be converted to a dismissal with prejudice upon Defendant's motion.

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[i] Originally, Defendant filed 18 motions. 5 of those were subsequently withdrawn.

EXHIBIT A

Motion to Dismiss for Failure to Provide Plaintiff Fact Sheet: March 28, 2014

Plaintiff	Plaintiff's Attorney	PFS Due Date	Notice Sent
Heather Lee	Parker Waichman	24-Feb-14	10-Dec-13
Amanda Kelly Fisher	Parker Waichman	24-Feb-14	10-Dec-13
Kayla Holland	Parker Waichman	24-Feb-14	10-Dec-13
Sarah Marie Kelly	Motley Rice/Parker Waichman	14-Feb-14	11-Dec-13
Brittany Patterson	Johnson Becker/Parker Waichman	24-Feb-14	11-Dec-13
Donna Shatto	Johnson Becker/Parker Waichman	24-Feb-14	11-Dec-13
Montana Powell	Parker Waichman	24-Feb-14	11-Dec-13
Patricia Dominguez	Matthews & Associates/D'Arcy Johnson Day	6-Dec-14	6-Jan-14
Samantha Farley	Matthews & Associates/D'Arcy Johnson Day	6-Dec-14	6-Jan-14
Deanna Moore	Meyers & Flowers/Parker Waichman	4-Nov-14	22-Jan-14
Elizabeth Roman	Rheingold Valet	15-Nov-13	22-Jan-14
Sabrina Brinkman	Parker Waichman	15-Dec-13	22-Jan-14
Ebony Henderson	Meyers & Flowers/Parker Waichman	15-Dec-13	22-Jan-14