ERICA DAVIS, **Plaintiff,** **v.** **BAYER CORP., ET AL.,** **Defendants.**	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION, BERGEN COUNTY** **DOCKET NO. BER-L-009907-10** **IN RE YAZ®, YASMIN®, OCELLA LITIGATION** **CASE CODE 287** **SPECIAL MASTER'S REPORT AND RECOMMENDATION**

Bayer has moved to dismiss this action for failure to serve preservation notices required by Case Management Order No. 39 ("CMO 3").

Plaintiff filed her complaint on October 4, 2010. She alleged a gallbladder injury as a result of her ingestion of YAZ. Pursuant to Section I of CMO 39, Ms. Davis was required (a) to notify various individuals and/or entities that they may have records relevant to the plaintiffs' claims and that such records must be preserved, and (b) to serve copies of these notices on Bayer's counsel. Bayer's counsel has indicated in his motion that no such notices were served upon Bayer.

Pursuant to Section I.E of CMO 29, "Gallbladder Plaintiffs who fail to fully comply with the requirements of Paragraph D above [service of copies of Notices upon Bayer counsel] shall be given notice of such failure by e-mail or fax from Defendant's Liaison Counsel or his designee and shall be provided **ten (10) additional days** to cure such deficiency ("Cure Period")." (Emphasis in Original). Section I.E. goes on to provide that "[n]o other extensions will be granted unless agreed to by all Parties"; "[i]f Plaintiff fails to cure the deficiency within the Cure Period, Defendant's Liaison Counsel or his designee may file a Rule to Show Cause why the Gallbladder Claim should not be dismissed with prejudice"; "[p]laintiff shall thereupon have **thirty (30)** days to respond to the Rule to Show Cause" (Emphasis in Original); and "[a]ny failure to respond to the Motion within the required period of time shall lead to the dismissal of

FILED

OCT 01 2013

BRIAN R. MARTINOTTI
J.S.C.

the Gallbladder Claim with prejudice, except for good cause shown."

I have examined the motion papers submitted by Bayer. It appears that Bayer gave e-mail notice to Plaintiff's counsel on July 26, 2013 of the failure of Plaintiff to serve the preservation notices upon Bayer on or before July 8, 2013 as required by Section I.D. of CMO 29. Bayer thereafter filed its motion to dismiss on August 28, 2013. Plaintiff has had 30 days to respond and has filed no response.

The Court appointed me Special Master in Section III of CMO 39 to make recommendations on motions. I have considered the provisions of CMO 39 and the material submitted by Bayer in support of its motion.

Since Ms. Davis has not complied with Section I.D. of CMO 29 and has not cured her failure to comply, I recommend that the Court grant Bayer's motion to dismiss.

DATE: October 1, 2013

/s Stephen A. Saltzburg
Special Master