

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
IN RE: ZOFRAN (ONDANSETRON))	
PRODUCTS LIABILITY LITIGATION)	
)	
This Document Relates to:)	MDL No. 1:15-md-2657-FDS
)	
<i>DeLeon v. GlaxoSmithKline, 15-cv-13919;</i>)	
<i>Dixon v. GlaxoSmithKline, 15-cv-13924;</i>)	
<i>Perham v. GlaxoSmithKline, 16-cv-10199;</i>)	
<i>Pilkington v. GlaxoSmithKline, 15-cv 13842;</i>)	
<i>Rickman v. GlaxoSmithKline, 15-cv-13830;</i>)	
<i>Shonkwiler v. GlaxoSmithKline, 15-cv-13583;</i>)	
_____)	

ORDER CONCERNING REQUESTS FOR SANCTIONS

SAYLOR, J.

In May 2016, this Court issued a series of orders requiring plaintiffs to file certain documents according to the following deadlines: (1) Product Identification Sheets (“PIDs”) were to be served by the later of either June 27, 2016, or 30 days from the entry of a protective order governing confidential and privileged information (Docket No. 251); (2) Plaintiff Fact Sheets (“PFSs”) were to be served by the later of July 25, 2016, or 60 days from the entry of a protective order governing confidential and privileged information (Docket No. 252); and (3) Short-Form Complaints were to be filed by August 8, 2016 (Docket No. 243).

On September 14, 2016, defendant moved to dismiss the complaints of plaintiffs Dixon, Pilkington, Rickman, Shonkwiler, and Perham for failure to prosecute and/or to comply with this Court’s discovery orders.

On September 20, plaintiffs Dixon, Pilkington, and Rickman filed an opposition in which they explained that they had required additional time to retrieve necessary medical records, and

for that reason had requested that defendant provide them with a 60-day extension to complete their PFSs. Their requested extension—if granted—would have resulted in a deadline of September 23, 2016. They eventually filed their PFSs on September 16, nearly two months after the court-ordered deadline. On October 4, defendant responded that it had opposed the request for an extension because it was made when the PFSs were already nearly one month late.

On October 4, 2016, plaintiff Shonkwiler filed an opposition to defendant's motion to dismiss, stating that she had needed additional time to retrieve the medical documentation necessary to complete the required documents. She further stated that she had cured any deficiencies by submitting her PID, PFS, and short-form complaint. Her opposition did not specify the dates on which those documents were submitted, but her short-form complaint was docketed on September 30, 2016, two months after the court-ordered deadline.

Plaintiff Perham did not file any opposition to defendant's motion to dismiss, nor did she seek an extension of time. She filed her PFS on September 19, 2016, nearly two months after the court-ordered deadline.¹

On October 20, 2016, defendant moved to dismiss the complaint of plaintiff DeLeon for failure to prosecute and/or to comply with this Court's discovery orders, on the ground that she had failed to submit her PFS by the court-ordered deadline.² DeLeon filed an opposition on October 28, stating that she had erroneously believed that her PFS had already been submitted, and that she had corrected the error by properly filing her PFS on October 21. Her PFS was filed nearly three months after the court-ordered deadline.

¹ The chart that counsel for defendant provided at the November 10 hearing indicated that Penham had filed her PID and PFS late. However, its September 14 motion referred only to a missing PFS.

² Again, the chart that counsel provided at the November 10 hearing indicated that DeLeon had filed all three required documents—PID, PFS, and short-form complaint—late. However, its October 20 motion referred only to a missing PFS.

Because it appears that plaintiffs have submitted the required information, an order compelling production of discovery and/or the filing of short-form complaints is unnecessary. Furthermore, the relatively extreme sanction of dismissal is not appropriate under the circumstances. The only remaining issue is whether an award of attorney's fees and costs pursuant to Rule 37(b) is appropriate. If defendant wants to continue to pursue such sanctions, it shall file a renewed motion for sanctions with one or more supporting affidavits showing the attorney's fees and costs it incurred in connection with seeking to compel the missing information. Any such renewed motion shall be filed within 21 days (that is, by December 9, 2016).

So Ordered.

Dated: November 18, 2016

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge