

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Paul Schenk, et al.,

10 Plaintiffs,

11 v.

12 Novartis Pharmaceuticals Corporation,

13 Defendant.

No. CV-12-08223-PCT-NVW

**ORDER**

14  
15 Before the Court is the parties' joint Stipulation of Voluntary Dismissal Without  
16 Prejudice (Doc. 114) pursuant to Rule 41(a)(1)(A)(ii), Federal Rules of Civil Procedure.  
17 The parties' joint Stipulation will be rejected for failure to comply with Rule 41 and as  
18 inconsistent with the rules and procedures underlying multidistrict litigation.

19 Under Rule 41, a plaintiff's right to dismiss an action without a court order is  
20 subject to "any applicable federal statute." Fed. R. Civ. P. 41. The statute governing  
21 multidistrict litigation, 28 U.S.C. § 1407, is such a statute. *In re Zicam Cold Remedy*  
22 *Mktg., Sales Practices, & Products Liab. Litig.*, 09-MD-2096 PHX-FJM, 2010 WL  
23 3402490 (D. Ariz. Aug. 26, 2010).

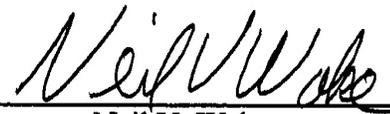
24 This case was first filed 2007 and was one of many cases that took part in a  
25 consolidated pretrial multidistrict litigation proceeding. In September 2012, it was  
26 remanded back to its original court of filing pursuant to 28 U.S.C. § 1407(a). Section  
27 1407(a) exists to "promote the just and efficient" resolution of cases such as this. *Id.* To  
28 allow the parties to dismiss this action without prejudice and leave this case open to  
refiling at this stage in the litigation would waste seven years of considerable court

1 resources and allow the unilateral actions of the parties to undermine the efficiency of the  
2 MDL process. *In re Zicam Cold Remedy Mktg.*, 09-MD-2096 PHX-FJM, 2010 WL  
3 3402490. Accordingly, the parties' joint Stipulation of Voluntary Dismissal Without  
4 Prejudice (Doc. 114) will be rejected.

5 The parties are reminded that their Supplemental Briefs and Statement of Facts  
6 pursuant to Court Order (Doc. 113) filed August 20, 2014, are due by end of the day  
7 today, Wednesday, August 27, 2014.

8 IT IS THEREFORE ORDERED that parties' joint Stipulation of Voluntary  
9 Dismissal Without Prejudice (Doc. 114) pursuant to Rule 41(a)(1)(A)(ii) is rejected.

10 DATED this 27th day of August, 2014.

11  
12 

13 \_\_\_\_\_  
14 Neil V. Wake  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28