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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAMELA COLEMAN, et al.,
Plaintiffs,
v.
BOSTON SCIENTIFIC CORPORATION,
Defendant.

Case No. 1:10-cv-01968-AWI-SAB
ORDER REQUIRING COUNSEL FOR
PLAINTIFFS TO FILE CLARIFICATION
REGARDING NOTICE OF VOLUNTARY
DISMISSAL
(ECF No. 82)
FIVE DAY DEADLINE

This action was initially filed on October 20, 2010. (ECF No. 1.) On February 22, 2012, the action was transferred under 28 U.S.C. § 1407 into the Southern District of West Virginia as part of Multidistrict Litigation Case No. 2326 (“MDL 2326”). (ECF No. 73.) On May 8, 2020, the action was remanded back to the Eastern District of California. (ECF No. 74.) As part of the remand order, the docket sheet from the Southern District of West Virginia was attached. (ECF No. 74-1.) Currently before the Court is a notice of voluntary dismissal filed by Plaintiffs Mary Bower and Kathleen Paison, only, dismissing the action as between such Plaintiffs and Defendant pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. (ECF No. 82.)

Rule 41(a)(1)(A) allows a plaintiff to dismiss an action without a court order by filing either: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.

1 Fed. R. Civ. P. 41(a)(1)(A)(i)-(ii).

2 From a review of the docket, it is unclear from previous filings whether Plaintiffs Mary
3 Bower and Kathleen Paison are in fact still parties in this action. Prior to transfer, on June 14,
4 2011, Plaintiffs Mary Bower and Kathleen Paison filed a notice of voluntary dismissal in the
5 Eastern District of California. (ECF No. 30.) However, these Plaintiffs were not terminated on
6 the Eastern District of California docket pursuant to this notice of voluntary dismissal.
7 Nonetheless the West Virginia docket indicates that Plaintiffs Mary Bower and Kathleen Paison
8 were terminated as parties on June 14, 2011. (ECF No. 74-1.) Further, on June 17, 2011,
9 Plaintiff Pamela Coleman filed a first amended complaint, and on September 26, 2011, Plaintiff
10 Pamela Coleman filed a second amended complaint. (ECF Nos. 31, 53.) Neither Plaintiff Mary
11 Bower nor Kathleen Paison appear as Plaintiffs on these complaints. Given these facts, the
12 Court shall order counsel for Plaintiffs to file a statement clarifying whether the Court should
13 simply direct the Clerk of the Court to terminate Plaintiffs Mary Bower and Kathleen Paison on
14 the docket pursuant to the notice of voluntary dismissal previously filed on June 14, 2011 (ECF
15 No. 30), or whether for some reason the notice filed on May 19, 2020 (ECF No. 82), is necessary
16 to effectuate such dismissal.¹ See Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193
17 F.3d 1074, 1077 (9th Cir. 1999) (“[A] dismissal under Rule 41(a)(1) is effective on filing, no
18 court order is required, the parties are left as though no action had been brought, the defendant
19 can’t complain, and the district court lacks jurisdiction to do anything about it.”).

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25 ¹ If the latter, and Plaintiffs Mary Bower’s and Kathleen Paison’s voluntarily dismissal of their action against
26 Defendant on June 14, 2011, was not effectuated, or was rendered moot at some point during the MDL, it is not
27 clear to the Court whether Defendant has filed an answer in this action that would preclude filing the notice of
28 dismissal without the consent of all parties under Rule 41. The Court notes that docket entry number 107 from the
Southern District of West Virginia docket signifies that a “Master Long Form Complaint” and “Master Answer to
Master Long Form Complaint.” (ECF No. 74-1 at 12.) Additionally, from a review of West Virginia docket, it
appears that some discovery has been completed with at least Plaintiff Pamela Coleman.

1 Accordingly, IT IS HEREBY ORDERED that within five (5) days of entry of this order,
2 counsel for Plaintiffs shall file a statement notifying the Court as to whether Plaintiffs Mary
3 Bower and Kathleen Paison have already dismissed their action against Defendant pursuant to
4 the notice of voluntary dismissal previously filed on June 14, 2011, and whether the notice of
5 dismissal filed on May 19, 2020, is thus moot.

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7 IT IS SO ORDERED.

8 Dated: May 20, 2020


UNITED STATES MAGISTRATE JUDGE

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