

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**IN RE: Seroquel Products Liability Litigation**

**MDL Docket No. 1769**

**This document relates to:**

**ALL CASES IN EXHIBIT 1**

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**ASTRAZENECA DEFENDANTS' MOTION REQUESTING DISMISSALS WITHOUT  
PREJUDICE FOR FAILURE TO SERVE PLAINTIFF FACT SHEETS**

Certain Plaintiffs have failed to serve their Plaintiff Fact Sheet. Accordingly, the AstraZeneca Defendants (AstraZeneca) move to dismiss the claims of those Plaintiffs. Under Case Management Order (CMO) No. 2, Plaintiffs are obligated to provide completed Plaintiff Fact Sheets within certain deadlines (Docket No. 129 at ¶ I(A)-(B)). One hundred and sixteen (116) Plaintiffs in the attached list (Exhibit 1), represented by the law firm Bailey Perrin Bailey LLP, were designated to provide their Plaintiff Fact Sheets on May 31, 2007. Despite a Notice of Overdue Discovery and an additional 20 day cure period, those 116 Plaintiff have still failed to serve any Plaintiff Fact Sheets whatsoever and their claims should be dismissed without prejudice in accordance with Case Management Order No. 2. In support of this Motion, AstraZeneca states as follows:

1. For cases filed prior to January 31, 2007, Paragraph I(A) of CMO No. 2 provides that Plaintiffs' counsel must designate when a completed Plaintiff's Fact Sheet will be served for each Plaintiff (Docket No. 129).

2. CMO No. 2 further provides that, if Plaintiffs do not serve a completed Plaintiff Fact Sheet within 10 days of the due date, AstraZeneca should send a Notice of Overdue Discovery. *Id.* ¶ I(C).

3. If a completed PFS is not served within 20 days of the Notice, AstraZeneca may submit to the Court an Order dismissing the Complaint without prejudice. *Id.* at ¶ I(D).

4. Plaintiffs then have 10 business days from the submission of the dismissal order to file a notice certifying that they served AstraZeneca with a completed PFS and provide documentation of receipt, or the case will be dismissed without prejudice. *Id.*

5. Pursuant to CMO No. 2, on February 16, 2007, Plaintiffs' counsel filed designations listing the month each Plaintiff's PFS was due (Docket No. 150). *See* Bailey Perrin Bailey LLP's Plaintiffs' Notice of Designation of Monthly PFS Due Dates (Exhibit 2).

6. On May 31, 2007, Plaintiffs' failed to serve 116 Plaintiffs' Fact Sheets that were designated for service on May 31, 2007.

7. On June 12, 2007, AstraZeneca's counsel sent a Notice of Overdue Discovery to Plaintiffs' counsel, stating that the unserved Plaintiff Fact Sheets in 116 cases designated to be served on May 31, 2007 were overdue and must be served within 20 days in accordance with CMO No. 2 (Exhibit 3).

8. Plaintiffs' counsel's 20 day cure period under CMO No. 2 to serve completed Plaintiff Fact Sheets expired on July 1, 2007. Plaintiffs' counsel has still not served the 116 Plaintiff Fact Sheets that it originally designated to serve on May 31, 2007.

9. Accordingly, AstraZeneca hereby moves the Court to Order the cases to be dismissed without prejudice if Plaintiffs do not serve AstraZeneca with completed Plaintiff Fact Sheets and file proof of receipt within 10 business days from the date of this Motion.

10. If Plaintiffs do not serve completed Plaintiff Fact Sheets by July 12, 2007, the Court should dismiss those cases without prejudice in accordance with CMO No. 2. Indeed, dismissal of cases where no Plaintiff Fact Sheet is provided has been held to be an appropriate sanction in multi-district product liability litigation. *See, e.g., In re PPA Products Liability Litigation*, 460 F.3d 1217, 1234 (9th Cir. 2006) (affirming district court's dismissal as appropriate sanction for failure to provide Plaintiff Fact Sheets).

11. A form Order with an Exhibit listing the cases ripe for dismissal is provided in accordance with CMO No. 2, paragraph I(D) (Exhibit 4).

WHEREFORE, in accordance with the terms of CMO No. 2, AstraZeneca respectfully requests that the Court dismiss the 116 cases in Exhibit 1 where no Plaintiff Fact Sheet has been served and there is no proof of service filed with the court within 10 business days from the date of this Motion.

Dated: July 2, 2007

/s/ A. Elizabeth Balakhani

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**CERTIFICATE OF SERVICE**

I hereby certify that, on the 2<sup>nd</sup> of July, 2007, I caused a true and correct copy of the foregoing AstraZeneca Defendants' Motion Requesting Dismissals Without Prejudice For Failure To Serve Plaintiff Fact Sheets to be served electronically through ECF upon the following:

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