

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

**IN RE: YASMIN AND YAZ (DROSPIRENONE)
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION**

) **3:09-md-02100-DRH-PMF**
) **MDL No. 2100**
)

**ORDER REGARDING
PFS COMPLIANCE and
DISMISSING CERTAIN
ACTIONS WITHOUT
PREJUDICE**

This Document Relates to:

- Petra Asel v. Bayer Corp., et al.* No. 3:10-cv-12527-DRH-PMF
- Lauren Baker v. Bayer Corp., et al.* No. 3:10-cv-12644-DRH-PMF
- Ashley Blackard v.
Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:10-cv-12230-DRH-PMF
- Shawna Carter v.
Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:10-cv-13225-DRH-PMF
- Vanessa Cervantes v.
Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:10-cv-13014-DRH-PMF
- Jill Day v.
Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:10-cv-12389-DRH-PMF
- Autumn Dickson v. Bayer Corp., et al.* No. 3:10-cv-12921-DRH-PMF
- Ashley Flynt v.
Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:10-cv-12485-DRH-PMF
- Tanya Lynch v. Bayer Corp., et al.* No. 3:10-cv-12626-DRH-PMF
- Rosslyn McCrae v.
Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:10-cv-12198-DRH-PMF
- Ellen Miller v.* No. 3:10-cv-10813-DRH-PMF

Bayer HealthCare Pharmaceuticals Inc., et al.

Kewona Richards v. Bayer Corp., et al.

No. 3:10-cv-11021-DRH-PMF

Janett Vargas v. Bayer Corp., et al.

No. 3:10-cv-12138-DRH-PMF

ORDER

HERNDON, Chief Judge:

This matter is before the Court on Defendant Bayer HealthCare Pharmaceuticals Inc.'s ("Bayer") motion, pursuant to Case Management Order 12 ("CMO 12"), for an Order dismissing Plaintiffs' claims, in the above-captioned matters, without prejudice for failure to comply with their Plaintiff Fact Sheet ("PFS") obligations.¹ Bayer contends that the Plaintiffs in the above-captioned matters were required to serve a completed PFS on or before February 24, 2011 but have not done so.²

Under Section E of CMO 12, **Plaintiffs were given 14 days from the date of Defendant's motion**, in this case 14 days from April 12, 2011, to file a response either certifying that they served upon Defendants and Defendants

¹ Under Section C of CMO 12, each Plaintiff is required to serve Defendants with a completed PFS, including a signed Declaration, executed record release Authorizations, and copies of all documents subject to the requests for production contained in the PFS which are in the possession of Plaintiff. Section B of CMO 12 further provides that a completed PFS is due "45 days from the date of service of the first answer to her Complaint or the docketing of her case in this MDL, or 45 days from the date of this Order, is whichever is later."

² See *e.g.*, *Miller v. Bayer HealthCare Pharmaceuticals Inc.*, No. 3:10-cv-10813-DRH-PMF Doc. 5, Doc. 5-1, and Doc. 5-2.

received a completed PFS, and attaching appropriate documentation of receipt or an opposition to Defendant's motion.³

To date, only two of the Plaintiffs in the above captioned member actions have filed a response:

1. Plaintiff Kewona Richards (*Kewona Richards v. Bayer Corp., et al.* No. 3:10-cv-11021-DRH-PMF) filed the requisite response on May 3, 2011 (Doc. 9). Thereafter Defendants filed a notice of non-opposition to plaintiff Richards' response (Doc. 10).
2. Plaintiff Janett Vargas (*Janett Vargas v. Bayer Corp., et al.* No. 3:10-cv-12138-DRH-PMF) filed the requisite response on May 3, 2011 (Doc. 9). Thereafter Defendants filed a notice of non-opposition to plaintiff Richards' response (Doc. 10).

³ Responses to Bayer's motion to dismiss were due 14 days from April 12, 2011 regardless of any response date automatically generated by CM/ECF. The Court has previously noted in orders in this MDL and during a status conference in this MDL that **when deadlines provided by CM/ECF conflict with orders of this Court, the Court ordered deadline will always control. See United States District Court for the Southern District of Illinois, Electronic Filing Rules, Rule 3 (The "filer is responsible for calculating the response time under the federal and/or local rules. The date generated by CM/ECF is a guideline only, and, if the Court has ordered the response to be filed on a date certain, the Court's order governs the response deadline."**). The deadlines provided by CM/ECF are generated automatically based on the generic responsive pleading times allowed under the rules and do not consider special circumstances (such as court orders specific to a particular case or issue).

Accordingly, the Court **ORDERS** as follows:

With regard to plaintiff Kewona Richards (*Kewona Richards v. Bayer Corp., et al.* No. 3:10-cv-11021-DRH-PMF) and plaintiff Janett Vargas (*Janett Vargas v. Bayer Corp., et al.* No. 3:10-cv-12138-DRH-PMF) the motion to dismiss is **DENIED**.

The plaintiffs in the remaining eleven member actions (where no responsive pleading was filed), have failed to comply with the PFS obligations under CMO 12. Therefore the following member actions are **DISMISSED WITHOUT PREJUDICE** for failure to comply with the requirements of CMO 12.

<i>Petra Asel v. Bayer Corp., et al.</i>	No. 3:10-cv-12527-DRH-PMF
<i>Lauren Baker v. Bayer Corp., et al.</i>	No. 3:10-cv-12644-DRH-PMF
<i>Ashley Blackard v. Bayer HealthCare Pharmaceuticals Inc., et al.</i>	No. 3:10-cv-12230-DRH-PMF
<i>Shawna Carter v. Bayer HealthCare Pharmaceuticals Inc., et al.</i>	No. 3:10-cv-13225-DRH-PMF
<i>Vanessa Cervantes v. Bayer HealthCare Pharmaceuticals Inc., et al.</i>	No. 3:10-cv-13014-DRH-PMF
<i>Jill Day v. Bayer HealthCare Pharmaceuticals Inc., et al.</i>	No. 3:10-cv-12389-DRH-PMF
<i>Autumn Dickson v. Bayer Corp., et al.</i>	No. 3:10-cv-12921-DRH-PMF
<i>Ashley Flynt v. Bayer HealthCare Pharmaceuticals Inc., et al.</i>	No. 3:10-cv-12485-DRH-PMF
<i>Tanya Lynch v. Bayer Corp., et al.</i>	No. 3:10-cv-12626-DRH-PMF

*Rosslyn McCrae v.
Bayer HealthCare Pharmaceuticals Inc., et al.*

No. 3:10-cv-12198-DRH-PMF

*Ellen Miller v.
Bayer HealthCare Pharmaceuticals Inc., et al.*

No. 3:10-cv-10813-DRH-PMF

Further, the Court reminds Plaintiffs that, pursuant to CMO 12 Section E, **unless Plaintiffs serve Defendants with a COMPLETED PFS or move to vacate the dismissal without prejudice within 60 days after entry of this Order, the Order will be converted to a Dismissal With Prejudice upon Defendants' motion.**

SO ORDERED

 Digitally signed by
David R. Herndon
Date: 2011.05.05
16:18:40 -05'00'

**Chief Judge
United States District Court**

Date: May 5, 2011