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

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

**3:09-md-02100-DRH-PMF**

**MDL No. 2100**

---------- **Judge David R. Herndon**

**This Document Relates to:**

*Maya Agosto, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10472-DRH-PMF[1]

*Brittany Aguirre, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10473-DRH-PMF[2]

*Lois Aubin, et al. v. Bayer Corporation, et al.3* No. 3:13-cv-10490-DRH-PMF[3]

*Michele Bailey, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10478-DRH-PMF[4]

*Amy Bell, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10471-DRH-PMF[5]

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[1] This order applies to all plaintiffs in the *Agosto* case: Maya Agosto, Andrea Anderson-Cox Chelsie Andrew, Angela Ballard, and Sedelia Beecher.
[2] This order applies only to plaintiffs Brittany Aguirre, Khristian Barnhart, Amy Feeken, and Elizabeth Folgers.
[3] This order applies to only plaintiffs Lois Aubin, Michelle Ball, and Courtney Burnett.
[4] This order applies to all plaintiffs in the *Bailey* case: Michele Bailey, Barbara Collins, Donna Collins, Brittney Duplantis, and Susan Farrell.
[5] This order applies to all plaintiffs in the *Bell* case: Amy Bell, Tiffany Brimhall, Chloe Cooper, Tyesha Cooper, and Samantha Dacey.

*Chrissy Brown, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10413-DRH-PMF[6]

*Elizabeth Bunning, et al. v. Bayer Pharma AG, et al.* No. 3:12-cv-11227-DRH-PMF[7]

*Kiara Callahan, et al. v. Bayer Corporation, et al.* No. 3:13-cv-10493-DRH-PMF[8]

*Patricia Carson, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10453-DRH-PMF[9]

*Sharell Christensen, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10438-DRH-PMF[10]

*Veronica Delgado, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10470-DRH-PMF[11]

*Alex Draisey, et al. v. Bayer Corporation, et al.* No. 3:13-cv-10495-DRH-PMF[12]

*Jolene Eddy, et al. v. Bayer Corporation, et al.* No. 3:13-cv-10302-DRH-PMF[13]

*Tanya Etie, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:11-cv-10423-DRH-PMF[14]

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[6] This Order applies to Plaintiff Sadie Haas Only.
[7] This order applies to only plaintiff Nicole Rimmel.
[8] This order applies to only plaintiffs Chelsea Carroll and Jennifer Dittberner.
[9] This order applies to only plaintiffs Melissa Mateyunas and Julie Nelson.
[10] This order applies to only plaintiff Sharell Christensen.
[11] This order applies to all plaintiffs in the *Delgado* case: Veronica Delgado, Tiffany Diehl, Zina Feliciano, Shakendra Gaskins, and Kathryn Gatti.
[12] This order applies to only plaintiffs Alex Draisey, Mary Dugan, and Claudia Finales.
[13] This order applies to only plaintiff Amy Jennings.
[14] This order applies to only Mary Theresa Massucci.

**ORDER REGARDING MOTION TO DISMISS WITH PREJUDICE**

**HERNDON, Chief Judge:**

On March 16, 2013, Bayer filed a motion seeking with prejudice dismissal, of the above captioned plaintiffs' claims.[15] The motion seeks dismissal, pursuant to Case Management Order 60 ("CMO 60"), for failure to submit any Claim Package Materials.[16]

Pursuant to the Court's local rules, the plaintiffs had 30 days to file a responsive pleading. None of the above captioned plaintiffs filed a responsive pleading. At the expiration of the responsive pleading deadline, as is required under CMO 60, the motion was considered by Special Master Stephen Saltzburg.[17] On April 28, 2014, Special Master's Saltzburg's report and recommendation relating to all but one of the above captioned cases was

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[15] On March 16, 2014, Bayer filed a motion to dismiss with prejudice seeking dismissal of the claims of specified plaintiffs in 20 member actions. The motion to dismiss has been withdrawn as to the following: *Kristie Cavanaugh, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10455-DRH-PMF. Therefore, this case is not addressed in this order. In addition, the plaintiffs in the following member actions were granted a responsive pleading extensions: *Elizabeth Carrion, et al. v. Bayer Corporation, et al.* No. 3:12-cv-10704-DRH-PMF; *Margaret Colson, et al. v. Bayer Corporation, et al.* No. 3:12-cv-11434-DRH-PMF; *Elizabeth Barns, et al. v. Bayer Corporation, et al.* No. 3:13-cv-10371-DRH-PMF; *Sophia Darlington, et al. v. Bayer Corporation, et al.* No. 3:13-cv-10372-DRH-PMF; and *Christina Brown, et al. v. Bayer Corporation, et al.* No. 3:10-cv-11539-DRH-PMF. Accordingly, as to these five cases, the motion is not ripe for consideration. The motion to dismiss, as it relates to these five cases, will be addressed in a separate order.

[16] Pursuant to the "Settlement Agreement," Exhibit A to CMO 60, plaintiffs enrolled in the Gallbladder Resolution Program are required to submit to the Claims Administrator all the Claim Package Materials identified in Section 3.03(a) of the Settlement Agreement. Section 3.01 of the Settlement Agreement fixed November 18, 2013 as the deadline for submission of a complete Claims Package. The subject motion asserts that the plaintiffs have failed to comply with this requirement.

[17] Section VIII of CMO 60 "appoints Professor Stephen Saltzburg as Special Master to hear motions to dismiss claims that fail to comply with the terms of the Agreement, and to recommend to this Court rulings on such motions, as specified in the Agreement" (Doc. 2739 p. 8).

docketed. The following day, on April 29, 2014, Special Master Saltzburg's report and recommendation relating to the remaining member action (*Chrissy Brown, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10413-DRH-PMF) (plaintiff Sadie Haas only) was docketed. In each case, Special Master Saltzburg found that the subject plaintiffs failed to comply with the requirements of CMO 60 and recommended that the subject plaintiffs' claims be dismissed with prejudice in accord with the requirements of CMO 60.

In each case, the parties were given 14 days to respond or object to Special Master Saltzburg's report and recommendation. The 14 day deadline for responding or objecting to the Special Master's report has expired. None of the above captioned plaintiffs have responded or objected.

Upon consideration of Bayer's motion to dismiss, the Special Master's reports, and the requirements of CMO 60, the Court finds that all but one of the subject plaintiffs have failed to comply with CMO 60. The exception is plaintiff Mary Theresa Massucci in member action *Tanya Etie, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:11-cv-10423-DRH-PMF. Plaintiff Massucci's claims were dismissed without prejudice pursuant to a stipulation of dismissal filed by the parties in August 2011 (Doc. 8). The Court will not now dismiss plaintiff Massucci's claims with prejudice for failure to comply with an order entered in March 2013 (after the parties stipulated to the dismissal of her claims).

Accordingly, **as to plaintiff Mary Theresa Massucci in member action**

***Tanya Etie, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:11-cv-10423-DRH-PMF**, the motion to dismiss is **DENIED**.

With regard to plaintiff Mary Theresa Massucci, should counsel for either party demonstrate that regardless of her status as a dismissed plaintiff, Ms. Massucci was provided with a gallbladder settlement package in order to supply the information needed and, therefore, given the opportunity to participate but failed to do so, the Court will reconsider the denial herein. However, such information and motion to reconsider must be filed in accordance with the rules governing either Rule 59 or 60, but the Court shall consider such evidence new evidence.

As to the remaining plaintiffs, the Court adopts Special Master Saltzburg's reports. The subject plaintiffs' claims are therefore **DISMISSED WITH PREJUDICE** for failure to comply with the requirements of CMO 60.

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

1. ***Maya Agosto, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.* No. 3:13-cv-10472-DRH-PMF**

The claims of ALL plaintiffs in the *Agosto* case (Maya Agosto, Andrea Anderson-Cox Chelsie Andrew, Angela Ballard, and Sedelia Beecher) are DISMISSED WITH PREJUDICE.

**FURTHER**, the Court directs the Clerk of the Court to enter judgment reflecting the same.

2. ***Brittany Aguirre, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.*** **No. 3:13-cv-10473-DRH-PMF**

The claims of plaintiffs Brittany Aguirre, Khristian Barnhart, Amy Feeken, and Elizabeth Folgers are DISMISSED WITH PREJUDICE.

3. ***Lois Aubin, et al. v. Bayer Corporation, et al.3*** **No. 3:13-cv-10490-DRH-PMF**

The claims of plaintiffs Lois Aubin, Michelle Ball, and Courtney Burnett are DISMISSED WITH PREJUDICE.

4. ***Michele Bailey, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.*** **No. 3:13-cv-10478-DRH-PMF**

The claims of ALL plaintiffs in the *Bailey* case (Michele Bailey, Barbara Collins, Donna Collins, Brittney Duplantis, and Susan Farrell) are DISMISSED WITH PREJUDICE.

**FURTHER**, the Court directs the Clerk of the Court to enter judgment reflecting the same.

5. ***Amy Bell, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.*** **No. 3:13-cv-10471-DRH-PMF**

The claims of ALL plaintiffs in the *Bell* case (Amy Bell, Tiffany Brimhall, Chloe Cooper, Tyesha Cooper, and Samantha Dacey) are DISMISSED WITH PREJUDICE.

**FURTHER**, the Court directs the Clerk of the Court to enter judgment reflecting the same.

6. ***Chrissy Brown, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.*** **No. 3:13-cv-10413-DRH-PMF**

The claims of plaintiff Sadie Haas are DISMISSED WITH PREJUDICE.

7. ***Elizabeth Bunning, et al. v. Bayer Pharma AG, et al.*** **No. 3:12-cv-11227-DRH-PMF**

The claims of plaintiff Nicole Rimmel are DISMISSED WITH PREJUDICE.

8. ***Kiara Callahan, et al. v. Bayer Corporation, et al.*** **No. 3:13-cv-10493-DRH-PMF**

The claims of plaintiffs Chelsea Carroll and Jennifer Dittberner are DISMISSED WITH PREJUDICE.

9. ***Patricia Carson, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.*** **No. 3:13-cv-10453-DRH-PMF**

The claims of plaintiffs Melissa Mateyunas and Julie Nelson are DISMISSED WITH PREJUDICE.

10. ***Sharell Christensen, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.*** **No. 3:13-cv-10438-DRH-PMF**

The claims of plaintiff Sharell Christensen are DISMISSED WITH PREJUDICE.

11. ***Veronica Delgado, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.*** **No. 3:13-cv-10470-DRH-PMF**

The claims of ALL plaintiffs in the *Delgado* case (Veronica Delgado, Tiffany Diehl, Zina Feliciano, Shakendra Gaskins, and Kathryn Gatti) are DISMISSED WITH PREJUDICE.

**FURTHER**, the Court directs the Clerk of the Court to enter judgment reflecting the same.

**12. *Alex Draisey, et al. v. Bayer Corporation, et al.* No. 3:13-cv-10495-DRH-PMF**

The claims of plaintiffs Alex Draisey, Mary Dugan, and Claudia Finales are DISMISSED WITH PREJUDICE.

**13. *Jolene Eddy, et al. v. Bayer Corporation, et al.* No. 3:13-cv-10302-DRH-PMF**

The claims of plaintiff Amy Jennings are DISMISSED WITH PREJUDICE.

**14.** ***Tanya Etie, et al. v. Bayer HealthCare Pharmaceuticals Inc., et al.*** **No. 3:11-cv-10423-DRH-PMF**

The motion to dismiss the claims of Mary Theresa Massucci is DENIED.

**SO ORDERED:**

Digitally signed by
David R. Herndon
Date: 2014.05.15
14:50:12 -05'00'

**Chief Judge** **Date: May 14, 2014**
**United States District Court**