

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

WILLIAM MILLER,

Plaintiff,

-vs-

ALZA CORPORATION, et al.,

Defendants.

:

Case No. 3:08-cv-402

:

District Judge Timothy S. Black
Magistrate Judge Michael R. Merz

RESPONSE TO STATUS REPORT

On May 12, 2010, the Magistrate Judge filed a Status Inquiry in this case (Doc. No. 15). Attorneys Tariq Naeem and Eric Pearson have jointly responded by letter, which is attached.

Counsel will have noted that since the Status Inquiry this case has been reassigned to newly-appointed District Judge Timothy S. Black pursuant to a random reassignment of cases among the District Judges being assigned civil cases in Dayton. In fact, Judge Black has already entered a Notice of Hearing in the case.

While counsels' letter appropriately responds to the inquiries made by the Magistrate Judge and while this case remains referred to Magistrate Judge Merz pending the discovery cut-off, the parties are cautioned that Judge Black's priorities for case management may differ from Judge Rose's. In particular, counsel should not assume court acquiescence in negotiated changes in the schedule, but should present those to the Court for consideration as promptly as is needed for the effective management of the case.

June 2, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge



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June 1, 2010

VIA E-MAIL

merz_chambers@ohsd.uscourts.gov

Magistrate Judge Michael R. Merz
Federal Building, Room 505
200 West Second Street
Dayton, Ohio 45402

Re: *William Miller, etc. vs. ALZA Corporation, et al.*
USDC, Southern District of Ohio, Western Division
Case No. 3:08 CV 0402

Judge Merz:

In response to this Court's May 12, 2010 Status Inquiry, counsel for the parties have conferred by telephone to discuss the status of this case and their response to the specific questions raised in the Court's Inquiry. The following constitutes the parties' joint response.

As this Court is aware, this case is one of many pending across the country against Defendants related to their fentanyl pain patch. The law firm of Heygood, Orr & Pearson, counsel for Plaintiff in this case, is also representing a number of plaintiffs in those other cases. Thus, the parties have agreed that much of the product-related discovery conducted in the prior cases will be available for use in this case, including documents produced by Defendants in those prior cases, thereby streamlining the amount of discovery needed to prepare this case for trial. The parties do anticipate submitting a Stipulated Protective Order for the Court's consideration, as part of their agreement to use documents produced by Defendants in prior cases, and they believe they can do so by the end of this week. In addition, most case-specific factual discovery has been completed, including written discovery, collection of decedent's medical records, and depositions of witnesses.

The parties do not anticipate requesting any extensions to the case management dates entered by Judge Rose on April 21, 2009. While Plaintiff did not submit his expert disclosures



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until April 22, 2010, he did so with the consent of Defendants. The parties are in the process of scheduling the depositions of Plaintiff's experts, and Defendants will be identifying their experts by June 22, 2010. By agreement, and with the consent of the Court, the parties may need to continue deposing experts past the current June 21, 2010 deadline for completion of case-specific discovery. Again, however, the parties do not expect that this extension will affect the current trial date scheduled for February 28, 2011.

The parties hope that this response answers all of your questions regarding the status of this case. If you have any further questions, counsel for the parties would be available for a telephone conference at this Court's convenience.

Respectfully submitted,

Tariq M. Naeem
Counsel for Defendants

Eric D. Pearson
Counsel for Plaintiff

TMN/nkg


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Respectfully submitted,

Tariq M. Naeem
Counsel for Defendants



Eric D. Pearson
Counsel for Plaintiff

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