

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

RUBY GUILBEAUX.,

Plaintiff,

v.

CIVIL ACTION NO. 2:13-cv-23378

BOSTON SCIENTIFIC CORPORATION,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is Defendant Boston Scientific Corporation's Motion to Dismiss With Prejudice, filed November 16, 2018. [ECF No. 14]. In the motion, defendant Boston Scientific Corporation ("BSC") moves the court for an order dismissing plaintiff's case with prejudice for failure to serve a Plaintiff Fact Sheet ("PFS") pursuant to deadlines and requirements established by Pretrial Order Nos. 16 and 196. In response, plaintiff, by counsel, concedes that plaintiff has not filed a PFS. Plaintiff's counsel states that he has made numerous attempts to contact plaintiff, without success, and that the attorney-client relationship has recently broken down. Plaintiff opposes any award of sanctions. [ECF No. 15].

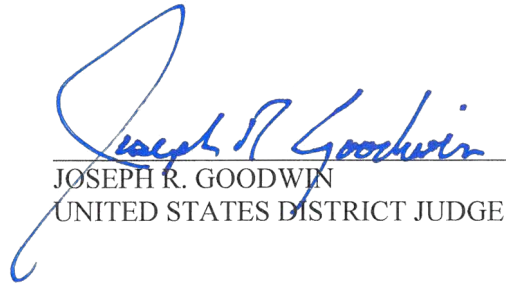
The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), that BSC should be dismissed without

prejudice from this case for plaintiff's failure to serve a Plaintiff Fact Sheet in compliance with the court's applicable pretrial orders.

Therefore, the court **ORDERS** that the motion to dismiss [ECF No. 14] is **GRANTED in part** to the extent BSC seeks dismissal and **DENIED insofar as BSC seeks dismissal with prejudice**. The court **ORDERS** that BSC is dismissed without prejudice, and this case is closed and stricken from the court's docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: October 24, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE