

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

**In Re: TAXOTERE (DOCETAXEL)
PRODUCTS LIABILITY LITIGATION**

MDL NO. 2740

SECTION “H” (5)

THIS DOCUMENT RELATES TO:
Wanda Stewart, Case No. 17-cv-10817;
Dora Sanford, Case No. 17-cv-09417;
Alice Hughes, Case No. 17-cv-11769.

**SANDOZ, HOSPIRA, AND ACCORD DEFENDANTS’ RESPONSE TO
THE PSC’S MOTION FOR LEAVE TO FILE AMENDED SHORT FORM
COMPLAINTS FOR THIRD TRIAL PLAINTIFFS**

Hospira, Inc., and Hospira Worldwide, LLC, formerly doing business as Hospira Worldwide, Inc. (“Hospira”), Sandoz Inc. (“Sandoz”), and Accord Healthcare, Inc. (“Accord”) (together, “Defendants”) respond to and oppose the PSC’s Motion for Leave to File Amended Short Form Complaints for Third Bellwether Trial Plaintiffs (Doc. 8577) (the “Motion”).

Plaintiffs Wanda Stewart, Dora Sanford, and Alice Hughes seek permission from the Court to amend their respective Short Form Complaints (“SFCs”) to: eliminate some of the legal counts not recognized by Louisiana law; add a failure-to-warn claim under the Louisiana Products Liability Act (“LPLA”); and revise and add numerous allegations that are either inconsistent with their prior allegations and sworn testimony or are irrelevant to these Defendants. *See* Proposed Second Am. SFCs in *Stewart* (Doc. 8577-2), *Sanford* (Doc. 8577-3), and *Hughes* (Doc. 8577-4). Defendants do not oppose the Motion for leave to amend to the extent that Plaintiffs seek to eliminate causes of action not permitted by Louisiana law and to add a failure-to-warn claim under the LPLA. Defendants otherwise oppose the Motion for the following three reasons.

First, Plaintiffs’ Motion should be denied to the extent that it seeks to retain Count I from the Master Complaint, for “Strict Products Liability – Failure to Warn.” Louisiana law governs

Plaintiffs' cases and does not permit strict products liability or common law failure-to-warn claims here. Rather, allegations of failure to warn may be pursued exclusively under the LPLA. Plaintiffs should be directed to substitute their LPLA cause of action for their generic Master Complaint Count I. They cannot pursue both.

Second, Plaintiffs' Motion for leave to amend should be denied to the extent that it seeks to use the SFCs improperly and as an end-run around their motion for leave to amend the Master Complaint. The purpose of the Short Form Complaint is to tailor the general allegations in the Master Complaint to fit the specific facts of each case. Instead, Plaintiffs are attempting to use their SFCs to do the opposite – to *expand* the general, non-case-specific allegations in the Master Complaint. Indeed, Plaintiffs concede that their motions to amend the SFCs would make the same proposed changes and additions that all Plaintiffs have moved for leave to make to the Master Complaint (Doc. 8334). *See* Pls.' Mem. in Supp. of Mot. (Doc. 8577-1) at 1-2; *see also* Proposed Second Am. SFC in *Sanford* (Doc. 8577-3) at 4-12. All Defendants have opposed Plaintiffs' motion for leave to file an amended Master Complaint (Doc. 8601), and this Court is scheduled to hear argument on December 5, 2019 (Doc. 8389). Plaintiffs cannot cite any authority for amending Master Complaint allegations through SFCs, and their Motion should therefore be denied to the extent that it seeks to alter those general, non-case-specific allegations.

Plaintiffs' attempt to add new and amended general allegations to their SFCs should also be denied for all of the same reasons Defendants set forth in their opposition to Plaintiffs' motion for leave to amend the Master Complaint, including Plaintiffs' undue delay and the prejudice and futility of the requested amendments. Further, Plaintiffs' Motion should be denied to the extent that it proposes to add dozens of allegations that relate only to Sanofi, a non-party, and not to any of the 505(b)(2) Defendants named in these three cases. Regardless of whether Plaintiffs are

permitted to add these new allegations to the Master Complaint (and they should not be), there is no basis for adding them to the SFCs, which should contain only allegations that apply to these specific cases.

Third, Plaintiffs' Motion should be denied as to Plaintiff Hughes's attempt to amend her case-specific factual allegations to delete her previously-alleged date of onset of injury.

This Court should deny the Motion except as to the limited consented-to amendments and Plaintiffs should promptly file compliant amended SFCs.

BACKGROUND

To facilitate orderly filings in this MDL, the parties agreed upon and the Court adopted a Short Form Complaint Order and process that directs Plaintiffs to "refer to the Amended Master Long Form Complaint" and "tailor the [SFC] form to correspond to each Plaintiff's claims/allegations." PTO 37A (Doc. 1682) at 1. The agreed SFC form and process followed significant negotiation, including with respect to which case-specific information Plaintiffs should include in the enumerated paragraphs 1-13 of the SFC.

Plaintiffs filed their initial SFCs on October 18, 2017 (*Stewart*) (Ex. 1), September 21, 2017 (*Sanford*) (Ex. 2), and November 3, 2017 (*Hughes*) (Ex. 3). Each SFC incorporated by reference the operative Master Complaint, set forth case-specific allegations following the agreed form, and asserted the following legal counts from the Master Complaint: Strict Products Liability – Failure to Warn; Strict Products Liability for Misrepresentation; Negligence; Negligent Misrepresentation; Fraudulent Misrepresentation; and Fraudulent Concealment. Plaintiff Stewart also asserted an additional cause of action for alleged redhibitory defects under Louisiana law. SFC in *Stewart* (Ex. 1) at 4.

Plaintiffs Stewart, Sanford, and Hughes were included in the third Trial Pool, and on October 31, 2019, in CMO No. 21 (Doc. 8430), this Court selected the three cases to proceed with discovery in connection with the third trial. On November 14, 2019, an agreed deadline, Plaintiffs in each case moved to amend their SFCs. Each Plaintiff's proposed amended SFC:

1. Amends the case-specific information provided in SFC paragraph 12, which requires allegations about the “[n]ature and extent of alleged injury (including duration, approximate date of onset (if known), and description of alleged injury),” to provide only the following allegation in each case: “Permanent, irreversible and disfiguring alopecia.” Proposed Second Am. SFCs in *Stewart* (Doc. 8577-2) at 3; *Sanford* (Doc. 8577-3) at 3; *Hughes* (Doc. 8577-4) at 3. This is in contrast to the individualized, case-specific description each Plaintiff offered for her own alleged injury in the original SFCs, namely: in *Stewart*: “Permanent hair loss”; in *Sanford*: “Disfiguring permanent Alopecia beginning sometime after treatment with Taxotere (Docetaxel) and continuing until present”; and in *Hughes*: “Hair Loss and Thinning – August 2012.” SFCs in *Stewart* (Ex. 1) at 4; *Sanford* (Ex. 2) at 4; and *Hughes* (Ex. 3) at 4.
2. Removes all previously asserted causes of action except for “Strict Products Liability – Failure to Warn.” *See, e.g.*, Proposed Second Am. SFC in *Sanford* (Doc. 8577-3) at 4.
3. Adds a cause of action for “Inadequate Warning Under LSA-RS 9:2800.57.” *See, e.g., id.* at 12.
4. Adds nine pages and 31 paragraphs of allegations copied verbatim from Plaintiffs' proposed Second Amended Master Complaint, which is subject to the PSC's pending motion for leave, many of which are redacted, nearly all of which involve allegations

asserted against Sanofi, a non-party in these three cases, and none of which is specific to any of the Plaintiffs or Defendants in these three cases. *See, e.g., id.* at 4-12.¹

LEGAL STANDARD

While Rule 15 provides that leave to amend should be “freely give[n] . . . when justice so requires,” the Fifth Circuit has stated that “leave to amend should not be given automatically.” Fed. R. Civ. P. 15(a)(2); *Chitimacha Tribe of La. v. Harry L. Laws Co.*, 690 F.2d 1157, 1163 (5th Cir. 1982). For example, the Court has discretion to deny leave if a proposed amendment is “futile” or otherwise fails to state a claim upon which relief could be granted. *Duzich v. Advantage Fin. Corp.*, 395 F.3d 527, 531 (5th Cir. 2004). The Court also has discretion to deny leave if a proposed amendment would unduly prejudice defendant, including where, as here, “[plaintiff’s] attempt to broaden the issues would likely require additional discovery” or require the defendant to prepare a different defense. *Parish v. Frazier*, 195 F.3d 761, 764 (5th Cir. 1999).

I. This Court Should Deny Plaintiffs’ Motion to the Extent That It Seeks to Retain a Legally Insufficient “Strict Products Liability” Claim

Courts routinely deny leave to amend a complaint if the proposed amendment contains legally insufficient claims. *See, e.g., Anderson v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 521 F.3d 1278, 1288-89 (10th Cir. 2008); *Cultor Corp. v. A.E. Staley Mfg. Co.*, 224 F.3d 1328, 1332-33 (Fed. Cir. 2000). This is because proposed amendments containing legally insufficient claims are futile. *See Duzich*, 395 F.3d at 531. “[T]o determine futility, [courts] . . . apply the same standard of legal sufficiency as applies under Rule 12(b)(6).” *Fuller v. United States*, No. 00-

¹ The proposed amended SFCs also contain certain changes to the “Defendants” and “Product(s)” identified and Stewart’s eliminates the additional cause of action for redhibitory defect under Louisiana law that appeared in her original SFC. *See, e.g., Proposed Second Am. SFCs in Stewart* (Doc. 8577-2) at 2-3, 13, and *Hughes* (Doc. 8577-4) at 2-3, 13. Defendants do not oppose those amendments, except to the extent that Plaintiffs have included the product name “Docetaxel Injection Concentrate,” which does not apply to these Defendants.

2791, 2001 WL 699036, at *1 (E.D. La. June 20, 2001) (quoting *Stripling v. Jordan Prod. Co., LLC*, 234 F.3d 863, 872-73 (5th Cir. 2000)).

Under Louisiana law, which governs these three Louisiana Plaintiffs' cases, products liability claims are legally insufficient unless permitted by the LPLA, which establishes "the exclusive theories of liability for manufacturers for damage caused by their products." La. R.S. § 9:2800.52. Because the LPLA does not permit any theory of strict liability, a strict liability claim is no longer "viable as an independent theory of recovery against a manufacturer" in a products liability action under Louisiana law. *Jefferson v. Lead Indus. Ass'n, Inc.*, 106 F.3d 1245, 1251 (5th Cir. 1997).

Defendants do not oppose Plaintiffs' motion for leave to amend their SFCs to eliminate counts. Nor do Defendants oppose Plaintiffs' motion to add an inadequate warning claim under the LPLA. But the proposed amendments also seek to retain the Master Complaint's generic Count I claim for "Strict Products Liability – Failure to Warn." Because Louisiana law does not permit such a claim and it would be subject to dismissal under the LPLA, Plaintiffs should not be allowed to amend to include it together with the LPLA claim. Instead, they should be directed to substitute their LPLA claim for the impermissible Master Complaint Count I.

II. The Court Should Deny Plaintiffs' Motion Because It Improperly Proposes to Amend the Master Complaint Through Short Form Complaints and Add Allegations About a Non-Party

a. The Court Should Not Permit Plaintiffs to Amend the Master Complaint by Amending Short Form Complaints

Plaintiffs attempt to do indirectly – amend the Master Complaint – what they have not been permitted to do directly. Specifically, Plaintiffs' Motion seeks to amend their SFCs by adding to or revising 31 paragraphs or subparagraphs in the operative Master Complaint, without having been granted leave to make those amendments to the Master Complaint. While the SFC process

adopted by the parties and the Court permits a Plaintiff to select from and add to the list of *legal counts* included in the Master Complaint to tailor her causes of action to her claims and the state law governing her case, neither the parties nor the Court ever contemplated, much less permitted, a process by which individual plaintiffs could seek to amend, through an SFC, the allegations in the Master Complaint on which all parties have relied in conducting general fact and expert discovery and other pretrial activities for years. There is good reason for this – to permit such amendments to those general allegations by each Plaintiff in an MDL would defeat the purpose of having a Master Complaint, create confusion about the scope and nature of common claims, and lead to significant uncertainty and inefficiency in these pretrial proceedings. Plaintiffs do not and cannot cite any authority supporting their attempt to amend the Master Complaint through their SFCs, and this Court should deny their Motion for leave to do so.

In any event, the Court is already addressing Plaintiffs' opposed motion for leave to file a Third Amended Master Complaint. That motion seeks to amend the Master Complaint in the same way that Plaintiffs attempt to amend it here through their SFCs, by revising allegations to fundamentally change the definition of Plaintiffs' alleged injury and by adding allegations that Defendants concealed the alleged risks of docetaxel from the medical community. As Defendants show in their Opposition to that motion (Doc. 8601), which Defendants incorporate in full by reference here, the Court should deny leave to amend the Master Complaint because the amendments are unduly delayed, contrary to Plaintiffs' own sworn statements and expert opinions, will trigger another round of Rule 12 briefing, will undo and reopen years of discovery and expert work, and will prejudice Defendants. Each of those reasons applies and warrants similar denial of Plaintiffs' motion to amend their SFCs in the same way.

Defendants Sandoz, Hospira, and Accord have already been subject to two years of general discovery – starting in November 2017, when each first had cases included in a trial pool. That discovery proceeded based on the allegations in Plaintiffs’ existing Master Complaint, not the dozens of new allegations and revised injury definition that Plaintiffs seek to add now. Similarly, in deposing the Plaintiffs, healthcare providers, and other witnesses during Phase 1 discovery during the last year in *Stewart*, *Sanford*, and *Hughes*, Defendants relied on Plaintiffs’ Master Complaint allegations, SFC allegations, and Plaintiff Fact Sheets, including allegations and information with which Plaintiffs’ proposed amendments to the Master Complaint conflict.

As just a few examples, in contrast to Plaintiffs’ proposed new allegations that attempt to redefine their alleged injury from occurring six months following chemotherapy to lacking any “single definition” and potentially “occurring between twelve to twenty-four months following chemotherapy treatment” (*see, e.g.*, Proposed Second Am. SFC in *Sanford* (Doc. 8577-3) at proposed amended paragraph 181):

- Plaintiff Stewart’s Plaintiff Fact Sheet defines her alleged injury as “[s]ignificant thinning of the hair on [her] head after six (6) months of discontinuing Taxotere® or Docetaxel treatment” and identifies her alleged injury as beginning July 2014, during the time that she was undergoing chemotherapy treatment (Doc. 8601-18 at 15, 18);
- Plaintiff Hughes’s Plaintiff Fact Sheet defines her alleged injury as “[n]o hair growth on [her] head or body after six (6) months of discontinuing Taxotere® or Docetaxel treatment” and identifies her alleged injury as beginning August 2012, six months after she completed chemotherapy treatment in February 2012 (Doc. 8601-19 at 16, 20); and

- Plaintiff Sanford's Plaintiff Fact Sheet identifies her alleged injury as beginning in November 2013, during the time that she was undergoing chemotherapy treatment (Sanford Sixth Am. Plaintiff Fact Sheet at 16-17) (Ex. 4).

Defendants are working to complete remaining case-specific and general discovery within the next few months and prepare for expert discovery pursuant to an agreed schedule for an October 2020 trial. To be clear, none of Plaintiffs' proposed Master Complaint amendments would salvage their claims from existing dispositive defenses, including the statute of limitations. However, if Plaintiffs were permitted to amend their core injury definition and other allegations now, Defendants would need the opportunity to address the amended pleadings and explore them through discovery, including potentially reopening discovery completed during the last two years. This would further delay this MDL proceeding and prejudice Defendants. Plaintiffs offer no justification for such a result, and their Motion to amend their SFCs should therefore be denied for the same reasons as their motion to amend the Master Complaint.

b. The Court Should Not Permit Plaintiffs to Amend Their Short-Form Complaints with Irrelevant Allegations About a Non-Party Defendant

Plaintiffs' Motion should also be denied because it seeks add at least 31 allegations about *Sanofi* to the SFCs in these three cases in which *Sanofi* is not a party. *See, e.g.*, Proposed Second Am. SFC in *Sanford* (Doc. 8577-3) at proposed amended paragraphs 124b, 136, 148a, 149a, 152a, 157a, 181a-c, 213. Plaintiffs offer no explanation, much less a credible basis, for why they should be permitted to amend their SFCs to add any allegations about *Sanofi*. Discovery of *Sanofi* closed nearly a year ago. CMO 5 (Doc. 762.) There is no valid reason for permitting Plaintiffs to add allegations in their SFCs—which are designed to be case-specific pleadings—about *Sanofi* and conduct unrelated to these Plaintiffs or the Defendants at issue – *Sandoz*, *Hospira*, and *Accord*. Thus, the Court should deny Plaintiffs' Motion to add allegations about *Sanofi* to their SFCs.

III. Plaintiff Alice Hughes’s Improper Attempt to Delete Her Alleged Date of Injury Will Prejudice Accord

In addition, Accord would be prejudiced by Plaintiff Hughes’s proposed Motion to Amend to the extent that it attempts to change paragraph 12 of her Short Form Complaint regarding the nature and extent of her alleged injury and its duration—from “August 2012” (six months after her chemotherapy treatment) to no date of onset or duration at all. Undue prejudice exists when a plaintiff attempts to change key factual and legal theories alleged in the complaint late in the course of litigation. *See Little v. Liquid Air Corp.*, 952 F.2d 841, 846-47 (5th Cir. 1992) (finding it reasonable for the district court to deny plaintiffs’ motion to amend that alleged a new factual basis and was filed following discovery and motions for summary judgment); *Addington v. Farmer’s Elevator Mut. Ins. Co.*, 650 F.2d 663, 667-68 (5th Cir. 1981) (denying plaintiff’s motion for leave to amend that attempted to establish new factual bases and legal theories more than one year after the filing of the lawsuit and after discovery was conducted).

In Plaintiff Hughes’s SFC, filed on November 3, 2017, she identified her injury as “Hair loss and Thinning” and stated that it began in “August 2012” (six months after her chemotherapy treatment). SFC in *Hughes* (Ex. 3) at 4. Plaintiff then submitted her initial Plaintiff Fact Sheet on January 19, 2018, and she amended it three more times before her deposition on March 20, 2019. In each PFS, Hughes indicated that her alleged injuries related to this lawsuit began in August 2012. Plaintiff Hughes was questioned at her deposition in March 2019 and testified consistently based on these sworn statements as to her knowledge of the facts underlying her lawsuit and the scope of her investigation into the cause of her hair loss.

Four months after Plaintiff Hughes’s deposition, on July 9, 2019, this Court issued its statute of limitations decisions in the *Johnson* and *Francis* matters, which provided guidance as to how the Court would assess the timeliness of plaintiffs’ claims under the Louisiana Prescription

Law. (Doc. 7571). Now – nearly eight months following Hughes’s deposition, four months following this Court’s statute of limitations Order, and two months after the close of Phase I discovery in *Hughes* – Plaintiff Hughes has filed the instant Motion seeking to revise her allegations by broadly claiming that she experienced “[p]ermanent, irreversible and disfiguring alopecia.” Proposed Second Am. SFC in *Hughes* (Doc. 8577-4) at 3.

Plaintiff Hughes thus seeks to contradict earlier statements made in her Amended SFC and multiple PFSs by changing the onset and duration of her alleged injury from “August 2012” to no date of onset or duration at all. This is completely inconsistent with the facts of record in her own case. Plaintiff Hughes’s intention is clear: to attempt to avoid dismissal under Louisiana’s Prescription Law and circumvent this Court’s statute of limitations rulings.² Plaintiff Hughes’s Motion is akin to a self-serving affidavit proffered in an attempt to defeat summary judgment, and it should likewise be rejected. *See generally Albertson v. T.J. Stevenson & Co.*, 749 F.2d 223, 228 (5th Cir. 1984) (“[T]he nonmovant cannot defeat a motion for summary judgment by submitting an affidavit which directly contradicts, without explanation, his previous testimony.”).

CONCLUSION

Defendants respectfully request that this Court require Plaintiffs to use the Master Complaint and Short Form Complaints for their intended purposes and pursuant to the agreed and entered Orders governing their scope and amendment. Plaintiffs’ Motion should be denied because their proposed amendments would retain a legally insufficient claim, circumvent the established procedure for amending the Master Complaint, and prejudice Defendants by untimely

² Plaintiff Hughes’s proposed revised allegations about the nature and timing of her injury in paragraph 12 are exactly the same as those of the other Plaintiffs seeking leave to amend (Stewart and Sanford), demonstrating that Hughes’s amendment is not case-specific, but rather a part of Plaintiffs’ global attempt to change the record to try to avoid statute of limitations dismissals.

adding new general allegations, including new allegations about a non-party Defendant. The Court should direct Plaintiffs to file amended SFCs that correct these problems as set forth above.

Date: November 26, 2019

Respectfully submitted,

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Counsel for Defendant Accord Healthcare Inc.

EXHIBIT 1

3. Other type of Plaintiff and capacity (i.e., administrator, executor, guardian, conservator):

4. Current State of Residence: Louisiana

5. State in which Plaintiff(s) allege(s) injury: Louisiana

6. Defendants (check all Defendants against whom a Complaint is made):

a. Taxotere Brand Name Defendants

- A. Sanofi S.A.
- B. Aventis Pharma S.A.
- C. Sanofi US Services Inc. f/k/a Sanofi-Aventis U.S. Inc.
- D. Sanofi-Aventis U.S. LLC

b. Other Brand Name Drug Sponsors, Manufacturers, Distributors

- A. Sandoz Inc.
- B. Accord Healthcare, Inc.
- C. McKesson Corporation d/b/a McKesson Packaging
- D. Hospira Worldwide, LLC f/k/a Hospira Worldwide, Inc.
- E. Hospira, Inc.
- F. Sun Pharma Global FZE
- G. Sun Pharmaceutical Industries, Inc. f/k/a Caraco Pharmaceutical Laboratories Ltd.
- H. Pfizer Inc.
- I. Actavis LLC f/k/a Actavis Inc.
- J. Actavis Pharma, Inc.

K. Other:

7. Basis for Jurisdiction:

Diversity of Citizenship

Other (any additional basis for jurisdiction must be pled in sufficient detail as required by the applicable Federal Rules of Civil Procedure):

8. Venue:

District Court and Division in which remand and trial is proper and where you might have otherwise filed this Short Form Complaint absent the direct filing Order entered by this Court:

USDC MDLA

9. Brand Product(s) used by Plaintiff (check applicable):

A. Taxotere

B. Docefrez

C. Docetaxel Injection

D. Docetaxel Injection Concentrate

E. Unknown

F. Other:

10. First date and last date of use (or approximate date range, if specific dates are unknown) for Products identified in question 9:

June 2014 thru October 2014

11. State in which Product(s) identified in question 9 was/were administered:

Louisiana

12. Nature and extent of alleged injury (including duration, approximate date of onset (if known), and description of alleged injury):

Permanent hair loss

13. Counts in Master Complaint brought by Plaintiff(s):

- Count I – Strict Products Liability - Failure to Warn
- Count II – Strict Products Liability for Misrepresentation
- Count III – Negligence
- Count IV – Negligent Misrepresentation
- Count V – Fraudulent Misrepresentation
- Count VI – Fraudulent Concealment
- Count VII – Fraud and Deceit
- Count VIII – Breach of Express Warranty (Sanofi Defendants only)

- Other: Plaintiff(s) may assert the additional theories and/or State Causes of Action against Defendant(s) identified by selecting “Other” and setting forth such claims below. If Plaintiff(s) includes additional theories of recovery, for example, Redhibition under Louisiana law or state consumer protection claims, the specific facts and allegations supporting additional theories must be pleaded by Plaintiff in sufficient detail as required by the applicable Federal Rules of Civil Procedure.

TAXOTERE® contains a vice or defect which renders it useless or its use so inconvenient that consumers would not have purchased it had they known about the vice or defect. Pursuant to Louisiana Civil code article 2520, a seller warrants the buyer against redhibitory defects, or vices, in the thing sold. TAXOTERE®, which was sold and promoted by Defendants, possesses a redhibitory defect because it is unreasonably dangerous, which renders TAXOTERE® useless or so inconvenient that it must be presumed that Plaintiff would not have bought TAXOTERE® had she known of the defects.

14. Name of Attorney(s), Bar Number(s), Law Firm(s), Phone Number(s), Email Address(es) and Mailing Address(es) representing Plaintiff(s):

By:

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EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: TAXOTERE (DOCETAXEL)
PRODUCTS LIABILITY LITIGATION

: MDL NO. 2740
:
: SECTION "N"(5)
: JUDGE ENGELHARDT
: MAG. JUDGE NORTH
:
:
: COMPLAINT & JURY DEMAND
:
: Civil Action No.: _____

DORA SANFORD,

Plaintiff,

vs.

HOSPIRA, INC. and HOSPIRA
WORLDWIDE, LLC f/k/a HOSPIRA
WORLDWIDE, INC.

Defendants.

AMENDED SHORT FORM COMPLAINT

Plaintiff(s) incorporate by reference the Amended Master Long Form Complaint and Jury Demand filed in the above-referenced case on March 31, 2017. Pursuant to Pretrial Order No. 15, this Amended Short Form Complaint adopts allegations and encompasses claims as set forth in the Amended Master Long Form Complaint against Defendant(s).

Plaintiff(s) further allege as follows:

1. Plaintiff:

Dora Sanford

2. Spousal Plaintiff or other party making loss of independent/secondary claim (i.e., loss of consortium):

N/A

3. Other type of Plaintiff and capacity (i.e., administrator, executor, guardian, conservator):

N/A

4. Current State of Residence: Louisiana

5. State in which Plaintiff(s) allege(s) injury: Louisiana

6. Defendants (check all Defendants against whom a Complaint is made):

a. Taxotere Brand Name Defendants

- A. Sanofi S.A.
- B. Aventis Pharma S.A.
- C. Sanofi US Services Inc. f/k/a Sanofi-Aventis U.S. Inc.
- D. Sanofi-Aventis U.S. LLC

b. Other Brand Name Drug Sponsors, Manufacturers, Distributors

- A. Sandoz Inc.
- B. Accord Healthcare, Inc.
- C. McKesson Corporation d/b/a McKesson Packaging
- D. Hospira Worldwide, LLC f/k/a Hospira Worldwide, Inc.
- E. Hospira, Inc.
- F. Sun Pharma Global FZE
- G. Sun Pharmaceutical Industries, Inc. f/k/a Caraco Pharmaceutical Laboratories Ltd.
- H. Pfizer Inc.
- I. Actavis LLC f/k/a Actavis Inc.
- J. Actavis Pharma, Inc.
- K. Other:

7. Basis of Jurisdiction:

- Diversity of Citizenship
- Other (any additional basis for jurisdiction must be pled in sufficient detail as required by the applicable Federal Rules of Civil Procedure):

8. Venue:

District Court and Division in which remand and trial is proper and where you might have otherwise filed this Short Form Complaint absent the direct filing Order entered by this Court:

United States District Court for the Middle District of Louisiana

9. Brand Product(s) used by Plaintiff (check applicable):

- A. Taxotere
- B. Docefrez
- C. Docetaxel Injection
- D. Docetaxel Injection Concentrate
- E. Unknown
- F. Other:

10. First date and last date of use (or approximate date range, if specific dates are unknown) for Products identified in question 9:

October 8, 2013 through January 21, 2014

11. State in which Product(s) identified in question 9 was/were administered;

Louisiana

12. Nature and extent of alleged injury (including duration, approximate date of onset (if known), and description of alleged injury):

Disfiguring permanent Alopecia beginning sometime after treatment with Taxotere (Docetaxel) and continuing until present.

13. Counts in Master Complaint brought by Plaintiff(s):

- Count I – Strict Products Liability – Failure to Warn
- Count II – Strict Products Liability for Misrepresentation
- Count III – Negligence
- Count IV – Negligent Misrepresentation
- Count V – Fraudulent Misrepresentation
- Count VI – Fraudulent Concealment
- Count VII – Breach of Express Warranty (Sanofi Defendants only)
- Other: Plaintiff(s) may assert the additional theories and/or State Causes of Action against Defendant(s) identified by selecting “Other” and setting forth such claims below. If Plaintiff(s) includes additional theories of recovery, for example, Redhibition under Louisiana Law or state consumer protection claims, the specific facts and allegations supporting additional theories must be pleaded by Plaintiff in sufficient detail as required by the applicable Federal Rules of Civil Procedure.



14. Name of Attorney(s), Bar Number(s), Law Firm(s), Phone Number(s), Email Address(es) and Mailing Address(es) representing Plaintiff(s):

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EXHIBIT 3

3. Other type of Plaintiff and capacity (i.e., administrator, executor, guardian, conservator):

NA

4. Current State of Residence: Louisiana

5. State in which Plaintiff(s) allege(s) injury: Louisiana

6. Defendants (check all Defendants against whom a Complaint is made):

a. Taxotere Brand Name Defendants

- A. Sanofi S.A.
- B. Aventis Pharma S.A.
- C. Sanofi US Services Inc. f/k/a Sanofi-Aventis U.S. Inc.
- D. Sanofi-Aventis U.S. LLC

b. Other Brand Name Drug Sponsors, Manufacturers, Distributors

- A. Sandoz Inc.
- B. Accord Healthcare, Inc.
- C. McKesson Corporation d/b/a McKesson Packaging
- D. Hospira Worldwide, LLC f/k/a Hospira Worldwide, Inc.
- E. Hospira, Inc.
- F. Sun Pharma Global FZE
- G. Sun Pharmaceutical Industries, Inc. f/k/a Caraco Pharmaceutical Laboratories Ltd.
- H. Pfizer Inc.
- I. Actavis LLC f/k/a Actavis Inc.
- J. Actavis Pharma, Inc.

K. Other:

7. Basis for Jurisdiction:

Diversity of Citizenship

Other (any additional basis for jurisdiction must be pled in sufficient detail as required by the applicable Federal Rules of Civil Procedure):

8. Venue:

District Court and Division in which remand and trial is proper and where you might have otherwise filed this Short Form Complaint absent the direct filing Order entered by this Court:

Eastern District Court of Louisiana

9. Brand Product(s) used by Plaintiff (check applicable):

A. Taxotere

B. Docefrez

C. Docetaxel Injection

D. Docetaxel Injection Concentrate

E. Unknown

F. Other:

10. First date and last date of use (or approximate date range, if specific dates are unknown) for Products identified in question 9:

November 2011 through February 2012

11. State in which Product(s) identified in question 9 was/were administered:

Louisiana

12. Nature and extent of alleged injury (including duration, approximate date of onset (if known), and description of alleged injury):

Hair Loss and Thinning - August 2012

13. Counts in Master Complaint brought by Plaintiff(s):

- Count I – Strict Products Liability - Failure to Warn
- Count II – Strict Products Liability for Misrepresentation
- Count III – Negligence
- Count IV – Negligent Misrepresentation
- Count V – Fraudulent Misrepresentation
- Count VI – Fraudulent Concealment
- Count VII – Fraud and Deceit
- Count VIII – Breach of Express Warranty (Sanofi Defendants only)

- Other: Plaintiff(s) may assert the additional theories and/or State Causes of Action against Defendant(s) identified by selecting “Other” and setting forth such claims below. If Plaintiff(s) includes additional theories of recovery, for example, Redhibition under Louisiana law or state consumer protection claims, the specific facts and allegations supporting additional theories must be pleaded by Plaintiff in sufficient detail as required by the applicable Federal Rules of Civil Procedure.



14. Name of Attorney(s), Bar Number(s), Law Firm(s), Phone Number(s), Email Address(es) and Mailing Address(es) representing Plaintiff(s):

By:

Respectfully submitted,
WENDT LAW FIRM, P.C.

s/Samuel M. Wendt
Samuel M. Wendt MO#53933
1100 Main Street, Suite 2610
Kansas City, MO 64105
Phone: (816) 531-4415
Fax: (816) 531-2507
Email: sam@wendtlaw.com
ATTORNEY FOR PLAINTIFF

EXHIBIT 4

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In Re: TAXOTERE (DOCETAXEL)
PRODUCTS LIABILITY
LITIGATION

MDL NO. 2740

SECTION "H" (5)

THIS DOCUMENT RELATES TO
ALL CASES

SIXTH AMENDED PLAINTIFF FACT SHEET

This Fact Sheet must be completed by each plaintiff who has filed a lawsuit related to the use of Taxotere® by the plaintiff or a plaintiff's decedent. Please answer every question to the best of your knowledge. In completing this Fact Sheet, you are under oath and must provide information that is true and correct to the best of your knowledge. If you cannot recall all of the details requested, please provide as much information as you can. You must supplement your responses if you learn that they are incomplete or incorrect in any material respect.

In filling out this form, please use the following definitions: (1) "**healthcare provider**" means any hospital, clinic, medical center, physician's office, infirmary, medical or diagnostic laboratory, or other facility that provides medical, dietary, psychiatric, or psychological care or advice, and any pharmacy, weight loss center, x-ray department, laboratory, physical therapist or physical therapy department, rehabilitation specialist, physician, psychiatrist, osteopath, homeopath, chiropractor, psychologist, nutritionist, dietician, or other persons or entities involved in the evaluation, diagnosis, care, and/or treatment of the plaintiff or plaintiff's decedent; (2) "**document**" means any writing or record of every type that is in your possession, including but not limited to written documents, documents in electronic format, cassettes, videotapes, photographs, charts, computer discs or tapes, and x-rays, drawings, graphs, phone-records, non-identical copies, and other data compilations from which information can be obtained and translated, if necessary, by the respondent through electronic devices into reasonably usable form.

Information provided by plaintiff will only be used for purposes related to this litigation and may be disclosed only as permitted by the protective order in this litigation. This Fact Sheet is completed pursuant to the Federal Rules of Civil Procedure governing discovery (or, for state court case, the governing rules of civil of the state in which the case is pending).

I. CORE CASE INFORMATION

Attorney Information

Please provide the following information for the civil action that you filed:

1. Caption: Dora Sanford vs Hospira Inc. and Hospira Worldwide LLC et al
2. Court and Docket No.: UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA 2:17-cv-09417

16. Was your Taxotere® or Docetaxel treatment part of a clinical trial? Yes No Unknown
17. If yes, please provide the name and location of the trial site:
- a) Name of trial site:
- b) Location of trial site:

VI. CLAIM INFORMATION

Current Status

1. Are you currently taking Taxotere® or Docetaxel? Yes No
2. Are you currently cancer-free? Yes No
3. If no, check those that apply to your CURRENT status:

Current Status	Yes
In remission	<input checked="" type="checkbox"/>
Currently receiving chemotherapy	<input type="checkbox"/>
Currently receiving radiation therapy	<input type="checkbox"/>
Currently hospitalized for cancer or cancer-related complications	<input type="checkbox"/>
Currently in home health or hospice care for cancer or cancer-related complications	<input type="checkbox"/>
Cancer returned after taking Taxotere® or Docetaxel	<input type="checkbox"/>

4. When was the last (most recent) date you consulted with an oncologist: ??/??/2018

Alleged Injury

5. State the injury you allege in this lawsuit and the dates between which you experienced the alleged injury. Check all that apply:

Alleged Injury	Yes	No	From	To
Persistent total alopecia – No hair growth on your head or body after six (6) months of discontinuing Taxotere® or Docetaxel treatment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present

Alleged Injury	Yes	No	From	To
Persistent alopecia of your head – No hair growth on your head after six (6) months of discontinuing Taxotere® or Docetaxel treatment. Hair is present elsewhere on your body	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present
Permanent/Persistent Hair Loss on Scalp	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present
Diffuse thinning of hair: partial scalp <input checked="" type="checkbox"/> Top <input checked="" type="checkbox"/> Sides <input checked="" type="checkbox"/> Back <input type="checkbox"/> Temples <input type="checkbox"/> Other:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/??/2013	--/--/---- <input checked="" type="checkbox"/> Present
Diffuse thinning of hair: total scalp <input type="checkbox"/> Top <input type="checkbox"/> Sides <input type="checkbox"/> Back <input type="checkbox"/> Temples <input type="checkbox"/> Other:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present
Significant thinning of the hair on your head after six (6) months of discontinuing Taxotere® or Docetaxel treatment – There are visible bald spots on your head no matter how you style your hair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present
Moderate thinning of the hair on your head after six (6) months of discontinuing Taxotere® or Docetaxel treatment – There is noticeable hair loss but if you brush or style your hair, the hair loss is less evident	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present
Small bald area in the hair on your head	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present
Large bald area in the hair on your head	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present
Multiple bald spots in the hair on your head	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/??/2013	--/--/---- <input checked="" type="checkbox"/> Present
Change in the texture, thickness or color of your hair after Taxotere® or Docetaxel treatment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present
Other:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present
Permanent/Persistent Loss of Eyebrows	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/??/2013	--/--/---- <input checked="" type="checkbox"/> Present
Permanent/Persistent Loss of Eyelashes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/??/2013	--/--/---- <input checked="" type="checkbox"/> Present
Permanent/Persistent Loss of Body Hair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/??/2013	--/--/---- <input type="checkbox"/> Present
Permanent/Persistent Loss of Genital Hair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/??/2013	--/--/---- <input checked="" type="checkbox"/> Present
Permanent/Persistent Loss of Nasal Hair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/??/2013	--/--/---- <input checked="" type="checkbox"/> Present
Permanent/Persistent Loss of Ear Hair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11/??/2013	--/--/---- <input checked="" type="checkbox"/> Present
Permanent/Persistent Loss of Hair in Other Areas Describe:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	--/--/----	--/--/---- <input type="checkbox"/> Present

6. Have you ever received treatment for the injury you allege in this lawsuit?