

New Matter

Amendment Relating to a Pending Matter

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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IN RE: FRESENIUS	§	
GRANUFLO/NATURALYTE DIALYSATE	§	MDL NO. 1:13-MD-2428-DPW
PRODUCTS LIABILITY LITIGATION	§	
	§	
This Document Relates to:	§	SHORT-FORM COMPLAINT
	§	AND DEMAND FOR JURY
Florella Dial, individually and on behalf of the	§	TRIAL
Estate of Carley Dial	§	
	§	
Case No.:	§	
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The Plaintiff(s) named below file this *Short-Form Complaint* against the Defendants named below and incorporate *The Master Complaint and Jury Demand* filed in MDL No. 2428 by reference. Plaintiff selects and indicates by checking-off where requested, those products, Parties and claims that are specific to his or her case. Plaintiffs (s) further allege as follows:

1. Plaintiff(s): Carley Dial (decedent/dialysis patient)
2. Plaintiff's Spouse (*if applicable*): Florella Dial
3. Other Plaintiff and capacity, if applicable (*i.e.*, administrator, executor, guardian, conservator, etc.): Florella Dial, individually and on behalf of the Estate of Carley Dial

4. State of Residence: North Carolina

5a. By checking here, I choose Massachusetts as the "home" forum.

5b. If you did not chose Massachusetts as the "home" forum, identify the United States District Court and Division in which venue would be proper absent direct filing:
U.S. District Court for the Eastern District of North Carolina

6. Defendant(s):¹

- FRESENIUS MEDICAL CARE HOLDINGS, INC.
- FRESENIUS MEDICAL CARE HOLDINGS, INC. d/b/a FRESENIUS MEDICAL CARE NORTH AMERICA
- FRESENIUS USA, INC.
- FRESENIUS USA MANUFACTURING, INC.
- FRESENIUS USA MARKETING, INC.
- FRESENIUS USA SALES, INC.
- FRESENIUS MEDICAL CARE AG & CO. KGaA.
- FRESENIUS MEDICAL CARE MANAGEMENT AG.
- FRESENIUS SE & CO. KGaA.
- FRESENIUS MANAGEMENT SE.
- Other _____

7. Basis of Jurisdiction

- Diversity of Citizenship
- Other: _____

Other allegations of jurisdiction and venue:

8. On or about February 3, 2012, Plaintiff had the following injury:

Severe adverse cardiovascular event

¹ If additional Counts and/or Counts directed to other Defendants are alleged, the specific facts supporting these allegations must be pleaded by the Plaintiff in a manner complying with the requirements of the Federal Rules of Civil Procedure, and the Defendants against whom they are alleged must be specifically identified on a separate sheet of paper attached to the *Short Form Complaint*.

which is alleged to have been caused by Defendants' NaturaLyte and/or GranuFlo administered to Plaintiff for dialysis treatment at: Fresenius - Pembroke, 1327 Harry West Lane, Pembroke, NC 28372

9. The following claims asserted in *The Master Complaint and Jury Demand*, and the allegations with regard thereto, are herein adopted by reference:

- Count I – STRICT LIABILITY
- Count II – NEGLIGENCE FAILURE TO WARN
- Count III – NEGLIGENCE DESIGN
- Count IV – NEGLIGENCE
- Count V – NEGLIGENCE MISREPRESENTATION
- Count VI – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
- Count VII – BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE
- Count VIII – BREACH OF EXPRESS WARRANTY
- Count IX – FRAUD
- Count X – VIOLATION OF CONSUMER PROTECTION LAWS
- Count XI – LOSS OF CONSORTIUM
- Count XII – WRONGFUL DEATH
- Count XIII – SURVIVAL ACTION
- Other Count(s) (*See FN 1*)

10. Plaintiff asserts the following additional theories against the Defendants identified in Paragraph 6 above (*See FN 1*):

11. Plaintiff asserts the following additional theories against Defendants other than those identified in Paragraph 6 above (*See* FN 1):

WHEREFORE, Plaintiff prays for relief as set forth in *The Master Complaint and Jury Demand* filed in MDL No. 2428.

DATE: April 14, 2014

/s/ Kristian W. Rasmussen
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*Attorney for Plaintiff Florella Dial, individually and
on behalf of the Estate of Carley Dial*