

JUL 27 2023

GREGG A. PADOVANO, J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

IN RE ALLERGAN BIOCELL
TEXTURED BREAST IMPLANT
PRODUCTS LIABILITY LITIGATION

CASE NO. 634

MASTER DOCKET NO. BER-L-5064-20

All prior orders remain in full force and effect
except as modified by this Order.

**AMENDED CASE MANAGEMENT ORDER # 9
(Implementation of Plaintiff Fact Sheet and
Defendant Fact Sheet for Personal Injury Cases)**

The Court finds that the Parties have conferred regarding a Case Management Order addressing Plaintiff Fact Sheets (“PFS”) and Defendant Fact Sheets (“DFS”) to be utilized in MCL 634. The Parties having stipulated thereto, and for other good cause shown,

IT IS ON THIS 27TH DAY OF JULY, 2023, ORDERED as follows:

I. SCOPE OF THE ORDER

This Case Management Order (“Order”) governs the form and schedule for service of Plaintiff Fact Sheets and Defendant Fact Sheets to be utilized in MCL 634.

II. PLAINTIFF FACT SHEET

A. The Court approves the form of PFS attached as **Exhibit A**, which shall be completed pursuant to the schedule set forth below by the following Plaintiffs who, as of the entry of this Order, have filed an individual case alleging a diagnosis of BIA-ALCL:

Plaintiff	Counsel
Allmendinger, Anastasia	Berger Montague
Battista, Emilee	Berger Montague

Plaintiff	Counsel
Brademas, Michelle	Mazie Slater Katz & Freeman
Brown, Jan	Mazie Slater Katz & Freeman
Bullock, Cortney	Motley Rice
Camp, Mindi	Berger Montague
Carmody, Laura	Mazie Slater Katz & Freeman
Commisso, Kimberly	Berger Montague
Gilham, Susan	Mazie Slater Katz & Freeman
Gomez, Maria	Mazie Slater Katz & Freeman
Halley, Natascha	Berger Montague
Higgins, Elizabeth	Mazie Slater Katz & Freeman
Kaylor, Lori Janessa	Berger Montague
Keller, Jeannette	Mazie Slater Katz & Freeman
Kelly, Sallianne	Mazie Slater Katz & Freeman
Krusinska, Eva	Berger Montague
Lauria, Lynda	Berger Montague
Lockhart, Tricia	Mazie Slater Katz & Freeman
Milan, Renee	Mazie Slater Katz & Freeman
Mohr, Candace	Mazie Slater Katz & Freeman
Pfeil, Dara	Mazie Slater Katz & Freeman
Quijas-Barker, Cynthia	Mazie Slater Katz & Freeman
Resnikoff, Jill	Berger Montague
Richards, Cheryl	Mazie Slater Katz & Freeman
Rogers, Kimra	Berger Montague
Rovira, Sharon	Lenze/Berger Montague

Plaintiff	Counsel
Rowland, Hilary	Mazie Slater Katz & Freeman
Silcox, Carol	Mazie Slater Katz & Freeman
Tesar, Kelly L.	Berger Montague/Lenze
Vanwassenhove, Anne	Berger Montague
Witherall, Suzanne	Mazie Slater Katz & Freeman

B. The PFS shall also be completed by twenty-five (25) Plaintiffs who, as of the entry of this Order, do not allege that they have been diagnosed with BIA-ALCL but who have undergone surgery to remove their Biocell implants after the July 24, 2019 recall (“non-ALCL/revision plaintiffs”), pursuant to the following selection process:

1. On or before August 3, 2023, Plaintiffs shall provide Allergan with a list of the following data points with respect to all non-ALCL/revision plaintiffs pending in MCL 634, to the extent such information is in plaintiffs’ or plaintiffs’ counsel’s possession: Plaintiff’s counsel; Plaintiff’s Allergan Biocell breast implant information (including Style and serial numbers); date[s] of implant and explant of Allergan Biocell implants; implanting and explanting doctors of Allergan Biocell implants; and whether Plaintiff received her Allergan Biocell implants for breast reconstruction or cosmetic augmentation.

2. On September 22, 2023, the Parties will simultaneously exchange lists of non-ALCL/revision plaintiffs who will be subject to this first wave of PFS/DFS exchange. Plaintiffs will select fifteen (15) Plaintiffs and Allergan will select ten (10) Plaintiffs.

C. The responses to the PFS shall be treated as answers to interrogatories and responses to requests for production of documents under the New Jersey Court Rules (“Rules”) and shall be supplemented in a timely manner in accordance with the Rules.

D. Absent a stipulation between the parties or leave of Court upon a showing of good cause, Allergan will not seek to serve any further written discovery upon an individual Plaintiff in this litigation until such time as a Plaintiff has been selected as an Initial Bellwether Discovery Plaintiff, and Plaintiffs preserve any and all objections to such future written discovery requests.

E. The PFS shall be completed without objections though Plaintiffs may withhold or redact information from medical or other records based upon a recognized privilege or relevance. Allergan shall be supplied with a privilege/redaction log.

F. The PFS will not be interpreted to limit the scope of inquiry at depositions or whether evidence is admissible at trial. The admissibility of information in the PFS is governed by the Rules and New Jersey Rules of Evidence, and objections to admissibility are not waived by virtue of the completion and service of a PFS.

III. DEADLINES AND SERVICE FOR FIRST WAVE OF PFS/DFS EXCHANGE

A. The deadline for all Plaintiffs subject to this Order to serve a materially completed and verified PFS is December 22, 2023.

B. An individual Plaintiff and Allergan may agree to a reasonable extension of the time limits set forth herein for service of the PFS. Plaintiffs' Liaison Counsel must be copied on all extension requests. If the individual Plaintiff and Allergan cannot agree on an extension of time, then the party seeking the extension may apply to the Court for relief upon a showing of good cause.

C. Any Plaintiff who undergoes an additional breast surgery after having already completed and uploaded a PFS pursuant to this Order shall supplement the PFS no later than sixty (60) days from the date of the revision surgery or thirty (30) days from the date that Plaintiff's counsel becomes aware of the revision surgery or procedure, whichever is later. Such Plaintiffs

must also provide with the supplement any updated authorizations for the release of medical records and all responsive non-privileged documents in their possession to the extent not previously produced, relating to the revision surgery.

D. If a Plaintiff or any representative of a Plaintiff who completes a PFS learns that any response is incomplete or incorrect, that Plaintiff or representative must supplement the pertinent response(s) to provide the corrected or additional information in a timely manner.

E. Plaintiffs shall use the online Centrality System provided by BrownGreer PLC in connection with the Allergan MDL and accessible at www.mdlcentrality.com/allergan to complete and serve Plaintiff Fact Sheets and the accompanying documentation. See Case Management Order No. 12 (Service of Fact Sheets, and Authorizations through MDL Centrality).

IV. PROCEDURES FOR NON-COMPLIANT PFS

A. Failure to Serve a PFS

1. Should a Plaintiff subject to this Order fail to upload a verified PFS on or before December 22, 2023, Allergan may serve a Notice of Non-Compliance via email upon the individual plaintiff's counsel and Plaintiffs' Liaison Counsel. The Notice of Non-Compliance shall be in spreadsheet format and shall include columns for the first and last name of the Plaintiff, the date the Short Form Complaint was filed, the name and contact information of the Plaintiff's counsel, the Plaintiff's MDL Centrality number, and a detailed description of the asserted discovery non-compliance.

2. The Parties' meet and confer obligations, if any, shall begin upon receipt by the individual plaintiff's counsel and Plaintiffs' Liaison Counsel of the Notice of Non-Compliance and, absent agreement of the parties, shall be completed within thirty (30) days.

3. Should a Plaintiff subject to this Order fail to upload the verified PFS within the thirty (30) day period from when the Notice of Non-Compliance was emailed, Allergan may then move the Court for dismissal of the action without prejudice. Any response to such a motion shall be filed and served within twenty-one (21) days, and any reply shall be filed within ten (10) days. If the PFS is uploaded before the Court rules, the motion for dismissal of the action without prejudice shall automatically be deemed to have been withdrawn.

B. Service of a Deficient PFS

1. If Allergan receives a PFS that is not materially complete, Allergan may serve a Notice of Non-Compliance upon Plaintiff's counsel and Plaintiffs' Liaison Counsel detailing the alleged deficiencies and the parties shall meet and confer. A non-materially complete PFS may include for purposes of this section a PFS which is missing any requisite authorization form and production of records but shall not include PFSs with minor information missing such as zip codes, addresses, or dates. The Notice of Non-Compliance shall be in spreadsheet format and shall include columns for the first and last name of the Plaintiff, the date the Short Form Complaint was filed, the name and contact information of the Plaintiff's counsel, the Plaintiff's MDL Centrality number, and a detailed description of the specific asserted discovery non-compliance. Within thirty (30) days of being identified on a Notice of Non-Compliance, the applicable Plaintiff shall attempt to cure the alleged deficiencies by uploading the required responsive information and/or documents to the applicable document-type field on MDL Centrality.

2. If a PFS remains materially deficient after this thirty (30) day period, counsel for Allergan, Plaintiff and Plaintiffs' Liaison Counsel shall meet and confer, and thereafter, if any dispute remains, Allergan may file a motion to compel with the Court. Any response to that motion shall be filed within fourteen (14) days, and any reply shall be filed within seven (7) days.

V. PRODUCTION OF DOCUMENTS/AUTHORIZATIONS

A. Contemporaneous with the submission of a PFS, each Plaintiff subject to this Order shall also produce blank, signed authorizations (hereafter, "Authorizations") (already agreed to by the Parties), which are attached to the PFS and shall be located in PDF fillable format on the Court's website, for the release to BrownGreer, PLC of, where applicable to that person's case, medical, psychological, insurance, employment, workers' compensation, Medicare/Medicaid, and Social Security records from any healthcare provider, hospital, clinic, outpatient treatment center, and/or any other entity, institution, agency or other custodian of records identified in the PFS. The signed Authorizations shall be undated and shall constitute permission for Allergan, utilizing the process set forth below, to obtain the records specified in the authorizations.

B. With respect to Authorizations provided that are dated, Allergan or its vendor issuing the Authorizations are authorized to re-date the Authorizations to the date they are sent to the healthcare providers and other entities that require Authorizations. Allergan and its vendor shall also be permitted to "white out" the date and re-date after three (3) business days' notice to Plaintiff's counsel and Plaintiffs' Liaison Counsel.

C. In the event an institution, agency, or medical provider to which a signed authorization is presented refuses to provide responsive records, the individual Plaintiff's attorney shall attempt to resolve the issue with the institution, agency, or provider, such that the necessary records are produced. Should a particular form be required, Allergan will provide it to the Plaintiff's counsel, who shall have their client execute and return it within twenty-one (21) days unless there is a specific objection to doing so.

D. Allergan agrees that none of the records obtained pursuant to these Authorizations shall be disclosed to anyone not associated with this lawsuit, shall be used only for purposes of

this lawsuit, and that at the conclusion of this case, either through settlement or judgment, all records obtained pursuant to this CMO including copies (including electronic copies) shall be destroyed and/or returned to Plaintiff's counsel and no copies thereof shall be kept by the defense, or any expert, consultant, or contractor retained by the defense.

E. Within five (5) business days after the submission of a PFS, each Plaintiff shall upload to MDL Centrality any relevant, non-privileged medical records in their possession that are responsive to the PFS.

F. All records obtained pursuant to an Authorization provided by any Plaintiff pursuant to this Order are automatically deemed as being Highly Confidential pursuant to the terms of the Protective Order entered in this MCL.

G. Recognizing the privacy protections afforded individuals regarding their medical and other personal records, all requests for the production of documents or information made pursuant to any Authorization form utilized by Allergan in this litigation shall direct that all responses and all productions of documents be made only to BrownGreer PLC. Upon receipt of any record, BrownGreer PLC shall provide written notice via email to Plaintiff's counsel as well as to Plaintiffs' Liaison Counsel and/or their designees (collectively, the "Review Attorneys"), alerting them to the availability of new records and sole access to same utilizing the MDL Centrality system. The Review Attorneys shall have ten (10) business days from receipt of the written notice to have sole access to review the records and redact same. On the 11th business day, the records, subject to any redactions submitted by the Review Attorneys, will then be made available to Allergan electronically by BrownGreer, PLC utilizing the MDL Centrality system. If a record pertains solely to mental health and/or sexual abuse and the Review Attorneys redact the record in its entirety, the record, or existence of same, will not be disclosed to Allergan. Otherwise,

Allergan will receive a log of any documents that are redacted for relevance or privilege. The Parties acknowledge that a Plaintiff who has alleged emotional distress or a similar claim beyond garden-variety emotional distress not requiring treatment has put into question their mental health and therefore Allergan is entitled to obtain and review records supporting same.

H. BrownGreer PLC will sign a written agreement in a form agreeable to Plaintiffs' Liaison Counsel and Allergan outlining the above process and its role and responsibilities outlined herein and will work with the Parties to set up/train on how to use their document portal and the process by which the Review Attorneys will review and submit redactions.

VI. DEFENDANT FACT SHEET

- A. The Court hereby approves the form of DFS attached hereto as **Exhibit B**.
- B. For each Plaintiff who serves a materially completed PFS pursuant to this Order, Allergan will serve a corresponding DFS within ninety (90) days from the date of service of the PFS. Allergan shall use the online Centrality System provided by BrownGreer PLC in connection with the Allergan MDL and accessible at www.mdlcentrality.com/allergan to complete and serve Defendant Fact Sheets and the accompanying documentation.
- C. If a Plaintiff supplements the PFS in such a manner as to require a supplemental response from Allergan, then Plaintiff's counsel shall notify Allergan and request in writing that Allergan provide an updated DFS within thirty (30) days.
- D. The parties may agree to reasonable extensions of these deadlines and if the parties cannot agree on any requested extension, the party seeking the extension may apply to the Court for relief upon a showing of good cause.
- E. Plaintiffs who are subject to this Order will not seek to serve further written individual discovery concerning their individual claims upon Allergan until such time as a

Plaintiff is selected as an Initial Bellwether Discovery Plaintiff, absent a stipulation between the Parties or leave of Court, and Allergan preserves any and all objections to such future written discovery requests.

VII. NONCOMPLIANT DFS

A. If Allergan does not provide a DFS by the above deadline in section VI.B, the Plaintiff may, after meeting and conferring with Allergan's counsel, file a motion to compel with the Court or request other relief supported by law. Any response to that motion shall be filed within fourteen (14) days, and any reply shall be filed within seven (7) days.

B. If Allergan provides a DFS that is not materially complete by the above deadline, counsel for Allergan and Plaintiff shall promptly meet and confer, and if the dispute remains unresolved, the Plaintiff may file a motion to compel with the Court or seek other relief supported by law. Any response to that motion shall be filed within fourteen (14) days, and any reply shall be filed within seven (7) days.



HON. GREGG A. PADOVANO, J.S.C.