

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: PROPULSID : **MDL NO. 1355**
PRODUCTS LIABILITY LITIGATION :
 : **SECTION: L**
 :
 : **JUDGE FALLON**
 : **MAG. WELLS ROBY**
THIS DOCUMENT RELATES TO ALL CASES :
 :

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**DEFENDANTS’ MOTION AND INCORPORATED MEMORANDUM FOR THE ENTRY
OF A 54(B) FINAL JUDGMENT**

NOW INTO COURT, through undersigned counsel, come Johnson & Johnson and Janssen Pharmaceutica Inc. (“Defendants”), and move this Court to direct the the entry of a 54(b) final judgment as to all claims of plaintiffs who this Court has ordered dismissed with prejudice for their failure to submit Plaintiff Profile Forms to Defendants in violation of Pre-Trial Order No. 9.

BACKGROUND

Over the past year, at the monthly status conferences, Defendants have brought before this Court several Motions to Dismiss with Prejudice against plaintiffs who have failed to submit PPFs to Defendants in violation of Pre-Trial Order No. 9. At these conferences, Defendants moved to dismiss

plaintiffs with prejudice in the matters of :

<i>Rosemary Lorio, et al v. Johnson & Johnson, et al</i> #01-0315	August 3, 2001
<i>Aline Zeno, et al v. Johnson & Johnson, et al</i> #00-0282	August 3, 2001
<i>Yvonne Adams, et al v. Forshag's Pharmacy Drug Store, et al</i> #01-1300	October 25, 2001
<i>Samella Addison, et al v. Westmar Pharmacy, et al</i> #01-1303	October 25, 2001
<i>Wayne Conley Alford, et al v. Brown Morris Pharmacy, et al, #01-1297</i>	October 25, 2001
<i>Gail Alix, et al v. Esplanade Pharmacy, et al</i> #01-1304	October 25, 2001
<i>Pearlie Anderson, et al v. Janssen Pharmaceutica Inc. et al</i> #01-1209	October 25, 2001
<i>Elise Ansardi, et al v. Violet Pharmacy, et al, #01-1294,</i>	October 25, 2001
<i>Junius Banks, et al v. Johnson & Johnson, et al, #01-1476</i>	October 25, 2001
<i>Gregory Batiste, et al v. Braswell Drugs, Inc., et al, #01-1290</i>	October 25, 2001
<i>Ronald Blanchard, et al v. Clinic Drug Store of Golden Meadow, Inc., et al, #01-1296</i>	October 25, 2001
<i>Valarie Boudreaux, et al v. Janssen Pharmaceutica, et al, #01-1292</i>	October 25, 2001
<i>Jerri Chesteen, et al v. Prescription Center of Morgan City, Inc., et al, #01-1738</i>	October 25, 2001
<i>Linda Dufrene, et al v. Sav-More Drugs, et al</i> #01-1295	October 25, 2001
<i>Michael Harris, et al v. Delta Drugs of Port Sulphur, Inc., et al</i> #01-1302	October 25, 2001
<i>Linda Shields, et al v. Johnson & Johnson, et al, #00-2737</i>	October 25, 2001

This Court, after hearing oral argument from Defendants' Liaison Counsel, Plaintiffs' Liaison Counsel and at times from the respective plaintiffs' counsel, granted these Motions dismissing the claims of plaintiffs with prejudice.

At the October 25, 2001 and the January 11, 2002 conferences, Defendants' Liaison Counsel informed the Court and all other parties that Defendants would be seeking the entry of a Federal Rule of Civil Procedure 54(b) judgment regarding these dismissed claims. See, Transcript of Monthly Status Conference Hearings, January 11, 2002, p. 7 and October 25, 2001, p. 8. This Court acknowledged Defendants' intent to move this litigation forward, noting, "Yes, I do think we ought to move those cases, because as we move into the next phase of this litigation, we have to get rid of the cases that are not part of the process so that they don't resurrect, or somehow or another slow down the active participants in this litigation . . ." See, Transcript of November 30, 2001 Status Conference, p. 8. Defendants contend such time is now, and there is no just reason for further delay.

Defendants attach to this memorandum a proposed Order in which Defendants suggest the following summary of reasons for the dismissal of prejudice of these plaintiffs:

- 1) The plaintiffs made subject of the Motions to Dismiss with Prejudice identified on Appendix A, which is incorporated into and made part of this Order, violated Pre-Trial Order No. 9 by failing to furnish Defendants with a Patient Profile Form;
- 2) The plaintiffs made subject of the Motions to Dismiss with Prejudice identified on

¹ Defendants attach to this Motion and Incorporated Memorandum a proposed Order with Appendix A, identifying all plaintiffs who are subject to the Order. Plaintiffs' Liaison Counsel has received and reviewed these documents.

Appendix A failed to respond to multiple written notices of their violations by Defendants' Liaison Counsel and Plaintiffs' Liaison Counsel;

- 3) The Court's record reflects that the plaintiffs made subject of the Motions to Dismiss with Prejudice identified on Appendix A were informed by the Court that their claims would be subject to dismissal on proper proof; and
- 4) Despite such notice, the plaintiffs made subject of the Motions to Dismiss with Prejudice identified on Appendix A failed to act in submitting Patient Profile Forms to Defendants.

Based on the foregoing summary of reasons, Defendants respectfully request that this Court designate the dismissal of each of these named plaintiffs as final under Federal Rule of Civil Procedure 54(b) and issue an Order so stating.

Respectfully submitted,

IRWIN FRITCHIE URQUHART & MOORE LLC

/s/ James Irwin

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JANSSEN PHARMACEUTICA INC. AND
JOHNSON & JOHNSON**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading entitled Defendants' Motion and Incorporated Memorandum for the Entry of a 54(b) Final Judgment was served on Plaintiffs' Liaison Counsel by e-mail and by e-service to all parties by uploading same to Verilaw, on this _____ day of June, 2002.

Appendix A violated Pre-Trial Order No. 9 by failing to furnish Defendants with a Patient Profile Form;

- 6) The plaintiffs made subject of the Motions to Dismiss with Prejudice identified on Appendix A failed to respond to multiple written notices of their violations by Defendants' Liaison Counsel and Plaintiffs' Liaison Counsel;
- 7) The Court's record reflects that the plaintiffs made subject of the Motions to Dismiss with Prejudice identified on Appendix A were informed by the Court that their claims would be subject to dismissal on proper proof; and
- 8) Despite such notice, the plaintiffs made subject of the Motions to Dismiss with Prejudice identified on Appendix A failed to act in submitting Patient Profile Forms to Defendants.

This Court finds that based on the foregoing summary of reasons, and for the reasons orally assigned at the aforementioned status conferences, that there is no just reason for delay to enter a final judgment under Federal Rule of Civil Procedure 54 as to the dismissal with prejudice of all plaintiffs identified on Appendix A; therefore, this Court directs the entry of a final judgment so stating.

New Orleans, Louisiana, this 19th day of June, 2002.

_____/s/ Eldon E. Fallon_____
UNITED STATES DISTRICT COURT JUDGE

APPENDIX A

PLAINTIFFS SUBJECT TO MOTION FOR ENTRY OF 54(B) JUDGMENT

Yvonne Adams, et al v. Forshag's Drug Store, et al (01-1300), 10/25/01

Eva Beavers
Camelia Bychurch
Marguerite Cothorn
Maudie Curney
Betty Manasco, individually, and on behalf of the estate of Rickey Manasco

Samella Addison, et al v. Westmar Pharmacy, et al (01-1303), 10/25/01

Julia Agoff
Demetta Alexis
Marion Olsen, individually, and on behalf of the estate of Carol Behre
Lillie Rose Chapman
Lillie Chapman, as next friend to Jarmal Chapman, minor child
Florence Cheatham
Rose Douglas
Oretha Fluker
Thomas Gordon
Venus Green
Jeanette Forsythe, as next friend to Sydni Henke, minor child
Annette Irvin
Harold Ishee
Gail LeNormand
Rosemary Macaluso
Elizabeth Miguez
Carmenzette Moten
Stephanie Payne, as next friend to Jasmine Payne, minor child
Evelyn Portier
Tanya Sandras
Katherine Simon
Beverly Territo
Katherine Verrette
Charles Williams, Sr.

Wayne Conley Alford, et al v. Brown Morris Pharmacy, et al (01-1297), 10/25/01

Wayn Conley Alford, individually and on behalf of the estate of Mattie Alford
Elizabeth Ballard
Bette D. Brown

Rosalie Burkhamer
Robert Ebersole, Sr.

Wayne Conley Alford, et al v. Brown Morris Pharmacy, et al (01-1297), 10/25/01 (con.)

Linda Foster
Annie Lloyd
Irene Mabry
Theresa Newman
Audrey Sauls

Gail Alix, et al v. Esplanade Pharmacy, et al (01-322), 10/25/01

Orelia Anderson
Alanna Bailey
Gloria Butler
Betty Cardwell
Steven Clark
Joann Cyres
Roselyn Davis
Josephine Ebbs
Harry Encalade, Jr.
Sheryl Freeman
Stacey Jackson
Lisa S. Johnson
Beverly King
Quinsonna Lucas
Raymond Manson
Toni Marshall
Rita Mae Martinez
Qiana Mitchell, as next friend to Damon Mitchell, minor child
Ellawean Owens
Shirley Paul
Frances Penn
Sarah Penwright, as next friend to Charles Penwright, minor child
Sheila Pierre
Deneen Quinn
Georgia Shelmire
Karen Small
Cynthia Songy
Ardis Stewart
Nietra Stroman
Joann Strong

Meri Taylor
Firmen Thomas
Linda S. Thomas
Bennette Williams, Jr.

Pearlie Anderson, et al v. Janssen Pharmaceutica Inc., et al (01-1298), 10/25/01

R. C. Armstrong
Blanche Barbato
Geraldine Berggreb
Janet Bodden
Raymond Boykin
Mona Burke, as next friend to Zachary Burke, minor child
Catrice Burrell
Stephanie Champagne, as next Friend to Melissa Champagne, Minor Child
Taylor Champagne
James Coleman
Dawn Constanzi, as next Friend to Darrin Constanzi, Jr., Minor Child
Helen Ducayag
Brett Fredenburg
Tonia Garner
Angela Germany
Brenda K. Griffin
William D. Harris
Lena Hendrix, as next Friend to Raymond Hendrix, Minor Child
Alannah Hiller
Paulina Johnson
Dorothy Jones
Dorothy Lane
Leslie Mabry, Jr.
Gordon Martine
Sandra McGowan
Constance Dunbar, as next Friend To, Carnell McLendon, Jr., Minor Child
Gerald Melerine
Zena Munster, as next Friend to Austin Munster, Minor Child
James Panter
Jacqueline Parker, as next Friend to Jaycob Parker, Minor Child
Gilda Rachel
Toyah Reddix, as next Friend to Tyrianna Reddix, Minor Child
Robert Robertson
Joseph Robinson, III
Pat Sanford, Jr.

Doris Scott
Debra Skipper
Shealyn Starks, as next Friend to Deondre Starks, Minor Child
Tammy Armone, as next Friend to Samantha Stoetzner, Minor Child
Larry Stogner
Nolan Thibodeaux
Lucille Thompson, as next Friend to Ra'neke Thompson, Minor Child

Pearlie Anderson, et al v. Janssen Pharmaceutica Inc., et al (01-1298), 10/25/01 (con.)

Lori Treither, as next Friend to Carl Treither, III, Minor Child
Melvin Villemarette
Cynthia Washington
Golda Williams
Linda Dufrene, as next Friend to Lauren Zehr, Minor Child

Elise Ansardi, et al v. Violet Pharmacy, et al (01-1294), 10/25/01

Elise Ansardi
Anthony Domino
Timothy Hellers
Carolyn Lindsey
Betty North

Junius Banks, et al v. Johnson and Johnson, et al (01-1476), 10/25/01

Brenda Marshall

Gregory Batiste, et al v. Braswell Drugs, Inc., et al (01-1290), 10/25/01

Lorraine Blake
William Boni, as next Friend To, Blain Boni, Minor Child
Shirley Dailey
Helen Ehrlicher
Barbara Foret
Kurt Gibbe, Jr.
Robert Harris, Individually, and on Behalf of the Estate of Pauline Harris
Yvonne Kirk
Irwin Leitz
Mark Lemus
Annie Nevis
Melvyn Oalman
Anthony Palermo
Elaine Randazzo
Johnnie Thomas

Ronald Blanchard, et al v. Clinic Drug Store of Golden Meadow, Inc., et al (01-1296),
10/25/01
Ronald Blanchard
Odessena Brown
Laura Gravois, Agnes Puebla, as next Friend To, Don Ray Puebla, Minor Child Theodora Simoneaux
Audrey Turner

Valarie Boudreaux, et al v. Janssen Pharmaceutica, et al (01-1292), 10/25/01
Valarie Boudreaux
Christine Collins
Aaron Dark, Sr
Linwood Dupre
Frances Farrington

Jerri Chesteen, et al v. Prescription Center of Morgan City, Inc., et al (01-1738), 10/25/01
Treasure Armond
Martha Ford

Linda Dufrene, et al v. Sav-More Drugs, Inc., et al (01-1295), 10/25/01
Danielle Jarrow
Wilfred Vosberg, III

Michael Harris, et al v. Delta Drugs of Port Sulphur, Inc., et al (01-1302), 10/25/01
Michael Harris
Judy Lipscomb

Rosemary Lorio, et al v. Johnson and Johnson, et al (01-0315), 08/03/01
Calvin Aubert
James Carter
Katherine Clayton
Talacey Clayton
Tracy Clayton
Marquell Mitchell
Albert Williams, Sr.
Della Williams
Ernestine Williams
Katia Williams
Khymest Terre Williams
Lisa Lynette Williams
Shelton Williams, Jr.

Shleton Williams, Sr.
Tyler J. Williams

Aline Zeno, et al v. Johnson and Johnson, et al (00-0282), 08/03/01
Mabel Charles

Charles Long, et al v. Janssen Pharmaceutic, et al (01-1826), 11/30/01
Charles Long

Linda Sheilds, et al v. Johnson and Johnson, et al (00-2737), 10/25/01
Patty Absheir
Hugh Ford
Irvin Leitz
Gladys Rodriguez