

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

IN RE: ABILIFY (ARIPIPRAZOLE)  
PRODUCTS LIABILITY LITIGATION

Case No. 3:16md2734

This Document Relates to the Cases  
Identified in Exhibit A

Judge M. Casey Rodgers  
Magistrate Judge Gary Jones

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**ORDER**

On February 20, 2019, the Court formally announced a global settlement between Plaintiffs' Lead Counsel and Defendants, and adopted a settlement program for the resolution of individual plaintiffs' claims. Thereafter, the Court entered several orders designed to facilitate the global settlement.<sup>1</sup> Pursuant to these orders, all individual plaintiffs who chose to participate in the settlement program were required to timely submit a completed claim form, valid supporting documentation for their claim, a fully executed release, and a fully executed stipulation for and/or proposed order of dismissal with prejudice, to the settlement claims administrators. Individual plaintiffs were advised that failure to fulfill the various requirements within the applicable deadlines may result in dismissal of their case with prejudice. To date, the individual plaintiffs identified on Exhibit A have failed to comply with

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<sup>1</sup> See Order Establishing the MDL 2734 Qualified Settlement Fund and Appointing Claims Administrators, ECF No. 1131; Order Regarding Settlement Agreement and Deadlines, ECF No. 1135; Order Regarding Case Review Process, ECF No. 1136; and Order Regarding Pro Se Plaintiffs, ECF No. 1137.

one or more of these directives by either: (1) failing to submit any supporting documentation for their claims; or (2) submitting documentation that fails to establish that the plaintiff used name brand Abilify.

On September 6, 2019, the Court specifically ordered the individual plaintiffs identified on Exhibit A to: (1) submit facially valid supporting documentation for his or her claim to the Claims Administrator, BrownGreer PLC; and (2) show cause why his or her case should not be dismissed for failure to comply with an order of the Court. *See* ECF No. 1165. The Court emphasized that failure to comply with either of these directives would result in dismissal of a case with prejudice. *See id.* at 3. The time for compliance has now expired and the individual plaintiffs identified in Exhibit A have either failed to respond to the show cause order or failed to show cause for why his or her case should not be dismissed.

Rule 37(b)(2) of the Federal Rules of Civil Procedure allows a court to sanction a party, up to and including dismissal of a case with prejudice, for failing to comply with court orders. This authority has particular significance in the MDL context. An MDL judge bears the “enormous” task of “mov[ing] thousands of cases toward resolution on the merits while at the same time respecting their individuality.” *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217, 1231 (9th Cir. 2006). To carry out this task in an organized and efficient manner, an MDL court must define and strictly adhere to case management rules. *See id.* at

1232 (“[T]he district judge must establish schedules with firm cutoff dates if the coordinated cases are to move in a diligent fashion toward resolution by motion, settlement, or trial.”); *see also* Fed. R. Civ. P. 1 (stating that the Federal Rules of Civil Procedure “should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding”). In turn, counsel must collaborate with the court “in fashioning workable programmatic procedures” and cooperate with those procedures thereafter. *Id.* at 1231-32. Pretrial orders—and the parties’ compliance with those orders and their deadlines— “are the engine that drives disposition on the merits.” *Id.* at 1232. “A [court’s] willingness to resort to sanctions in the event of noncompliance can ensure that that the engine remains in tune, resulting in better administration of the vehicle of multidistrict litigation.” *In re Cook Medical, Inc. Pelvic Repair Sys. Prof. Liab. Litig.*, 2018 WL 4698953, at \*2 (S.D. W. Va. Sept. 28, 2018) (citing *Freeman v. Wyeth*, 764 F.3d 806, 810 (8th Cir. 2014) (“The MDL judge must be given ‘greater discretion’ to create and enforce deadlines in order to administrate the litigation effectively. This necessarily includes the power to dismiss cases where litigants do not follow the court’s orders.”)). However, before levying the severe sanction of dismissal with prejudice under Rule 37, a court must find that a party has “engage[d] in a clear pattern of delay or willful contempt (contumacious conduct),” and that “lesser sanctions would not suffice.” *Pippen v. Georgia-Pacific Gypsum, LLC*, 408 F. App’x 299, \*2 (11th Cir. 2011)

(quoting *Betty K. Agencies Ltd. V. M/V MONADA*, 432 F.3d 1333, 1337-38 (11th Cir. 2005)).

In this case, the Court finds that both prongs of the standard for dismissal with prejudice under Rule 37(b)(2) are satisfied as to the individual cases identified in Exhibit A. Many of the plaintiffs have exhibited a clear pattern of disregarding the Court's orders regarding the settlement program and ignored an order requiring them to show cause why their cases should not be dismissed. Other plaintiffs responded to the show cause order but conceded that they are unable to provide *any* evidence that they used name brand Abilify. The Court finds that at this advanced stage of the litigation, which has been pending for almost three years, it is not too much to require plaintiffs to provide proof of use in support of their claim that Abilify caused them injury, particularly where they are seeking to be compensated for taking the drug. The Claims Administrators for the settlement program have notified these plaintiffs of their documentation deficiencies multiple times, and even extended the submission deadline, to no avail. More recently, the plaintiffs were warned that failure to provide the requisite documentation would result in dismissal of their cases with prejudice. None of the plaintiffs sought an extension of the Court's deadline for compliance or indicated, by filing a case review certification pursuant to ECF No. 1136, that they instead wish to continue litigating their claim. In light of these

plaintiffs' history and the posture of this MDL, the Court finds that dismissal with prejudice is the only acceptable alternative.

Accordingly, it is **ORDERED** that:

1. The individual cases identified on Exhibit A are hereby **DISMISSED WITH PREJUDICE** for the plaintiffs' failure to comply with court orders.
2. The Clerk is directed to enter a copy of this Order on the individual docket for each of the cases identified in Exhibit A, and then to close those cases in their entirety for all purposes.

**SO ORDERED**, on this 24th day of September, 2019.

*M. Casey Rodgers*

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**M. CASEY RODGERS**  
**UNITED STATES DISTRICT JUDGE**

# **EXHIBIT A**

<b>No.</b>	<b>Case Number</b>	<b>Plaintiff</b>
1	3:17-cv-00548	Tina Silvers
2	3:17-cv-00584	Trevor-Lee Kunz
3	3:17-cv-00616	Toby Dauzat
4	3:18-cv-00381	Bonnie Green
5	3:18-cv-00854	Carl Johnson
6	3:18-cv-00863	Lynell Willis
7	3:18-cv-00949	Bernando Turner
8	3:18-cv-00983	Mary Moronez
9	3:18-cv-01005	Dewana Parker
10	3:18-cv-01016	William Clayton
11	3:18-cv-01017	Clyde Davis
12	3:18-cv-01028	Teresa Evans
13	3:18-cv-01036	Jeremy Owen
14	3:18-cv-01039	Debra Tolbert
15	3:18-cv-01091	Elizabeth Ramos Torres
16	3:18-cv-01097	Lauro Carrasco
17	3:18-cv-01112	Leon Barner
18	3:18-cv-01115	Justin Siegner
19	3:18-cv-01136	Gina Kivett
20	3:18-cv-01144	Cindy Russell
21	3:18-cv-01154	Mindy Cowart
22	3:18-cv-01161	Tammy Kelly
23	3:18-cv-01163	Hans Trujillo
24	3:18-cv-01172	Jessica Daniels
25	3:18-cv-01176	April Humphries
26	3:18-cv-01177	Jeffrey Larson
27	3:18-cv-01178	Linda Lesesne
28	3:18-cv-01193	Meghan Cook
29	3:18-cv-01289	Tamian Miller
30	3:18-cv-01293	Tyler Katz
31	3:18-cv-01296	Christopher Franklin

32	3:18-cv-01298	Cabrini Mitchel
33	3:18-cv-01310	Kevin Williams
34	3:18-cv-01311	Derrick Lancer
35	3:18-cv-01404	Joshua Fern
36	3:18-cv-01482	Carl Ward
37	3:18-cv-01522	Charonda Blunt
38	3:18-cv-01602	James Jackson
39	3:18-cv-01660	Rachelle Hunt
40	3:18-cv-01666	Sequoia Burston
41	3:18-cv-01668	Jacqueline Carambia
42	3:18-cv-01678	Richard Davis
43	3:18-cv-01684	Walter Glover
44	3:18-cv-01685	Anna Williams
45	3:18-cv-01699	Mark Thurby
46	3:18-cv-01704	Elizabeth Hogan
47	3:18-cv-01735	Denis Sullivan
48	3:18-cv-01754	Nathaniel Woolum
49	3:18-cv-01763	Gloria Davis
50	3:18-cv-01766	Christopher Thompson
51	3:18-cv-01782	Thomas Nelson
52	3:18-cv-01804	Drella Johnson
53	3:18-cv-01808	Alice Jones
53	3:18-cv-01811	Flora Harris
54	3:18-cv-01813	Deborah Moore
55	3:18-cv-01827	Debbie Holmgren
56	3:18-cv-01848	Mary Iozzo
57	3:18-cv-01992	Ruthie Fink
58	3:18-cv-02013	Daniel Montejo
59	3:18-cv-02015	John Naumann
60	3:18-cv-02016	Johnathan Nichols
61	3:18-cv-02020	Zoharel Quinn



62	3:18-cv-02023	Dakota Robinson
63	3:18-cv-02029	Cassey Touchet
64	3:18-cv-02034	Fonda Riley
65	3:18-cv-02067	Kamerra Barnes
66	3:18-cv-02067	Darryl Blackwell
67	3:18-cv-02067	Debra Catania
68	3:18-cv-02067	Mary Wallace
69	3:18-cv-02067	Roberta Burnett
70	3:18-cv-02067	Tanica Chancellor
71	3:18-cv-02067	Brenae Barnes
72	3:18-cv-02067	Trevon Anderson
73	3:18-cv-02067	Danny Bauerle
74	3:18-cv-02067	Monique Cade
75	3:18-cv-02067	Yolanda Adams
76	3:18-cv-02067	Thomas Carbone
77	3:18-cv-02070	Jermal Staggers
78	3:18-cv-02070	Michael Swan
79	3:18-cv-02070	Jacqueline Meyer
80	3:18-cv-02070	Bernell Williams
81	3:18-cv-02070	Ernest Wilkins
82	3:18-cv-02070	Zanphier Walker
83	3:18-cv-02070	Letroy Toussaint
84	3:18-cv-02070	Sarah Thorton
85	3:18-cv-02070	Eric Stump
86	3:18-cv-02070	Juanita Smith
87	3:18-cv-02070	Cassandra Simpson
88	3:18-cv-02070	Sharon Reiter
89	3:18-cv-02070	Joyce Pringle
90	3:18-cv-02070	Timothy Price
91	3:18-cv-02070	Bobie Nall
92	3:18-cv-02070	Antonio Romero

93	3:18-cv-02070	Dominique Powell
94	3:18-cv-02070	Kannon Russell
95	3:18-cv-02070	Kimberlee Smith Schulz
96	3:18-cv-02070	Christopher Straight
97	3:18-cv-02070	Dennis Tapley
98	3:18-cv-02072	Glen Hendricks
99	3:18-cv-02072	Jimmy Downey
100	3:18-cv-02072	Tracey McCray
101	3:18-cv-02072	Steven Davis
102	3:18-cv-02072	Andrea Green
103	3:18-cv-02072	Sherman Howerton
104	3:18-cv-02072	Joann Kump
105	3:18-cv-02072	Annie Lloyd
106	3:18-cv-02072	Brian Doubrava
107	3:18-cv-02072	Ferial Jackson
108	3:18-cv-02072	Jomoy Lee
109	3:18-cv-02072	Karen Elbon
110	3:18-cv-02072	Michael Henry
111	3:18-cv-02072	Camilla Joyner
112	3:18-cv-02072	Levette Godfrey
113	3:18-cv-02072	Cindy Hitt
114	3:18-cv-02072	Lamar Knight
115	3:18-cv-02072	Tonya Johnson
116	3:18-cv-02081	Bessie Burian
117	3:18-cv-02081	Michael Clemons
118	3:18-cv-02081	Susan Hoffmann
119	3:18-cv-02082	Emmy Vandenberg
120	3:18-cv-02082	Rebecca McBride
121	3:18-cv-02082	Dennis Barr
122	3:18-cv-02082	Charles Gilbert
123	3:18-cv-02082	Anne Ferrara

124	3:18-cv-02098	Toby Russell
125	3:18-cv-02098	Adrian Price
126	3:18-cv-02254	Anthony Kemper
127	3:18-cv-02295	Kathy Motzno
128	3:18-cv-02351	Brandon Jones
129	3:18-cv-02374	Dionna Rooks
130	3:18-cv-02405	Remonia Lee
131	3:19-cv-00208	Benny Bost
132	3:19-cv-00112	Sharon Winn
133	3:19-cv-00212	Julia Ford
134	3:19-cv-00215	Kristin Funderburk
135	3:19-cv-00218	Doretta Hullihen
136	3:19-cv-00219	Rebecca Juges
137	3:19-cv-00221	Kara Marshall
138	3:19-cv-00223	Becky Matthews
139	3:19-cv-00232	Kelton Harris—no contact in months
140	3:19-cv-00234	Robert Gardner
141	3:19-cv-00236	David Jayson
142	3:19-cv-00237	Nancy Infield
143	3:19-cv-00260	Miracle Charles
144	3:19-cv-00266	Kimberly Kelsey
145	3:19-cv-00276	Elizabeth Krohn
146	3:19-cv-00287	Zachary Stolp
147	3:19-cv-00290	Charles Bayless
148	3:19-cv-00292	Sandra Deese
149	3:19-cv-00300	Trina Reed