

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

IN RE SMITH & NEPHEW BIRMINGHAM  
HIP RESURFACING (BHR) HIP IMPLANT  
PRODUCTS LIABILITY LITIGATION

MDL No. 2775  
Master Docket No. 1:17-md-2775

JUDGE CATHERINE C. BLAKE

**THIS DOCUMENT RELATES TO  
ALL CASES**

**██████████ CASE MANAGEMENT ORDER NO. 13**  
**Show Cause Process to Address Cases in Which Plaintiff Fails to Serve a Substantially  
Complete Plaintiff Fact Sheet**

Defendant Smith & Nephew, Inc. (“Defendant”) hereby submits this proposed Order regarding a Show Cause Process to address cases in which a Plaintiff fails to serve a substantially complete Plaintiff Fact Sheet (“PFS”) as required by CMO 8 (as amended) or 12, as applicable.

**I. Scope of this Order**

This Order applies to all cases now pending or that will be direct-filed in, removed to or transferred to this Court, whether in the BHR Track or the THA Track.

**II. Plaintiff Fact Sheet Obligations**

**A.** Case Management Order (“CMO”) 8 [Dkt. No. 814], and First Amendment to CMO 8 [Dkt. No. 854-1], provide that each Plaintiff in the BHR Track shall serve a completed and signed Plaintiff Fact Sheet, in the form approved by the Court and by the means directed therein, including responsive documents and executed authorizations, within sixty days of either the entry of CMO 8 or transfer into or direct-filing into the MDL, whichever is later. CMO 8 (A) & (C). A PFS must be “substantially complete” which is defined to include compliance with four requirements enumerated in paragraph (D), including answering all applicable questions, providing a signed verification, providing an unaddressed, duly executed authorization for the

release of records, and producing requested documents if in the Plaintiff's possession, custody or control. CMO 12 [Dkt. No. 1400] sets out a similar set of requirements for Plaintiffs in the THA Track.

**B.** CMO 8 and CMO 12 provide, for the BHR and THA Tracks respectively, that in cases of non-compliance with PFS requirements, including failure to serve a substantially complete PFS as defined in the CMOs, Defendant will send a notice of deficiency via MDL Centrality stating that the Plaintiff has thirty days in which to cure the alleged material deficiency. If the material deficiency is not cured within that time, or within any extended time agreed upon by the parties, "Defendant may move for dismissal of Plaintiff's claim, including dismissal with prejudice upon an appropriate showing." CMO 8, at ¶ IV.B; CMO 12, at ¶ VI.B. For purposes of this order, a PFS is deemed materially deficient if it is not "substantially complete" as defined in CMOs 8 (as amended) or 12, as applicable.

### **III. Show Cause Process**

**A.** In order to address any cases in this MDL in which a Plaintiff fails to serve a substantially complete PFS as required after expiration of the specified or otherwise agreed time to cure the deficiency, the Court hereby institutes the following process:

1. S&N will provide on a quarterly basis (in April, June, September and January), to Plaintiffs' Leadership and to counsel of record (if different) for any Plaintiff at issue, a list of cases potentially subject to dismissal for PFS non-compliance, including the dates of any applicable deficiency notices and a short statement of the reason the PFS is not substantially complete. For 2019 only, the first such list will be provided in May 2019, instead of June.
2. Such list will be provided on or before 21 days prior to the scheduled status conference in the month in which the list is provided, or, if no status conference is scheduled, by the first Wednesday of that month.
3. Three business days prior to the scheduled status conference, or by the last business day of the month in any month in which there is no status conference scheduled, Defendant will file with the Court a list of the

Plaintiffs and cases on the quarterly list that have not cured the identified PFS deficiencies and thus have still not served a substantially complete PFS, and a proposed Show Cause Order, substantially in the form attached as Exhibit A hereto.

4. The Show Cause Order will allow an additional 21 days in which each Plaintiff can cure the material deficiency by serving on Defendant a substantially complete PFS in accordance with CMO 8 (as amended) or CMO 12, as applicable.
5. The Show Cause Order will further provide that failure to cure within 21 days may result in dismissal with prejudice.
6. Within 5 days after expiration of the 21-day cure period under the Show Cause Order, Defendant will file proposed Orders of Dismissal for any case on the quarterly list as to which the PFS material deficiency was not cured within the allotted time. The Court will enter the Orders of Dismissal absent a showing by the Plaintiff that no PFS material deficiency exists.

IT IS SO ORDERED, this 18<sup>th</sup> day of April 2019.



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HON. CATHERINE C. BLAKE  
UNITED STATES DISTRICT JUDGE

Exhibit A

Text of Proposed Show Cause Order

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**IN RE: SMITH & NEPHEW  
BIRMINGHAM HIP RESURFACING  
(BHR) HIP IMPLANT PRODUCTS  
LIABILITY LITIGATION**

**MDL: 1:17-MD-2775-CCB**

**THIS DOCUMENT RELATES TO:  
[CASE CAPTIONS]**

**SHOW CAUSE ORDER**

Case Management Order (“CMO”) 8 [Dkt. No. 814], and First Amendment to CMO 8 [Dkt. No. 854-1], provide that each Plaintiff in the BHR Track shall serve a completed and signed Plaintiff Fact Sheet, in the form approved by the Court and by the means directed therein, including responsive documents and executed authorizations, within sixty days of either the entry of CMO 8 or transfer into or direct-filing into the MDL, whichever is later. CMO 8 (A) & (C). A PFS must be “substantially complete” which is defined to include compliance with four requirements enumerated in paragraph (D), including answering all applicable questions, providing a signed verification, providing an unaddressed, duly executed authorization for the release of records, and producing requested documents if in the Plaintiff’s possession, custody or control. CMO 12 [Dkt. No. 1400] sets out a similar set of requirements for Plaintiffs in the THA Track.

CMO 8 and CMO 12 provide, for the BHR and THA Tracks respectively, that in cases of non-compliance with PFS requirements, including failure to serve a substantially complete PFS as defined in the CMOs, S&N or its agent will send a notice of deficiency via MDL Centrality stating that the Plaintiff has thirty days in which to cure the alleged material deficiency. If the

material deficiency is not cured within that time, or within any extended time agreed upon by the parties, “Defendant may move for dismissal of Plaintiff’s claim, including dismissal with prejudice upon an appropriate showing.” CMO 8, at ¶ IV.B; CMO 12, at ¶ VI.B. For purposes of this order, a PFS is deemed materially deficient if it is not “substantially complete” as defined in CMOs 8 or 12, as applicable.

Pursuant to CMO 13 [Dkt. No. \_\_\_], on [Date], Defendant Smith & Nephew, Inc. provided to Plaintiffs’ Leadership and all Plaintiffs’ counsel of record in the above-captioned actions a listing of the cases in which Plaintiff had failed to serve a substantially complete Plaintiff Fact Sheet. On [date], Smith & Nephew, Inc. timely filed with the Court an updated list of cases in which a substantially complete Plaintiff Fact Sheet still had not been served.

WHEREFORE, the Court hereby issues this ORDER TO SHOW CAUSE why the cases captioned above should not be dismissed with prejudice, and

FURTHER ORDERS each Plaintiff in the cases captioned above within fourteen days of entry of this Order to serve on Defendant a substantially complete Plaintiff Fact Sheet, failing which this Court will dismiss each such case with prejudice.

SÓ ORDERED, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

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HON. CATHERINE C. BLAKE  
UNITED STATES DISTRICT JUDGE