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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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In Re: Fluoroquinolone	)	File No. 15MD2642
Products Liability Litigation	)	(JRT)
	)	
	)	Minneapolis, Minnesota
	)	November 20, 2019
	)	10:30 A.M.
	)	
	)	
	)	

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BEFORE THE HONORABLE CHIEF JUDGE JOHN R. TUNHEIM  
UNITED STATES DISTRICT COURT  
**(STATUS CONFERENCE AND SHOW CAUSE HEARING)**

Court Reporter:	KRISTINE MOUSSEAU, CRR-RPR
	1005 U.S. Courthouse
	300 South Fourth Street
	Minneapolis, MN 55415

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

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1 MR. PLAUCHE: Evan Plauche from the Chauvin case.

2 MS. GRIFFIN: Katie Griffin for plaintiffs.

3 MS. LEE: And this is Kathy Lee for Dirk Nation.

4 THE COURT: Okay. All right. For the defendants  
5 here?

6 MS. BERNIER: Jan McLean Bernier, Nilan Johnson  
7 Lewis, on behalf of the Janssen defendants.

8 MR. SUFFERN: Good morning, Your Honor. This is  
9 Michael Suffern on behalf of Teva Canada Limited and Cobalt  
10 Laboratories, LLC, in the Achman case.

11 THE COURT: Why don't you say that again?

12 MS. BERNIER: Jan McLean Bernier, Nilan Johnson  
13 Lewis, on behalf of the --

14 MR. SUFFERN: I'm sorry. Michael Suffern on  
15 behalf of Actavis Pharma, Inc., Teva Canada Limited and  
16 Cobalt Laboratories, LLC, in the Achman case.

17 MS. BERNIER: Jan McLean Bernier, Nilan Johnson  
18 Lewis, on behalf of the Janssen defendants.

19 THE COURT: Good morning.

20 MR. SOLOW: Good morning, Your Honor. Andrew  
21 Solow on behalf of the Bayer and Merck defendants.

22 THE COURT: Good morning, Mr. Solow. I think we  
23 probably got everyone who is on the phone. Did anyone not  
24 get a chance to identify themselves?

25 MR. BUDD: Sorry, Your Honor. I was on mute. It

1 is Russell Budd for the plaintiffs.

2 THE COURT: All right. Good morning, Mr. Budd.

3 All right. Let's proceed with the case  
4 management conference first, and then we can address  
5 anything that needs to be addressed on the orders to show  
6 cause.

7 All right. Mr. Sims.

8 MR. SIMS: Thank you, Your Honor. Thomas Sims  
9 for the plaintiffs. Really there is not too much to report  
10 in the way of status. We are down to just a handful of  
11 plaintiffs who are either in the process of having their  
12 case dismissed or subject to pending orders to show cause.

13 There is approximately maybe a dozen or so that  
14 Janssen and various plaintiffs' counsel are currently  
15 working on. In addition, there is a few that I believe  
16 Bayer is getting ready to either file for orders to show  
17 cause or that have been transferred more recently, and  
18 there will be an order to show cause pending if the  
19 plaintiff doesn't comply with PTO 18 obligations.

20 So the number is quite small that aren't either  
21 dismissed or subject to a pending order to show cause.

22 THE COURT: All right. Anything you would like  
23 to add?

24 MS. BERNIER: Good morning. After going through  
25 all the dockets, we determined that Janssen had 50 cases

1 remaining open against it. As of this morning, 16 will be  
2 dismissed.

3 THE COURT: 16 did you say?

4 MS. BERNIER: Correct. Currently as of now I  
5 believe there is 34 cases outstanding against Janssen.  
6 Mr. Sims indicated this morning they can't find one  
7 plaintiff. We believe we have nine pro se plaintiffs.  
8 That would make ten if they withdraw from that case. Those  
9 cases are being worked by Mr. Richards' office,  
10 Mr. Winter's office and our office.

11 There is some Phase II settlements outstanding  
12 where we are waiting for Medicare to be resolved before  
13 those can be set for dismissal, and Mr. Sims indicated  
14 there are two plaintiffs that have died, and there are  
15 suggestions that certificates of death are needed in two  
16 cases.

17 THE COURT: Okay.

18 MS. BERNIER: So I believe that's the scope of  
19 what is against Janssen.

20 THE COURT: Thank you.

21 Mr. Solow?

22 MR. SOLOW: Good morning, Your Honor. The Bayer  
23 and Merck defendants have funded the Master Settlement  
24 Agreement. We have filed with the Court 360 dismissals. I  
25 have just confirmed with your deputy clerk this morning.

1 There are a handful of dismissals that I believe just got  
2 missed by the Clerk's Office to be entered as orders, just  
3 about 20 of those.

4 After the orders to show cause that are heard  
5 this afternoon, which we have not received any oppositions  
6 to with the exception of one, which we will discuss, I  
7 believe Your Honor will have at most three to four cases  
8 left. One of them is Mr. Reed, who is a pro se attorney --  
9 representing himself. He is pro se. He is on the line  
10 today. He is on one of the orders to show cause.

11 The other one is the Chauvin case. Mr. Plauche  
12 is on the line today, and then finally there is two other  
13 cases which we expect to put on an order to show cause in  
14 the coming weeks. One of those is a pro se Ms. Blansette,  
15 who Your Honor had previously granted an extension to when  
16 she was on an order to show cause. The other one, the  
17 parties worked out an agreement on an extension, and that  
18 time will be expiring shortly.

19 THE COURT: Okay. All right. Thank you,  
20 Mr. Solow. I appreciate the update.

21 The Court issued an order to show cause on --  
22 let's see. We have one, you filed it on October 30th, I  
23 believe, but that encompasses perhaps these cases, the  
24 requirement to appear on November 20th, 10:30 a.m., to show  
25 good cause why the Court should not dismiss these cases

1 pursuant to earlier court orders requiring a showing of  
2 information so that cases could proceed.

3 Mr. Solow?

4 MR. SOLOW: Thank you, Your Honor. That's MDL  
5 Docket Number 888. All but two of those cases we have not  
6 heard anything from. So we would ask Your Honor to go  
7 ahead and dismiss those cases for failure to comply with  
8 PTO 18.

9 THE COURT: And the ones that you have heard are,  
10 which ones, the Reed case?

11 MR. SOLOW: Yes. Mr. Reed, who is on the line,  
12 and that's case number 16CV02059.

13 THE COURT: Mm-hmm.

14 MR. SOLOW: And then the Chauvin case, 18CV00579,  
15 and I can address those two in a moment.

16 THE COURT: Okay. First of all, with respect to  
17 the remaining cases listed in the order to show cause, the  
18 Court will order those cases to be dismissed with prejudice  
19 for failure to comply with Pretrial Order Number 18.

20 Okay. Let's talk about the other two cases,  
21 Mr. Solow.

22 MR. SOLOW: Yes, Your Honor. Before I forget if  
23 you want to deal with this first, there is another order to  
24 show cause that was also returnable today. That is docket  
25 915, and that's two cases, and neither one of them has

1 complied, and we would ask Your Honor to go ahead and  
2 dismiss those two cases as well.

3 THE COURT: Okay. That motion is granted, and we  
4 will issue a written order listing all of these.

5 MR. SOLOW: And we will follow up with a proposed  
6 order to chambers and on the docket for both of those.  
7 Your Honor, turning to the two cases, one case, the Chauvin  
8 case, is represented by counsel. They went ahead and sent  
9 us some materials.

10 We still believe, Your Honor, that they are  
11 deficient in terms of satisfying their PTO 18 obligations.  
12 We went ahead and sent -- I apologize if I'm mispronouncing  
13 his name -- Mr. Plauche, we sent him a deficiency letter  
14 which he has not responded to yet, but in short, Your  
15 Honor, there is a couple key deficiencies in the PTO 18  
16 requirement.

17 First and foremost, we did get a case specific  
18 expert report, but it does not comply with Rule 26. It  
19 does not include a fee schedule, publications, prior  
20 testimony. It's also substantially dated prior to when it  
21 was originally performed, and then there is just an updated  
22 signature page, but in our view, it's clearly lacking in  
23 that.

24 Likewise, in terms of responsibilities under PTO  
25 18 to serve a generic causation and liability report, they

1 have gone ahead and just sent us copies of the MDL PSC's  
2 prior report. It is not clear to us that in fact counsel  
3 in the Chauvin case has retained those experts.

4 So as Your Honor recalls, we had dismissed, Your  
5 Honor had dismissed without prejudice our pending *Daubert*  
6 motions, but we had a *Daubert* hearing scheduled where Your  
7 Honor had ordered those witnesses to be live at the  
8 hearing.

9 So it's certainly our position that if we go  
10 ahead and proceed with expedited bifurcated discovery on  
11 causation, we would want to go ahead and renew those  
12 *Daubert* motions. So we think it's imperative, Your Honor,  
13 that counsel indicates whether in fact they have retained  
14 those experts so that we can bring them in for a *Daubert*  
15 hearing.

16 Likewise, there is a few other deficiencies, Your  
17 Honor, namely there is an obligation to provide no record  
18 affidavits from providers. There is a statement from  
19 Ms. Chauvin indicating that she can't get records from a  
20 facility, but we don't have the actual no records  
21 submission from that facility, but these are all outlined  
22 in a letter that has not been responded to that we sent to  
23 counsel last week.

24 So I can pause on that case while counsel is on  
25 the line.

1 THE COURT: That's fine.

2 Mr. Plauche, is it?

3 MR. PLAUCHE: It is Plauche, Your Honor.

4 THE COURT: Plauche, okay. Do you want to  
5 respond?

6 MR. PLAUCHE: Sure. Your Honor, we, we have  
7 provided so far in this case over 6,450 pages worth of  
8 medical records, starting back in 2018, to defense counsel  
9 which they received those records via certified mail, which  
10 we have a certified receipt.

11 We have also produced a specific causation expert  
12 report from Dr. Mark Ghalili. Dr. Ghalili is a physician.  
13 He is not an academic expert. He does not do -- he does  
14 not handle litigation for a living. We essentially  
15 received this letter last week.

16 We're attempting to get in contact with him to  
17 determine whether he has been involved in any litigation  
18 and what, if any, publications he has available to defense  
19 counsel, which we will do to the extent that he has  
20 anything, and if he doesn't, we will also advise defense  
21 counsel of that fact. So that's in the process, Your  
22 Honor.

23 We believe Dr. Ghalili's report, specific report,  
24 complies with Pretrial Order Number 18 and Pretrial Order  
25 Number 3. With regard to the production of the general

1 causation and liability expert reports, it's our position  
2 that those experts were retained by plaintiffs steering  
3 committee.

4 They produced reports on behalf of all the  
5 plaintiffs, including Ms. Chauvin and Mr. Chauvin, and that  
6 we should be allowed to rely on those reports in the  
7 prosecution of this claim. At this point whether or not we  
8 retain those experts I think is not, is not relevant.

9 I think we should not have to retain them at this  
10 moment until this case gets transferred back to the Eastern  
11 District and it's set for trial, and then at that point we  
12 will make a decision as to which experts we intend to  
13 retain of the group that produced reports, which I think  
14 there are four reports, Dr. Plunkett, Dr. Simpson,  
15 Dr. Smith, Dr. Manian. That is on the expert issue.

16 With regard to the affidavits, there was an issue  
17 with Mr. Chauvin's affidavit, which I don't think Mr. Solow  
18 mentioned it, but one of the affidavits was inadvertently  
19 produced. It was not signed. We have the signed version.  
20 For some reason it was not scanned in when the records were  
21 scanned, and we can take care of providing that to  
22 Mr. Solow in a day or two.

23 With regard to the lack of compliance with PTO  
24 Number 3, we think we have complied in good faith with  
25 everything in PTO 18 and 3. We have subpoenaed and

1 obtained records from every health care provider that has  
2 treated this lady over the years.

3 There is one issue related to pharmacy records  
4 from the old, what we call, Cherry Hospital which was a  
5 hospital which existed pre Katrina, pre Hurricane Katrina,  
6 and eventually closed as a result of flooding that took  
7 place in Hurricane Katrina. That hospital was eventually  
8 disbanded.

9 A subsequent hospital was created, the Medical  
10 Center of New Orleans, which now is a public hospital that  
11 operates now. We could not obtain any pharmacy numbers  
12 from the pharmacy records prior to 2013 and contacted  
13 associate counsel for that entity who advised us that that  
14 entity did not track NBC codes for pharmacy records pre  
15 2013.

16 So they don't have any records because the  
17 records from that whole computer system that they had have  
18 been destroyed, and in any event they did not track NBC  
19 codes in the pharmacy records to 2013. The medical records  
20 do show ad nauseam that Ms. Chauvin was given Cipro, and  
21 it's referred to in the records repeatedly that she was  
22 given Cipro in IV form and also in pill form and also  
23 Avelox, which is documented in her records.

24 So we have done everything humanly possible to  
25 comply with these pretrial orders, and we just got this

1 letter last week. We will be happy to provide counsel for  
2 Bayer with an affidavit from that prior pharmacy entity  
3 that we spoke with about these records documenting what I  
4 just said, which was that they don't have any records pre  
5 2013 that deal with NBC codes on drugs that were dispensed  
6 by the hospital.

7 MR. SOLOW: Your Honor?

8 THE COURT: Go ahead.

9 MR. SOLOW: If I may. Your Honor, the one issue  
10 that I think is fundamental here, and there seems to be a  
11 misunderstanding, is the requirements of PTO 18. Section D  
12 of PTO 18 indicates that if any plaintiff is now deemed a  
13 litigating plaintiff and wants to proceed with their case,  
14 the Court has entered a requirement that in addition to  
15 sending, submitting case specific expert reports, also  
16 generic causation and liability reports, the Court has also  
17 set up an expedited briefing schedule, both on  
18 case-specific discovery and on causation and liability with  
19 a dispositive and *Daubert* motion schedule to be held in  
20 this court.

21 So, Your Honor, discussions by Mrs. Chauvin's  
22 counsel about remand and waiting to remand seems to just  
23 miss the mark on PTO 18 obligations. So we are obligated,  
24 if in fact the Court deems that they have satisfied their  
25 PTO 18 obligations, to now enter into a Case Management

1 Order that calls for that case-specific discovery and a  
2 briefing schedule here in this court on dispositive  
3 motions, including *Daubert*, including on general causation  
4 and liability.

5 So we very much intend on renewing those motions,  
6 so it is a fundamental issue. We can't proceed if he does  
7 not in fact have these experts. So, you know, it's not our  
8 purview to get involved with the PSC and whether in fact  
9 these experts are available or not. I asked a simple  
10 question: Has he retained them or not, and I don't believe  
11 he has.

12 So therefore, Your Honor, first of all, we  
13 believe he is in default of PTO 18, and the case should be  
14 dismissed. If not, Your Honor, there needs to be an  
15 adjournment of that deadline so that we can find out once  
16 and for all if he in fact has these experts, because if he  
17 doesn't have these experts, then he is in default if he  
18 can't produce them for a *Daubert* hearing.

19 MR. PLAUCHE: Your Honor, our position again on  
20 that issue is that plaintiffs steering committee retained  
21 these experts. They retained them on behalf of all the  
22 plaintiffs. They produced reports. The report should  
23 stand, and we should be able to use them.

24 There are only two cases left, as I understand  
25 it, in this MDL. These cases should be transferred back to

1 the courts from which they came, which in this case is the  
2 Eastern District of Louisiana, and we can deal with the  
3 *Daubert* hearings at that point in front of the judge, Judge  
4 LaMere, in the Eastern District where this case came from,  
5 because at this point, as I appreciate it, there is no need  
6 for an MDL if there is only two plaintiffs left out there  
7 with cases that are still pending.

8 THE COURT: Well, Mr. Plauche, the matter is  
9 still assigned to this Court for all pretrial matters, and  
10 it has to be sent back to the transferor district when it  
11 is essentially ready for trial. I mean that is the  
12 obligation in multi district litigations. So there are  
13 some more requirements here that I believe you have to  
14 follow for the plaintiff in your case.

15 MR. PLAUCHE: I understand that, Your Honor.

16 THE COURT: Yeah. I think what we need to do  
17 here is, I'm going to extend this matter for I think 40  
18 days, which would take us into January, and see if you can  
19 work this out.

20 If you can't, you can renew the motion to dismiss  
21 at that point in time, Mr. Solow.

22 MR. SOLOW: Okay.

23 THE COURT: All right?

24 MR. SOLOW: Just so I have the time, Your Honor.  
25 40 days from now, then we can file a renewed PTO 18 order

1 to show cause?

2 THE COURT: Right. Yes, if the requirements of  
3 the pretrial orders have not been met.

4 MR. SOLOW: Okay. Just so we're clear, Your  
5 Honor, does that mean in fact that in 40 days I file a  
6 notice of motion and set it for another 21 days?

7 THE COURT: Yes.

8 MR. SOLOW: Thank you, Your Honor.

9 MR. PLAUCHE: Your Honor, Evan Plauché again. I  
10 want to make sure I understand this. If we file a motion  
11 to transfer back to the Eastern District, is that something  
12 that the Court would consider at this point?

13 THE COURT: I can't consider it at this point  
14 because we need to have cases trial ready when they are  
15 sent back. So the *Daubert* matters, expert reports, any  
16 challenges to them really have to be considered in this  
17 court.

18 Once that's all finished, then I can consider the  
19 motion to transfer back to the transferor court. That's  
20 pursuant to all of the pretrial orders that we have entered  
21 in this case. Okay?

22 MR. PLAUCHE: Yes, Your Honor.

23 THE COURT: Okay. All right. And the Reed  
24 matter, Mr. Reed, are you on the phone?

25 PLAINTIFF REED: Yes, sir, I am, Your Honor.

1 THE COURT: Okay. I'm going to have Mr. Solow  
2 talk first, and then we will hear from you. Okay?

3 PLAINTIFF REED: Yes, sir.

4 MR. SOLOW: Your Honor, Mr. Reed has had his case  
5 pending for a while now in the MDL. He was formerly  
6 represented by Mr. Richards and Mr. Richards' firm.  
7 Mr. Reed was given an allocation under the Master  
8 Settlement Agreement. Again, that was a private agreement  
9 entered into between the parties.

10 The plaintiffs steering committee hired their own  
11 special master to do those allocations. Bayer and Merck  
12 defendants had no involvement in those allocations.  
13 Mr. Reed refused his allocation and did not comply with PTO  
14 18.

15 If you give me one second, Your Honor?

16 THE COURT: Yes.

17 MR. SOLOW: Just so we're clear in terms of time,  
18 the official opt-in or opt-out date for participation in  
19 the Master Settlement Agreement was at the latest June 6th,  
20 so certainly Mr. Reed has had ample time to satisfy those  
21 obligations under PTO 18 and/or try to find an attorney.

22 Mr. Reed can, certainly representing himself, he  
23 can tell Your Honor, but from the letters he has filed with  
24 the Court, he has been unable so far to go ahead and obtain  
25 counsel to help him. Several times over the past several

1 months, Mr. Reed has reached out to myself, indicating that  
2 he had a change in heart and would like to join the  
3 settlement.

4 We have worked with Mr. Sims, who in his role as  
5 a member of the plaintiffs steering committee has tried to  
6 assist Mr. Reed and get him the necessary paperwork to  
7 enroll in the settlement, but again, Your Honor, on  
8 multiple occasions Mr. Reed has had a change of heart and  
9 decided not to proceed.

10 We made very clear to Mr. Reed that despite the  
11 pending order to show cause we would honor the master  
12 settlement allocation for him up until the time we were  
13 here to go ahead and prosecute this order to show cause.  
14 As Your Honor knows, this order to show cause was  
15 originally returnable on Halloween, October 31st.

16 Your Honor had a scheduling conflict and moved it  
17 to today, November 20th. As such Mr. Reed has had the  
18 added benefit of an additional 20 days of time. So, Your  
19 Honor, we have made it clear to Mr. Reed that at this point  
20 we now need to go ahead and litigate his case, and he is  
21 clearly, while he has sent us a ton of medical records, I  
22 can confirm he did send us seven batches of medical records  
23 via e-mail the other night.

24 I know he has also attempted to file several of  
25 them on the Court's docket. There are still obviously

1 major deficiencies in terms of PTO 18, including both the  
2 case specific and the general causation and general  
3 liability expert reports.

4 So our view, Your Honor, is that Mr. Reed having  
5 chosen now to litigate needs to deal with his obligations  
6 under PTO 18 to move forward. I know he has asked for an  
7 extension of time. Your Honor, our view is, certainly  
8 there has been sufficient time for Mr. Reed to try to get  
9 an attorney. Nobody has taken his case so far.

10 So I think, you know, Your Honor, we would oppose  
11 such an application, but if Your Honor believes that it's  
12 just to go ahead and give Mr. Reed one last time, we would  
13 urge the Court that this should be the final extension. At  
14 that point in time if Mr. Reed is not prepared to go  
15 forward, either with counsel or pro se, that his case be  
16 dismissed with prejudice.

17 THE COURT: All right.

18 Mr. Sims or Mr. Richards, anything you would like  
19 to say?

20 MR. SIMS: No, Your Honor. I have been  
21 communicating with Mr. Reed. He has expressed an interest  
22 in settlement in the past but has some concerns about some  
23 of the time lines involved due to the issue with  
24 intervening Medicare liens.

25 THE COURT: I see. Okay.

1 Mr. Richards, anything?

2 MR. RICHARDS: No, Your Honor. We have not  
3 communicated with Mr. Reed since the order withdrawing us  
4 as counsel.

5 THE COURT: All right. Okay.

6 Mr. Reed, anything that you would like to say  
7 today?

8 PLAINTIFF REED: Yes, sir, I would. I have been  
9 disabled for several years and with the mental state of  
10 mind where I cannot even focus and concentrate on things  
11 like what people said. It's just, I just don't remember  
12 it. Bottom line is, I had a couple strokes, and I can't  
13 remember, and I have had a lot of sickness, and I took two  
14 type drugs. I had some doctor bills back in 2008, and  
15 that's what I could find at the time.

16 I just sent a sample of all these things, and  
17 it's just a very small fraction. There is well over a  
18 thousand pages, two thousand pages. I just couldn't get  
19 them organized on that PTO. Mentally, the project  
20 disappears. That's my problem. The day before I asked for  
21 some help if it's possible to where I could get counsel.

22 I just don't know -- mainly they turn me down  
23 because I cannot get the -- I can't get the attorneys to  
24 take it on the case. There is not enough time. There is  
25 not enough time. Two of them said they already had a

1 conflict of interest in regards to the law firm, Jason  
2 Richards.

3 They have a conflict. That's just what they  
4 said. So each of one these, I called them up over and over  
5 and over, and them calling back sooner or later, sorry,  
6 we're not able to take this in time to preserve yourselves.

7 In regards to Mr. Richards and his participation  
8 in this thing, this has been prior years. He did point  
9 blank tell me he was going to put me personally on the  
10 bottom level. First, he said he was going to cut me off in  
11 the other case. It was all to do with being litigated  
12 between this firm and myself on the first go-around, and it  
13 was the Levaquin.

14 I had to go back to his offer and all the  
15 symptoms of this thing, but now I had to deal with an  
16 associate, that I have been involved with peripheral  
17 sensory, sensory -- I don't feel my hands, and I have  
18 symptoms all the time. So I have quite a bit of these  
19 drugs.

20 All I can do is the best I can do. I just don't  
21 have someone to represent me. Personally I'm just not  
22 capable. I can't drive. I can't feel my feet. I have all  
23 the problems, I mean lots and lots of problems, but you  
24 notice how many prescriptions I did of this drug and the  
25 symptoms.

1           And in the e-mail I had by the Court because I  
2           had to send the stuff regular mail, so I'm aware of that.  
3           She said, she told me, but I can't remember. That's about  
4           all I want to say. I was told by Mr. Sims that it would be  
5           weeks before I received any kind of payment in the case  
6           that on account of the \$150 to Medicare.

7           There are a number of cases, but with the law  
8           firm, Jason Richards. I contacted Medicare, and after  
9           sending letters, sent me a notice I don't owe nothing to  
10          them, this case that goes all the way back that many years.  
11          And I had Medicare and Medipack both, so there is -- I  
12          don't have all that.

13          So that's the distribution of funds because they  
14          had run out of money. There is plenty in the trial that  
15          here is gone. I didn't have a problem with Mr. Richards  
16          before. The money is gone. They offered me 50 percent of  
17          the allotment on account of using that drug called Avelox.

18          I contacted, I contacted the administration.  
19          They said it was cut in half. It would be another FLQ,  
20          which it is not. I got information from the neuropathy  
21          foundation, and it indicated that the claims for Darvon are  
22          having an adverse reaction to any sort.

23          They did accelerate during that period of time,  
24          at least FLQ, and then after that, as time goes on and it  
25          was prescribed, there was no problems after that. It was

1 basically after that that was the worst case. It's there  
2 and cut them in half. It's not the same case, but it puts  
3 forth a trend of dishonesty. That's all I can say is  
4 dishonesty.

5 Get cut off later. I don't have any information  
6 about this case here at all. It already exceeded the time  
7 there. I don't know why they didn't send it to me sooner  
8 because the whole time just to get the thing ready in the  
9 time you get to do it so they represent me. That's all I  
10 can do is tell it like it is.

11 I was hoping that maybe I could get since it  
12 would be like 16 weeks before or 18 weeks, 18 weeks before  
13 I am able to get the money to be available to be able to  
14 pay. I'm sure I could get an attorney to take it. I have  
15 to come up with two weeks in advance to pretrial  
16 information.

17 I can't find nobody to help me with it. That's a  
18 fact. I had a stroke, and they sent me from there for a  
19 brain scan, and it came back bad results, and I have not  
20 been able to regain my ability for a short term memory. I  
21 can talk, but I can't remember what was said. That's my  
22 problem.

23 THE COURT: All right. Mr. Reed, I understand  
24 the problem, and we're well aware of that. At the same  
25 time, we have to get these matters resolved. The cases are

1 resolving, and you've had a great deal of time here to, you  
2 know, either get an attorney or prepare the necessary  
3 materials.

4 This is what I'm going to do: This is about all  
5 I can give you. I can give you 60 more days essentially to  
6 January 20th to either get an attorney and get the  
7 necessary materials prepared in the form that is required  
8 by the orders of this Court, or at the end of that time if  
9 we're not in that position, I will have to dismiss your  
10 case.

11 I don't know if you'll be offered any kind of  
12 additional time to consider a settlement or not. If you  
13 are, I would recommend that you take it because it's  
14 difficult, and we understand it's difficult for you to put  
15 all these materials together.

16 But at the same time, these matters can't  
17 continue for a long period of time because we're trying to  
18 wrap up this case, and everyone has been working very, very  
19 hard, both plaintiffs' lawyers and defense lawyers in this  
20 case, to get the matter resolved.

21 So I'm going to give you until January 20th to  
22 get the papers in the way that they need to be according to  
23 the Court's orders. It would help if you had an attorney  
24 doing this for you. Otherwise, at the end of that time if  
25 we're not in that position, I'm going to have to grant the

1 defendant's motion simply to dismiss your case.

2 Again, there have been times that you have  
3 indicated a willingness to accept the settlement. I  
4 understand the complications relative to Medicare, but I  
5 would recommend that if you are offered that opportunity  
6 again, and I can't order that or anything, but if you are  
7 given that opportunity that you accept it. Okay?

8 That's just my recommendation to you, but I'm  
9 giving you another 60 days.

10 PLAINTIFF REED: Okay. Are you Mr. Ahern?

11 THE COURT: I'm the judge talking to you.

12 PLAINTIFF REED: Okay. I'm sorry. I didn't  
13 know.

14 THE COURT: That's fine. My apologies for not  
15 introducing myself to you.

16 PLAINTIFF REED: I know you are trying to help me  
17 so --

18 THE COURT: All right.

19 PLAINTIFF REED: -- isn't necessarily that good.

20 THE COURT: But you understand you have until  
21 January 20th. Okay?

22 PLAINTIFF REED: Yes, sir. Thank you, Your  
23 Honor. Do you want me to hang up now?

24 THE COURT: Yes. That's fine. Thank you.

25 PLAINTIFF REED: Appreciate it.

1 MR. SIMS: Just one issue with respect to  
2 Mr. Reed's case, he did make a submission to the Court that  
3 was fairly lengthy. On at least two instances he included  
4 a term sheet that related to the Master Settlement  
5 Agreement, and whatever the Court requires, but we want to  
6 make sure that is not filed in the public record because it  
7 is confidential as it relates to the terms of the  
8 settlement agreement.

9 THE COURT: We understand that. All right.  
10 Anything else, Mr. Solow?

11 MR. SOLOW: That's it, Your Honor. Thank you.

12 THE COURT: Do we have any other matter to  
13 discuss today?

14 MR. SIMS: Just setting the next status  
15 conference, Your Honor.

16 THE COURT: All right. Do we want to try for a  
17 January date? Does that sound all right?

18 MR. SIMS: It does, Your Honor. If we could, I'm  
19 trying to think in terms of if there is any OSCs that may  
20 come due, if you file maybe early February to link up with  
21 the dates on the OSC.

22 THE COURT: That would be fine. Sure.

23 MR. SOLOW: Sorry, Your Honor. That would work  
24 best for us if we could link it up to -- I guess if  
25 Mr. Reed has until January 20th, and then we would file a

1 motion for an order to show cause, which I believe gives  
2 him 21 days, so mid-February.

3 THE CLERK: That would be February 10th.

4 MR. SOLOW: I'm currently scheduled to be on  
5 trial, Your Honor, at the end of January in federal court  
6 in the Northern District of California, so if we could just  
7 put it the end of February?

8 THE COURT: The week of the 17th, the 17th is  
9 probably the holiday. Do you have a schedule in front of  
10 you, Heather?

11 THE CLERK: The 17th is the holiday.

12 THE COURT: The 18th, do you think the trial  
13 would be over by then?

14 MR. SOLOW: If not, Your Honor, I could have  
15 somebody else cover it.

16 THE COURT: Tuesday, the 18th, does that look  
17 okay?

18 MR. SOLOW: Is Monday Martin Luther King Day?

19 THE COURT: President's Day is the 17th.

20 MR. SOLOW: Could we do it on the 19th in case  
21 somebody else has to travel?

22 THE CLERK: We have naturalizations in this  
23 courtroom in the morning.

24 THE COURT: Afternoon that day is fine. Two  
25 o'clock on the 19th?

1 MR. SOLOW: Thank you, Your Honor.

2 THE COURT: All right. Let's do it. Let's set  
3 it for then. Okay?

4 If there is nothing else, thank you, everyone,  
5 and we will see you in a couple months.

6 MR. SOLOW: Thank you.

7 PLAINTIFF BLANSETTE: May I interject a question  
8 here?

9 THE COURT: Identify yourself.

10 PLAINTIFF BLANSETTE: My name is Brad Blansette.  
11 I'm one of the other pro se litigants in this case, and I  
12 am completely unsure of what is happening with my section  
13 of this case. I had wanted to essentially make a  
14 settlement, a settlement agreement, but I was only offered  
15 the lowest tier settlement.

16 And I sent in motions explaining my situation but  
17 haven't got any response to them over the last month or  
18 two.

19 THE COURT: Okay. Are you familiar with this  
20 case, Mr. Solow?

21 MR. SOLOW: Yes, Your Honor. This was a case  
22 that was on an order to show cause for failure to comply  
23 with PTO 18. Your Honor went ahead and granted an  
24 extension request for Mr. Blansette, and that extension  
25 runs until November 26th, at which time, Your Honor, if we

1 do not receive any of the materials for PTO 18, we will go  
2 ahead and put Mr. Blansette on one of the last PTO 18  
3 orders to show cause.

4 At this point in time as for Mr. Blansette's  
5 benefit, as I mentioned earlier, Your Honor, the Bayer and  
6 Merck defendants have gone ahead and funded the Master  
7 Settlement Agreement. That was a private settlement. This  
8 was not a class action. It was not something that was  
9 entered into or needed to be approved by the Court.

10 Pursuant to that agreement, we went ahead and  
11 deferred to the plaintiffs steering committee to hire a  
12 special master and do those allocations, and my clients had  
13 no involvement with those allocations. At this time, Your  
14 Honor, we are not interested in reconsidering those  
15 allocations.

16 If people don't want to accept those, we will go  
17 ahead and litigate these cases. Mr. Blansette has now  
18 until November 26th to go ahead and comply with PTO 18.  
19 Your Honor, in the case of him asking, I would strongly  
20 oppose a further extension. I think Your Honor has already  
21 given him 45 days from the last order to show cause.

22 Mr. Blansette now would have had well over half a  
23 year from that June opt-out date to either go ahead and  
24 proceed on this case by himself or obtain counsel. So I  
25 think at this point, Your Honor, it's either litigate or be

1 dismissed.

2 THE COURT: Any of the plaintiffs' lawyers want  
3 to say anything on this one?

4 MR. SIMS: No, Your Honor.

5 PLAINTIFF BLANSETTE: Hello?

6 THE COURT: Did you hear all that, Mr. Blansette?

7 PLAINTIFF BLANSETTE: I did not, sir. All I can  
8 hear is mostly just a buzzing noise in the background when  
9 Mr. Solow is talking.

10 THE COURT: Well, he was speaking into the  
11 microphone here. It should have been working for you. Can  
12 you hear me okay?

13 PLAINTIFF BLANSETTE: I can hear you okay, but  
14 there is a buzzing in the background. When Mr. Solow was  
15 talking, I couldn't hardly understand anything at all.

16 THE COURT: Well, I wonder if one of those  
17 microphones is buzzing somehow.

18 MR. SOLOW: Mr. Blansette, can you hear me now?

19 PLAINTIFF BLANSETTE: I can.

20 MR. SOLOW: Mr. Blansette, I will just reiterate  
21 what I said previously on the record. This was a private  
22 settlement entered into by the Bayer and Merck defendants  
23 with the plaintiffs steering committee where the plaintiffs  
24 steering committee went ahead and obtained a special master  
25 to value the cases that would participate in the

1 settlement.

2 This was not a class action settlement, nor is it  
3 a settlement that needed to be approved by the Court. It's  
4 a private settlement of the parties. My clients at this  
5 point in time have no interest in reconsidering the  
6 allocations that were put together by the special master  
7 hired by the plaintiffs steering committee.

8 Your settlement allocation was turned down. We  
9 have had your case on an order to show cause that was  
10 originally returnable several months ago. You had  
11 petitioned the Court for an extension of time to obtain  
12 counsel and proceed. At this point in time, you have until  
13 November 26th to go ahead and comply with Pretrial Order  
14 18.

15 You can do that either by yourself, or you can  
16 obtain a lawyer. We will oppose any requests for further  
17 time. To be blunt, Mr. Blansette, my client has no  
18 interest in settling this matter for anything more than you  
19 were allocated by the plaintiffs steering committee under  
20 that private Master Settlement Agreement.

21 So at this point you can either litigate or  
22 dismiss your case with prejudice.

23 PLAINTIFF BLANSETTE: All right. Let me make  
24 this clear. Would the allocation be the lowest tier  
25 available of the settlement?

1 MR. SOLOW: We were not involved in the  
2 allocations. Whatever the allocation was, it was.

3 THE COURT: And the Court was not involved,  
4 either. So that was really a matter with plaintiffs'  
5 counsel.

6 PLAINTIFF BLANSETTE: Okay. Because I don't  
7 think the plaintiffs' counsel didn't tell me the whole  
8 truth, and the situation is that I'm trying to find out if  
9 other attorneys screwed up this case before I, before I  
10 enrolled in the MDL as far as damaging my statute of  
11 limitations date, and I still haven't gotten any indication  
12 if that has to do with anything with the settlement  
13 agreement or if it makes any bearing whatsoever in my  
14 position in this case.

15 But I need an answer on that so that we can  
16 determine if I need to bring charges against outside  
17 attorneys for damaging my status in this case.

18 MR. SIMS: Your Honor, this is Mr. Sims.

19 Mr. Blansette, you and I have talked a few times  
20 in the past. I believe you have my contact information.  
21 If you would like to talk later today, I can share with you  
22 where you fell in the settlement matrix and the basis for  
23 that, and that should answer that question.

24 PLAINTIFF BLANSETTE: Okay. Well, I need  
25 something in writing as to where I fall in that matrix,

1 please.

2 MR. SIMS: Sure. I'm happy to send you an e-mail  
3 if you would like, and that will spell it out in writing.

4 PLAINTIFF BLANSETTE: Okay. All right. That  
5 will work I guess, and we will speak later about this. I  
6 want the Court to be aware, I'm in the same position as the  
7 last person that spoke when I'm mentally dealing with  
8 things, and I'm dealing with three other federal cases  
9 including one against HUD and the City of Scottsdale, and I  
10 have an ill family member that is trying to force me out on  
11 the street, and I don't have any money to even provide  
12 documents.

13 I have a thousand-page medical record connected  
14 to my disability for this, but I don't have the money to  
15 even make copies of a thousand pages of paper. So I'm in a  
16 bad situation here, but I guess the best point would be  
17 just to figure out with Mr. Sims what is going on. I just  
18 need in writing what I'm eligible for, what I'm not  
19 eligible for and why.

20 THE COURT: Okay. Mr. Sims will help you today.  
21 All right?

22 PLAINTIFF BLANSETTE: Okay. So does that mean I  
23 have just until the 26th then to resolve this, or can I  
24 please get an extension, because I did ask for a 60-day  
25 extension which would put me until sometime in the first

1 few weeks in December.

2 THE COURT: Well, you talk to Mr. Sims today, and  
3 we will see where this develops. As of right now it's  
4 still the 26th of November. All right?

5 PLAINTIFF BLANSETTE: Okay.

6 MR. SOLOW: Thank you, Your Honor.

7 THE COURT: Anyone else on the phone that needs  
8 to say anything?

9 PLAINTIFF REED: Yes, I'm still here.

10 THE COURT: We couldn't hear you, Mr. Reed.

11 PLAINTIFF REED: Okay. Can you hear me now?

12 THE COURT: That's better.

13 PLAINTIFF REED: Yes, sir. I wrote both dates  
14 down. And the 20th, you all talking about the holiday or  
15 something. What date would that be?

16 THE COURT: January 20th.

17 PLAINTIFF REED: The 20th. Okay.

18 THE COURT: Thank you.

19 PLAINTIFF REED: My attorneys, I had a couple of  
20 dates. They just said there is not enough time. I will  
21 see what I can get done then.

22 THE COURT: Sounds good. Thank you.

23 All right. Thank you, everyone. We will be in  
24 recess.

25 THE CLERK: All rise.

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**(Court was adjourned.)**

\* \* \*

1 I, Kristine Mousseau, certify that the foregoing  
2 is a correct transcript from the record of proceedings in  
3 the above-entitled matter.

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Certified by: s/ Kristine Mousseau, CRR-RPR  
Kristine Mousseau, CRR-RPR

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