

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

This Document Relates To All Actions
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14-MD-2543 (JMF)
14-MC-2543 (JMF)

ORDER NO. 66

JESSE M. FURMAN, United States District Judge:

On May 11, 2015, the Court granted New GM’s motion to dismiss, without prejudice, the claims of two economic loss plaintiffs, Nykea Fox and Courtney Williams (“Plaintiffs”) for failure to submit substantially complete plaintiff fact sheets (“PFSs”) required by Order No. 45. (Order No. 55 (14-MD-2543 Docket No. 953); *see also* Order No. 45 (14-MD-2543 Docket No. 758)). When the two Plaintiffs failed to certify that they had submitted substantially complete PFSs or otherwise moved to vacate the dismissal, New GM moved to dismiss their claims with prejudice. (14-MD-2543 Docket No. 1023). Neither Plaintiff submitted an opposition to New GM’s motion, due by June 25, 2015 (Order No. 48 (14-MD-2543 Docket No. 1030)); instead, Lead Counsel filed a letter indicating that, despite counsel’s efforts to contact the two Plaintiffs, both have been non-responsive. (14-MD-2543 Docket No. 1054). Accordingly, “[b]ecause Ms. Fox and Mr. Williams have yet to substantially complete a PFS, Lead Counsel does not oppose their dismissal as named plaintiffs and proposed class representatives with prejudice, subject to retention of their rights as putative class members.” (*Id.*).

The Supreme Court and the Second Circuit have long recognized that federal courts are vested with the authority to dismiss a plaintiff’s action with prejudice because of a failure to prosecute, a power that is “necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts.” *Link v. Wabash*

R.R., 370 U.S. 626, 629-30 (1962); *see, e.g., United States ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 250 (2d Cir. 2004); *see also, e.g., In re World Trade Ctr. Disaster Site Litig.*, 722 F.3d 483, 487 (2d Cir. 2013) (noting that district courts’ “responsibility to manage their dockets so as to achieve the orderly and expeditious disposition of cases . . . is particularly acute where the litigation is complex and continuing”). Because dismissal is “one of the harshest sanctions at a trial court’s disposal,” however, it must be “reserved for use only in the most extreme circumstances.” *Drake*, 375 F.3d at 251. In considering a Rule 41(b) dismissal, a court must weigh five factors: “(1) the duration of the plaintiff’s failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court’s interest in managing its docket with the plaintiff’s interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal.” *Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir. 1996).

Upon due consideration of the foregoing factors, the Court finds that dismissal with prejudice is the appropriate sanction for the two individual Plaintiffs’ continued failure to submit PFSs as required by Order No. 45.¹ Plaintiffs have been on continual notice of the consequences of failing to submit substantially complete PFSs, and have been repeatedly reminded over the past several months — through Order No. 45 itself; New GM’s entry of a Notice of Overdue Discovery (14-MD-2543 Docket No. 819); New GM’s Motion to Dismiss Without Prejudice

¹ As noted, Lead Counsel indicates that they do not oppose dismissal of Plaintiffs’ claims, “subject to retention of their rights as putative class members.” As Plaintiffs were named for the first time in the Lead Counsel’s Consolidated Complaints, not in any individual complaints — and have since been removed as named Plaintiffs in the Second Amended Consolidated Complaint (“SACC”) — the *only* rights Plaintiffs appear to have had before the Court’s ruling on this motion, as non-parties to this action, are those as putative class members.


(14-MD-2543 Docket Nos. 865, 953); and New GM's current motion and the Court's Order in response — that their claims could be dismissed, eventually with prejudice, if they failed to meet their (rather minimal) PFS obligations. Those efforts to inform Plaintiffs of the consequences of their noncompliance with Order No. 45 — which also include their counsel's "diligent efforts to contact [them] and notify each of the consequences of their inactivity, to include dismissal of their claims" (14-MD-2543 Docket No. 1054) — have proved fruitless, leaving the Court with no "means to move this case forward efficiently without the cudgel of extreme sanctions," *Baptiste v. Sommers*, 768 F.3d 212, 219 (2d Cir. 2014). Finally, timely submission of PFSs is essential to the orderly and expeditious management of this MDL, and crucial in ensuring that New GM has adequate notice of the claims against it.

In light of the foregoing, the claims of Plaintiffs Nykea Fox and Courtney Williams are hereby DISMISSED with prejudice. *See In re World Trade Ctr. Disaster Site Litig.*, 722 F.3d at 487 (holding "that the court did not exceed the bounds of its discretion in dismissing the noncompliant plaintiffs' complaints"). Additionally, because Fox and Williams may not be the only Plaintiffs who were named in the first Consolidated Complaints to be dropped from the SACC, **Lead Counsel** is directed to submit a letter, no later than **July 8, 2015**, (1) identifying any other Plaintiffs who appear only in the Pre-Sale or Post-Sale Consolidated Complaint, not in any individual action, and who were not named in the SACC; and (2) indicating whether they have any objection to the Clerk of Court terminating such Plaintiffs as parties in this action.

The Clerk of Court is directed to terminate Nykea Fox and Courtney Williams as Plaintiffs in this action and to terminate 14-MD-2543 Docket No. 1023.

SO ORDERED.

Dated: July 1, 2015
New York, New York



JESSE M. FURMAN
United States District Judge