

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

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<b>IN RE: YASMIN AND YAZ</b>	)	
<b>(DROSPIRENONE) MARKETING, SALES</b>	)	<b>3:09-md-02100-DRH-PMF</b>
<b>PRACTICES AND PRODUCTS LIABILITY</b>	)	
<b>LITIGATION</b>	)	<b>MDL No. 2100</b>

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**This Document Relates to:**

*April McMurtrey, et al. v. Bayer Pharmaceuticals Corporation, et al*<sup>1</sup> 3:10-cv-11100-DRH-PMF

**ORDER**

**HERNDON, District Judge:**

Presently before the Court is defendants’ Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction filed in accord with Case Management Order Number 70 (“CMO 70”) (MDL 210 Doc. 3634). In accord with CMO 70 the plaintiff was given 14 days to respond. The plaintiff has failed to respond in any way to the defendants’ motion. The Court deems the failure to respond to be an admission of the merits of the motion. SDIL-LR 7.1(c).

It is evident that diversity jurisdiction is lacking; accordingly, defendants’ motion must be granted. In the instant case, plaintiff is a citizen of a foreign country suing a foreign defendant. Diversity jurisdiction does not include cases in which there is a foreign national on each side of the case. *See Karazanov v. Madison Two Assocs.*, 147 F.3d 624, 626–27 (7th Cir. 1998) (Wood, J.) (“a suit between aliens falls outside Section 1332’s jurisdictional grant”) (citing *Hodgson*

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<sup>1</sup> This order applies only to plaintiff Luisa del Carmen Gomez.

*v. Bowerbank*, 9 U.S. (5 Cranch) 303, (1809)). Further, the fact that there also is a U.S. defendant does not give rise to diversity jurisdiction. As Judge Easterbrook has explained, Section 1332(a) “does not contemplate an alignment of alien versus citizen plus alien.” *Israel Aircraft Indus. Ltd v. Sanwa Bus. Credit Corp.*, 16 F.3d 198, 202 (7<sup>th</sup> Cir. 1994) (Easterbrook, J).

For the foregoing reasons, defendants’ motion to dismiss for lack of subject matter jurisdiction is **GRANTED**. The claims of **plaintiff Luisa del Carmen Gomez** are **DISMISSED** for lack of subject matter jurisdiction.

**IT IS SO ORDERED.**

**Signed this 26th day of April, 2015.**

*David R. Herndon*



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by David R.

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**United States District Court**