

Beth S. Rose – (NJ Bar No. 028491987)  
Charles J. Falletta – (NJ Bar No. 035911996)  
**SILLS CUMMIS & GROSS P.C.**  
One Riverfront Plaza  
Newark, NJ 07102  
(973) 643-7000  
[brose@sillscummis.com](mailto:brose@sillscummis.com)  
[cfalletta@sillscummis.com](mailto:cfalletta@sillscummis.com)

-and-

**HOLLINGSWORTH LLP**  
1350 I Street, NW  
Washington, D.C. 20005  
(202) 898-5800

*Attorneys for Defendant  
Novartis Pharmaceuticals Corporation*

FILED

May 12, 2023

HON. BRUCE J. KAPLAN, J.S.C.

NENITA RADCLIFFE and RICHARD  
RADCLIFFE,

Plaintiffs,

v.

MERCK SHARP & DOHME CORP. and  
NOVARTIS PHARMACEUTICALS  
CORPORATION,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – MIDDLESEX COUNTY  
Docket No. MID-L-8620-14

CIVIL ACTION  
In Re Fosamax® Litigation  
CASE NO. 282

**ORDER DISMISSING DEFENDANT  
NOVARTIS PHARMACEUTICALS  
CORPORATION WITHOUT PREJUDICE  
FOR PLAINTIFFS' FAILURE TO  
PROVIDE PROOF OF USE**

**THIS MATTER** having been opened to the Court by Sills Cummis & Gross P.C., attorneys for Defendant Novartis Pharmaceuticals Corporation (“NPC”), for an Order, pursuant to the Court’s February 3, 2023 Order and Rule 4:23-2(b), dismissing Plaintiffs’ Complaint without prejudice for failure to provide proof of use, and the Court having read and considered the papers submitted in this matter, and for good cause having been shown;

**IT IS** on this 12th day of May 2023;

**ORDERED** that Defendant’s, Novartis Pharmaceuticals Corporation’s, Motion to Dismiss without prejudice **is hereby GRANTED**; and it is further

**ORDERED** that should Plaintiff fail to produce proof of use (“POU”) within sixty (60) days of this Order, then a motion to dismiss with prejudice may be filed; and it is further

**ORDERED** that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this order.

*/s/ Bruce J. Kaplan*  
HONORABLE BRUCE J. KAPLAN, J.S.C.

**UNOPPOSED**

Having reviewed the above motion, the Court finds it to be meritorious on its face and is unopposed. Pursuant to R. 1:6-2, it therefore will be granted essentially for the reasons set forth in the moving papers.