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FILED

July 7, 2023

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

*Attorneys for Defendants Merck & Co., Inc.
and Merck Sharp & Dohme LLC.*

JEWEL GENCO,

Plaintiff,

v.

MERCK & CO., INC., MERCK SHARP &
DOHME CORP., "JOHN DOE," "JANE
DOE," AND "XYZ CORP" (FICTITIOUS
NAMES),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

DOCKET NO.: MID-L-006455-22

ORDER

THIS MATTER having been brought before the Court upon motion by Fox Rothschild LLP, attorneys for Defendants, Merck & Co., Inc., and Merck Sharp & Dohme Corp., for an Order to Dismiss Plaintiffs' Complaint, without prejudice, pursuant to R. 4:23-5(a)(1), for failure to provide a materially complete and certified Plaintiff Fact Sheet, and the Court having read and considered the papers submitted in this matter, opposition filed, and for good cause having been shown;

IT IS on this 7th day of July, 2023;

ORDERED that Defendants', Merck & Co., Inc., and Merck Sharp & Dohme Corp.'s, Motion to Dismiss without prejudice **is hereby GRANTED**; and it is further

ORDERED that should Plaintiff fail to produce a materially complete and certified Plaintiff Fact Sheet 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.

OPPOSED

Statement of Reasons

This matter having been brought before the Court upon motion by Fox Rothschild LLP, attorney for Defendants, Merck & Co., Inc., and Merck Sharp & Dohme Corp., for an Order to dismiss Plaintiff's complaint without prejudice pursuant to R. 4:23-5(a)(1), for failure to provide a materially complete and certified Plaintiff Fact Sheet ("PFS"). The Court notes that it has considered the moving papers and Plaintiffs' opposition.

By way of background, Plaintiff's PFS was originally due on April 11, 2023, as set forth in the June 12, 2019, PFS Case Management Order and the September 8, 2021 Amended CMO: Plaintiff Fact Sheets (the "PFS CMOs"). On May 18, 2023, Merck's counsel contacted plaintiff's counsel regarding this case, as Merck had not yet received a PFS despite the deadline for service of the same having passed, however no response was received. On June 2, 2023, Merck's counsel again contacted plaintiff's counsel, but again received no response. During the June 21, 2023 liaison counsel call, this Court granted Merck permission to file the instant motion to dismiss without prejudice.

In support of Defendant's motion, Defense counsel argues that Plaintiff has not complied with this Court's PFS Orders, has failed to provide a PFS, and Plaintiff's failure forecloses any opportunity for Merck to assess the case. Accordingly, Merck asks this Court to dismiss Plaintiff's case without prejudice.

In opposition, Plaintiff's counsel represents that their office notified Plaintiff of their discovery obligations under the PFS CMO, by way of calling Plaintiff five (5) times and mailing her three (3) notices about the need to respond to discovery and warning her that if she did not respond that her case would be dismissed. Additionally, Plaintiff's counsel employed a third-party investigator to locate Plaintiff and to produce additional means of contacting her, to no avail. Plaintiff asks this Court for additional time, as the Court sees fit, to produce the outstanding discovery.

R. 4:23-5(a)(1) provides, in pertinent part, "[i]f a demand for discovery ... is not complied with ... the party entitled to the discovery may ... move, on notice, for an order dismissing or suppressing the pleading of the delinquent party.... Unless good cause or other relief is shown, the court shall enter an order of dismissal ... without prejudice."

Here, Plaintiff has not provided PFS within the original time frame and has failed to respond to her attorney's repeated attempts to contact her. In light of the fact that Plaintiff continues to be non-compliant with discovery, the Court believes that dismissal without prejudice is appropriate at this time pursuant to R. 4:23-5(a)(1). A dismissal without prejudice is an appropriate sanction that will suffice to put Plaintiff on notice that her case is in jeopardy of being dismissed, and Defendants will be within its right to file a motion to dismiss with prejudice should Plaintiffs fail to produce a materially complete and certified PFS within sixty (60) days of this Order.

Accordingly, the Court will be granting Defendants' motion to dismiss without prejudice pursuant to R. 4:23-5(a)(1).