

PREPARED BY THE COURT

In Re: Singulair® Litigation

SUPERIOR COURT OF NEW
JERSEY LAW DIVISION:
ATLANTIC COUNTY

DOCKET NO.: ATL-L-481-22

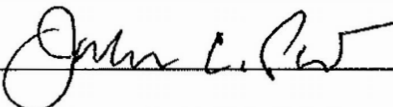
**ORDER: DISMISSAL WITH
PREJUDICE**

THIS MATTER having been brought before the court by Eileen Oakes Muskett, Esq., attorney for Defendants' Merck & Co., Inc. and Merck Sharp & Dohme Corp., and the Court having considered the moving papers, and any opposition thereto and for good cause being shown as stated in the Memorandum of Decision;

IT IS on this 20th day of December 2024, upon consideration of Defendant's Motion to Dismiss Plaintiffs' cases with prejudice, it is hereby **ORDERED** that the Defendant's Motion be **GRANTED** and the 21 Plaintiffs' claims, as identified in Exhibit A attached to the Defendants' motion are dismissed with prejudice.

IT IS FURTHER ORDERED that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to R. 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.

Unopposed
 Opposed


HON. JOHN C. PORTO, P.J.Cv.



**NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS**

JOHN C. PORTO, P.J.Cv.

1201 Bacharach Boulevard
Atlantic City, N.J. 08401-4527
(609) 402-0100 ext. 47820

**MEMORANDUM OF DECISION ON MOTION
Pursuant to Rule 1:6-2(f)**

TO: Lynne Kizis, Esq.
Wilentz, Goldman & Spitzer, P.A.
Attorneys for Plaintiffs

*All other counsel of record on
eCourts.*

Eileen Oakes Muskett, Esq.
Fox Rothschild, LLP
*Attorney for Defendants, Merck &
Co., Inc. and Merck Sharp & Dohme
Corp.*

RE: In Re Singulair® Litigation

DOCKET NO. ATL-L-481-22

**NATURE OF MOTION: Defendants' Motion to Dismiss Plaintiff's Complaint
With Prejudice for Failure to provide Plaintiff Fact Sheets**

**HAVING CAREFULLY REVIEWED THE MOVING PAPERS, I HAVE RULED ON THE
ABOVE CAPTIONED MOTION AS FOLLOWS:**

NATURE OF MOTION AND PROCEDURAL HISTORY

This is a products liability/Multi-County Litigation ("MCL") matter. All Plaintiffs allege various injuries as a result of ingesting Defendants' prescription pharmaceutical product, Singulair. On January 1, 2022, Plaintiffs filed their Complaint.

On September 4, 2024, the Court entered an order compelling Plaintiff to provide materially complete Plaintiff Fact Sheets ("PFS's"). On September 27, 2024, this Court entered an Order granting Defendant's motion to dismiss without prejudice for failure to make discovery. On December 3, 2024, Defendant filed this

motion to dismiss the Plaintiffs complaints with prejudice for failure to produce and exchange discovery/PFS' identified in Exhibit A¹ attached to Defendants' motion.

PARTIES' CONTENTIONS

DEFENDANTS

Defendant's counsel certified on September 4, 2024, this Court entered an Order² compelling 21³ Plaintiffs to produce "materially complete [PFS] or Dismissals With Prejudice" by September 6, 2024. On September 27, 2024, this Court entered an Order granting Defendant's motion to dismiss without prejudice for failing to produce the required materially complete PFS's.

To date, counsel certified Plaintiffs did not provide the sought after PFS's and more than 60 days passed since the case was dismissed without prejudice. Plaintiffs did not move for reinstatement of the claims. Therefore, counsel requested this Court enter an order dismissing said Plaintiffs' Complaints with prejudice.

PLAINTIFFS

Plaintiff's counsel argued Defendants' motion to dismiss the claims of Ado Hrnjica and Tammy Wilkinson with prejudice should be denied.

Specifically, counsel stated "dismissal with prejudice is an extreme remedy that is inappropriate where, as here, Plaintiffs are diligently working to provide Defendants with the information they seek, and Defendants will suffer no prejudice from allowing Plaintiff's additional time to comply with Defendants' demands." Counsel argued that both Ado Hrnjica and Tammy Wilkinson have, or are actively working to, provide Defendants with PFS's. However, counsel argued "Defendants have alleged deficiencies in virtually every single [PFS] submitted in this [MCL], some of which are quite trivial."

¹ The Plaintiff's names and associated docket numbers are included in the Exhibit.

² See Case Management Order #13.

³ Said Plaintiffs were identified in Exhibit A of the Defendants' motion.

Counsel opposed the dismissal of Ado Hrnjica and Tammy Wilkinson and asserted both Plaintiffs are working to cure these alleged deficiencies in their PFS's. As such, counsel argued dismissal with prejudice is not justified in these instances.

Further, counsel argued Defendants will not suffer prejudice by the allowance of additional time for Plaintiff's to substitute their PFS's because discovery is still ongoing, and "Defendants continue to collect records from numerous Plaintiffs and have focused their efforts on obtaining deposition testimony in the bellwether cases." Since these cases are not bellwether cases, counsel argued dismissal with prejudice is not appropriate here and should be denied.

Additionally, counsel requested an extension of time of thirty days for Ado Hrnjica and Tammy Wilkinson to cure the alleged deficiencies in their PFS's.

DEFENDANT REPLY BRIEF

Defendant's counsel initially noted their motion identified twenty one Plaintiff's and Plaintiff's counsel did not oppose dismissal as to the remaining 19 Plaintiff's listed on the omnibus motion. Therefore, those 19 Plaintiffs should be dismissed with prejudice.

However, in light of Plaintiff's counsel's opposition to Ado Hrnjica's and Tammy Wilkinson's dismissal with prejudice, Defense counsel argued their dismissal is still warranted. Counsel stated, "it has been over eighteen months since this Court entered Case Management Order #6 regarding the production of [PFS] and at least nine months since [PFS] for all Plaintiff's in this MCL were due." In addition, counsel argued Plaintiffs have already been granted several discovery extensions to comply with these obligations and yet to do so.

Counsel further argued with respect to Tammy Wilkinson, Plaintiff's opposition failed to note "that to date, no [PFS] has ever been uploaded for plaintiff Wilkinson." As such, counsel argued Plaintiffs failed to provide an explanation as to why Wilkinson should be afforded any further extension of discovery when she

has yet to provide any information or documentation on the months that have passed since her case was dismissed without prejudice.

Next, counsel argued, with respect to Ado Hrnjica, his PFS was submitted 75 days after the case was dismissed without prejudice and just one day before Plaintiff's opposition to this motion was due, and was the first PFS submitted by Hrnjica. In addition, counsel argued Hrnjica's PFS "contains numerous material deficiencies that are far from "trivial," including, among others: failure to identify the correct plaintiff's name; failure to provide dates of onset of his alleged injuries or their diagnoses; failure to provide details regarding his alleged suicidal thoughts and attempts; failure to sign authorizations; and failure to provide details regarding his alleged Singular usage or other prescription medications." Moreover, counsel stated neither Plaintiff ever filed a motion seeking the reinstatement of their claims and never "demonstrated 'exceptional circumstances' as to why the [defendants'] motion should not be granted."

Accordingly, counsel requested this Court grant the motion to dismiss with prejudice to all Plaintiff's listed in Exhibit A.

DISCUSSION

Defendants seek a dismissal of the Plaintiff's Complaints based on Rules 4:23-2(b)(3) and 4:23-5(a)(2) for failure to provide the PFS.

The rules of discovery are to "be construed liberally in favor of broad pretrial discovery." Payton v. New Jersey Turnpike, 148 N.J. 524, 535 (1997). This policy is based upon the principle that "[o]ur court system has long been committed to the view that essential justice is better achieved when there has been full disclosure so that the parties are conversant with all the available facts." Jenkins v. Rainer, 69 N.J. 50, 56-57 (1976).

Rule 4:10-2(a) provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence; nor is it ground for objection that the examining party has knowledge of the matters as to which discovery is sought.

Rule 4:23-5(a)(2) states, in pertinent part:

If an order of dismissal or suppression without prejudice has been entered pursuant to paragraph (a)(1) of this rule and not thereafter vacated, the party entitled to the discovery may, after the expiration of 60 days from the date of the order, move on notice of an order of dismissal or suppression with prejudice. [...] If the delinquent party is appearing pro se, the moving party shall attach to the motion a similar affidavit of service of the order and notices or, in lieu thereof, a certification as to why service was not made. Appearance on the return date of the motion shall be mandatory for the...delinquent pro se party. [...] The motion to dismiss or suppress with prejudice shall be granted unless a motion to vacate the previously entered order of dismissal or suppression without prejudice has been filed by the delinquent party and either the demanded and fully responsive discovery has been provided or exceptional circumstances are demonstrated.

Rule 4:23-2(b)(3) states

If a party... fails to obey an order to provide or permit discovery,... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof with or without prejudice, or rendering a judgment by default against the disobedient party;

Here, the Court finds the Plaintiffs failed to comply with Defendant's discovery requests, and the September 4, 2024 Order. Additionally the order of dismissal without prejudice was never vacated on behalf of either of the two noted Plaintiffs, Ado Hrnjica or Tammy Wilkinson or the remaining 19 listed by the Defendants. The record reflects eighteen months elapsed since this Court entered Case Management Order #6 regarding the production of PFS and at least nine months since PFS for all plaintiffs in this MCL were due. Defendants' counsel noted Plaintiffs were already afforded several extensions to comply with their discovery obligations. This Court further finds Defendants waited the requisite 60 days before filing this motion and the requested discovery remains outstanding. Plaintiff Wilkinson never provided a PFS and Plaintiff Hrnjica's PFS was certified by Defendants' counsel as having "numerous material deficiencies,..."

The Court also finds Defendants are not in default of any discovery obligations and made good faith effort to resolve the issues prior to filing the motion. Moreover, Defendants' counsel stated neither Plaintiff ever filed a motion seeking the reinstatement of their claims and never "demonstrated 'exceptional circumstances' as to why the [defendants'] motion should not be granted."

This Court is cognizant of the logistical issues confronted by Plaintiff's counsel and that a dismissal with prejudice is an extreme sanction; however, the

Defendants are entitled to all appropriate discovery within the timelines established by the Court. The Plaintiffs are likewise obligated to abide by the requisite timelines to provide discovery and are further obligated to file appropriate motions. Since the PFS were not provided and no motions to vacate the existing dismissal was never filed, the Court is constrained to grant the Defendants' motion in accord with Rule 4:23-2(b)(3).

Accordingly, the Court **GRANTS** Defendant's motion to dismiss all of the identified 21 Plaintiff's Complaint with prejudice for failure to provide discovery as identified in Exhibit A.

An appropriate Order is entered on eCourts. Conformed copies accompany this Memorandum of Decision.


JOHN C. PORTO, P.J.Cv.

Date: December 20, 2024

EXHIBIT A

Plaintiff Name	Case No.
Beverly, Josie	ATL-L-000706-22
Beverly, Larry	ATL-L-000713-22
Bradley, Joan	ATL-L-000717-22
Bullins, Ginger	ATL-L-000778-22
Dilbert, Nyanza	ATL-L-000759-24
Egger, Darlah	ATL-L-000652-22
Gregory, Jeannelle (by her Guardian Ad Litem Constantino Nova-Rae)	ATL-L-002975-22
Hall, Nicholas	ATL-L-000512-22
Hrnjica, Ado	ATL-L-000624-22
Jones, Sheldon	ATL-L-000716-22
Kennelly-Hines, Katrina	ATL-L-000583-22
Lane, Michael	ATL-L-002985-22
Levy, Geraldine	ATL-L-000740-22
Lyons, Rebecca	ATL-L-001549-22
Murray, Susan ¹	ATL-L-000651-22
Polk, Brandy (by her Guardian Ad Litem Alaina Polk)	ATL-L-002979-22
Shaurette, Elizabeth	ATL-L-002972-22
Ward, Jessica	ATL-L-000610-22
Wilkinson, Tammy	ATL-L-000682-22
Williams, Felicia	ATL-L-000684-22
Worth, Scott	ATL-L-000707-22

¹ Court docket and Complaint incorrectly reflect plaintiff's name as "Jessica Ward."