

**FILED**

**OCTOBER 22 , 2021**

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

Eileen Oakes Muskett, Esquire  
Attorney ID No. 020731994  
**FOX ROTHSCHILD LLP**  
Midtown Building, Suite 400  
1301 Atlantic Avenue  
Atlantic City, NJ 08401  
Tel: (609) 348-4515  
Fax: (609) 348-6834  
[emuskett@foxrothschild.com](mailto:emuskett@foxrothschild.com)

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

LILLIAN BIRD and HOWARD E. BIRD,

Plaintiff,

v.

MERCK & CO., INC., MERCK SHARP &  
DOHME CORP., and McKESSON CORP.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY

DOCKET NO.: MID-L-004857-20

**ORDER**

**WHEREAS**, Defendants, Merck & Co., Inc. and Merck Sharp & Dohme Corp., by and through counsel, Fox Rothschild, LLP, move before the Court to dismiss Plaintiffs' case with prejudice, and the Court having read and considered the moving papers submitted, and having found that this Motion is unopposed, and for good cause having been shown;

**IT IS** on this 22nd day of October, 2021,

**ORDERED** that Defendants' Motion to Dismiss **is hereby GRANTED**; and it is further

**ORDERED** that Plaintiff's case is **DISMISSED WITH PREJUDICE** in accordance with R. 4:23-5(a)(2); and it is further

**ORDERED** that this Order shall be deemed served upon its filing to eCourts. Movant shall serve all parties not electronically served within seven (7) days of the date of this Order in accordance with R. 1:5-1(a).

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

**UNOPPOSED**

**SEE STATEMENT OF REASONS ATTACHED**

### **Statement of Reasons**

This Matter comes before the Court upon Defendants' Motion to Dismiss Plaintiff's Complaint with prejudice pursuant to R. 4:23-2 for Plaintiff's failure to provide Proof of Use. The Court, having considered the moving papers submitted, and having found this Motion unopposed, will be granting same essentially for the reasons set forth in the moving papers in accordance with R. 1:6-2. The Court notes the following additional procedural history: Plaintiff's case was dismissed without prejudice via Order on August 3, 2021, for failure to provide Proof of Use. Accordingly, at this time, more than sixty (60) days have passed since Plaintiff's case was dismissed without prejudice, Plaintiff has not filed a Motion to Reinstate, nor filed an opposition. A dismissal with prejudice is now warranted in accordance with R. 4:23-5(a)(2). Thus, this Motion is **GRANTED**, and Plaintiff's case is **DISMISSED WITH PREJUDICE**.