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FILED

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

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

ROBERTO JORGE,

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-001407-23

**DEFENDANTS' MOTION TO DISMISS
THE CLAIMS OF PLAINTIFF WITHOUT
PREJUDICE**

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 20th day of October, 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 Plaintiff's opposition.

By way of background, Plaintiff's PFS was originally due on June 23, 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 June 29, 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 July 13, 2023, Merck's counsel again contacted Plaintiff's counsel, asking if they would agree to include Plaintiff on a consent order. On August 24, 2023, Plaintiff's counsel responded stating he would "need additional time." During the August 29, 2023, Case Management Conference and pursuant to CMO #35, Plaintiff's counsel was to provide substantially complete and certified PFS by October 1, 2023 or counsel for Merck had permission to file a motion to dismiss without prejudice thereafter.

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 eight (8) times and mailing him three (3) notices about the need to respond to discovery and warning him that if he did not respond that his case would be dismissed. Additionally, Plaintiff's counsel employed a third-party investigator

to locate Plaintiff and to produce additional means of contacting him, 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 his attorney’s repeated attempts to contact him. 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 his 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).