

FILED

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

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

CINDY McCLENDON,

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-004653-19

ORDER

THIS MATTER having been brought before the Court upon Motion for an Order to Show Cause filed by Defendants, Merck & Co., Inc. and Merck Sharp & Dohme Corp., by and through counsel, Fox Rothschild LLP, and the Court having considered Defendants' motion for an Order to Show Cause as to why the claims of Plaintiff, Cindy McClendon, should not be dismissed with prejudice, along with Plaintiff's opposition, and for good cause having been shown,

It is now on this 28 day of May 2021,

ORDERED that the Defendants' Motion for an Order to Show Cause be and hereby is **GRANTED**; and it is further

ORDERED that Plaintiff must respond within seven (7) days of the date of this Order to show cause as to why her case should not be dismissed with prejudice for failure to provide a

Plaintiff Fact Sheet (“PFS”) in contravention of this Court’s June 12, 2019 Case Management Order; and it is further

ORDERED that, if appropriate, the Court shall set a date for oral argument on this matter and will communicate same to counsel; and it is further

ORDERED that service of this Order shall be deemed served upon its filing to eCourts. Movant shall serve all parties not electronically serve within seven (7) days of the date of this Order.

SEE STATEMENT OF REASONS ATTACHED

OPPOSED

/s/ Bruce J. Kaplan

Hon. Bruce J. Kaplan, J.S.C.

Statement of Reasons

Merck & Co., Inc. and Merck Sharp & Dohme Corp. (“Defendants”) move the Court to enter an Order requiring Plaintiff, Cindy McClendon, to show cause as to why her case should not be dismissed with prejudice for her continued failure to provide a Plaintiff Fact Sheet (“PFS”) within the time prescribed by the Court in its June 12, 2019 Case Management Order (“PFS CMO”). Plaintiff’s counsel filed an opposition requesting additional time to provide Plaintiff’s PFS.

Defendants’ Answer to Plaintiff’s Complaint was filed on October 29, 2020. In accordance with the Court’s PFS CMO, Plaintiff’s PFS was due within sixty (60) days of Defendants’ Answer. See June 12, 2019 CMO, § B, ¶ 2.¹ According to Defendants, as evidenced by the Exhibits attached to this Motion, Plaintiffs requested four (4) extensions of the PFS deadline. See Ex. A, 12/22/20 Email, Ex. B, 1/27/21 Email, Ex. C, 2/25/21 and 2/26/21 Email, Ex. D, 3/29/21 Email. As a result of Plaintiff’s continued requests for extensions to serve the PFS, counsel for Merck now moves for an Order to Show Cause as to why Plaintiff’s case should not be dismissed, in accordance with the PFS CMO. See June 12, 2019 CMO, § D.

¹ The Court’s June 12, 2019 CMO provides, in pertinent part, “[f]or cases filed in or transferred to this MCL subsequent to the date of this CMO, plaintiffs must serve Merck with a complete and verified PFS and responsive documents within sixty (60) days of the date that Merck answers or moves to partially dismiss the plaintiff’s Complaint.”

The Court's June 12, 2019 CMO, § D specifically states,

[i]f any plaintiff wholly fails to produce a PFS by the deadlines ... counsel for Merck shall notify Plaintiffs' Liaison Counsel, and counsel for that plaintiff, in writing The notice letter will state that the failure to produce a PFS within fourteen (14) days of the date of the notice letter will result in Merck filing an order to show cause as to why an order should not be issued dismissing plaintiff's case with prejudice.

Defendants have fully complied with notifying Plaintiff's counsel as to their failure to provide a PFS and have similarly advised of their intention to file the within Motion asking for an Order to Show Cause, as permitted by the Court's PFS CMO. See Ex. D, 2/22/21 Email. At this time, Plaintiff has still failed to provide a PFS. Accordingly, this Motion is **GRANTED**.