

Eileen Oakes Muskett, Esquire
Attorney ID No. 020731994
FOXROTHSCHILD LLP
Midtown Building, Suite 400
1301 Atlantic Avenue
Atlantic City, NJ 08401
Tel: (609) 348-4515
Fax: (609) 348-6834
emussett@foxrothschild.com

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

FILED

MAY 28 , 2021

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

CARL PAILETTE and JANE PAILETTE,

Plaintiffs,

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-005488-19

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 Plaintiffs, Carl and Jane Paillette, should not be dismissed with prejudice, along with Plaintiffs' opposition, and for good cause having been shown,

It is now on this 28th day of May 2021, hereby:

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

ORDERED that Plaintiffs must respond within seven (7) days of the date of this Order to show cause as to why their 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.

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 Plaintiffs, Carl and Jane Paillette, to show cause as to why their 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 November 13, 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, 1/12/21 Email; Ex. B, 2/11/21 Email; Ex. C, 3/12/21 & 3/15/21 Emails; Ex. D, 4/9/21 Email. As a result of Plaintiffs’ continued requests for extensions to serve the PFS, counsel for Merck now moves for an Order to Show Cause as to why Plaintiffs’ case should not be dismissed, in accordance with the PFS CMO. See June 12, 2019 CMO, § D.

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

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.”

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 Plaintiffs' 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 Email. At this time, Plaintiffs have still failed to provide a PFS. Accordingly, this Motion is **GRANTED**.