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FILED

October 6, 2023

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

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

CHARLES B. STILL and ANN MARIA  
STILL,

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

MCL NO.: 629

DOCKET NO.: MID-L-002952-20

**ORDER: DISMISSAL 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 completed authorizations, 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 6th 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 authorization 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**

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 completed authorizations, consistent with this Court's Group B Bellwether July 13, 2023, CMO. The Court notes that it has considered the moving papers and Plaintiffs' opposition.

By way of background, Plaintiff's on August 14, 2023, counsel for Merck chose plaintiffs' case as one of Merck's 15 Bellwether Discovery Cases. Pursuant to the Bellwether CMO, plaintiffs were subsequently required to provide signed authorizations to Merck by September 5, 2023. Plaintiff's liaison counsel then reached out again on September 6 and 7, requesting authorizations be provided by September 8, 2023. When Plaintiff failed to provide the authorizations, Defendant sought permission to dismiss Plaintiff's claims, which the Court granted on September 13, 2023. To date, Plaintiff has not provided the authorizations required by the Bellwether CMO.

In support of Defendant's motion, Defense counsel argues that Plaintiff has not complied with this Court's Bellwether CMO, has failed to provide authorizations, 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 Bellwether CMO, by way of calling Plaintiff three (3) 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 the authorizations 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 authorizations 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).