

FILED

JUL 01 2019

By the Court:

Judge James F. Hyland

IN RE ZOSTAVAX LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

MCL NO. 629

**SECOND AMENDED ORDER
GRANTING DEFENDANTS MERCK'S
MOTION TO DISMISS THE
COMPLAINT**

It is hereby ordered on this 1 day of July , 2019

ORDERED that this Court's Order dated June 10, 2019 Granting Defendants' Motion to dismiss the Complaint and this Court's Amended Order dated June 14, 2019 Granting Defendants' Motion to Dismiss the Complaint are hereby **VACATED**; and

IT IS FURTHER ORDERED that the Defendants' Motion to Dismiss the Complaint is hereby **PARTIALLY GRANTED** for the reasons stated on the record on June 10, 2019; and

IT IS FURTHER ORDERED that, Count II (products liability – defective design), Count III (products liability – manufacturing defect), Count IV (products liability – failure to warn), Count VI (breach of implied warranty), Count X (unjust enrichment), and Count XIII (loss of consortium) are **DISMISSED WITHOUT PREJUDICE**; and

IT IS FURTHER ORDERED that Count I (negligence), Count V (breach of express warranty), Count VII (fraudulent misrepresentation), Count VIII (fraudulent concealment), Count IX (negligent misrepresentation) and Count XII (violation of consumer protection laws) are upheld as properly plead and are to remain as viable claims; and

IT IS FURTHER ORDERED that Plaintiffs may file a motion to amend their Complaint pursuant to R. 4:9-1 within sixty (60) days of the date hereof; and

IT IS FURTHER ORDERED that a copy of this Order shall be served on all parties within seven (7) days of the date hereof.



HON. JAMES F. HYLAND, J.S.C.