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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 Corp.*

DENNIS ADAMS,

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-005850-18

WHEREAS, Defendants, Merck & Co., Inc., and Merck Sharp & Dohme, Corp., by and through its counsel, Fox Rothschild, LLP, moves the Court for an Order dismissing Plaintiff's case with prejudice pursuant to R. 4:23-5(a)(2), and the Court having considered the moving papers, papers in opposition and reply, and for the reasons stated in the statement of reasons, and for good cause shown,

IT IS ON this 8th day October 2021, hereby:

ORDERED that Defendants' Motion is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED that Plaintiff's case be and is hereby **DISMISSED** without prejudice in accordance with R. 4:23-5(a)(1); and it is further

ORDERED that this Order shall be deemed served upon its filing to eCourts. Movant shall serve all parties not electronically served within seven (7) days of the date of this Order in accordance with R. 1:5-1(a).

/s/ Bruce J. Kaplan

HONORABLE BRUCE J. KAPLAN, J.S.C.

OPPOSED

SEE ATTACHED STATEMENT OF REASONS

STATEMENT OF REASONS

This matter comes before the Court by way of the Defendants, Merck & Co., Inc., and Merck Sharp & Dohme, Corp., Motion to Dismiss the Plaintiff's Complaint with prejudice for failure to comply with this Court's Order dated to July 12, 2021. In opposition, the Plaintiff correctly notes that the Court's July 12, 2021 Order did not dismiss Plaintiff's Complaint without prejudice but rather compelled compliance with outstanding Plaintiff Fact Sheet (PFS) deficiencies within 60 days of the date of the Order or face sanctions including dismissal with prejudice. Moreover, Plaintiff represents that the delinquent discovery was provided on September 30, 2021. In reply, Defendants argue that the Plaintiff still has not provided a death certificate or appropriate documentation of the Plaintiff's next of kin (NOK) to prosecute this claim and further that the Plaintiff's answers to PFS question C.4 – C.5 and questions III.1 – III.5 remain deficient.

The Court will be denying Defendants' Motion to Dismiss with prejudice but will instead be dismissing this case without prejudice in accordance with R. 4:23-5(a)(1). Pursuant to R. 4:23-5(a)(2), Defendants may file a Motion to Dismiss with prejudice following the passage of the required sixty (60) day period. To the extent that Plaintiffs communicate with and provide to Counsel the required material to cure the current PFS deficiencies, a Motion to Reinstate may be filed.

The Court in entering this Order finds that the Plaintiff passed away in May 2020 and the NOK were aware of the pending lawsuit and the need to be named personal representative back in November 2020. Despite this knowledge, and multiple extensions and Court Orders they have failed to comply. Moreover, the Court must find that the answers referenced above are incomplete and non-responsive. In light of the foregoing reasons, the Motion to Dismiss with prejudice is granted in part and denied in part and the Plaintiff's Complaint is dismissed without prejudice.