

FILED

March 25, 2026

HON. BRUCE J. KAPLAN, P.J.Cv.

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and Merck Sharp & Dohme LLC*

IN RE ZOSTAVAX LITIGATION

APPLICABLE TO ALL CASES ON THE  
ATTACHED EXHIBIT A

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY

MCL NO.: 629

**ORDER: DISMISSAL WITH PREJUDICE  
CASES LISTED IN EXHIBIT A.**

**THIS MATTER**, having come before the Court upon the motion of Defendants Merck & Co., Inc. and Merck Sharp & Dohme LLC (“Merck”), through their counsel, Fox Rothschild, LLP for an Order dismissing the complaints of the Plaintiffs identified in Exhibit A with prejudice for failure to comply with the December 10, 2025 Amended DCO and the Court having considered the moving papers, the opposition filed by Mark Sadaka, the reply to same; and for good cause been shown:

**IT IS**, on this 25<sup>th</sup> day of March, 2026, hereby ORDERED:

- a. Merck's motion to dismiss the cases listed in Exhibit A with prejudice is GRANTED.
- b. The claims of all plaintiffs listed within the attached Exhibit A are hereby dismissed with prejudice.
- c. Service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to R. 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the entry of the Order.

*[S] Bruce J. Kaplan*

Bruce J. Kaplan, P.J.Cv.

OPPOSED

### **STATEMENT OF REASONS**

This Motion comes before the Court by way of Defendant Merck Sharp & Dohme Corp's Motion to Dismiss with Prejudice the cases attached<sup>1</sup> for failure to comply with Paragraph 4 of the Court's December 10, 2025 Second Amended Docket Control Order (Second Amended DCO), which required Litigating Plaintiffs to serve documents and/or information on Merck, including (a) A Plaintiff Fact Sheet; (b) Pharmacy records; (c) Medical records; (d) Record Collection Production; (e) a signed Affidavit attesting to the Litigating Plaintiff's compliance with the DCO; (f) Expert Reports; (g) Retention Agreements; and (h) a signed Affidavit attesting to the time at which the Litigating Plaintiff learned of their alleged Zostavax-related injuries, initial date of legal inquiry, and date of retaining counsel for this matter. See Second Amended DCO, ¶4. The Court is also in receipt of Plaintiffs' (Sadaka Firm Plaintiffs) opposition to the motion filed by Mark Sadaka and Defendant's reply to same.

Within the moving papers, the Sadaka Firm Plaintiffs request additional time in order to file the documents required by the Second Amended DCO. The deadline by which the above documents/information were required to be produced was no later than February 9, 2026. Prior to the Second Amended DCO, the date by which all Litigating Plaintiffs were to produce the aforementioned documents/information was November 23, 2025. Thus, all Litigating Plaintiffs, including the Sadaka Firm Plaintiffs have been on notice for over eight months that their documents/information requirements were required in order to proceed with their claims in the Zostavax MCL, as well as an additional fourteen (14) days to cure their deficiencies after the filing of the instant motion dismiss by Defendants pursuant to R. 4:23- 2(b)(1).<sup>2</sup>

Given the amount of time previously allotted to all Litigating Plaintiffs under the prior Docket Control Orders and the presently controlling Second Amended DCO, the Court finds that further extension of the deadline for the Sadaka Firm Plaintiffs to comply with the Second

<sup>1</sup> See Exhibit A.

<sup>2</sup> See Second Amended DCO, ¶6.

Amended DCO is unwarranted. As Mr. Sadaka states within the opposition, “The majority of those litigating Plaintiffs identified by Merck have not indicated any intention of continuing their Zostavax claims to counsel.” See Plaintiff’s Opposition Brief, p. 1, filed Mar. 12, 2026. As the length of time that has already been granted to all Litigating Plaintiffs to comply with the Second Amended DCO has exceeded eight months, and Mr. Sadaka represents that there is no present intention indicated by the remaining Sadaka Firm Plaintiffs within Exhibit A to continue litigation of their claims, the Court finds that further extension of time for compliance is unwarranted. Absent any evidence that the Sadaka Firm Plaintiffs intend to comply with the Second Amended DCO at this juncture, the Court has no reason to find that compliance will occur with additional time provided.

Our Supreme Court has held that, “[t]he dismissal of a party’s cause of action, with prejudice, is drastic and is generally not to be invoked except in those cases where the order for discovery goes to the very foundation of the cause of action ... or where refusal to comply is deliberate and contumacious.” Schlosser, 111 N.J. Super. at 341 (citing Tsibikas v. Morrof, 5 Super. 306 (App. Div. 1949)).

The unfortunate reality is given the length of time of non-compliance, the Court finds there is no “lesser sanction” that can suffice to remedy the violations of this Court’s Order. The window for compliance with the Second Amended DCO has lapsed, as has the additional time to cure deficiencies.

As such, Defendant’s Motion to Dismiss with Prejudice is hereby granted with respect to each case enumerated on the Case List. This dismissal is effectuated in accordance with the clear terms of the Amended DCO, which explicitly afforded all Plaintiffs an opportunity to cure the deficiency within the designated timeframe, yet the Plaintiffs’ failure to comply necessitates the dismissal of their claims. Motion granted.

# **EXHIBIT A**

Bates, Joann MID-L-006078-18

Boswell, Ronald MID-L-004946-18

Brady, Danny Carlisle, Sr. MID-L-008096-19

Burris, Sarah MID-L-006262-18

Clevenger, Georgeann MID-L-003916-23

Clowesley, Peggy MID-L-004703-20

Cobarrubia, Dorice MID-L-000982-21

Cooksey, Richard MID-L-003987-20

Cozzarelli, Raymond MID-L-007664-19

Davis, Danny MID-L-000936-21

Eubank, Deborah MID-L-006586-20

Fair, Walter Scott MID-L-007834-19

Farmer, Bonnie MID-L-007904-20

Frazier, Joyce MID-L-001259-21

Free, Eugene MID-L-000781-21

Fresina, Lisa D. MID-L-004843-19

Garland, Katrina S. MID-L-001654-19

Garrison, Deborah MID-L-007858-18

Goodrich, James MID-L-001655-22

Hall, Brenda MID-L-001437-19

Harrell, Mary MID-L-006441-21

Hopkins, Ann Marie MID-L-008594-20

Huggins, Donna Sue MID-L-004213-20

Jackson, Shirley MID-L-003355-21

Johnson, Richard MID-L-005127-20

Jones, Penny MID-L-006874-20

Judy, Yong MID-L-001435-19

Kingrea, Cleo MID-L-008745-20

Lewis, Clouse MID-L-003468-19

Lewis, Shirley MID-L-004057-19

Liggins, Mercury (deceased)

Liggins, Dontrey (admin) MID-L-005988-19

Malesev, Sharon MID-L-008049-20

Merenda-Kellner, Madelyn MID-L-000041-21

Miley, Suzanne MID-L-000042-21

Mondragon, Raymond MID-L-003808-20

Nunley, Helen MID-L-001509-21

Oakley, Adele MID-L-006474-17

Palermo, Salvatore MID-L-002383-24

Parker, Joyce MID-L-002380-21

Piteau, Arthur MID-L-002384-24

Proctor, James MID-L-001914-19

Rapp, Harry R. MID-L-006381-17

Ray, Virginia Lou MID-L-005125-20

Roberson, Roger MID-L-001062-21

Roberts, Barbara MID-L-005259-19

Rodgers, David H. MID-L-001835-21

Scott, Carolyn J. MID-L-001510-21

Scott, Judith Fulton MID-L-002457-23

Scott, Patricia MID-L-000901-23

Stafford, Karon MID-L-005748-20

Stein, Charles M. MID-L-006590-20

Summers, Patricia MID-L-001903-19

Sutphin, Emil Leon, Jr. (deceased)

Sutphin, Cynthia (admin) MID-L-002657-22

Turco, Martha MID-L-000788-22

Vallone, Leslie MID-L-006454-22

Watts, Evelyn MID-L-001267-21

Yahalom, Ofer Eyal MID-L-002271-23