

**FILED**

**APRIL 14 , 2022**

ORDER OF BRUCE J. KAPLAN, J.S.C.  
SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – MIDDLESEX VICINAGE  
56 PATERSON STREET  
NEW BRUNSWICK, NEW JERSEY 08903

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

IN RE: ZOSTAVAX® LITIGATION

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY

MCL NO.: 629

MASTER DOCKET NO.: 4999-18

CIVIL ACTION

ORDER FOR DISMISSAL

**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 the complaints of the Plaintiffs in the Attached Schedule A with prejudice pursuant to R. 4:23-5(a)(2), for failure to provide Plaintiff Fact Sheet as these cases have been dismissed without prejudice pursuant to January 24, 2022 Dismissal Order, and the Court having read and considered the papers submitted in this matter, and no opposition submitted, and for the reasons set forth in the attached Statement of Reasons, and for good cause having been shown;

**IT IS** on this 14th day of April 2022,

**ORDERED** that Defendants' Motion to Dismiss with prejudice is **hereby GRANTED**, and it is further

**ORDERED** that the complaints listed in the attached Schedule A are hereby dismissed with prejudice, 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.

**UNOPPOSED**

See Statement of Reasons and Schedule of Cases attached

**Statement of Reasons**

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 the complaints in the attached Schedule A with prejudice pursuant to R. 4:23-5(a)(2), for failure to provide a materially complete and certified Plaintiff Fact Sheets. The Court notes that it has considered the moving papers, and notes that Plaintiff's Counsel have not filed opposition in the attached cases.

On January 24, 2022, this Court entered a dismissal order without prejudice for the complaints in the attached Schedule A for failure to provide Plaintiff Fact Sheet. Defendants argue that more than sixty (60) days have passed since these cases were dismissed without prejudice. Plaintiffs have not complied with this Court's orders and have not provided Plaintiff Fact Sheets; therefore, these motions follow.

Pursuant to R. 4:23-5(a)(2), if "an order of dismissal ... without prejudice has been entered pursuant to paragraph (a)(1) of this rule and not thereafter vacated, the party entitled to the discovery may, after the expiration of 60 days from the date of the order, move on notice for an order of dismissal with prejudice." It is well-settled that "dismissal with prejudice is the ultimate sanction, [and that] it will normally be ordered only when no lesser sanction will suffice to erase the prejudice suffered by the non-delinquent party," Zaccardi v. Becker, 88 N.J. 245, 253 (1982) (internal citations omitted), "or when the litigant rather than the attorney was at fault." Ibid. (citing Schlosser v. Kragen, 111 N.J. Super. 337, 341 (1970)).

Our Supreme Court has also 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 N.J. Super. 306 (App. Div. 1949)).

The Court finds that Plaintiffs have had more than enough time to comply with this Court's Orders and have failed to do so. It is not in dispute that the discovery at issue remains outstanding.

The unfortunate reality is given the length of time of non-compliance, there is no "lesser

sanction” that can suffice to remedy the violations of this Court’s order.

A dismissal with prejudice is now warranted in accordance with R. 4:23-5(a)(2). Therefore, Defendants Motion to Dismiss with prejudice is **GRANTED**.

**SEE ATTACHED SCHEDULE A**  
**SCHEDULE OF CASES DISMISSED WITH PREJUDICE**

<u>Case</u>	<u>Docket No.</u>
Taitt v. Merck	MID-L-002403-19
Thomas v. Merck	MID-L-000967-19
Stafford v. Merck	MID-L-000959-19
Peniche v. Merck	MID-L-002058-19
Pofok v. Merck	MID-L-004979-19
Mann v. Merck	MID-L-001187-19
Kautman v. Merck	MID-L-003165-19
Hicks v. Merck	MID-L-004395-19
Haas v. Merck	MID-L-004641-19
Bullen v. Merck	MID-L-006592-20
Bass v. Merck	MID-L-003463-19