

BOWMAN AND BROOKE LLP

Randall L. Christian
New Jersey Bar No. 234812017
317 George Street, Suite 320
New Brunswick, NJ 08901
&
2901 Via Fortuna Drive, Suite 500
Austin, Texas 78746
(512) 874-3811

FILED

November 22, 2023

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

And

DUGHI, HEWIT & DOMALEWSKI, P.C.

Russell L. Hewit
New Jersey Bar No. 012081977
340 North Avenue
Cranford, NJ 07016
(908) 272-0200

Attorneys for Defendants Genentech, Inc.,
Hoffmann-La Roche Inc., GlaxoSmithKline
LLC, and Roche Laboratories, Inc.

**IN THE SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY**

DOROTHY L. MASON,

Plaintiff,

vs.

MERCK SHARP & DOHME CORP.,
GLAXOSMITHKLINE LLC., HOFFMAN-LA
ROCHE, INC., GENENTECH, INC., and
ROCHE LABORATORIES, INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX
COUNTY

Docket No. MID-L-9710-14

FOSAMAX LITIGATION

**ORDER DISMISSING
DEFENDANTS ROCHE
LABORATORIES INC.,
HOFFMANN-LA ROCHE INC.,
GLAXOSMITHKLINE LLC, and
GENENTECH, INC. WITH
PREJUDICE FOR FAILURE TO
PROVIDE PROOF OF USE**

THIS MATTER having been opened to the Court by Bowman and Brooke LLP, attorneys
for Defendants Roche Laboratories Inc. and Hoffmann-La Roche Inc., for an Order, pursuant to

In so doing, the Court notes 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 unfortunate reality is given the length of time of non-compliance, and the lack of any opposition, the Court finds there is no “lesser sanction” that can suffice to remedy the violations of this Court’s order.

More than sixty (60) days have passed since Plaintiff’s Complaint was dismissed without prejudice and Plaintiff has failed to provide proof of use, has failed to file a Motion to Reinstate the case, and Plaintiff has failed to object to the requested relief. As a result, Defendant Roche’s motion to dismiss with prejudice is granted.