

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**IN RE:**

**AC CUTANE PRODUCTS LIABILITY**

**MDL 1626 - IBD TRACK CASES**

**Case No: 8:04-MD-2523-T-30TBM**

**8:13-CV-1287-T-30TBM**

**(Kyle Berry)**

**ORDER**

THIS CAUSE comes before the Court upon Plaintiff Kyle Berry's Motion to Enforce Settlement (Dkt. 1344) and Defendants Hoffmann-La Roche In. and Roche Laboratories Inc.'s Response in Opposition (Dkt. 1349). The Court, having considered the motion, response, and being otherwise advised in the premises, concludes that the motion should be granted.

**DISCUSSION**

Plaintiff contends that a settlement was reached between the parties and must be enforced. The Court agrees. The record shows that on November 4, 2013, Plaintiff's counsel informed Defendants' counsel via e-mail that he would recommend to his client that his case be dismissed. Defendants' counsel responded that Defendants would agree to a dismissal of the case with prejudice, with each party to bear their own costs. Specifically, on November 5, 2013, Defendants' counsel provided a Joint Stipulation of Voluntary Dismissal with Prejudice under F.R.C.P. 41(a)(1)(ii) to Plaintiff's counsel via e-mail and expressly requested

that Plaintiff's counsel "let [them] know if you are in agreement with the stipulation . . ." (Dkt. 1344-3). This November 5, 2013 correspondence was clearly a settlement offer. Notably, the offer did not include a deadline for acceptance.

On February 6, 2014, Defendants filed their motion for summary judgment based on the adequacy of Accutane's warnings. On February 7, 2014, Defendants' counsel sent Plaintiff's counsel a letter regarding Plaintiff's failure to timely disclose his general causation experts. On February 17, 2014, Plaintiff's counsel sent an e-mail to Defendants' counsel and accepted Defendants' November 5, 2013 settlement offer. Specifically, Plaintiff's counsel stated: "I [sic] client has agreed to dismiss his case. You are hereby authorized to change the date on the joint stipulation of dismissal and file with the court." (Dkt. 1344-4). On February 19, 2014, Defendants' counsel responded to the e-mail and stated that significant time had passed since the November 2013 proposal, Defendants had incurred "significant expense" associated with the pending motion for summary judgment, and Defendants could not agree to a dismissal of the case without recouping those expenses. (Dkt. 1344-5).

Plaintiff did not file a timely response to the pending motion for summary judgment. Accordingly, on February 27, 2014, the Court entered an Order to Show Cause and directed Plaintiff to file a response to the pending motion for summary judgment within fourteen days. Plaintiff then filed the instant motion to enforce the purported settlement agreement.


The Court concludes that Plaintiff accepted Defendants' November 5, 2013 settlement offer on February 17, 2014. Defendants failed to attach a deadline to their settlement offer. Defendants also failed to withdraw their offer. Thus, this issue turns on whether Plaintiff accepted the offer within a reasonable time. The Court concludes that Plaintiff's acceptance

was within a reasonable time. Specifically, a little more than three months had passed; the Court does not view this passage of time as unreasonable under the circumstances. Notably, Defendants could have and should have withdrawn their offer prior to drafting and filing their motion for summary judgment.

It is therefore **ORDERED AND ADJUDGED** that:

1. Plaintiff Kyle Berry's Motion to Enforce Settlement (Dkt. 1344) is granted.
2. This action is dismissed with prejudice, with each party to bear their own fees and costs.
3. The Clerk is directed to close case 8:13-CV-1287-T-30TBM.
4. Defendants' Motion for Summary Judgment (Dkt. 1338) is denied as moot.

**DONE** and **ORDERED** in Tampa, Florida on March 28, 2014.

  
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JAMES S. MOODY, JR.  
UNITED STATES DISTRICT JUDGE

**Copies furnished to:**  
Counsel/Parties of Record

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