

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

<p>IN RE: PLAVLIX MARKETING, SALES PRACICES AND PRODUCTS LIABILITY LITIGATION (NO. II)</p>	<p>MDL No. 2418</p>
<p>This Document Relates to:</p> <p>ALFRED BROWN, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>BRISTOL-MYERS SQUIBB COMPANY <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 14-cv-5410-FLW-TJB</p> <p style="text-align: center;">ORDER</p>

THIS MATTER having been opened to the Court by Arnold Porter LLP, Lowenstein Sandler PC and Parker Ibrahim & Berg LLC, attorneys for defendants BRISTOL-MYERS SQUIBB COMPANY, SANOFI-AVENTIS U.S. LLC, SANOFI U.S. SERVICES INC., and SANOFI-SYNTHELABO LLC (collectively “Defendants”), seeking an Order dismissing the claims of Plaintiff Dawari Dan-Harry (“Plaintiff”) with prejudice. Plaintiff, appearing *pro se*, has not opposed the motion.

On November 13, 2015, Plaintiff’s counsel moved for leave to withdraw as counsel before the Magistrate Judge, and on December 3, 2015, the Magistrate Judge granted that request. The Magistrate Judge’s Order required Plaintiff to either retain new counsel or indicate within 45 days of that Order’s entry whether Plaintiff intends to proceed *pro se*. Plaintiff has not responded to the Magistrate Judge or otherwise contacted the Court. Defendants now seek an Order dismissing Plaintiff’s claims with prejudice for failure to prosecute. Upon receipt of Defendants’ Motion, this Court sent a letter, dated February 5, 2016, to Plaintiff, informing him that his failure to take further

action or comply with the Magistrate Judge's Order could result in dismissal with prejudice. This Court has not received a response from Plaintiff.

Under Fed. R. Civ. P. 41(b), dismissal of an action is permitted when a "plaintiff fails to prosecute or to comply with ... a court order." The Third Circuit has set forth six factors to determine whether it is appropriate for a trial court to dismiss a case for failure to prosecute: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of alternative sanctions; and (6) the meritoriousness of the claim or defense. *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863, 868 (3d Cir. 1984). All of the factors do not need to be satisfied for a court to find that a dismissal is warranted. *Opta Sys., LLC v. Daewoo Elec, Am.*, 483 F.Supp.2d 400, 406 (D.N.J. 2007) ("Thus, the court finds the first five *Poulis* factors weigh in favor of Defendants"). Instead, the factors should be weighed "to assure that the 'extreme' sanction of dismissal or default is reserved for the instances in which it is justly merited." *Poulis*, 747 F.2d at 870.

In regards to the first factor, Plaintiff is personally responsible for his failure to comply with the Magistrate Judge's Order. Indeed, the Order specifically required Plaintiff to obtain new counsel or indicate whether he intends to proceed *pro se*. Plaintiff failed to respond even after receiving a notice from this Court informing her that he was in violation of that Order. *See Opta Sys., LLC*, 483 F.Supp.2d at 404 (finding that the plaintiff was "clearly responsible" for its failure to retain new counsel as ordered because he was advised of the court's decision and had an opportunity to retain new counsel but failed to do so).

As to the second factor, Defendants are prejudiced by Plaintiff's inaction because they are unable to proceed with the litigation; indeed, Plaintiff has effectively abandoned his case. *See Ware v. Rodale Press Inc.*, 322 F.3d 218, 222 (3d Cir. 2003) (finding that "the burden imposed by impeding a party's ability to prepare effectively a full and complete trial strategy is sufficiently prejudicial").

Next, Plaintiff has a history of delay because he has known of his former counsel's request to withdraw for a substantial period of time. Additionally, Plaintiff had ample time to respond to the Court's Orders, but he did not. *Id.*; *see Opta*, 483 F.Supp.2d at 405 ("Failure to respond to the court's order demonstrates plaintiff's pattern of dilatory conduct").

The fourth factor is also satisfied because Plaintiff's conduct was willful. Despite the Magistrate Judge's Order and the letter sent by this Court instructing Plaintiff to respond, Plaintiff willfully chose not to take action. *See Dawkins v. Bristol-Myers Squibb Co.*, No. 07-1186 (FLW), 2012 WL 1587541 at * 3 (D.N.J. April 16, 2012) (finding in circumstances where the plaintiff chose not to respond to a court order it may be inferred that the plaintiff has abandoned his case and therefore, plaintiff's conduct satisfies the fourth *Poulis* factor).

With respect to the fifth factor, alternative sanctions would not be effective in this matter. Despite the Magistrate Judge's and this Court's clear warnings of dismissal, Plaintiff has not complied. It is unlikely that Plaintiff would respond to an alternative sanction. *See Opta*, 483 F.Supp. 2d at 405 (finding where plaintiff failed to obtain new counsel or obey court orders, sanctions short of dismissal would be ineffective); *Dawkins*, 2012 WL 1587541, at *3 ("plaintiff's record of unresponsiveness suggests that alternative actions would be futile").

Lastly, the final factor examines the merits of a plaintiff's claim or defense. While Plaintiff's claims may arguably have some merit, the Court need not focus on this factor since all

other *Poulis* factors weigh in favor of dismissal. See *Collura v. City of Philadelphia*, 590 Fed. Appx. 180, 188 (3d Cir. 2014); *Deslonde v. New Jersey*, No.09-03446, 2010 WL 4226505 at *3 (D.N.J. October 21, 2010) ("However, even assuming that Plaintiff's claim has merit, the inclusion of this [sixth] factor is largely neutral and does not change the Court's conclusion that the balance of the *Poulis* factors supports dismissal of this action."). Accordingly, having analyzed all the elements, the Court finds that Plaintiff's failure to prosecute her claims warrant dismissal with prejudice. Accordingly, the Court having considered all submissions in connection with the motion pursuant to Fed. R. Civ. P. 78, for the reasons set forth herein, and for good cause shown,

IT IS on this 3rd day of May, 2016,

ORDERED that Defendants' motion to dismiss [dkt 28] Plaintiff's claims with prejudice is **GRANTED**; and it is further

ORDERED that Plaintiff's claims are dismissed with prejudice.

/s/ Freda L. Wolfson
Freda L. Wolfson
United States District Judge