

CIVIL DIVISION

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**FILED**

JUN 06 2014

Hon. Jared D. Honigfeld  
J.S.C. ret., t/a on recall  
Morris County

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-and-

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*Attorneys for Defendant Novartis  
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DELORES KUCH,  
  
Plaintiff,  
  
v.  
  
NOVARTIS PHARMACEUTICALS  
CORPORATION,  
  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY  
Docket No.: MRS-L-3157-13

CIVIL ACTION  
In Re Zometa / Aredia Litigation  
CASE NO: 278

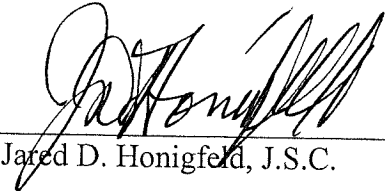
**ORDER DENYING MOTION FOR  
RECONSIDERATION**

**THIS MATTER** having been opened to the Court by Plaintiff's counsel for reconsideration of the Court's February 14, 2014 Order dismissing Plaintiff's Complaint, the Court having considered the papers submitted, including those filed in opposition by defendant Novartis Pharmaceuticals Corporation ("NPC"), and for good cause shown;

IT IS on this 6<sup>th</sup> day of June, 2014;

**ORDERED** that Plaintiff's Motion for Reconsideration be and hereby is **DENIED**.

**ORDERED** that a copy of this Order shall be served on Plaintiff's counsel within seven (7) days of the date hereof.

  
\_\_\_\_\_  
Hon. Jared D. Honigfeld, J.S.C.

This Motion was:  Opposed.

Unopposed

**Kuch v. Novartis Pharmaceuticals Corporation**

**Statement of Reasons**

Plaintiff's Motion

Plaintiff Delores Kuch ("*plaintiff*") brings the instant motion seeking reconsideration of the order entered by the court on February 14, 2014, dismissing plaintiff's complaint without prejudice, subject to refiling her complaint in Middlesex County as part of Multicounty Litigation No. 278.

R. 4:49-2 states that a motion for reconsideration "shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." R. 4:49-2.

In D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990), the Chancery Division stated

[a] litigant should not seek reconsideration merely because of dissatisfaction with a decision of the Court. Rather, the preferred course to be followed when one is disappointed with a judicial determination is to seek relief by means of either a motion for leave to appeal or, if the Order is final, by a notice of appeal. Reconsideration should be utilized only for those cases which fall into that narrow corridor in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence. Said another way, a litigant must initially demonstrate that the Court acted in an arbitrary, capricious, or unreasonable manner, before the Court should engage in the actual reconsideration process.

Id. at 402.

The complaint in this matter was originally filed on November 27, 2013, in the Morris County Superior Court, Law Division. On January 16, 2014, defendant Novartis

Pharmaceuticals Corporation (“*defendant*”) filed a motion to dismiss plaintiff’s complaint. As stated above, in an order entered by the court on February 14, 2014, plaintiff’s complaint was dismissed without prejudice, subject to refiling her complaint in Middlesex County as part of Multicounty Litigation No. 278.

Plaintiff argues that the order entered by the court on February 14, 2014, should be vacated because it relied “upon a palpably incorrect basis” and failed to consider plaintiff’s opposition papers. Plaintiff’s Brief, pg. 2 (citing *D’atria, supra*, 242 N.J. Super. at 401).

Critically, plaintiff’s proposed order would reinstate her complaint, vacate the order entered by the court on February 14, 2014, and transfer this actions’ file to Middlesex County. Plaintiff’s Proposed Order. However, plaintiff concedes that, pursuant to the order entered by the court on February 14, 2014, she has filed her complaint in Middlesex County. Plaintiff’s Brief, pgs. 2-3. Therefore, the relief which plaintiff seeks — reinstating her complaint and transferring this action to Middlesex County — is moot.

Notwithstanding the court’s concluding that plaintiff’s motion is moot, the court will address plaintiff’s arguments as to why the order entered by the court on February 14, 2014, should be vacated. Plaintiff argues that she filed her complaint in Morris, rather than Middlesex County, in order to ensure the complaint was filed within the appropriate Statute of Limitations. Plaintiff’s Brief, pg. 2. Specifically, plaintiff argues that she filed her complaint in Morris County because “time constraints required a filing in the closest courthouse.” Exhibit B to the Certification of Terrence J. Sweeney, Esq.

Plaintiff concedes that “all counsel have litigated in this Multi-County litigation for years, with plaintiff serving substantially identical complaints on defendant.”

Plaintiff’s Brief, pg. 3. Pursuant to the Multi-County Directive #10-07, “all future such complaints, no matter where they might be venued, shall be filed in Middlesex County.”

Exhibit 1 to the Certification of Charles J. Falletta, Esq. Therefore, plaintiff explicitly admits she was aware that she should have filed her complaint in Middlesex County pursuant to Directive #10-07 but simply chose to ignore Multi-County Directive #10-07 as a matter of convenience.

The court notes that because plaintiff’s complaint is now pending in Middlesex County, she will be afforded the opportunity to litigate her case on the merits.

Based on the foregoing, the court is of the opinion that plaintiff has failed to demonstrate that the court based its order entered on February 24, 2014, upon a “palpably incorrect or irrational basis” or that the court did not “consider, or failed to appreciate the significance of probative, competent evidence.”

Therefore, plaintiff’s motion is denied.

#### Oral Argument

Plaintiff requested oral argument. However, the court concluded that the moving papers submitted in connection with the instant motion were sufficient so as to decide the instant motion on the papers. R. 1:6-2(d)

