

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES—GENERAL

**Case No. CV-14-3856-MWF (PLAx)**

**Date: August 19, 2014**

**Title: Michel Hendrix -v- Novartis Pharmaceuticals Corp.**

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**Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge**

Deputy Clerk:

Rita Sanchez

Court Reporter:

Not Reported

Attorneys Present for Plaintiff:

None Present

Attorneys Present for Defendant:

None Present

**Proceedings (In Chambers): ORDER GRANTING MOTION FOR SUMMARY JUDGMENT [44]**

Before the Court is the Motion for Summary Judgment on Plaintiff's Duplicative Lawsuit (the "Motion"), filed on July 28, 2014, by Plaintiff Michel Hendrix. (Docket No. 33). The Court has read and considered the papers on the Motion, and deems it appropriate for submission on the papers without oral argument, pursuant to Federal Rule of Civil Procedure 78(b) and Local Rule 7-15. Therefore, the hearing on **August 25, 2014** is **VACATED**. For the reasons stated below, the Motion is **GRANTED**.

On October 2, 2013, the Court granted summary judgment in favor of Defendant Novartis Pharmaceuticals Corp. in the related case, *Michel Hendrix v. Novartis Pharmaceuticals Corp.*, No. 13-2402-MWF (PLAx) (the "Original Action"). The Court held that there was no genuine issue of material fact as to whether Plaintiff's claims were barred by California's two-year statute of limitations. (Original Action, Docket No. 132). The order granting summary judgment in the Original Action is presently on appeal. *Hendrix v. Novartis Pharm. Corp.*, No. 13-56867 (9th Cir.).

Soon thereafter, Plaintiff filed the same claims in Maryland state court, seeking to take advantage of the three-year statute of limitations of § 2-101(b) of the Maryland Code of Courts and Judicial Proceedings. Defendant removed the case to the District of Maryland on February 6, 2014. (Docket No. 1). Defendant moved to transfer this

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case to the Central District of California on March 11, 2014. (Docket No. 8). In response to the motion to transfer venue, Plaintiff argued that transfer would be appropriate after the Maryland district court decided “pivotal issues of Maryland law including whether Plaintiff’s . . . Maryland Complaint is timely under [Maryland law] [and whether the Maryland statute of limitations] comports with the United States Constitution, the Maryland Constitution and the Md. Declaration of Rights.” (Docket No. 9, at 7).

The Maryland district court granted the motion to transfer venue, reasoning that “all of the factors set forth in Section 1404(a) support transfer of this action to the Central District of California.” (Docket No. 11, at 1). The Maryland district court further held as follows:

Maryland’s statutory scheme requires application of California statute because plaintiff as a California resident has no connections to Maryland. Md. Code, Cts & Jud. P. § 5-115(b). I have previously upheld the constitutionality of this statute. *See Helinski v. Appleton Papers*, 952 F. Supp. 2d 266, 274-75 (D. Md. 1997), *aff’d sub nom. Miller-Jackson v. Mead Corp.*, 139 F.3d 891 (4th Cir. 1998).

(*Id.*).

Following transfer, this Court denied Plaintiff’s request to stay this action pending resolution of the appeal in the Original Action, because the Maryland court had already determined that Plaintiff was ineligible to take advantage of Maryland’s relaxed statute of limitations. (Docket No. 39). Plaintiff did not attempt to argue that he was entitled to reconsideration of the Maryland court’s rulings (nor did any basis for reconsideration suggest itself). Rather, Plaintiff argued that the Maryland court had not actually decided the critical questions.

And so here. Plaintiff’s Opposition to the Motion raises the same arguments made in support of the motion to stay the action. Namely, Plaintiff argues that the Maryland savings statute violates the United States Constitution, the Maryland

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Constitution, and the Maryland Declaration of Rights because it favors Maryland residents over nonresidents. And he argues that the Maryland district court did not decide these questions because the issues were not necessary to the motion to transfer venue. As this Court has already ruled, the issues were relevant to the motion to transfer and, even if they had not been, the fact that the Maryland district court explicitly ruled on them makes those rulings the law of the case under applicable Ninth Circuit law. (*See* Docket No. 39, at 4).

Plaintiff faces two unfavorable prior orders that must be overturned in order to succeed: both the Maryland district court's order transferring the action to this Court and this Court's order denying the motion to stay. "[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 661 (9th Cir. 1999). Likewise, Local Rule 7-18 sets forth these same three narrow grounds as the only basis on which a motion for reconsideration should be granted. Plaintiff again has not even attempted to argue that these issues are appropriate for reconsideration under Local Rule 7-18, and the Court declines Plaintiff's invitation to reconsider the prior orders in this case.

Summary judgment is appropriate because Plaintiff's claims are time barred as a matter of law. This Court ruled in the Original Action that Plaintiff's claims are barred under California law, and the Maryland district court addressing the motion to transfer in this case has ruled that Plaintiff cannot take advantage of the Maryland statute of limitations. No legal issue remains to be decided on the statute of limitations and no genuine issue of material fact remains in light of the legal rulings. Accordingly, the Motion is **GRANTED**.

The Court **ORDERS** the Clerk to treat this Order, and its entry on the docket, as an entry of judgment. Local Rule 58-6.

IT IS SO ORDERED.