

**Cantor v Pfizer Inc.**

2010 NY Slip Op 30581(U)

March 18, 2010

Supreme Court, New York County

Docket Number: 114888/08

Judge: Martin Shulman

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3-29-10

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

MARTIN SHULMAN

PF J.S.C.

Index Number : 114888/2008

CANTOR, FRED R.

vs.

PFIZER INC

SEQUENCE NUMBER : 001

COMPEL DISCLOSURE

Th.

PART 1

INDEX NO. 114888/08

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

is motion to/for \_\_\_\_\_

Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits A-G

~~Notice of Cross-Motion~~

Answering Affidavits — Exhibits A-G

Replying Affidavits - exhibit A-Z

PAPERS NUMBERED	
1	_____
2	_____
3	_____

Cross-Motion:  Yes  No


Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

**FILED**

MAR 19 2010

NEW YORK COUNTY CLERK'S OFFICE

Dated: March 18, 2010



MARTIN SHULMAN J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Supreme Court of the State of New York  
County of New York: I.A.S. Part 1

-----X  
Fred R. Cantor,

Plaintiff,

-against-

Pfizer Inc.

Defendant.

**FILED**

Index No.: 114888/08

MAR 19 2010

NEW YORK  
COUNTY CLERK'S OFFICE

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Judge Martin Shulman:

In this personal injury action, Plaintiff Fred R. Cantor moves, pursuant to CPLR 3124, for an order compelling Defendant Pfizer Inc. ("Pfizer") to produce documents, supplement interrogatory responses, produce deposition witnesses<sup>1</sup>, provide a privilege log<sup>2</sup>, and to impose penalties, including costs and fees attendant to this motion. In addition to opposing Mr. Cantor's motion, Pfizer cross-moves, pursuant to CPLR §3103(a), for an order requiring Mr. Cantor to assume responsibility for further discovery production costs incurred by Pfizer.

This action arises from Mr. Cantor's medically prescribed use of Lipitor, the most widely used pharmaceutical treatment for lowering cholesterol. The potential adverse effects of taking Lipitor most commonly known to the public at large are liver dysfunction and skeletal muscle abnormalities. Mr. Cantor claims that during his roughly two year use of the minimum recommended dosage of the drug he suffered from a number of undisclosed adverse side effects, such as peripheral neuropathy, cognitive dysfunction and mood alteration (i.e., depression). Mr. Cantor commenced

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<sup>1</sup> The court is currently supervising and directing depositions.

<sup>2</sup> Pfizer has produced a privilege log.

this action seeking to hold Pfizer liable on the grounds that Lipitor is defectively designed, inadequately tested, unreasonably dangerous as marketed and lacks proper and adequate warnings as to the dangers associated with the adverse side effects of taking the drug.

After approximately 15 months of less than cooperative discovery, the parties still remain at odds as to the nature and scope, as well as sufficiency, of the documents thus far provided. Upon review of the parties' respective submissions, plaintiff's motion and Pfizer's cross-motion are granted in part and denied in part for the reasons set forth below.

As an initial matter, this court denies both parties' requests to impose upon the other the costs attendant to these motions and to be incurred in producing further documentary discovery. As to those portions of Mr. Cantor's motion to compel certain disclosure, as outlined below, Pfizer is to comply within 45 days of service of a copy of this order with notice of entry. Plaintiff is directed to effectuate such service by no later than 10 days after the entry of this order.

Accordingly, Pfizer is directed to either produce the following, or an affidavit setting forth the details of its search (i.e., who performed the search; what was searched; and when, where and how the search was performed), as well as Pfizer's document retention, expungement and destruction policy and practices, as to any documents it claims to be unable (except due to confidentiality or privilege concerns) to produce. Unless otherwise indicated, the document production is temporally limited to documents found for the period of time beginning from January 2005 and ending with April 2008, as follows:


1. Documents related to safety studies of Lipitor not provided by Pfizer to the FDA;
2. Documents related to Pfizer's internal analysis of studies as to the safety and effectiveness of Lipitor to the extent these concern such adverse side effects as those complained of by Mr. Cantor;
3. Documents related to actual, proposed or considered changes to the Lipitor label to include additional warning and/or information concerning such adverse side effects as those complained of by Mr. Cantor;
4. Chart(s) setting forth the principal corporate divisions and subdivisions of Pfizer **from January 2005 to the present**;
5. Documents by and/or between Pfizer and the FDA concerning the Lipitor label that relate to such adverse side effects as those complained of by Mr. Cantor, and/or referencing such communications;
6. Documents relating to Pfizer's public statement that Lipitor is as "safe as sugar";
7. Documents relating to promotional material concerning Lipitor which the FDA advised and/or directed Pfizer to either refrain from or cease disseminating;
8. Documents relating to investigations and/or determinations concerning such adverse side effects as those complained of by Mr. Cantor, arising from, or in connection with, legal proceedings or official inquiries commenced by the FDA or other United States governmental agencies as to the manufacture, marketing and sale of Lipitor in the United States;
9. Documents relating to Pfizer's marketing, advertising and educational materials filed with the FDA, as well as provided in the United States to physicians, sales representatives and consumers; and
10. Documents describing and/or setting forth the methodologies used by Pfizer to track/monitor Lipitor adverse event reports and/or complaints reported by healthcare providers concerning such adverse side effects as those complained of by Mr. Cantor.

The parties are strongly urged to comply in a prompt and appropriate manner so as to bring this unexpectedly protracted disclosure phase of the action to a much anticipated conclusion. In furtherance of assuring compliance with this order, the parties should note that failure to comply may result in an order of preclusion and/or sanction, the nature and scope of which will be determined either *sua sponte* or upon a showing of default by way of service upon this Part and the non-complying party of an affirmation of non-compliance.

Unless otherwise specifically addressed, all other requests have nonetheless been considered and are denied.

The foregoing constitutes this court's Decision and Order. Copies of this Decision and Order have been sent to counsel for the parties.

Dated: New York, New York  
March 18, 2010

  
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Hon. Martin Shulman, J.S.C.

**FILED**  
MAR 19 2010  
NEW YORK  
COUNTY CLERK'S OFFICE