

Egan v Telomerase Activation Sciences, Inc.

2014 NY Slip Op 31176(U)

April 30, 2014

Supreme Court, New York County

Docket Number: 652533/2012

Judge: Eileen Bransten

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART THREE

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BRIAN T. EGAN and ED MURRAY, individually and
on behalf of all others similarly situated,

Plaintiffs,

Index No. 652533/2012
Motion Date: 4/4/2014
Motion Seq. No.: 004

-against-

TELOMERASE ACTIVATION SCIENCES, INC., and
NOEL THOMAS PATTON,

Defendants.

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BRANSTEN, J.

In motion sequence number 004, Plaintiffs Brian T. Egan and Ed Murray move to certify a class in this putative class action. In addition, Plaintiffs seek to be appointed class representatives and to have the Blau Leonard Law Group, LLC named class counsel. Defendants Telomerase Activation Sciences, Inc. ("TA Sciences") and Noel Thomas Patton oppose. For the reasons that follow, Plaintiffs' motion is denied in its entirety.

I. Background

The instant litigation is a putative class action, asserting deceptive acts and practices in the marketing of TA-65, a treatment for aging. Plaintiffs purchased TA-65 and now bring deceptive practices claims on behalf of themselves and others against

Defendant TA Sciences, the company that produces TA-65, and its chairman, Defendant Patton.¹

Plaintiffs commenced this action on July 23, 2012, and Defendants TA Sciences and Patton interposed an Answer on October 3, 2012. In their Answer, Defendants asserted seven affirmative defenses. On October 21, 2013, the Court granted Defendants' motion to file an Amended Answer, adding a counterclaim against Plaintiff Egan for libel per se. *See* October 21, 2013 Decision and Order (Docket No. 64).

II. Analysis

To maintain an action as a class action, a plaintiff is required to seek an order certifying the class "within sixty days after the time to serve a responsive pleading has expired for all persons named as defendants" in the action. *See* CPLR 902. Failure to seek class certification within this sixty-day period mandates denial of the class certification motion with prejudice. *See Shah v. Wilco Sys., Inc.*, 27 A.D.3d 169, 173 (1st Dep't 2005) (denying untimely motion for class certification with prejudice since the filing deadline enumerated in CPLR 902 "is mandatory").

¹ The Complaint also asserted the same deceptive practices claims against Joseph Raffaele, M.D.; however, pursuant to a Stipulation of Discontinuance filed on December 10, 2012, the claims against Raffaele have been dismissed.

Plaintiffs filed the instant class certification on December 23, 2013, nearly a year and a half after the commencement of this action and fifteen months after the filing of Defendants' Answer. While the parties do not specify exactly when Plaintiffs served the Complaint on Defendants – and accordingly when Defendants' responsive pleadings were due – this motion is nonetheless clearly untimely under CPLR 902. Even assuming for the sake of argument that Defendants interposed their Answer on the day that the Complaint was served, Plaintiffs' filing of the instant motion nearly fifteen months later was plainly more than sixty days after the time Defendants' Answer was due. Plaintiffs have offered no justification for this late filing. Accordingly, Plaintiffs' motion for class certification is denied with prejudice, and their request to be appointed lead plaintiffs, with their attorney serving as class counsel, is likewise denied.

(Order follows on next page.)

III. Conclusion

Accordingly, it is

ORDERED that Plaintiffs Brian T. Egan and Ed Murray's motion for class certification, to appoint Plaintiffs as class representatives, and to appoint Blau Leonard Law Group, LLC as class counsel is denied.

ORDERED that counsel are directed to appear for a compliance conference in Room 442, 60 Centre Street, on June 10, 2014, at 10 AM.

Dated: New York, New York

April 30, 2014

ENTER:



Hon. Eileen Bransten, J.S.C.