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

In the Matter of the Application of

DR. JACQUELINE MOLINE,

Petitioner,

For an Order Pursuant to CPLR §§ 2304, 3103 and 3119(e) Quashing a New York Subpoena *Duces Tecum* and *Ad Testificandum* Served by

JOHNSON & JOHNSON; JOHNSON & JOHNSON HOLDCO (NA) INC.; JANSSEN PHARMACEUTICALS, INC.; KENVUE, INC.; and LLT MANAGEMENT,

Respondents.

Index No . _____

PETITION TO QUASH SUBPOENA AND FOR A PROTECTIVE ORDER

Petitioner Jacqueline Moline, M.D., MSc ("Dr. Moline"), by and through her undersigned counsel, hereby petitions this Court pursuant to CPLR §§ 3119, 2304, and 3103, to quash the subpoena (the "Subpoena") dated March 14, 2024, issued by Johnson & Johnson; Johnson & Johnson Holdco (NA) Inc.; Janssen Pharmaceuticals, Inc.; Kenvue, Inc.; and LLT Management (together, "J&J") in connection with the action pending in *Clark v. Johson & Johnson, et al.*, No. MID-L-3809-18AS (N.J. Super. Ct., Middlesex Cty.) (the "*Clark* Action"). In support of her petition, Dr. Moline alleges as follows:

1. This proceeding is brought pursuant to CPLR § 3119(e), which states that an application for a protective order or to enforce, quash, or modify a subpoena issued under CPLR § 3119 must be submitted to the court in the county in which discovery is to be conducted.

2. The Subpoena, which is attached as Exhibit 1 to the Affirmation of Kevin H. Marino filed in connection with this petition, was issued pursuant to CPLR § 3119. The Subpoena was served and seeks discovery from Dr. Moline in New York County.

3. As set forth more fully in Dr. Moline's accompanying memorandum of law, which is incorporated by reference herein, the Subpoena is the latest in a long series of attempts by J&J and other consumer-talc defendants to force Dr. Moline to breach her ethical and regulatory obligations by disclosing confidential data that would reveal the identities of individuals she studied when analyzing a causal link between mesothelioma and exposure to consumer talc-based products (the "Confidential Data").

4. The two studies at issue were approved by Dr. Moline's employer, Northwell Health, Inc. ("Northwell"), pursuant to strict standards that required her to anonymize the individuals she studied and store their protected health information, including their identities, in a secure database on Northwell's servers. Dr. Moline cannot obtain this data without Northwell's permission.

5. Disclosing the Confidential Data would not only harm Dr. Moline and Northwell by forcing them to breach their ethical obligations to safeguard the identity of the studies' subjects, but also would subject those cancer victims and their families to harassment from J&J and other consumer-talc defendants and deter researchers from conducting socially valuable medical research.

6. J&J has no need for this information that could justify this harm. The plaintiffs in the *Clark* Action have informed J&J that they are not relying on Dr. Moline as an expert in that case. To the extent any expert relies on her studies, J&J would be able to effectively cross-examine that expert by noting the studies' alleged limitations, just as defense counsel did in a trial shortly after the first of Dr. Moline's journal articles was published.

CLAIM FOR RELIEF

7. Petitioner repeats and realleges the allegations set forth in paragraphs 1-6 above as if fully set forth herein.

8. The Subpoena is improper and should be quashed under CPLR §§ 3119(e), 2304, and 3103 because it seeks information that is not in Dr. Moline's possession, custody, or control.

9. The Subpoena is improper and should be quashed under CPLR §§ 3119(e), 2304, and 3103 because it harasses and imposes an undue burden on third parties. More specifically, if the Subpoena were allowed, it would (i) harm Dr. Moline and her employer, Northwell, by forcing them to breach their ethical and regulatory obligations to safeguard the identities of the studies' subjects, (ii) subject those cancer victims and their families to harassment from J&J and other consumer-talc defendants, and (iii) deter researchers from conducting socially valuable medical research.

10. No prior application has been made for the relief now requested.

WHEREFORE, Petitioner respectfully requests that this Court:

(a) enter an order pursuant to CPLR §§ 3119, 2304, and 3103 quashing the Subpoena; and

(b) enter any further relief that the Court deems just and proper.

Dated: April 5, 2024

Respectfully submitted,

MARINO, TORTORELLA & BOYLE, P.C.

By: /s/ Kevin H. Marino

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