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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE: :
FOSAMAX PRODUCTS LIABILITY LITIGATION :
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Master File No.
06 MD 1789 (JFK)

ORDER

JOHN F. KEENAN, United States District Judge:

Before the Court is Merck's motion for the Court to enter a new Lone Pine order, this one targeted at nine plaintiffs who failed to submit sufficient paperwork to participate in the global settlement. The Plaintiff's Steering Committee does not oppose the motion. By Order dated August 19, 2014, this Court ordered counsel for the individual affected plaintiffs to respond to the motion by August 29, 2014. One Plaintiff does not oppose entry of the Lone Pine order. See Corbett v. Merck Sharp & Dohme Corp., No. 08 Civ. 4089, ECF No. 136. The other eight oppose entry of a Lone Pine order on substantially similar grounds. See Doyle v. Merck Sharp & Dohme Corp., No. 08 Civ. 4202, ECF No. 17; Hanke v. Merck Sharp & Dohme Corp., No. 13 Civ. 5915, ECF No. 27; Khan v. Merck Sharp & Dohme Corp., No. 09 Civ. 332, ECF No. 14; Minzner v. Merck Sharp & Dohme Corp., No. 08 Civ. 7109, ECF No. 10; Robinson v. Merck Sharp & Dohme Corp., No. 10 Civ. 6561, ECF No. 102; Sloan v. Merck Sharp & Dohme Corp., No. 07 Civ. 6182, ECF No. 17; Swolley v. Merck Sharp & Dohme Corp., No. 09 Civ. 9071, ECF No. 102; Williams v. Merck Sharp & Dohme Corp., No. 12 Civ. 9138, ECF No. 15. The eight

Plaintiffs opposing the Lone Pine order argue that such an order is inappropriate because their claims are not meritless and the order would burden them. Counsel for those eight Plaintiffs also seek to withdraw as counsel and to stay the individual actions for forty-five days to allow each Plaintiff time to retain new counsel.

For much the same reasons expressed in its July 31, 2014 Order, the Court agrees with Merck that a Lone Pine order is appropriate because such an order imposes only a minimal burden on the affected Plaintiffs and would ensure that only viable cases be remanded to their home districts. The motions to withdraw as counsel will be dealt with in separate orders.

Accordingly, it is hereby ORDERED, pursuant to Rules 16 and 26 of the Federal Rules of Civil Procedure, that the plaintiffs listed in Appendix I to this Order shall produce the following documents in accordance with the schedule set forth below:

1. Completed Plaintiff Profile Forms, records requested therein, and executed Authorizations for Release of Medical Records for each Plaintiff in MDL 1789 pursuant to CMO #3.
2. A Rule 26(a)(2) Expert Report, signed and sworn to by a qualified physician or other medical expert ("the expert") that includes the following:

- a. The name, professional address, and curriculum vitae of the expert, including a list of all publications authored by the expert within the preceding ten years;
- b. A list of the Plaintiff's medical records reviewed by the expert prior to the preparation of the Expert Report, as well as copies of any such records not posted on the website of MRC, the vendor that has collected various medical records in this litigation and made those records available to plaintiffs pursuant to the terms of paragraph 5 of CMO 13;
- c. The dates during which the Plaintiff used Fosamax and references to the evidence relied upon to determine such use (either the actual pages or the Bates stamped numbers);
- d. The name(s) of the physician(s) who prescribed Fosamax to the Plaintiff;
- e. Whether the expert believes to a reasonable degree of medical certainty that Fosamax caused Plaintiff's alleged injury, and if so, the factual and medical/scientific bases for that opinion; and
- f. The date, at least by month and year, when the expert believes to a reasonable degree of medical certainty the Plaintiff first developed the injury alleged to have been caused by Fosamax.

Plaintiffs shall produce these documents on or before November 17, 2014, unless a Plaintiff's action is stayed to allow that Plaintiff an opportunity to retain new counsel, in which case that Plaintiff shall produced these documents on or before January 5, 2015. Supervision of the above-described productions will be referred to Magistrate Judge Francis. The failure to comply with the terms of this Order within the time periods prescribed herein may result in the dismissal of the delinquent Plaintiffs' actions with prejudice, as set forth below:

1. For any Plaintiff who fails to comply with this Order in a timely and complete manner, Merck will notify the Plaintiff and the Court of the failure to comply.
2. The Plaintiff will then have 15 days to show cause why the Plaintiff's complaint should not be dismissed with prejudice.
3. If the Plaintiff fails to demonstrate sufficient cause for the failure to comply with this Order, the Plaintiff's complaint will be dismissed with prejudice.
4. If the Plaintiff demonstrates sufficient cause for the failure to comply with this Order, the Court will have discretion to determine the relief necessary for Plaintiff to comply reasonably with this Order.

This Order should be entered on the docket of 06 MD 1789 as well as on the dockets of the individual cases set forth in Appendix I. Merck should also mail a copy of this Order to all affected pro se Plaintiffs.

SO ORDERED.

Dated: New York, New York
September 17, 2014



John F. Keenan
United States District Judge

APPENDIX I

Case Number	Plaintiff Name
08-cv-4089	James Corbett, Personal Representative for Ivy Corbett
08-cv-4202	Susan Doyle
13-cv-5915	Doris Hanke
10-cv-6561	Lowell Howell, Personal Representative for Mildred Robinson
09-cv-332	Naheed Khan
08-cv-7109	Audrey Minzner
07-cv-6182	Susan Sloan
09-cv-9071	Robin Swolley
12-cv-9138	Claudette Williams