

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 COUNTY OF LOS ANGELES

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4  
5 Coordination Proceeding  
6 Special Title (Rule 3.550(c))  
7 *Vioxx*® Cases  
8 This Document Applies to All  
9 Individual VIOXX® Cases  
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11 } CASE NO. JCCP No. 4247  
12 } Assigned to the Honorable Victoria G. Chaney  
13 } -- Department 324  
14 }  
15 } ORDER REGARDING RULES AND  
16 } PROCEDURES RELATING TO ALL  
17 } CASES FILED OR TRANSFERRED ON OR  
18 } AFTER NOVEMBER 9, 2007  
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12 This Order applies to all plaintiffs represented by counsel who file personal injury  
13 claims directly in, or whose claims were transferred into, JCCP No. 4247 on or after November  
14 9, 2007 ("Post 11.09 Plaintiffs") and who receive notice of this Order. Counsel for Merck shall  
15 serve Notice of this Order by registered mail on any counsel who files a claim after November 9,  
16 2007 that is coordinated in JCCP No. 4247.  
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1 **I. PRESERVATION NOTICE REQUIREMENT**

2 A. Counsel shall be responsible for ensuring that all records in the possession of the  
3 plaintiffs' pharmacies and healthcare providers as described in paragraph (B)  
4 below have been preserved, collected and reviewed. Thirty days after receiving  
5 notice of this Order, counsel shall notify the individuals or entities listed below in  
6 Paragraph B, by registered mail, that they may have records relevant to the  
7 putative plaintiff's ("Plaintiff or Plaintiffs") claim ("Claim") in the In Re Vioxx®  
8 Litigation ("Litigation") and that any records relating to the Plaintiff must be  
9 preserved pursuant to Case Management Order No. 5 entered by this Court on  
10 December 14, 2003 (the "Notice"), pending collection by the Plaintiff.

11 B. The following individuals or entities must be notified pursuant to Paragraph 1  
12 above:

- 13 1. All Pharmacies that dispensed any medications to the Plaintiff for the  
14 period from January 1, 1995 to the present;
- 15 2. All Physicians, Medical Facilities, other Healthcare Providers and/or others  
16 persons ("other Providers") who Plaintiff claims provided any samples of  
17 Vioxx to the Plaintiff;
- 18 3. All Physicians, Medical Facilities and/or other Healthcare Providers who  
19 prescribed Vioxx for the Plaintiff;
- 20 4. All Physicians and/or other Healthcare Providers who treated Plaintiff for  
21 the period from January 1, 1995 to the present; and
- 22 5. If Plaintiff is seeking lost wages, all of his employers for the period from  
23 three years prior to the date for which he is seeking lost wages through the  
24 last day for which Plaintiff is seeking lost wages.

25 C. A copy of Case Management Order No. 5 shall be attached to the Notice and all  
26 copies of the Notice shall be preserved by Counsel for Plaintiff for so long as the  
27 claim remains pending in this Proceeding.

28 D. Within ten (10) days of filing a claim, Plaintiff shall serve a statement listing the  
names and addresses of all individuals or entities to which Notices were sent,  
along with copies of the Notices and a signed certification that the Notices were  
sent as required by this Order. Service by Plaintiffs shall be made in accordance  
with the service procedures of Case Management Order No. 3.

E. Plaintiffs who fail to fully comply with the requirements of this Order shall be  
given notice by e-mail or fax from Defendants' Liaison Counsel or his designee  
and shall be provided thirty (30) additional days to cure such deficiency ("Cure

1 Period"). No other extensions will be granted, except for good cause shown. If  
2 Plaintiff fails to cure the deficiency within the Cure Period, Defendant's Liaison  
3 Counsel shall file a Motion to Show Cause why the claim should not be dismissed  
4 with prejudice. Plaintiff shall thereupon have thirty (30) days to respond to the  
5 Notice to Show Cause. Any failure to respond to the Motion within the required  
6 period of time shall lead to the dismissal of the claim with prejudice, except for  
7 good cause shown.

8 F. Plaintiff may not seek to introduce into evidence at trial any document or  
9 information asserting that Vioxx was dispensed by a pharmacy or that Vioxx was  
10 provided to the Plaintiff as a sample if a Notice were not sent to the Plaintiff's  
11 pharmacy, physician, other healthcare provider and/or Other Provider as required  
12 by this Order, except upon leave of court for good cause shown. A Plaintiff who  
13 fails to comply with this Order may also be subject to other sanctions or orders.

## 14 **II. DISCOVERY REQUIREMENTS**

15 A. Within forty-five (45) days of filing his or her claim in this Litigation, all Post  
16 11.09 Plaintiffs who claim to have suffered an injury as a result of the use of  
17 Vioxx must produce the following information:

- 18 1. All pharmacy records regarding the dispensing of drugs to the Plaintiff for  
19 the period from January 1, 1995 to the present, along with a signed  
20 certification from the respective pharmacies indicating that the production  
21 is complete.
- 22 2. All medical records relating to the Plaintiff from all healthcare providers  
23 requested in the Amended and Supplemental Plaintiff Profile Form for the  
24 period from January 1, 1995 to the present, along with a signed certification  
25 from each Healthcare Provider who has records relating to the Plaintiff  
26 indicating that all records in the possession, custody or control of the  
27 Provider have been produced.
- 28 3. If any death is claimed, a statement to that effect along with a copy of the  
death certificate and autopsy report, if one was performed,
4. An Amended Plaintiff Profile Form (attached as Exhibit A), records  
requested therein, and executed Authorizations for Release of Records  
pursuant to Case Management Order No. 3. Service by Plaintiffs shall be  
made in accordance with the service procedures of Case Management  
Order No. 3.

- 1           5.     Answers to the Interrogatories set out in Exhibit B. Service by Plaintiffs  
2           shall be made in accordance with the service procedures of Case  
3           Management Order No. 3.
- 4           6.     An affidavit signed by the Plaintiff (i) attesting that records have been  
5           collected from all pharmacies that dispensed drugs to, or for, the plaintiff;  
6           (ii) attesting that all medical records described in paragraph (3) above have  
7           been collected; and (iii) attesting that all records collected pursuant to  
8           subparagraphs (1), (2) and (3) have been produced pursuant to the Order,  
9           along with an index or list identifying the source of the records. Service by  
10          Plaintiffs shall be made in accordance with the service procedures of Case  
11          Management Order No. 3.

12          B.     Within thirty (30) days of the filing of a new claim in this Litigation, the Court  
13          shall set a status conference at which time the Court shall set a prompt deadline  
14          for:

- 15           1.     A case-specific expert report from a medical expert attesting (i) that the  
16           Plaintiff suffered an injury and (ii) that Vioxx caused the injury. The case  
17           specific expert report must include (i) an explanation of the bases of the  
18           attestation that Vioxx caused the plaintiff to suffer the injury; (ii) an  
19           identification of any other causes that were considered in formulating the  
20           opinion; (iii) a description of the specific injuries allegedly suffered; (iv) a  
21           description of the specific medical findings that support the diagnosis of  
22           those injuries; and (v) an identification of all documents relied on by the  
23           expert in forming his opinions. Service by Plaintiffs shall be made in  
24           accordance with the service procedures of Case Management Order No. 3.

25          C.     If any of the documents described in subparagraphs A (1), (2) and (3) do not exist,  
26          the Plaintiff shall state that fact in his or her affidavit and the reason why they do  
27          not exist and provide a certified "No Records Statement" from the pharmacy or  
28          healthcare provider..

29          D.     Plaintiffs who fail to fully comply with the requirements of this Order shall be  
30          given notice by e-mail or fax from Defendants' Liaison Counsel or his designee  
31          and shall be provided thirty (30) additional days to cure such deficiency ("Cure  
32          Period"). No other extensions will be granted, except for good cause shown. If  
33          Plaintiff fails to cure the deficiency within the Cure Period, Defendant's Liaison  
34          Counsel shall file a Motion to Show Cause why the claim should not be dismissed  
35          with prejudice. Plaintiff shall thereupon have thirty (30) days to respond to the  
36          Notice to Show Cause. Any failure to respond to the Motion within the required  
37          period of time shall lead to the dismissal of the claim with prejudice.

### III. ATTORNEYS FEES FOR POST 11.09 PLAINTIFFS

1 This Court finds that:

2 A. The Status of the Litigation:

- 3 1. Prior to September 30, 2004, approximately 400 lawsuits had been filed  
4 against Merck & Co. by plaintiffs alleging various injuries from the use of  
5 Vioxx. In New Jersey, an Order had been entered on May 20, 2003  
6 establishing a coordinated proceeding for Vioxx litigants and, on  
7 September 30, 2002, an Order was entered in California for the same  
8 purpose.
- 9 2. On September 30, 2004, Merck withdrew Vioxx from the market. The  
10 withdrawal of Vioxx led to extensive publicity nationwide in newspapers  
11 and magazines, on television and radio, and across the Internet. While  
12 plaintiffs' counsel had extensively advertised seeking clients to pursue  
13 claims against Merck relating to the use of Vioxx before September 30,  
14 2004, that advertising increased markedly throughout the country after the  
15 withdrawal. Like the publicity relating to the withdrawal, the advertising  
16 apprised the public of possible claims they might have against Merck in  
17 connection with the use of Vioxx.
- 18 3. By December 31, 2004, three months after the withdrawal of Vioxx,  
19 approximately 923 lawsuits were on file, encompassing approximately  
20 3291 plaintiffs.
- 21 4. On September 30, 2002, the Judicial Council of California ruled that cases  
22 alleging injury from the use of Vioxx filed in California were to be  
23 transferred to one district court for coordination. The Council decided that  
24 the cases should be transferred to the Superior Court for the County of Los  
25 Angeles and, ultimately, the undersigned was appointed to conduct the  
26 consolidated and coordinated proceedings.
- 27 5. By the first year anniversary of the withdrawal of Vioxx, more than 8,900  
28 Vioxx lawsuits had been filed involving more than 18,500 plaintiffs. As of  
the date of this Order, there are more than 26,800 active Vioxx cases on file  
in various courts throughout the country, involving more than 47,500  
plaintiffs and an additional 13,000 claims on tolling agreements for a total  
of more than 60,500 claimants. By any measure, the scale of this litigation  
is large.
6. Discovery in this litigation has also been extensive. More than 54 million  
pages of documents and a terabyte of data have been produced by Merck  
pursuant to various requests from plaintiffs' counsel along with another 86  
million pages of data from Merck Profile Forms. More than 1,800  
depositions have also been taken in the litigation and depositions have

1 consumed more than 2,000 days and comprise more than 380,000 pages of  
2 testimony. Also, more than fifteen trials have been conducted, including  
3 two in California.

4 B. Pharmaceutical Tort Litigation and Contingent Fees.

- 5 1. It is the practice in the United States for lawyers bringing claims on behalf  
6 of clients in personal injury actions to be compensated pursuant to  
7 contingent fee agreements. That is, the lawyer's fee is contingent on the  
8 lawyer's success in the recovery of compensation from another party for his  
9 client.
- 10 2. In large-scale pharmaceutical tort litigation, it is particularly commonplace  
11 for lawyers representing plaintiffs to be compensated through contingent  
12 fees.
- 13 3. Large-scale pharmaceutical tort litigation (which can be similar to  
14 traditional mass tort litigation in scale) can be, and usually is,  
15 extraordinarily expensive, particularly in the early stages. It is well  
16 understood that proving cases in mass tort litigation, at least at first, is  
17 expensive. Experts of various kinds may be needed and discovery from the  
18 defendants may take a long time and much effort.
- 19 4. However, the cost and risk inherent in prosecuting the first series of claims  
20 in a large-scale pharmaceutical tort is not the same throughout the  
21 litigation.
- 22 5. Because of the extensive publicity and extensive advertising that followed  
23 the withdrawal of Vioxx, users of Vioxx (and their lawyers) have had  
24 ample notice of the possibility that they may have a claim against Merck in  
25 connection with their use of the drug. The uncertainty of the number of  
26 potential claims in a litigation of this magnitude makes the management of  
27 this proceeding exceedingly difficult both for the parties and the Court.

28 C. The Vioxx Litigation is an extremely mature litigation. To date, MDL and state  
court lawyers have tried 17 cases, taken over 1,800 depositions, more than 50  
million pages of documents have been produced plus an enormous volume of  
electronic data, and substantial Third Party discovery has occurred. Because of  
this extensive work done by the PSC and certain state court lawyers, the cost of  
litigation Vioxx claims has been substantially reduced.

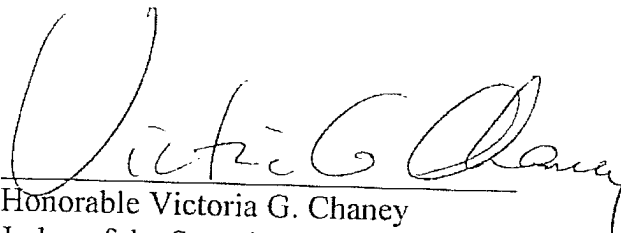
D. Given the extensive amount of discovery and trial preparation that has been  
undertaken and already achieved -- as well as the work on, and lessons learned  
from, bellwether trials conducted in this Court and others over the last several

1 years, counsel filing new claims can reasonably expect to expend much less time  
2 and resources prosecuting those cases than counsel who have been involved in  
3 those proceedings from the beginning, and I encourage counsel to consider such  
4 disparity in negotiating attorneys' fees.

4 **IV. PENALTIES FOR FRAUD AND DECEPTION**

5 Any Plaintiff (and his or her attorneys) who submits false or intentionally misleading  
6 information, or otherwise attempts to satisfy the documentation requirements of this Order  
7 through any form of deception, dishonesty or fraud shall be subject to appropriate sanctions  
8 (including monetary sanctions and costs) and dismissal with prejudice. Post 11.09 Plaintiffs  
9 who fail to fully comply with the requirements of this Order may be subject to sanctions and  
10 dismissal of their claims pursuant to California Code of Civil Procedure § 2023.  
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14 DATED: 11/9/07

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17 Honorable Victoria G. Chaney  
18 Judge of the Superior Court  
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