

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

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 IN RE: : MDL NO. 1789
 Fosamax Products Liability Litigation : 1:06-md-1789 (JFK)
 -----X
This Document Relates to: :
 ALL ACTIONS :
 -----X

(PROPOSED) CASE MANAGEMENT ORDER 22

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 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 within 60 days of the date of this Order. 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
4. Plaintiff's Complaint will be dismissed with prejudice.
5. 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
_____, 2014

JOHN F. KEENAN
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK