

FILED

March 17, 2026

HON. BRUCE J. KAPLAN, P.J.Cv.

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*Attorneys for Defendants Merck & Co., Inc.  
and Merck Sharp & Dohme LLC*

In Re: Fosamax® Litigation

APPLICABLE TO ALL CASES ON THE  
ATTACHED EXHIBIT A

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX  
COUNTY

MCL No. 282

MASTER DOCKET NO. MID-L-007153-14

**ORDER: DISMISSAL WITH  
PREJUDICE CASES LISTED IN  
EXHIBIT A.**

**THIS MATTER**, having come before the Court upon the motion of Defendants Merck & Co., Inc. and Merck Sharp & Dohme LLC (“Merck”), through their counsel, Fox Rothschild, LLP for an Order dismissing the complaints of the Plaintiffs identified in Exhibit A with prejudice for failure to comply with the Amended DCO and the Court having considered the moving papers, any opposition thereto, and the arguments of counsel, if any; and for good cause been shown:

**IT IS**, on this 16<sup>th</sup> day of March, 2026, hereby **ORDERED**:

- a. Merck’s motion to dismiss the cases in Exhibit A with prejudice is **GRANTED**.
- b. The claims of all plaintiffs listed on the attached Exhibit A are hereby dismissed with prejudice.

- c. Service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to R. 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the entry of the Order.

BY THE COURT:

*151 Bruce J. Kaplan*

The Honorable Bruce J. Kaplan, P.J.Cv.

UNOPPOSED

### **STATEMENT OF REASONS**

This Motion comes before the Court by way of Defendant Merck Sharp & Dohme Corp's Motion to Dismiss with Prejudice the cases attached<sup>1</sup> for failure to comply with Paragraph 3 of the Amended Docket Control Order (DCO), which required litigating Plaintiffs to serve documents and/or information on Merck including (a) an executed Plaintiff Profile Form along with production of required documents; (b) proof of use of Fosamax; (c) proof that their alleged injury can qualify as an atypical femur fracture; and, for Litigating Plaintiffs asserting injuries that occurred after January 31, 2011, (d) an explanation of their legal theory of proximate cause. See Amended DCO ¶3. The deadline by which the above information was required to be produced was January 30, 2026.<sup>2</sup>

On February 2, 2026 Defense Counsel distributed emails to the last known email addresses of counsel for Litigating Plaintiffs advising them of their noncompliance with the Amended DCO and requesting that they remedy their deficiencies within 14 days of the notice or their claims would be subject to a motion to dismiss pursuant to Paragraph 6 of the Amended DCO.<sup>3</sup> The Litigating Plaintiffs have not adhered to the directive to supply Merck with the information and/or documents required per Paragraph 3 of the Amended DCO within the prescribed fourteen (14) days to cure their deficiencies.

In light of the Litigating Plaintiffs' failure to comply with the Court's Orders and in light of the additional time provided to cure deficiencies, the Court shall be entering an Order dismissing the aforementioned cases with prejudice. The Court finds that despite notice and opportunity, the Litigating Plaintiffs in the cases listed have not provided the required documents and/or information or filed opposition.

Our Supreme Court has held that, "[t]he dismissal of a party's cause of action, with prejudice, is drastic and is generally not to be invoked except in those cases where the order for discovery goes to the very foundation of the cause of action ... or where refusal to comply is

<sup>1</sup> See Exhibit A

<sup>2</sup> See Amended DCO, ¶5

<sup>3</sup> See Amended DCO, ¶6 ("Before a motion to dismiss is filed, Merck shall notify the Litigating Plaintiff in writing of their failure to comply with Paragraphs 3 and 5, setting forth any alleged deficiencies, and provide 14 days for the Litigating Plaintiff to cure the deficiencies.")

deliberate and contumacious.” Schlosser, 111 N.J. Super. at 341 (citing Tsibikas v. Morrof, 5 Super. 306 (App. Div. 1949)).

The unfortunate reality is given the length of time of non-compliance, and the lack of any opposition, the Court finds there is no “lesser sanction” that can suffice to remedy the violations of this Court’s order. The original window for compliance with the Amended DCO has lapsed, as has the additional time to cure deficiencies, and no oppositions have been filed to the instant Motion to Dismiss the Cases.

As such, Defendant’s Motion to Dismiss with Prejudice is hereby granted with respect to each case enumerated on the Case List. This dismissal is effectuated in accordance with the clear terms of the Amended DCO, which explicitly afforded the Plaintiffs an opportunity to cure the deficiency within the designated timeframe, yet the Plaintiffs' failure to comply necessitates the dismissal of their claims. Motion granted.

# EXHIBIT A

**EXHIBIT A – ORDER FOR DISMISSAL WITH PREJUDICE****FAILURE TO SUBMIT INFORMATION UNDER DCO**

<b>Plaintiff</b>	<b>Case</b>	<b>Plaintiff Firm</b>	<b>Case No.</b>
Kao, Huei	Kao, Huei	Aylstock, Witkin, Kreis & Overholtz	L-7992-14
Maskiewicz, Evelyn	Maskiewicz, Evelyn	Aylstock, Witkin, Kreis & Overholtz	L-8383-14
Kicinski, Maria	Kicinski, Maria	Bern Ripka LLP	L-8100-14
Kolb, Barbara	Kolb, Barbara	Bern Ripka LLP	L-8265-14
Latham, Rosemary	Latham, Rosemary	Bern Ripka LLP	L-8062-14
Eddy, Linda	Eddy, Linda	Cory Watson	L-1160-15
Fiddie, Carolyn	Fiddie, Carolyn	Goza & Honnold, LLC	L-9381-14
Richmond, Eva	Richmond, Eva	Napoli Shkolnik LLP	L-7907-14
Ballowe, Lucille	Ballowe, Lucille	Oshman & Mirisola	L-7369-14
Davis, Linda Fay	Davis, Linda	Oshman & Mirisola	L-7367-14
Blyseth, Elinor	Blyseth, Elinor	Rheingold Valet	L-8048-14
Brock, Linda Anne	Brock, Linda	Rheingold Valet	L-7904-14
Ceo, Lucille	Ceo, Lucille	Rheingold Valet	L-6749-14
Hollinghurst, Takeko	Hollinghurst, Takeko	Rheingold Valet	L-7469-14
Lomas, Judith	Lomas, Judith	Seeger Weiss	L-6798-14
Waller, Ivo Dean	Harris, Judy (PR-Ivo Dean Waller Estate)	Seeger Weiss	L-9126-14
Reyes, Vicenta	Reyes, Vicenta	Weitz & Luxenberg	L-7305-14

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