FILED

December 10, 2025

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

IN RE: ZOSTAVAX® LITIGATION	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: MIDDLESEX COUNTY** **MCL NO.: 629** **CASE MANAGEMENT ORDER** **(Second Amended Docket Control Order)**

A. Applicability of Order

1. This Case Management Order "CMO" supersedes the Amended Docket Control Order and applies to all Plaintiffs alleging personal injury (and related) claims against Merck who have cases pending against Merck as of the date of this CMO and who have not provided to Merck either an executed Release or a Stipulation of Dismissal with Prejudice by the close of the Participation Period as defined herein ("Litigating Plaintiffs").

2. The "Participation Period" shall mean the period of time commencing with execution of the parties' Master Settlement Agreement and concluding on December 11, 2025.

3. Litigating Plaintiffs who represent themselves *pro se* shall be bound by the requirements of this CMO and shall fully comply with all obligations required of counsel by this CMO, unless otherwise stated.

B. Requirements to Produce Specified Information

4. Litigating Plaintiffs shall serve the following documents and/or information on Merck:

a. Plaintiff Fact Sheet ("PFS"): If not already completed, executed, and served, the Litigating Plaintiff must comply with all requirements of the PFS including but not limited to producing all medical records that document the Litigating Plaintiff's alleged Zostavax-related injury/injuries, and any pharmacy records evidencing vaccination with Zostavax.

b. Pharmacy Records: All pharmacy records regarding the dispensation of a prescription medication to the Litigating Plaintiff for the period from five (5) years prior to the date of Litigating Plaintiff's vaccination with Zostavax.

c. Medical Records: All medical records relating to the Litigating Plaintiff from health care providers for the period from five (5) years prior to the Litigating Plaintiff's vaccination with Zostavax. Any Litigating Plaintiff seeking recovery for a shingles-related injury[1] shall serve laboratory reports documenting that strain-identification testing detected vaccine-strain varicella zoster virus in a rash sample from the Litigating Plaintiff.

d. Record Collection Production: The Litigating Plaintiff and his/her counsel shall affirmatively collect and produce Pharmacy and Medical Records from all available sources in the Litigating Plaintiff's possession, custody or control, which includes but is not limited to any relevant Pharmacy and Medical records that can be collected from the Litigating Plaintiff's medical facilities, health care providers, and/or pharmacies that treated and/or dispensed drugs to, or for, the Litigating Plaintiff. A Litigating Plaintiff and his/her counsel shall not be in compliance with this CMO by producing only records in the Litigating Plaintiff's or his/her counsel's current possession, or by only producing authorizations to allow Merck to collect such records.

e. Affidavit: An affidavit, signed under oath, by the Litigating Plaintiff attesting to the following:

   i. The Litigating Plaintiff has complied with all requirements of this CMO.

   ii. Records have been collected from all pharmacies that dispensed drugs to, or for, the Litigating Plaintiff covered by Section B.4.b above.

   iii. All medical records described in Section B.4.c. above have been collected.

   iv. All records collected have been produced pursuant to this CMO; and

   v. If any of the documents or records described in Sections B.4.a., B.4.b., or B.4.c. do not exist, then the affidavit shall state that fact and the reasons, if known, why such materials do not exist, and shall attach a "No Records Statement" from the pharmacy, medical facilities, and/or other healthcare provider.

[1] Shingles-related injuries for the purposes of this Order are a) herpes zoster ("shingles"); b) herpes zoster oticus; c) Ramsay Hunt syndrome; d) herpes zoster opthalmicus; e) zoster sine herpete ("shingles without rash"); f) herpes zoster encephalitis; and/or g) herpes zoster meningitis. The aforementioned injuries include any sequalae that may flow from the injury, including, but not limited to, postherpetic neuralgia and allodynia.

f. Expert Reports: Expert reports in compliance with New Jersey Rule 4:17-4(e) as follows:

i. A Rule 4:17-4(e) expert report on general causation concerning the alleged injury/injuries.

ii. A Rule 4:17-4(e) case-specific expert report concerning the causation of the Litigating Plaintiff's alleged injury/injuries. The reports required by Sections B.4.f.i. and this B.4.f.ii. may be combined in a single report by a single expert.

iii. A Rule 4:17-4(e) expert report on the basis for liability concerning Merck - e.g., support for allegations that Merck's warning label(s) were inadequate, that Merck failed to adequately test and/or monitor the safety of Zostavax, that Merck negligently designed Zostavax, and/or that Merck marketed Zostavax in a manner that would serve as the basis for a claim against Merck.

g. Retention Agreements: Signed retention agreements between Litigating Plaintiffs' counsel and each expert who submits a report pursuant to Section B.f. above - which shall affirm the expert's intention to attend a deposition, Daubert hearing, and trial, if necessary. These retention agreements shall not be produced to Merck with the other requirements under Section B.

h. Affidavit: An affidavit signed by the Litigating Plaintiff attesting to the following:

i. The date the Litigating Plaintiff first learned his/her alleged injury/injuries may be related to Zostavax use.
ii. How the Litigating Plaintiff first learned his/her alleged injury/injuries may be related to Zostavax use.
iii. The date the Litigating Plaintiff first spoke to or corresponded with an attorney about potential litigation related to Zostavax use; and
iv. The date the Litigating Plaintiff first retained counsel for litigation related to Zostavax use.

In providing the affidavit required by this paragraph, nothing in this paragraph is intended to infringe or in any way compromise the attorney- client privilege, or require the production of documents that are protected from disclosure by the attorney client privilege, including, but not limited to attorney-client retainer agreements; as such, in the event that the information required to be included in

the affidavit required by this paragraph is protected under the attorney-client privilege, the assertion of that privilege must be set forth in the affidavit.

C. Deadline to Comply

5. The items required by Section B above shall be produced no later than 60 days after the conclusion of the Participation Period (i.e., by February 9, 2026), except that for a Litigating Plaintiff for whom new counsel enters an appearance, the items required by Section B above shall be produced no later than 90 days after the conclusion of the Participation Period (i.e., by March 11, 2026).

D. Failure to Comply

6. Should any Litigating Plaintiff fail to comply with the applicable deadline for compliance set forth in Section C above, or should Merck deem a Litigating Plaintiff's attempted compliance with this CMO as deficient, Merck shall file a motion to dismiss pursuant to 4:23-2(b)(1). Litigating Plaintiff, either through counsel or, if applicable, *pro se*, shall respond to the motion within fourteen (14) days. If no response is filed within 14 days, the Court shall dismiss the Litigating Plaintiff's case with prejudice. If a response is filed within 14 days, the Court shall rule on the motion after the completion of all briefing.

It is so **ORDERED.**

BY THE COURT:

/S/ Bruce J. Kaplan
HONORABLE BRUCE J. KAPLAN, P.J.Cv.