

FILED

January 26, 2024

HON. BRUCE J. KAPLAN, J.S.C.

IN RE: FOSAMAX® LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

MID-L-7153-14

CASE NO. 629

**CASE MANAGEMENT ORDER
JANUARY 16, 2024
CASE MANAGEMENT ORDER**

THIS MATTER, having come before the Court at a case management conference on January 16, 2024, and counsel for Plaintiffs and counsel for Defendants having been present, and for good cause having been shown;

IT IS on this 26th day of January 2024, ORDERED as follows:

1. STATUS OF PLAINTIFFS

Plaintiffs' counsel shall continue to identify for the Court and Defense counsel those Plaintiffs who are deceased and do not already appear on prior Case Management Order Exhibits. Plaintiffs' counsel shall continue in their efforts to determine the status of their clients and update defense counsel and the Court accordingly to effectuate substitution of an estate representative as the plaintiff or dismissal of the case. The most recent list of deceased Plaintiffs is attached to this Order as Exhibit A.

As required by this Court's prior orders, for those cases identified on Exhibit A, Plaintiff must file a motion pursuant to R. 4:34-1, dismissal, or amended complaint within sixty days of the date of this Order. For those cases identified on Exhibit A in which Plaintiffs have not filed a motion to dismiss, voluntary dismissal, or amended complaint, defense counsel may file a motion to dismiss these cases with prejudice. This deadline may be extended by the Court if plaintiff's counsel files a motion to extend and demonstrates good cause.

2. UNRESPONSIVE PLAINTIFFS

a. Plaintiffs identified on Exhibit B are determined to be unresponsive because counsel for these Plaintiffs have certified to this Court that they have used all reasonable efforts to communicate with their clients concerning the Generic Settlement over the most recent 180-day period but have been unable to communicate with their clients using the client's last known contact information. Parties who are unresponsive to their counsel ("Unresponsive Plaintiffs") cannot actively participate in their cases, pursue their claims, or respond to offers to resolve their claims, and thus unnecessarily burden the Court.

b. Counsel for the Unresponsive Plaintiffs shall serve on their clients within ten days of the date of this Order by personal carrier and certified mail or similar process a copy of the Notification of Opt-in / Opt-Out attached as Exhibit C to this Order using the client's last best and known contact information. Plaintiff's should detail the efforts they have made in attempting to obtain the best and last known address, including through the use of skip traces and private investigators, as well as any other means at Plaintiff's disposal. In so notifying their clients, Plaintiffs' counsel shall ensure their client is informed of: (i) the terms of the settlement; (ii) the time within which they must submit their decision to opt in or opt out; and (iii) the consequences of their decision.

c. Upon motion, this Court will dismiss without prejudice the cases of those Plaintiffs on Exhibit B who fail to return an executed Notification of Opt-in / Opt-Out within thirty days of receiving the Notification.

d. Thereafter, any Plaintiff on Exhibit B whose case was dismissed without prejudice may have their case reinstated by consent of all parties or by Order of this Court on motion for good cause. If any Plaintiff on Exhibit B whose case was dismissed without prejudice fails to have their case reinstated by April 15, 2024, counsel for Defendants may move to dismiss the case with prejudice.

3. MOTION PRACTICE

The Court hereby suspends its prior Order that required permission of the Court prior to engaging in motion practice. The Court will permit parties to file:

- (i) motions pursuant to R. 4:34-1 to substitute a plaintiff;
- (ii) motions to amend a complaint to replace plaintiff;
- (iii) motions to dismiss; and
- (iv) stipulations of dismissal. Notwithstanding the Court's suspension of its prior Order, counsel will alert the Court prior to filing one of the aforementioned motions by sending an email to the Court in advance of filing.

4. NEXT CASE MANAGEMENT CONFERENCE

The next Case Management Conference is scheduled for April 16, 2024, at 9:30 a.m. EST via zoom link provided by the court. A liaison counsel meeting is scheduled for April 16, 2024, at 9:00 a.m. EST via a zoom link provided by the court. An agenda for the Case Management Conference shall be submitted to the court 7 days before the liaison counsel meeting. At the April Case Management Conference, the Court will determine the frequency of subsequent Case Management Conferences. However, the parties may request the Court's further assistance with respect to enforcement of ongoing settlement obligations or enforcement of the Court's Order to Show Cause in paragraph 1.

/s/ Bruce J. Kaplan
HONORABLE BRUCE J. KAPLAN, J.S.C

Service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. If applicable, 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.

ORDER SUBMITTED UNDER 5 DAY RULE ON January 16, 2024 AND WITH NO OPPOSITION BEING FILED.

EXHIBIT A

Last Name	First Name	MID Docket Number	Plaintiff's Firm
Allah	Halimah	MID-L-008259-14	Levin Papantonio Rafferty
Bennett	Ruth	MID-L-008501-14	Levin Papantonio Rafferty
Britton	Alyce	MID-L-008279-14	Levin Papantonio Rafferty
San Vicente	Pearla	MID-L-008462-14	Levin Papantonio Rafferty
Tomlinson	Wilma	MID-L-008012-14	Levin Papantonio Rafferty
Wolfe	Elaine	MID-L-008264-14	Levin Papantonio Rafferty

EXHIBIT B

Last Name	First Name	MID Docket Number	Plaintiff's Firm
Beckwith	Betty and Robert	MID-L-006722-14	Levin Papantonio
Hill	Cheryl and Peter	MID-L-009665-14	Clayco Arnold
Price	Barbara	MID-L-007222-14	Anapol Schwartz
Rosenbrock	Eleanor and Larry	MID-L-006703-14	Anapol Schwartz

EXHIBIT C

NOTIFICATION OF OPT-IN / OPT-OUT

THIS NOTIFICATION OF OPT-IN / OPT-OUT ("Notification") is made and entered into by [insert plaintiffs' name].

I am a plaintiff in the *In re: Fosamax Litigation*, No. 282 currently pending in the Superior Court of New Jersey, Middlesex County. I received this document on _____, 2024. My attorney has notified me that I may elect to participate in a Master Settlement Agreement (the "Agreement") entered into by (i) Plaintiffs' Generic Liaison Counsel, (ii) Participating Generic Defendants, (iii) my Counsel, and (iv) other Participating Claimants. My attorney has also shared with me and I understand the principal terms of the Agreement and the definition of these terms.

By signing this Notification, I represent that:

I wish to participate in the Agreement and will, within ten days of signing this Notification, provide the necessary documents to my attorney to join the Agreement and otherwise cooperate in resolving my claim.

[Plaintiffs' Signature]

I do not wish to participate in the Agreement.

[Plaintiffs' Signature]

I understand that I must return this document to my attorney in thirty days, or my case may be dismissed.

IN WITNESS WHEREOF, I have executed this Notification effective as of the date set forth under my name below:

Date: _____

By _____