

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA**

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**IN RE: GARDASIL PRODUCTS  
LIABILITY LITIGATION**

**MDL No. 3036**

**THIS DOCUMENT RELATES TO ALL  
CASES**

**Civil Action No. 3:22-md-03036-KDB**

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**JOINT STATUS REPORT FOR JUNE 13, 2024 PRETRIAL CONFERENCE**

The parties jointly submit the following status report ahead of the Pretrial Conference scheduled on June 13, 2024, at 10:00 a.m.:

**I. JUNE PRETRIAL CONFERENCE**

The parties are meeting and conferring on a variety of issues and in light of the progress the parties have made as described below, the parties jointly request the June Pretrial Conference be cancelled.

**II. PLEADINGS**

**A. Merck's Federal Rule of Civil Procedure Rule 12 Motions**

On April 19, 2024, Plaintiffs filed a motion to limit the application of the Court's March 20, 2024 Order only to MDL Plaintiffs Bergin and America (D.E. 136). Pursuant to the Text-Only Order by the Court, Merck filed its response to Plaintiffs' motion on May 21, 2024 and any reply is due by June 5, 2024.

Merck filed a Federal Rule of Civil Procedure 12(b)(1) motion to dismiss for lack of subject matter jurisdiction in the Tessa Needham (Case No. 3:24-cv-00291), Shanie Roman (Case No. 3:24-cv-00278), and Angela Walker (Case No. 3:24-CV-00433) MDL matters

(D.E. 144). Pursuant to the Text-Only Order by the Court, responses to Merck's motion are due by June 17, 2024 and replies due by July 2, 2024.

Merck also filed a motion under Federal Rule of Civil Procedure 12(b)(1) and 12(c) in the Junious Nielsen (Case No. 3:23-cv-00729) matter (D.E. 141). While Merck's motion in the *Nielsen* case is specific to the facts in that case, there are certain, general concepts that could overlap with general concepts relating to the represented plaintiffs. As such, and pursuant to the Text-Only Order by the Court, responses to this motion are also due by June 17, 2024 and replies due by July 2, 2024.

### **III. DISCOVERY**

#### **A. Merck Depositions and Discovery**

On May 13, 2024, the Court entered an Order granting the Parties' joint request to extend the fact discovery deadlines and subsequent expert discovery and briefing deadlines in the Second Case Management Order (D.E. 140).

To date, seven Rule 30(b)(6) depositions related to Merck's pharmacovigilance processes and Gardasil clinical trials have occurred. A Rule 30(b)(6) deposition related to Merck's sales and marketing of Gardasil occurred on April 24, 2024.

To date, twelve Rule 30(b)(1) depositions of current and former Merck employees have occurred. Two additional depositions of current/former Merck employees are scheduled to occur in June. The parties are meeting and conferring about the scheduling of four additional requested Rule 30(b)(1) depositions of current and former Merck employees subject to the Second Case Management Order (D.E. 122). Merck witness depositions have been and will continue to be crossed-noticed in the individual California state court matters.

To date, Plaintiffs have requested at least 37 of the 42 additional Merck document sources

allotted pursuant to the parties' agreement in the Second Case Management Order (D.E. 122). Merck continues to object to two of those requested document sources, and the parties are in the process of meeting and conferring about those disputed sources. Merck has completed its document production of the 35 document sources that Plaintiffs have requested at this time except for the documents from those sources for which it is withdrawing privilege claims. As noted above, additional document sources may be requested by Plaintiffs in accordance with the Second Case Management Order.

The written discovery deadline was February 15, 2024. The MDL Plaintiffs served written discovery in the form of five sets of Requests for Productions, four sets of Interrogatories, and two sets of Requests for Admissions. The parties are meeting and conferring about certain of Merck's responses to various discovery requests.

**B. California Coordination**

There are currently seven Gardasil cases pending in California state court. The first California Gardasil trial, Jennifer Robi, is currently scheduled to begin on October 7, 2024. Merck filed a motion to continue the Robi trial date, which Robi has opposed. A hearing related to Merck's motion will occur on June 6, 2024.

**C. Plaintiffs' Third-Party Subpoenas**

Plaintiffs' counsel have served subpoenas on multiple third parties. Plaintiffs have served subpoenas *duces tecum* and for depositions on four authors of the Chao (2011) study, which is a publication of data from one of Merck's postmarketing commitment studies related to the FDA's approval of Gardasil. Two authors were subpoenaed in the MDL, and two different authors were subpoenaed in the Robi California state court matter. Plaintiffs have also served or informed Merck they intend to serve subpoenas *duces tecum* on the American Academy of Pediatrics and

UpToDate. The parties are meeting and conferring as to the scope of these third-party subpoenas.

Plaintiffs have withdrawn subpoenas *duces tecum* served or intended to be served on experts on behalf of the government in the VICP.

**D. Bellwether Case Updates**

Almost all depositions of bellwether Plaintiffs and, if applicable, their parents have occurred, and the parties are scheduling the depositions of the bellwether Plaintiffs' health care providers consistent with the Stipulation and Order Regarding Deposition Scheduling of and Contact with Plaintiffs' Treating Healthcare Providers in the Initial Bellwether Pool (D.E. 114).

On February 15, 2024, the written discovery deadline, Merck served on the bellwether plaintiffs one set of Requests for Productions, Interrogatories, and Requests for Admissions. Plaintiffs provided responses to the Requests for Admissions on April 19, 2024, and will provide responses to the Interrogatories and Requests for Productions through Plaintiffs' initial expert disclosures, on or before August 19, 2024. The parties agreed that Merck's additional case-specific discovery requests to the bellwether plaintiffs can be deferred to Phase III of the litigation (if applicable).

Merck has issued subpoenas *duces tecum* to multiple bellwether plaintiffs' parents. Certain bellwether plaintiffs' parents have produced documents in response to the subpoenas; others are preparing documents in response to Merck's subpoena. The parties are meeting and conferring about the scope of Merck's third-party subpoenas.

**E. Privilege Log**

As discussed at the last status conference, over several months, the parties met and conferred about Merck's privilege log. Plaintiffs challenged documents in groups as they made their way through the privilege log. For ease of reference, the parties divided the documents over

which Merck claims privilege in whole or in part into three categories. Following the May Status Conference, Merck conducted another review of the Category One documents. Following that re-review, Merck revised or downgraded its privilege assertion and thereafter submitted 100 Category One documents to the Court for *in camera* review. Because certain of the remaining documents covered email strings containing the same redactions, and because Merck withdrew a number of privilege claims, Merck and Plaintiffs agree that it would not be useful to submit more Category One documents for *in camera* review at this time.

Merck has re-reviewed the Category Two documents and has provided Plaintiffs with the results on June 4, 2024. There are 1,062 documents over which Merck is maintaining its original privilege designations. There are 681 documents for which Merck has reduced its privilege claim (*i.e.*, agreeing to produce a redacted version of a fully withheld document or producing a redacted version with less text redacted). Merck has withdrawn its claim of privilege in full from the remaining Category Two documents. Merck expects to produce next week the documents for which it has withdrawn or reduced its privilege claim. The Parties ask that Plaintiffs identify to Merck the 100 documents they want Merck to submit to the Court from Category Two by June 21, 2024 and that Merck provide copies of the documents to the Court by June 28, 2024.

With respect to Category Three, Merck provided Plaintiffs with the privilege log on Tuesday, June 4. There are 8,196 documents on the log. As Plaintiffs go through the log and submit challenges to Merck, Merck will review the challenges as it has done with the Category One and Category Two documents.

**F. Plaintiffs' Fact Sheet Productions**

Plaintiffs have produced Plaintiff Fact Sheets Part I, II, III, and IV, additional authorizations, and responsive documents in several cases. The parties will continue to meet and

confer about ESI production of materials Plaintiffs produced as part of PFS productions. Merck is reviewing the received PFSs and productions for deficiencies and will be meeting and conferring with Plaintiffs regarding Merck's observed deficiencies, if any. Plaintiffs continue to supplement and produce PFSs and documents on an ongoing basis as complaints are filed.

**G. Defendant Fact Sheets**

Merck has served several DFSs pursuant to the DFS Order and is continuing to serve and supplement DFSs. Plaintiffs are reviewing the received DFSs for deficiencies and are meeting and conferring with Merck regarding Plaintiffs' observed deficiencies.

Date: June 6, 2024

Respectfully submitted,

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