

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

**IN RE: GARDASIL PRODUCTS
LIABILITY LITIGATION**

MDL No. 3036

**THIS DOCUMENT RELATES TO ALL
CASES**

Civil Action No. 3:22-md-03036-RJC

JOINT STATUS REPORT FOR JANUARY 9, 2024 PRETRIAL CONFERENCE

The parties jointly submit the following status report ahead of the Pretrial Conference scheduled on January 9, 2024, at 11:00 a.m.:

I. PLEADINGS

A. Merck's Federal Rule of Civil Procedure 12 Motion

Pursuant to the Third Pretrial Order, Merck filed a Federal Rule of Civil Procedure 12(c) motion in the Bergin (W.D.N.C.) and America (N.D.N.Y.) cases on February 7, 2023 (D.E. 67, 68). Pursuant to the parties' agreement and the Court's text-only Order, Plaintiffs filed their response on March 9, 2023, and Merck's reply was filed on March 23, 2023.

II. DISCOVERY

A. Joint Request for Extension of Discovery Deadlines and for Discovery Limits

The parties met and conferred and jointly submitted a proposed Order to the Court regarding an extension of discovery deadlines and for discovery limits (D.E. 117). The proposed Order was also submitted via CyberClerk. The parties respectfully request that the Court enter this Order. Should the Court wish to discuss the proposed Order, the parties will be prepared to do so at the January MDL Conference.

B. Plaintiffs' Motion to Compel

On March 20, 2023, the Court entered its Order related to Plaintiffs' Motion to Compel. Since the Court's Order was entered, the parties have met and conferred regarding a range of issues. The parties have reached agreement on a second production in "Report Format" of information ("Second Report Format Production") for every reported Gardasil and Gardasil 9 adverse event in its Merck Adverse Event Reporting and Review System ("MARRS") database as of the date of the First Report Format Production. The parties' agreement, absent technical issues, would resolve any outstanding disputes related to the Court's Order regarding the MARRS database. Merck expects to make this production in early January 2024. In addition to the information previously provided to Plaintiffs in March and May 2023, Merck served amended responses to Plaintiffs' Interrogatories 36 and 87. The parties will be prepared to update the Court at the January MDL Conference.

C. Merck Depositions and Discovery

The parties have completed Rule 30(b)(6) depositions related to Merck's pharmacovigilance processes and Gardasil clinical trials. Seven Merck Rule 30(b)(6) deponents were deposed on September 12, 13, 15, 21, and 22, and November 9 and 30, 2023. One Merck Rule 30(b)(1) deposition occurred on October 27 and continued to completion on December 7.

The parties intend to meet and confer about Plaintiffs' Sales & Marketing Rule 30(b)(6) Notice, which was recently served on December 15. Additional Merck Rule 30(b)(1) witnesses are scheduled to be deposed on January 26, February 15, February 20, and March 8, 2024. The parties are meeting and conferring about the scheduling of additional Rule 30(b)(1) depositions of current and former Merck employees subject to the parties' agreement in the Proposed Order Regarding Discovery and Amended Phase I and II Schedule (D.E. 117-1). Merck witness

depositions have been and will continue to be crossed-noticed in the individual California state court matters.

To date, Plaintiffs have requested 37 of the 42 additional Merck document sources allotted pursuant to the parties' agreement in the Proposed Order Regarding Discovery and Amended Phase I and II Schedule (D.E. 117-1). Merck continues to object to three of those requested document sources, and the parties are in the process of meeting and conferring about those disputed sources. Merck has produced and is continuing to produce documents from the various agreed document sources on a rolling basis pursuant to the parties' agreement in the Proposed Order Regarding Discovery and Amended Phase I and II Schedule (D.E. 117-1).

. On December 22, the MDL Plaintiffs served written discovery in the form of two sets of Requests for Productions and a set of Interrogatories. Merck's response is currently due on January 22, 2024.

D. California Coordination

As agreed and reported in the October 2023 Joint Status Report (D.E. 113) and the Proposed Order Regarding Discovery and Amended Phase I and II Schedule (D.E. 117-1), Merck and Plaintiffs' counsel for the cases pending in California have agreed in principle to submit an agreed stipulation in each of the California Gardasil cases requesting an approximately 120-day continuance on the trial dates and respective pretrial deadlines in those matters. On December 19, 2023, Merck sent Plaintiffs' counsel a draft stipulation for submission and awaits Plaintiffs' approval.

Additionally, on December 1, 2023, Plaintiffs served a meet and confer letter regarding Merck's October 2022 discovery responses in various California matters. Because the discovery requests at issue in Plaintiffs' letter addressed overlapping generic Merck discovery issues that, in

the interest of coordination, should be addressed once and in the MDL, the parties have agreed to deem the disputed discovery requests set forth in Plaintiffs' letter served in the MDL. Merck agreed to assess and, where appropriate, serve amended responses in the MDL by February 13, 2024. Should any disputes remain after meeting and conferring, those will be briefed in the MDL in the interest of coordination.

E. Bellwether Case Updates

Many depositions of bellwether Plaintiffs and their parents have occurred, and the parties are conferring on scheduling additional depositions for other bellwether Plaintiffs and their parents.

The parties are also conferring about certain bellwether Plaintiffs' and their parents' counsel's objections to and instructions not to answer questions regarding family medical history, including plaintiffs' family members' diagnoses of mental health conditions, during their depositions. If the parties are unable to reach agreement, the parties will be prepared to present the dispute at the January MDL Conference.

Additionally, the parties are meeting and conferring about certain bellwether Plaintiffs' Plaintiff Fact Sheets, which based on their deposition testimony Merck believes require amendment, supplemental production, and/or potential further relief.

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.

The parties are in the process of scheduling the depositions of the bellwether plaintiffs' vaccinating healthcare providers in the cases where the bellwether plaintiffs' depositions are

complete.

F. Privilege Log

The parties continue to meet and confer about Merck's privilege log. Plaintiffs have identified documents they assert have been improperly withheld or redacted. In response, Merck re-reviewed those documents and submitted its response and supplemental production.

G. Plaintiffs' Fact Sheets 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.

H. 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: January 2, 2024

Respectfully submitted,

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