

C/M

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

|                               |   |                       |
|-------------------------------|---|-----------------------|
| -----                         | X |                       |
|                               | : |                       |
| IN RE: PROPECIA (FINASTERIDE) | : |                       |
| PRODUCTS LIABILITY LITIGATION | : | 12-md-2331 (BMC) (PK) |
|                               | : |                       |
|                               | : |                       |
| -----                         | X |                       |

|                                     |   |                       |
|-------------------------------------|---|-----------------------|
|                                     | : |                       |
| JOHN POTENZANO,                     | : |                       |
|                                     | : |                       |
| Plaintiff,                          | : | 15-cv-2004 (BMC) (PK) |
|                                     | : |                       |
| - against -                         | : |                       |
|                                     | : |                       |
| MERCK & CO., INC. and MERCK SHARP & | : |                       |
| DOHME CORP.,                        | : |                       |
|                                     | : |                       |
|                                     | : |                       |
| Defendants.                         | : |                       |
| -----                               | X |                       |

|                                     |   |                       |
|-------------------------------------|---|-----------------------|
|                                     | : |                       |
| LARRY M. ROWLAND, JR.,              | : |                       |
|                                     | : |                       |
| Plaintiff,                          | : |                       |
|                                     | : |                       |
| - against -                         | : | 13-cv-1251 (BMC) (PK) |
|                                     | : |                       |
|                                     | : |                       |
| MERCK & CO., INC. and MERCK SHARP & | : |                       |
| DOHME CORP.,                        | : |                       |
|                                     | : |                       |
|                                     | : |                       |
| Defendants.                         | : |                       |
| -----                               | X |                       |

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|---|---|--|
|   | : |  |
| <b>This document relates to the cases set forth</b> | : |  |
| <b>in Exhibit A attached hereto and the five</b>    | : |  |
| <b>cases described below</b>                        | : |  |
| -----   | X |  |

**ORDER**

COGAN, District Judge.

On May 9, 2017, the Court issued PPO 16. That Order directed the Plaintiffs' Executive Committee in this consolidated litigation to review the plaintiffs' experts' opinions on general causation for the claims, and to review what evidence the experts deemed necessary to establish facts consistent with their proffered opinions (that is to say, what facts a hypothetical plaintiff would have to prove to prevail against defendants). The Order then directed counsel for each plaintiff to review the experts' opinions and to inform their clients whether their factual claims fit within the experts' stated theory – *i.e.*, whether those clients were likely to have a viable claim in this litigation. PPO 16 then stated:

The Court will entertain Rule 41(a) Motions to Dismiss and/or Motions to Withdraw as Counsel up and through August 7, 2017. In the event Counsel for any individual Plaintiff files a Motion to Withdraw as Counsel, a copy of this PPO shall be sent to the Plaintiff for his review.

12-md-02331-BMC-PK, ECF 366, at 1.

Accordingly, pursuant to Practice and Procedure Order No. 16 (“PPO 16”), the cases listed in the attached Exhibit A are hereby dismissed.

However, the following three cases are not dismissed:

- **13-cv-4194, Jensen:** Plaintiff Jensen’s counsel never moved to withdraw, so dismissal for failure to prosecute pursuant to PPO 16 would be improper.
- **15-cv-2098, Tyler:** As the Court stated in its order dated November 8, 2017, Tyler has already told the Court that he intends to proceed *pro se*, and therefore this case should not be dismissed for failure to prosecute.
- **14-cv-2482, Wall:** In a letter to the Court dated December 12, 2017, plaintiff appears to state that he intends to proceed *pro se* until he finds alternate counsel. Although plaintiff’s letter was untimely under PPO 16, the Court concludes that his case should not be dismissed for failure to prosecute because he submitted the letter notifying the Court before the Court had dismissed his case.

In addition, for the reasons described below, the following two plaintiffs, **John Potenzano** and **Larry M. Rowland, Jr.**, are granted a 20-day extension from the date of this order to either (1) inform the Court whether they intend to proceed *pro se*, or (2) to have new counsel enter an appearance on the record for them. If the following plaintiffs fail to do either of those two things within 20 days of the date of this order, their cases will be dismissed.

The reasons for this extension of time are as follows:

- **15-cv-2004, Potenzano**

Plaintiff Potenzano, who is currently *pro se*, was represented by John Fletcher Romano of the Romano Law Group, when plaintiff initiated this action. Mr. Romano continued to represent plaintiff until this Court granted his motion to withdraw on August 30, 2017.

Plaintiff's former counsel moved to withdraw on August 8, 2017, a day after the deadline in PPO 16. In his motion to withdraw, counsel stated that he would provide plaintiff with a copy of PPO 16, but he never submitted proof that he actually sent it, as required by PPO 16. Plaintiff Potenzano is therefore granted 20 days to advise the Court of his intentions.

- **13-cv-1251, Rowland**

Plaintiff Rowland, who is currently *pro se*, was represented by Catherine Theodora Heacox, David Kuttles, and Richard D. Meadow of The Lanier Law Firm, and Randi Alyson Kassan of Sanders Viener Grossman, LLP, when plaintiff initiated this action. Those attorneys continued to represent plaintiff until this Court granted their motion to withdraw.

Plaintiff's former counsel moved to withdraw on September 21, 2017, well after the August 7, 2017 deadline called for in PPO 16.<sup>1</sup> This Court granted their motion to

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<sup>1</sup> In the affidavit attached to the motion to withdraw, one counsel stated that they "would have withdrawn from representation at an earlier date had Plaintiff cooperated with counsel and signed the agreement to dismiss his case."

withdraw on September 25, 2017 (as modified on September 29, 2017 to terminate all four counsel). On October 3, 2017, counsel certified that plaintiff was mailed a copy of PPO 16 on September 26, 2017.

Although plaintiff's counsel provided plaintiff with a copy of PPO 16, it was sent so far after the deadline that even if plaintiff received it the day after it was mailed, plaintiff would have had only 10 days to find new counsel or inform the Court of his intention to appear *pro se*. Given that PPO 16 stated that plaintiff's counsel could withdraw up and through August 7, 2017, plaintiff may have reasonably been confused about whether PPO 16 applied to him at all. He is therefore granted 20 days to advise the Court of his intentions.

**SO ORDERED.**

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U.S.D.J.

Dated: Brooklyn, New York  
January 8, 2018

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The Court notes that this is not an excuse for a late motion to withdraw; counsel did not need their client to voluntarily agree to dismiss the case for them to file the motion (if their client had, this order would be unnecessary).

## EXHIBIT A

| No. | Case Name                | Case Number          | Withdrawing Counsel                               |
|-----|--------------------------|----------------------|---|
| 1   | Antonoff, Brian D.       | 1:15-cv-01969-BMC-PK | Johnson Becker PLLC                               |
| 2   | Ashcroft, David          | 1:15-cv-01970-BMC-PK | Johnson Becker PLLC                               |
| 3   | Banuelos, Anthony        | 1:13-cv-03281-BMC-PK | Johnson Becker PLLC                               |
| 4   | Battersby, Kevin         | 1:15-cv-02667-BMC-PK | Johnson Becker PLLC                               |
| 5   | Beal, Gary               | 1:13-cv-03968-BMC-PK | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. |
| 6   | Bland, Alan J.           | 1:13-cv-01911-BMC-PK | Johnson Becker PLLC                               |
| 7   | Blount, Lennon           | 1:14-cv-03647-BMC-PK | Davis & Crump                                     |
| 8   | Botti, John              | 1:13-cv-00217-BMC-PK | Johnson Becker PLLC                               |
| 9   | Bouchard, Wilfred A.     | 1:15-cv-01669-BMC-PK | Johnson Becker PLLC                               |
| 10  | Boza, Ever               | 1:13-cv-01098-BMC-PK | Johnson Becker PLLC                               |
| 11  | Brennan, Sean            | 1:13-cv-03895-BMC-PK | Simmons Hanly Conroy LLC                          |
| 12  | Burkhart, Cory           | 1:15-cv-01974-BMC-PK | Johnson Becker PLLC                               |
| 13  | Carratura, Ian           | 1:15-cv-07213-BMC-PK | Simmons Hanly Conroy LLC                          |
| 14  | Cassano, Charles F.      | 1:15-cv-01978-BMC-PK | Romano Law Group                                  |
| 15  | Cavalleo, Ralph          | 1:13-cv-03979-BMC-PK | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. |
| 16  | Cherkaoui, Ali           | 1:12-cv-04417-BMC-PK | Johnson Becker PLLC                               |
| 17  | Clann, Herbert           | 1:13-cv-02375-BMC-PK | Locks Law Firm                                    |
| 18  | Cook, Aaron              | 1:15-cv-01976-BMC-PK | Johnson Becker PLLC                               |
| 19  | Crooks, Jeffrey          | 1:15-cv-02026-BMC-PK | Johnson Becker PLLC                               |
| 20  | Cruz, Cesar A.           | 1:14-cv-05315-BMC-PK | Johnson Becker PLLC                               |
| 21  | D'Ambrosio, Mark         | 1:12-cv-05459-BMC-PK | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. |
| 22  | Davis, Eric              | 1:13-cv03901-BMC-PK  | Simmons Hanly Conroy LLC                          |
| 23  | DeCosta, Todd R.         | 1:13-cv-01802-BMC-PK | Johnson Becker PLLC                               |
| 24  | Della Corte, Jerry P.    | 1:14-cv-06066-BMC-PK | Cellino & Barnes                                  |
| 25  | Dennis, Mark             | 1:13-cv-01388-BMC-PK | Simmons Hanly Conroy LLC                          |
| 26  | Deubel, Alfred           | 1:13-cv-02143-BMC-PK | Romano Law Group                                  |
| 27  | Dienst, Bruce A.         | 1:15-cv-01981-BMC-PK | Romano Law Group                                  |
| 28  | Dunlap, Larry            | 1:13-cv-02144-BMC-PK | Romano Law Group                                  |
| 29  | Eble, Bernard            | 1:14-cv-03051-BMC-PK | Davis & Crump                                     |
| 30  | Eichstedt, Glenn Maurice | 1:13-cv-02021-BMC-PK | Fulmer Sill                                       |
| 31  | El-Amin, Karim           | 1:13-cv-04928-BMC-PK | Johnson Becker PLLC                               |
| 32  | Elbert, Gene             | 1:13-cv-01651-BMC-PK | LaszloLaw   |
| 33  | Emerson, Steven          | 1:13-cv-02023-BMC-PK | Johnson Becker PLLC                               |
| 34  | Ericson, Daniel          | 1:13-cv-01811-BMC-PK | Johnson Becker PLLC                               |
| 35  | Evans, Christopher A.    | 1:13-cv-01102-BMC-PK | Johnson Becker PLLC                               |

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|----|-------------------------|-----------------------|---|
| 36 | Fairfield, John         | 1:13-cv-03985-BMC-PK  | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A.   |
| 37 | Falley, George          | 1:13-cv-04315-BMC-PK  | Simmons Hanly Conroy LLC                            |
| 38 | Fergus, Rodney          | 1:13-cv-03267-BMC-PK  | Davis & Crump                                       |
| 39 | Fisher, Brian J.        | 1:14-cv-03104-BMC-PK  | Johnson Becker PLLC                                 |
| 40 | Flaherty, John          | 1:14-cv-02135-BMC-PK  | Johnson Becker PLLC                                 |
| 41 | Fox, Adam               | 1:15-cv-05023-BMC-PK  | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A.   |
| 42 | Freeze, Paul D.         | 1:14-cv-02076-BMC-PK  | Johnson Becker PLLC                                 |
| 43 | Ganote, Jeffrey P.      | 1:13-cv-02041-BMC-PK  | Johnson Becker PLLC                                 |
| 44 | Garduno, Robert J.      | 1:12-cv-03905-BMC-PK  | Johnson Becker PLLC                                 |
| 45 | Goldner, Maurice        | 1:13-cv-03906-BMC-PK  | Johnson Becker PLLC                                 |
| 46 | Goodroe, Charles        | 1:15-cv-05149-BMC-PK  | Davis & Crump                                       |
| 47 | Grahn, Loren            | 1:12-cv-06096-BMC-PK  | LaszloLaw   |
| 48 | Greenstein, Victor      | 1:14-cv-02138-BMC-PK  | Johnson Becker PLLC                                 |
| 49 | Hale, Christopher D.    | 1:13-cv-01992-BMC-PK  | Johnson Becker PLLC                                 |
| 50 | Handy, Anthony S.       | 1:14-cv-02077-BMC-PK  | Johnson Becker PLLC                                 |
| 51 | Hardy, Merle            | 1:13-cv-02376-BMC-PK  | Locks Law Firm                                      |
| 52 | Hawley, Scott R.        | 1:13-cv-02044-BMC-PK  | Johnson Becker PLLC                                 |
| 53 | Heinen, David           | 1:14-cv-02078-BMC-PK  | Johnson Becker PLLC                                 |
| 54 | Hermann, Ronald E. II   | 1:13-cv-01823-BMC-PK  | Johnson Becker PLLC                                 |
| 55 | Hernandez, Antonio      | 1:13-cv-02022-BMC-PK  | Johnson Becker PLLC                                 |
| 56 | Hoekstra, Robert        | 1:15-cv-02143-BMC-PK  | Johnson Becker PLLC                                 |
| 57 | Horowitz, Lee           | 1:16-cv-02167-BMC-PK  | The Oliver Law Group P.C.                           |
| 58 | Hovart, Miljenko        | 1:15-cv-01991-BMC-PK  | Romano Law Group                                    |
| 59 | Hyman, Kevin P.         | 1:13-cv-00562-BMC-PK  | Johnson Becker PLLC                                 |
| 60 | Johnson, Devon          | 1:15-cv-01618-BMC-PK  | Simmons Hanly Conroy LLC                            |
| 61 | Juliano, Christopher J. | 1:15-cv-01993-BMC-PK  | Romano Law Group                                    |
| 62 | Kailholz, John          | 1:13-cv-01788-BMC-PK  | Johnson Becker PLLC                                 |
| 63 | King, Curtis            | 1:13-cv-00106-BMC-PK  | LaszloLaw   |
| 64 | Kushner, Brian          | 1:13-cv-02027-BMC-PK  | Johnson Becker PLLC                                 |
| 65 | Langdon, John           | 1:13-cv-02382-BMC-PK  | Locks Law Firm                                      |
| 66 | Legott, Mark E.         | 1:12-cv-06091-BMC-PK  | Simmons Hanly Conroy LLC                            |
| 67 | Lewis, Matthew          | 1:13-cv-01926-BMC-PK  | Johnson Becker PLLC                                 |
| 68 | Lutz, Bill              | 1:15-cv-02066-BMC-PK  | Sanders Viener Grossman, L.L.P.<br>Grossman, L.L.P. |
| 69 | Maher, Phil             | 1:14-cv-02229- BMC-PK | Simmons Hanly Conroy LLC                            |
| 70 | Malveto, Anthony        | 1:13-cv-00544-BMC-PK  | Simmons Hanly Conroy LLC                            |
| 71 | Manikis, Nick           | 1:15-cv-02099-BMC-PK  | Johnson Becker PLLC                                 |
| 72 | Markakis, James         | 1:13-cv-02999-BMC-PK  | Johnson Becker PLLC                                 |
| 73 | Mascal, Matthew         | 1:13-cv-04886-BMC-PK  | Morelli Law Firm                                    |
| 74 | Massimo, Dennis J.      | 1:13-cv-01909-BMC-PK  | Johnson Becker PLLC                                 |
| 75 | Maszka, Douglas         | 1:13-cv-03922-BMC-PK  | Johnson Becker PLLC                                 |

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| 76  | Matonte, Daniel             | 1:13-cv-04318-BMC-PK | Simmons Hanly Conroy LLC                          |
| 77  | Mawani, Fayaz               | 1:13-cv-01700-BMC-PK | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. |
| 78  | McCartney, Kieran           | 1:13-cv-03924-BMC-PK | Johnson Becker PLLC                               |
| 79  | McCatty, Steven             | 1:13-cv-01800-BMC-PK | Johnson Becker PLLC                               |
| 80  | McDonald, Timothy           | 1:13-cv-03988-BMC-PK | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. |
| 81  | Meehan, Daniel              | 1:13-cv-03989-BMC-PK | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. |
| 82  | Mendez, David J.            | 1:14-cv-02080-BMC-PK | Johnson Becker PLLC                               |
| 83  | Mistrot, Mark               | 1:13-cv-00575-BMC-PK | Simmons Hanly Conroy LLC                          |
| 84  | Norton, Paul A.             | 1:13-cv-07413-BMC-PK | Johnson Becker PLLC                               |
| 85  | Palmeri, Richard P.         | 1:14-cv-07584-BMC-PK | Johnson Becker PLLC                               |
| 86  | Patel, Nayan                | 1:13-cv-01989-BMC-PK | Johnson Becker PLLC                               |
| 87  | Poureshmentalemy,<br>Ramine | 1:13-cv-01920-BMC-PK | Johnson Becker PLLC                               |
| 88  | Powell, Michael             | 1:13-cv-03931-BMC-PK | Simmons Hanly Conroy LLC                          |
| 89  | Roe, Randolph W.            | 1:13-cv-02042-BMC-PK | Johnson Becker PLLC                               |
| 90  | Rossello, Steve             | 1:12-cv-01871-BMC-PK | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. |
| 91  | Sanders, William<br>Shawn   | 1:13-cv-03970-BMC-PK | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. |
| 92  | Schaal, Jason K.            | 1:15-cv-01661-BMC-PK | Johnson Becker PLLC                               |
| 93  | Scheid, Kevin L.            | 1:13-cv-02393-BMC-PK | Locks Law Firm                                    |
| 94  | Schwechter, Brian           | 1:16-cv-01574-BMC-PK | Romano Law Group                                  |
| 95  | Seim, Marc                  | 1:14-cv-02646-BMC-PK | Morelli Law Firm                                  |
| 96  | Semenchuk, George           | 1:13-cv-03998-BMC-PK | Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. |
| 97  | Senzamici, Paul II          | 1:15-cv-01604-BMC-PK | Simmons Hanly Conroy LLC                          |
| 98  | Shar, Jonathan C.           | 1:14-cv-02082-BMC-PK | Johnson Becker PLLC                               |
| 99  | Shed, Clarence              | 1:14-cv-03084-BMC-PK | Davis & Crump                                     |
| 100 | Sherman, Robert M.          | 1:14-cv-00033-BMC-PK | Johnson Becker PLLC                               |
| 101 | Silveira, Scott R.          | 1:13-cv-01918-BMC-PK | Johnson Becker PLLC                               |
| 102 | Sleddens, Steve             | 1:13-cv-01897-BMC-PK | Johnson Becker PLLC                               |
| 103 | Smith, John                 | 1:13-cv-01385-BMC-PK | Fulmer Sill                                       |
| 104 | Stanley, Levy G.            | 1:13-cv-07416-BMC-PK | Johnson Becker PLLC                               |
| 105 | Tabrizi, Amir               | 1:15-cv-02087-BMC-PK | Johnson Becker PLLC                               |
| 106 | Tart, John C.               | 1:13-cv-01929-BMC-PK | Johnson Becker PLLC                               |
| 107 | Thanos, Billy               | 1:14-cv-02053-BMC-PK | LaszloLaw   |
| 108 | Trimble, Kevin L.           | 1:13-cv-02033-BMC-PK | Johnson Becker PLLC                               |
| 109 | Trujillo, Steven            | 1:14-cv-02083-BMC-PK | Johnson Becker PLLC                               |
| 110 | Turkmen, Tarkan             | 1:13-cv-02550-BMC-PK | Locks Law Firm                                    |
| 111 | Wanek, Michael P.           | 1:13-cv-01579-BMC-PK | Fulmer Sill                                       |

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|-----|------------------|----------------------|---------------------|
| 112 | Ware, Melvin     | 1:13-cv-01622-BMC-PK | Morelli Law Firm    |
| 113 | Webb, William    | 1:13-cv-01794-BMC-PK | Johnson Becker PLLC |
| 114 | West, Adam W.    | 1:13-cv-01896-BMC-PK | Johnson Becker PLLC |
| 115 | West, Michael J. | 1:13-cv-02000-BMC-PK | Johnson Becker PLLC |
| 116 | Wohl, Harold L.  | 1:15-cv-03171-BMC-PK | Davis & Crump       |
| 117 | Yeung, Peter     | 1:12-cv-01875-BMC-PK | Johnson Becker PLLC |