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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

IN RE: Bard Implanted Port Catheter Products Liability Litigation	MDL No. 3081 **JOINT MEMORANDUM RE ISSUES TO BE ADDRESSED AT THE DECEMBER 3, 2024 CASE MANAGEMENT CONFERENCE** (Applies to All Actions)

Pursuant to Case Management Order No. 27 ("CMO 27"), the Parties submit this Joint Memorandum in advance of the Case Management Conference ("CMC") scheduled for December 3, 2024. *See* Doc. 1704, at 1.

I. Case Statistics

There are 879 cases pending in the MDL. 25 cases have been dismissed from the MDL. On July 1, 2024, the parties exchanged lists of twenty-four cases for inclusion in the PFS/DFS Group 1. *See* CMO 10, Doc. 115, at 2. The parties in PFS/DFS Group 1 have exchanged their respective Fact Sheets. The initial deadline to exchange lists of proposed cases for Discovery Group 1 is December 10, 2024.

Id. at 6. Pursuant to CMO 10, the parties shall file a Joint Memorandum on December 17th identifying their selection of cases. *See id.*

II. State-Court Litigation

There are 63 cases pending in New Jersey. On October 15th, the New Jersey Supreme Court designated these actions as multicounty litigation ("MCL"). The New Jersey Supreme Court assigned the MCL to the Superior Court of New Jersey, Law Division, Bergen County, for centralized case management by the Honorable Gregg A. Padovano, J.S.C. No further proceedings have taken place in the MCL.

There are 7 cases pending in the Superior Court of Maricopa County. To date, Defendants have answered all complaints, except one whose deadline to answer remains outstanding. Plaintiff Debra Vincent, represented by the Arizona State Court Liaison Counsel, moved to consolidate the cases on October 4, 2024, and the Honorable Timothy J. Ryan consolidated the cases on November 6, 2024.

III. Common-Issue Discovery

A. Defendants' Production of Documents

1. Plaintiffs' Position

As far as Plaintiffs are aware at this time, Defendants have completed substantial production of the documents that they agreed to produce, and there are no production issues for the Court to resolve.

2. Defendants' Position

Defendants have substantially completed their productions from the sixty-six agreed-upon Custodial Files, as well as the numerous agreed-upon Non-Custodial Sources. Attached hereto as Exhibit A is a chart summarizing Defendants' productions. There are no productions issues to be addressed with the Court.

B. Depositions & the Fact Discovery Deadline

1. Plaintiffs' Position

The parties briefed this issue for the Court in their submissions on October 18, 2024 and November 6, 2024. Plaintiffs continue to assert that good cause exists

for a modest extension of the discovery deadline. During December and January, the parties will be taking at least 14 depositions that were not anticipated when the discovery schedule was set – all while taking a number of other, anticipated fact witness depositions that will be used at trial, taking critically important 30(b)(6) witnesses depositions that will be used at trial, and finalizing expert reports and general discovery and on a truncated, holiday schedule. This tight schedule was not of Plaintiffs' own making and was, mostly, the result of Defendants' moving depositions due to the availability of their own witness, something which Plaintiffs had no control over and did not believe they had any basis upon which to request relief. As such, Plaintiffs are prejudiced by the current schedule and good cause exists for a modest extension of discovery, until March 28, as requested in Plaintiffs October 18 and November 6 briefing.

Since the last status conference, there are a couple of notable updates. First, on November 19, 2024, Plaintiffs formally served their 30(b)(6) deposition notices to Defendants. Defendants agree that the notices are substantially similar[1] to the draft notice that Plaintiffs exchanged with Defendants in July after the parties agreed that an early draft notice would facilitate deposition scheduling. Nevertheless, Defendants have provided no update as to how many individuals may sit as 30(b)(6) representatives and have indicated that they will take the full time allowed by the deposition protocol to respond to the notices and set the depositions, which contrary to their November 6 Joint Memorandum statement that they were "prepared to confer" regarding a 30(b)(6) notice. Doc. 1735 at 5. Thus, any complaint that Defendants may now have about how Plaintiffs have handled 30(b)(6) noticing is baseless. Second, although many of the third parties who have been served with

[1] In correspondence dated Nov. 20, 2024 regarding Plaintiffs' 30(b)(6) notice, Defendants' counsel stated "[W]e expected the final notice to look considerably different than it originally did. We are disappointed to see that it does not." Plaintiffs have no explanation as to why Defendants expected the notices to look "considerably different," given the stated, original intention of the draft notice.

document requests have not yet responded with production, given the current discovery schedule and out of necessity, Plaintiffs have begun to serve third-party deposition notices. Plaintiffs anticipate that those subpoenas will be served this week.

2. Defendants' Position

a. Fact Witness Depositions

The parties continue to make meaningful progress through fact witness depositions. As of the date of this submission, Plaintiffs have taken 28 of the 46 anticipated fact witness depositions from the three sets of Custodians. 11 of the remaining 18 depositions are scheduled to take place in December, and 3 are scheduled to take place in January. Defendants have offered dates for 2 of the 5 remaining depositions of custodians.[2]

Although raised in past Joint Memoranda, Plaintiffs have not moved forward with their request to depose still-unidentified employees who were not named as Custodians. This Court should deny any request for leave to take additional company witness depositions for the reasons previously stated. *See* Doc. 1451, at 6. In short, Plaintiffs never raised the prospect of additional fact witness depositions until October 2024 despite (1) having a list of over 200 employees with representative job titles since February 2024; and (2) extensively negotiating Custodians, production deadlines, and depositions in the spring, *see* Doc. 525, at 4 (setting dates for depositions of Custodians). In addition, despite numerous requests, Plaintiffs still have not confirmed which or how many third-party depositions they are contemplating or have scheduled, if any. *See id.*, at 6. Only upon receipt of Plaintiffs' initial exchange of this Joint Memorandum did Plaintiffs indicate that

[2] One of the remaining unscheduled depositions is the Group 1 Custodian who is presently living in Europe. The second unscheduled deposition was a previously confirmed deponent whose deposition was adjourned due to a funeral. The final unscheduled deposition is apex witness Kimberly Hammond whose deposition date was adjourned pending the Court's ruling.

they have begun to serve third-party deposition notices. Plaintiffs should notify Defendants regarding prospective third-party depositions as soon as possible—particularly if there have been negotiations over scheduling with these third parties.

b. Rule 30(b)(6) Depositions

On November 19, 2024, Plaintiffs finally served their official request for a Rule 30(b)(6) deposition. Per CMO 21, Defendants' objections are due December 3rd. *See* Doc. 617, ¶ 5(b). The parties must confer over those objections by December 6th "unless otherwise agreed by the Parties." *Id.* CMO 21 further prescribes that "[i]f the Parties are not able to reach resolution, the Parties will schedule a call with the Court for resolution of the dispute," and that "[t]he deposition shall not proceed until the objection is resolved between the Parties or by order of the Court." *Id.*

Defendants anticipate lodging numerous objections to the 26-page notice, including, *inter alia*, (1) the overall overbreadth of notice in light of the number of topics and the breadth of each topic;[3] (2) topics that read as document demands, are amenable to an written response, and/or are otherwise reducible to a memory test about thousands of technical documents;[4] (3) topics that are within the purview of

[3] *Compare* Ex. B, Pls.' Notice of Rule 30(b)(6) Deposition *with Alvarado-Herrera v. Acuity*, 344 F.R.D. 103, 109 (D. Nev. 2023) (granting protective order regarding notice that sought "to cover nearly every conceivable facet of the case"); *ReBath LLC v. HD Solutions LLC*, 2021 WL 2291377, at *1 (D.Ariz. June 4, 2021) ("Rule 30(b)(6) does not permit burdening the responding party with production and preparation of a witness on every facet of the litigation." (quotation marks omitted)).

[4] *Compare* Ex. B, Topic Nos. 3, 31, 41 (seeking testimony regarding Defendants' "net worth," "including but not limited to, total assets, total liabilities, total profits, profits and profitability relating to the Devices"; "[f]inancial metrics for evaluating design/redesign"; and "[t]he revenue, sales, gross and net profits, and costs (domestically and globally) for the Devices") *with Trs. of Boston Univ. v. Everlight Elecs. Co.*, 2014 WL 5786492, at *4 (D. Mass. Sept. 24, 2014) (denying motion to compel testimony on topics related to "[a]ll financial information," including "the costs, expenses on an itemized basis, gross profit margin, operating profit margin, incremental profit margin, and revenue" for alleged infringing products on the basis

expert testimony;[5] and (4) topics that are not stated with "reasonable particularity."[6] Defendants plan to offer dates during the weeks of December 2nd and 9th to confer over their objections. Defendants look forward to paring down the number of topics for Rule 30(b)(6) testimony and negotiating other matters such as an overall cap on the number of hours for these depositions.[7] *See* Doc. 1451, at 8 (noting that

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that "[i]t is not reasonable to expect one or more witnesses to remember and testify about every one of these facts"); *Burton v. AbbVie, Inc.*, 2023 WL 4677024, at *4 (C.D. Cal. June 21, 2023) (finding that topic seeking testimony regarding "information concerning the sales, profits, losses, and costs of production for [pharmaceutical product]" . . . "would be better suited to be obtained through interrogatories and document production"). *Compare* Ex. B, Topic Nos. 8-9 ("The complete design history file [and device master record] for the Devices, including each component part of the file, the custodian responsible for the file and the maintenance of the file."); *with U.S. v. HVI Cat Canyon, Inc.*, 2016 WL 11683593, at *8 (C.D. Cal. Oct. 26, 2016) (granting protective order because, *inter alia*, "many of the topics appear to be questions best answered by the contents of a document and do not appear to require further testimony").

[5] *Compare* Ex. B, Topic No. 32 (seeking testimony regarding the "[f]easibility of alternative designs of the Devices and manufacturing those designs") *with Burton*, 2023 WL 4677024, at *4 ("Rule 30(b)(6) witnesses are not required to provide expert testimony . . . ."); *Trs. of Boston Univ.*, 2014 WL 5786492, at *4 (same).

[6] *See, e.g.*, Ex. B, No. 28 ("All projects related to polyurethane catheters, silicone catheters, or implanted port catheter devices (including each Component of the Device) that were intended to reduce the risk of fracture, kinking, infection, thrombosis, occlusion, or fouling of the device, catheter, or port body from thrombus, bacteria, or microorganisms. This includes information regarding the reason, purpose, concept, design, testing, results, redesign, improvement, regulatory efforts and outcomes, launch, expected revenue, budgets, expenses, patents, third-parties involved in, and termination of the projects. For the sake of clarity, this topic includes, but is not limited to, the . . . projects [set forth in seven subparts].").

[7] *See In Re Rembrandt Techs.*, 2009 WL 1258761, at *14 (D. Colo. May 4, 2009) ("A blanket rule permitting a seven-hour deposition of each designated deponent is unfair []because it rewards broader deposition notices and penalizes corporate defendants who regularly maintain business information in silos and who therefore must either designate multiple individuals to respond or spend time, energy, money and other resources preparing a single individual to respond[] . . . ."); *M.G. through*

Defendants will seek to "negotiate a total cap of the number of hours for Rule 30b(b)(6) testimony (if needed)").

Defendants raise several points in response to Plaintiffs' comments regarding the Rule 30(b)(6) notice. *See supra*, at 3-4. First, as previously noted, *see* Doc. 1451, at 6-7, Plaintiffs' served a "model" notice "to assist with fact witness scheduling" in the event that Defendants elected to have particular fact witnesses who may be corporate designees sit for only one depositions. Email from R. Phillips, July 2, 2024, at 2:08 p.m. EST. Defendants did not solicit this model notice. Indeed, CMO 21 does not obligate Defendants to offer prospective corporate designees for a fact witness deposition on the same day. *See* Doc. 616 (stating that "the Parties will use their best efforts to coordinate to avoid unnecessary multiple depositions of the same witness" but that "nothing in this provision is intended to prevent the deposition of an individual in both his or her individual capacity and as a corporate representative"). Given that depositions of Custodians were on a rolling schedule tied to the substantial completion deadlines, it would have been impractical for Defendants to hold back certain early depositions based on the prospect that they *may* be Rule 30(b)(6) designees to deposed in January.

Second, Plaintiffs drafted their model notice to be "as comprehensive as [Plaintiffs could] make it" given its intended function as a scheduling tool. Email from R. Phillips, July 2, 2024, at 2:08 p.m. EST. Because "it is well accepted that Rule 30(b)(6) does not permit 'burdening the responding party with production and preparation of a witness on every facet of the litigation,'" *HVI Cat Canyon, Inc.*,

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Garcia v. Armijo, 2024 WL 168270, at *2 (D.N.M. Jan. 16, 2024) ("Plaintiffs will be allowed up to 18 hours total to depose the six representatives. . . . Plaintiffs may divide that time as they see fit, but in no event should any one individual be deposed more than seven hours absent Court order or agreement by the parties."); *Unknown Party v. Arizona Bd. of Regents*, 2021 WL 2291380, at *8 (D. Ariz. June 4, 2021) ("Given the number of topics to be covered in this case, the Court concludes that it would be reasonable to allocate a total of 14 hours to complete [the] Rule 30(b)(6) deposition, regardless of how many designees are utilized.").

2016 WL 11683593, at *7 (quoting *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, 2012 WL 1511901, at *2 (N.D. Cal. Jan. 27, 2012)), Defendants anticipated that the formal notice would be substantially pared down to "target issues on which corporate testimony is truly needed," *Alvardo-Herrera*, 344 F.R.D. at 107; *see also IVC Filter*, No. 15-md-2641, Doc. 4434, at 44:20-45:2 ("30(b)(6) depositions are useful for accumulating information generally known to an entity but become . . . unworkable and overburdensome if they're used to collect the kind of granular information that you would normally get through document production or through depositions of individual witnesses.").

Third, Plaintiffs' attempt to fault Defendants for utilizing CMO 21's negotiated 14-day period to prepare their objections is without merit—particularly when the timing of service required Defendants to respond over the Thanksgiving holiday. Courts have repeatedly acknowledged the burden imposed on a party to respond to an overbroad notice. *See, e.g.*, *HVI Cat Canyon, Inc.*, 2016 WL 11683593, at *8 (noting that "courts have not hesitated to issue protective orders when corporations are asked to respond to overly broad or unfocused Rule 30(b)(6) deposition notice"). It takes time for the responding party to determine which topics are stated with reasonable particularity such that the party can fulfill its obligation to prepare a witness, which topics must be the subject of further conferrals, and which topics are completely objectionable on their face. Plaintiffs cannot credibly complain about Defendants' compliance with CMO 21's timing when Defendants raised Plaintiffs' failure to serve their formal Rule 30(b)(6) in the lead up to the October 18th Joint Memorandum. Finally, Plaintiffs' attempt to fault Defendants for not identifying the anticipated number of designees is also without merit. The number of designees turns in part on breadth of the agreed-upon topics in the negotiated notice.

Defendants look forward to discussing their objections with Plaintiffs in an effort to reduce the amount of, or need for, judicial intervention. The Parties will schedule a call with the Court for the resolution of any disputes.

c. Plaintiffs Still Do Not Establish Good Cause for an Extension of the Fact Discovery Deadline

Plaintiffs fail to demonstrate that good cause exists for modification of the Court's schedule at this time. *See McBroom v. Ethicon, Inc.*, 341 F.R.D. 40, 44 (D. Ariz. 2022) (stating that good cause turns on the diligence of the party seeking the extension). The parties continue to make substantial progress through fact witness depositions and have reserved nearly all of January for Rule 30(b)(6) depositions. In the event that the Court is inclined to grant the extension, Defendants respectfully request that the Court adopt Defendants' proposed amended schedule set forth in the prior Joint Memorandum. *See* Doc. 1331, at 30-31.

C. Privilege Issues

1. Plaintiffs' Position

Following argument at the last status conference regarding Plaintiffs' privilege challenges listed in Exhibit 11, Defendants de-designated roughly 10% of the documents that Plaintiffs' challenged, amounting to the release of about 120 additional, wrongly-withheld documents. The parties met and conferred regarding remaining challenges at-issue in Exhibit 11, and they have resolved their differences. With respect to later-produced privilege logs (not captured by Exhibit 11), the parties will continue to confer as challenges arise.

2. Defendants' Position

Following the November 7th CMC, and in accordance with CMO 27, Defendants reviewed ***all*** 1,352 of the Plaintiffs' privilege challenges on "Exhibit 11". On November 13th Defendants released 117 documents that were challenged on Exhibit 11 from their privilege log in full or with privilege redactions. In total,

Defendants released 8.9% of the documents challenged by Plaintiffs.[8] Following Defendants' production, Defendants initiated a meet and confer and on the afternoon of Friday, November 22nd Plaintiffs identified **three** documents on Exhibit 11 that Defendants maintained as privileged. Defendants promptly evaluated the three documents and explained why the documents were privileged. Upon receiving Defendants' response, Plaintiffs confirmed they were satisfied with the explanation and that there they had no privilege log issues to address at the CMC.

During the parties' meet and confer, Plaintiffs commented that they anticipate raising additional privilege challenges. Pursuant to CMO 19, Plaintiffs missed the deadlines to challenge privilege log volumes 5 – 8. To the extent Plaintiffs plan to challenge any documents on privilege log volumes 9 – 11, such challenges should be made in good faith and limited to specific documents rather than sweeping categorical challenges. Defendants remain available to meet and confer on any additional privilege log challenges in accordance with the process outlined in CMO 19.

IV. Plaintiff Profile Forms

A. Plaintiffs' Position

Defendants have identified certain cases with alleged deficiencies in Plaintiffs' respective PPF disclosures. Plaintiffs' Leadership has continued to contact the counsel representing the plaintiffs whose cases are the subjects of the alleged deficiencies and provided guidance with respect to curing those deficiencies. The counsel for these plaintiffs have submitted amended PPFs, and the Plaintiffs' Leadership continues to work with counsel for the plaintiffs identified by Defendants as having uncured deficiencies to assure that all disclosures are compliant with CMO No. 8.

B. Defendants' Position

[8] Defendants released 42 of the Exhibit 11 documents *prior to* receipt of Plaintiffs' Exhibit 11 on October 11, 2024.

1. Pending Order to Show Cause

On November 8, 2024, the Court entered an Order to Show Cause as to Plaintiff Brittney Isidore (2:24-cv-01501). *See* Doc. 1703. Plaintiff's counsel responded on November 14, 2024, and Defendants filed their reply on November 21, 2024. *See* Doc. 1737.

2. Pending Motion to Compel

After the October CMC, counsel for the parties met and conferred on late served PPFs and submitted a joint submission on November 15, 2024. *See* Docs. 1759 at 1, 1759-1 at 1-2, and the Court entered an Order compelling the plaintiffs addressed in that Order to comply by December 6, 2024. *See* Doc. 1802.

3. Plaintiffs Who Failed to Serve a PPF

There is one plaintiff who failed to serve a PPF within the time prescribed in CMO 8. *See* Doc. 113. Plaintiff Tamekia Franklin (2:24-cv-02415-DGC) filed her complaint on September 13, 2024. Pursuant to CMO 8, her PPF was due to be served on October 14, 2024. *See* Doc. 113 at 1. Defendants sent the letter attached as Exhibit C on October 18, 2024. On November 5, 2024, Plaintiff's counsel notified Defendants that they have not been able to establish contact with Ms. Franklin and that they understand Defendant reserves the right to move to dismiss Plaintiff's claims should she fail to comply with the deadline. *See* Ex. D. To date, Plaintiff Franklin has not served a PPF and has not requested an extension. Pursuant to CMO 8, Defendants seek an order to show cause as to why the Complaint filed by Plaintiff Tamekia Franklin should not be dismissed. *See* Doc. 113 at 5.

There are eight (8) additional plaintiffs who failed to serve a PPF within the time required by CMO 8 but are in the 21-day cure period set by CMO 8. *See* Doc. 113 at 4.

4. Deficient PPFs

There are seven (7) plaintiffs who served incomplete PPFs that have not been cured and are not in compliance with CMO 8. The chart below identifies the

plaintiff, case number, and date the letter identifying the deficiencies was sent. Pursuant to CMO 8, Defendants seek an order compelling each of the thirteen (13) plaintiffs to comply with CMO 8 and that they be ordered to comply by December 13, 2024.

Plaintiff and Case Number	Deficiency Letter
Hannie, III, Thomas J 2:24-cv-02548-DGC	11/5/2024
Schultz, Amy	11/11/2024 (resp. due OOB 12/3)
Forren, Vivien	11/11/2024 (resp. due OOB 12/3)
Brinser, Amos W.	11/18/2024 (resp. due OOB 12/3)
Nordskog, Marnie (rep. Schelli)	11/15/2024 (resp. due OOB 12/3)
Payne, Lisa Lea	11/18/2024 (resp. due OOB 12/3)
Sanchez, Loretta J. (rep. Edwin)	11/15/2024 (resp. due OOB 12/3)

There are an additional five (5) plaintiffs who served incomplete PPFs but are in the 15-day cure period set by CMO 8. *See* Doc. 113 at 5.

5. Plaintiffs who failed to supplement PPFs as required by CMO 8

Based on a recent review, Defendants estimate that approximately 20% of the PPFs served thus far are incomplete. Plaintiffs indicated that they were still waiting on medical records or other information and "will supplement." However, many plaintiffs indicated this months ago, and have not supplemented. Defendants cannot determine the actual number or scope of the promised to-be-cured deficiencies without spending significant time and expense. Defendants have raised this issue with Plaintiffs' Leadership and the parties will meet and confer before the next CMC about possible ways to address this issue.

V. Plaintiff Fact Sheets

A. Plaintiffs' Position

Plaintiffs in the Initial Plaintiff Pool of cases have asserted privilege over certain records that have been obtained to date through Marker Group pursuant CMO No. 16. Currently, Plaintiffs stand by the privileges asserted to date but continue to meet and confer on any privilege challenges, in accordance with the requirements of CMO No. 16.

Defendants previously identified alleged deficiencies in a number of PFS disclosures by plaintiffs in PFS/DFS Group 1. Plaintiffs' Leadership has continued to contact the counsel representing the plaintiffs whose cases are the subjects of the alleged deficiencies and provided guidance with respect to curing those deficiencies. The counsel for these plaintiffs have submitted amended PFSs, and Plaintiffs are not currently aware of any unresolved PFS deficiencies.

Defendants have identified plaintiff Scott Johnson as having a deficient PFS with respect to the decedent's death certificate and estate documents. Plaintiffs' Leadership will coordinate with counsel for the aforesaid plaintiff and assist as appropriate to ensure that the requirements of CMO No. 8 are met. At this point, Plaintiffs oppose an Order from the Court compelling the plaintiff to produce Letters of Administration or corresponding documentation, as (1) Defendants have not demonstrated that such documentation is required to maintain the action under applicable state law and (2) Defendants have not have not made a showing that the plaintiff is in possession of such materials and has failed to produce them.

B. Defendants' Position

On September 26, 2024, counsel for plaintiff Scott Johnson (2:23-cv-1693) informed Defendants that Mr. Johnson has passed away and that a death certificate was forthcoming. *See* Ex. E. To date, Defendants have not received a death certificate, or any further communication. Defendants filed a suggestion of death. *See* Doc. 1837. Defendants are not able to obtain the outstanding medical records

needed to evaluate Mr. Johnson's case without that information and ask that the Court enter an order compelling Mr. Johnson's counsel to produce the death certificate, documentation appointing the representative and updated authorizations so that the information outstanding can be obtained. Alternatively, if Mr. Johnson's estate/representative does not intend to pursue this case, Defendants request that Mr. Johnson's counsel be compelled to inform both Defendants and Plaintiffs' Leadership. Defendants request that this information be provided by December 6, 2024, because the deadline to exchange bellwether selections is December 10, 2024.

Defendants continue to review the privilege assertions made by Plaintiffs and are meeting and conferring with counsel for the plaintiffs that Defendants believe have not properly asserted a privilege claim. Defendants do not seek any relief at this time.

VI. Defendant Profile Forms

A. Plaintiffs' Position

Plaintiff leadership has identified 17 cases to date where Defendants failed to issue a response to DPF Deficiency Notices issued within the 15-day deadline required by Amended CMO No. 8.[9] Plaintiffs provided this information in their initial Joint Status Report draft to Defendants, which was sent on November 1, 2024. Some of the responses due to the DPF Deficiency Notices issued in those cases were over a month late. The referenced cases are set forth in the table below:

1. Bucio, Ramiro	2:24-cv-01565-DGC
2. Corley, Maria	2:24-cv-01728-DGC
3. Fantz, Jennifer	2:24-cv-01739-DGC
4. Gracia, Angelica	2:24-cv-00753-DGC
5. Grady, Angela	2:24-cv-01753-DGC
6. Knight, Ricky	2:24-cv-01600-DGC

[9]

7. Patterson, Tiffany	2:24-cv-01610-DGC
8. Piano, Patrick	2:24-cv-01566-DGC
9. Rizzi, Regina	2:24-cv-01630-DGC
10. Savoy, Ralph	2:24-cv-01620-DGC
11. Surrett, Ty,	2:24-cv-01724-DGC
12. Wofford, Nichole	2:24-cv-01715-DGC
13. Brown-Jones, Patricia	2:24-cv-01891-DGC
14. Perkins, Michele	2:24-cv-01725-DGC
15. Stith, Angela	2:24-cv-01862-DGC
16. Story, Jerry	2:24-cv-01852-DGC
17. Tittle, Thomas	2:24-cv-01489-DGC

On November 1, 2024, after the initial joint memo drafts were exchanged, Defendants served responses to the DPF Deficiency Notices in those matters. However, Defendants' responses stood on their earlier DPFs and did not provide additional information. Defendants also failed to produce any information from the complaint files with respect to the aforementioned cases, information required by CMO No.8 that remains far past due from the original 15-day deadline of Amended CMO No. 8.

The 17 cases at issue comprise cases across only two firms. Members of plaintiff leadership are contacting additional plaintiff counsel as it is believed Defendants have failed to respond to DPF Deficiency Notices in other cases, or

issued the same response indicating a supplement would be sent but are unable to provide an expected date of completion.

Despite the clear articulation of broad non-compliance with CMO No. 8, Defendants have made no supplemental disclosures to bring the subject DPFs into compliance with the CMO. In the event that Defendants provide some supplemental disclosures prior to the CMC, Plaintiffs will advise the Court regarding any uncured deficiencies during the CMC.

Under Amended CMO No. 8, if Defendants fail to serve a substantially complete DPF within the time allowed or fail to contact Plaintiff's counsel to explain why further time is needed to substantially complete the DPF, Plaintiff may raise a request to compel a substantially complete DPF during a case management conference. Plaintiffs are raising this issue to make the Court aware of the outstanding DPF Deficiencies. Plaintiffs plan on requesting the Court to compel responses in these cases pursuant Amended CMO No. 8.

B. Defendants' Position

Plaintiffs' Position recites verbatim their Position in the November 14, 2024, Joint Memorandum except they removed the last part of the last sentence of their prior Position statement in which they stated that they "plan on requesting the Court to compel responses at a later date pursuant to Amended CMO No. 8 after identifying a complete list of cases where the DPFs are still deficient." Doc 1735, at 27 (emphasis added). Plaintiffs have apparently given up on identifying specific cases and specific deficiencies. Instead, they continue to reference an unnamed list of "17 cases" for which Plaintiffs claim a vague and amorphous list of deficiencies. On Friday, November 29, Plaintiffs provided a draft of this joint report that for the first time alleged that the parties had met and conferred regarding these 17 cases and asserted that Defendants were "feigning ignorance" regarding their identities. Since none of Defendants' counsel are aware of any such meet and confer discussions, on Saturday, November 30, Defendants' counsel emailed Plaintiffs' counsel to request

that Plaintiffs' counsel provide information regarding the date and participants in the meet and confer discussions they insist occurred on this issue. Plaintiffs' counsel did not respond to that request.[10]

It is difficult to address Plaintiffs' copy-and-paste Position because Plaintiffs have yet to (and apparently no longer plan to) identify the unnamed "17 cases" with claimed deficiencies. But, one matter that appears to be the issue in dispute in all or most of the unidentified "17 cases" is the production of complaint files. On that issue, Defendants explained in both the DPF itself and in response to the deficiency allegations that the complaint files are not yet closed, (i.e., complete), and Defendants' investigation is therefore ongoing. In the DPFs, Defendants stated:

> Defendants' investigation of Plaintiff's reported incident is ongoing, and the complaint file has been opened but is not yet completed, i.e., closed. Once the complaint file is closed, Defendants will supplement and produce the complaint file.

And in response to correspondences in which Plaintiffs raised an issue with the complaint files, Defendants reiterated that the complaint files are incomplete and explained (again) that they would produce the complaint files once closed:

> Moreover, because the investigation into Plaintiff's incident relies upon receipt of information from various entities, Defendants are unable to provide an expected date of completion. However, consistent with the language in the DPF and their process with respect to other Plaintiffs' complaint files in similar circumstances, Defendants will supplement to produce the complaint file once it is closed.

Plaintiffs state, as they did in their last Position statement, that they intend to move to compel responses in the 17 unidentified cases "at a later date." Defendants disagree that this situation presents a valid deficiency supporting a motion to compel, but nevertheless responded to Plaintiffs' deficiency letters the same day that they became aware of the issue from Plaintiffs' draft of the Joint Memorandum on November 1, 2024. Further, as Defendants have stated multiple times now, their

[10] Respectfully, Defendants have no record of receiving any communication listing the 17 cases at issue until 3:40 P.M. EST on December 2, 2024, which was after the deadline for submission of this Joint Memorandum.

investigation into the underlying and related issues is ongoing, and, in compliance with applicable FDA regulations, such investigation necessarily entails attempting to obtain information from third parties over whom Defendants have no control. An order compelling production of something that Defendants have already avowed to produce once it becomes available is neither necessary nor appropriate.

VII. Defendant Fact Sheets

A. Plaintiffs' Position

On August 30, 2024, Defendants served Defendant Fact Sheets (DFS) for cases selected for the Initial Plaintiff Pool of the bellwether process pursuant Case Management Order No. 10. Defendants' responses contained multiple deficiencies. This included several instances where Defendants set forth the same deficient response to the same question across several actions, and in some cases, in all the DFS's served. In one such response, Defendants indicated they were not familiar with a term used in the question asked. The questions in the DFS were negotiated and agreed upon by the parties, and the Court approved them as discovery requests to which no objections should issue. CMO No. 10, Sec. III(B). Accordingly, 44 of the 48 plaintiffs in the Initial Plaintiff Pool issued Deficiency Notices to the DFS's, the majority of which were sent on September 30, 2024. To date, members of plaintiff leadership have reached out to counsel for Defendants to request meet and confers in several of these individual matters to further discuss the deficiencies pursuant CMO No. 10, Sec. C. The conferences held with respect to this issue have not resulted in DFS disclosures which comply with CMO No. 10. The Court has entertained numerous grievances from Defendants with respect to plaintiffs' disclosures, many of them ill-conceived, in light of the necessity to select representative bellwether cases. Defendants now object to being held to the agreed-upon standards of CMO No.8 when their own disclosures are deficient. In light of these circumstances and the imminent deadline for selection of Discovery Pool

cases, Plaintiffs intend to request an Order compelling compliance with CMO No. 10.

B. Defendants' Position

Defendants timely served proper Defendant Fact Sheets (DFS) for cases selected for the Initial Plaintiff Pool pursuant CMO 10. Although the DFS were sufficient, to conduct discovery in good faith and resolve potential disputes, Defendants agreed to meet and confer with Chelsea Dickerson (who held herself out as one of three Plaintiff Steering Committee members leading DFS deficiency issues) and Ryan Cavanaugh (counsel for Plaintiff Linda Miller) about the alleged deficiencies in the DFS for Linda Miller—the first Plaintiff for which Defendants received a deficiency notice. Defendants offered two dates for the initial meet-and-confer call, and Ms. Dickerson and Mr. Cavanaugh chose the later of the two dates: November 5, 2024.

After that meet and confer, the parties jointly agreed to reconvene for a second meet and confer on November 15, 2024. During the second meet and confer, the parties agreed that Defendants would supplement certain DFS answers during the week of Thanksgiving, and the plaintiffs would review the responses to confirm whether the supplements resolved the disputes. Consistent with that agreement, Defendants uploaded a supplemental DFS for Linda Miller on November 25, 2024 (the Monday of the week of Thanksgiving and prior to receipt of Plaintiffs' draft joint report raising this issue), and Plaintiffs have not identified any further alleged deficiencies or even acknowledged receipt of the supplemental DFS.

Plaintiffs' claim that the "conferences held with respect to this issue have not resulted in DFS disclosures which comply with CMO No. 10" is therefore patently incorrect.[11] Plaintiffs also imply that Defendants have not been responsive to meet-

[11] To be clear, Defendants' initial DFS complied with CMO No. 10, but Defendants supplemented in good faith and in accordance with the written agreement with Ms. Dickerson and Mr. Cavanaugh. One issue called out by Plaintiffs is that in one

and-confer requests, claiming that "members of plaintiff leadership have reached out to counsel for Defendants to request meet and confers in several of these individual matters." First, Defendants' counsel has responded to a number of meet and confer requests; any suggestion to the contrary is incorrect. And second, as Plaintiffs should know, Ms. Dickerson confirmed verbally and in writing that the scheduling of additional meet and confers in other cases in which they were requested are "stayed," so that the parties can confirm whether the supplemental DFS for Linda Miller is sufficient to address issues for the remaining plaintiffs in the Initial Plaintiff Pool who allege DFS deficiencies. Regarding the status of meet and confers on the Linda Miller case, Ms. Dickerson wrote:

> As the supplemental responses specifying the documents with more particularity relates to many of the deficiencies claimed in other cases, we will plan on reviewing Defendants' Supplement once received and will then respond if we believe additional meet and confers are needed on either this case or any others.
>
> I understand you are not responding directly to those attorneys on meet and confer requests for now and we will consider scheduling of the same stayed until we receive the Supplement here.

Defendants believe that the supplemental DFS they provided for Linda Miller addresses the claimed deficiencies in the other cases. Defendants stand ready to supplement in those other cases consistent with its supplemental DFS for Linda Miller and await word from Plaintiffs regarding the supplemental DFS, which Plaintiffs have not yet acknowledged.

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answer, "Defendants indicated they were not familiar with a term used in the question asked." This gripe stems from Plaintiffs' own "drafter's remorse" about using a term that not even Ms. Dickerson or Mr. Cavanaugh could define in meet and confers, not from an insufficient answer. Defendants explained in their answer what they understood the term to mean and answered based on their understanding of the term. In any event, Defendants further supplemented that response in a good faith effort to resolve a dispute.

VIII. Stipulation to Amend Case Management Orders

Enclosed herewith is a proposed stipulation to amend CMO 7 to permit the filing of amended master pleadings that eliminate the successor liability claims and allegations in this case. *See* Doc. 1704, at 2.

Dated: December 2, 2024

Respectfully submitted,

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Attorneys for Defendants

Exhibit A

Defendants' Production of Documents

PRODUCTION	DATE	DESCRIPTION	DOCS	PAGES
BARD_IPC_MDL_001	12/26/2023	*Cruz* Production	6,290	91,035
BARD_IPC_MDL_002a	1/5/2024	Prior Patent Litig. Production (I of IV)	211,955	993,418
BARD_IPC_MDL_003	1/5/2024	Prior Port Litig. Deposition Transcripts	48	1,794
BARD_IPC_MDL_002b	1/11/2024	Prior Patent Litig. Production (II of IV)	200,966	1,396,347
BARD_IPC_MDL_004	1/12/2024	CV of Information Infrastructure Rule 30(b)(6) Deponent & Related standard operating procedures ("SOPs")	18	241
BARD_IPC_MDL_005	1/17/2024	SOPs and corporate org document related to Information Infrastructure Deposition	4	50
BARD_IPC_MDL_006	1/19/2024	Information Infrastructure Document	1	9
BARD_IPC_MDL_002c	1/19/2024	Prior Patent Litig. Production (III of IV)	97,634	449,900
BARD_IPC_MDL_002d	1/24/2024	Prior Patent Litig. Production (IV of IV)	137,420	814,251
BARD_IPC_MDL_007	1/26/2024	510(k) submissions related to the Product Codes	19	4,599
BARD_IPC_MDL_008	2/2/2024	510(k) submissions and related docs for the Product Codes	498	15,508
BARD_IPC_MDL_009	2/9/2024	Corrective and Preventative Actions (CAPAs), Remedial Action Plans (RAPs), Situational Analyses (SAs), Health Hazard Evaluations (HHEs) / Health Risk Assessments (HRAs), and Failure Investigation reporting documentation associated with the Product Codes	293	8,583
BARD_IPC_MDL_010	2/16/2024	Marketing documents, SOPs, supplement of three 510(k)s	2,168	20,057
BARD_IPC_MDL_011	2/23/2024	Marketing team documents	4,316	24,239
BARD_IPC_MDL_012	2/29/2024	Design History Files, Instructions for Use, Patient Guides, and CAPAs	6,650	120,589
BARD_IPC_MDL_013	3/8/2024	Marketing shared drives, R&D shared drives, and Notes to File regarding various 510(k)'s	16,588	150,676
BARD_IPC_MDL_014	3/15/2024	Documents from Design History Files and SOPs collected from Master Control	394	3,471

BARD_IPC_MDL_015	3/15/2024	Marketing shared drives and R&D shared drives	16,030	114,792
BARD_IPC_MDL_016	3/22/2024	Marketing shared drives and R&D shared drives	11,907	238,458
BARD_IPC_MDL_017	3/30/2024	R&D, Regulatory, Clinical Affairs, and Marketing departmental shared drives	14,220	111,010
BARD_IPC_MDL_018	4/5/2024	Marketing, R&D, Regulatory, & Medical Affairs departmental shared drives	12,613	69,351
BARD_IPC_MDL_019	4/12/2024	Marketing & R&D departmental shared drives	14,982	60,484
BARD_IPC_MDL_020	4/20/2024	Documents from Master Control Archive	19,918	105,149
BARD_IPC_MDL_021	4/23/2024	R&D, Marketing, Regulatory, & Clinical Affairs departmental shared areas, and an export from WorkDay	6,927	64,542
BARD_IPC_MDL_022	4/26/2024	Documents from first 30 Custodial Files & Volume 1 of Defendants' Privilege Log	42,300	168,088
BARD_IPC_MDL_023	5/3/2024	Regulatory departmental shared drive documents	3,328	25,384
BARD_IPC_MDL_024	5/3/2024	Documents from Master Control Archive	26,254	125,322
BARD_IPC_MDL_025	5/10/2024	Documents from Master Control	18,336	373,712
BARD_IPC_MDL_026	5/10/2024	Documents from Custodial Files of first 30 Custodians	31,161	125,288
BARD_IPC_MDL_027	5/17/2024	Documents from Master Control Archive	7,719	31,555
BARD_IPC_MDL_028	5/17/2024	Documents from Custodial Files of first 30 Custodians	35,125	128,206
BARD_IPC_MDL_029	5/24/2024	Supplement of org charts and documents from R&D departmental shared drives	12,426	523,650
BARD_IPC_MDL_030	5/24/2024	Documents from Custodial Files of first 30 Custodians	42,128	150,536
BARD_IPC_MDL_031	5/31/2024	Documents from Master Control and Master Control Archive	14,502	283,356
BARD_IPC_MDL_032	5/31/2024	Documents from Custodial Files of the first thirty Custodians and R&D shared drives	41,432	172,221
BARD_IPC_MDL_033	6/7/2024	Documents from Custodial Files of first 30 Custodians	19,159	97,415
BARD_IPC_MDL_034	6/7/2024	Documents from Master Control and Master Control Archive	2,895	48,425

BARD_IPC_MDL_035	6/14/24	Documents from Custodial Files of first 30 Custodians	45,328	168,846
BARD_IPC_MDL_036	6/14/24	Documents from Master Control	1,408	20,619
BARD_IPC_MDL_037	6/14/24	Exports of port related adverse event reporting information from the TrackWise and Easy Track systems as well as documents from various R&D, Manufacturing and Regulatory shared drives	1,975	33,026
BARD_IPC_MDL_038	6/22/24	Documents from the Custodial Files of several of the first 30 Custodians	68,214	935,018
BARD_IPC_MDL_039	6/22/24	hard copy documents as well as documents from various corporate, R&D, Regulatory, Medical and Clinical Affairs, Marketing and Sales, and Quality departmental shared areas, as well as supplement of Notes to File relating to various 510(k)'s	16,007	100,316
BARD_IPC_MDL_040	6/26/24	hard copy documents as well as documents from various corporate, R&D, Regulatory, Medical and Clinical Affairs, Marketing, Sales, and Quality departmental shared areas	18,169	322,804
BARD_IPC_MDL_041	6/26/24	Supplement of documents from Master Control	11	277
BARD_IPC_MDL_042	6/28/24	Documents from the Custodial Files of the first 30 Custodians	148,260	714,545
BARD_IPC_MDL_043	6/28/24	hard copy documents as well as documents from various corporate, R&D, Regulatory, Medical and Clinical Affairs, Marketing, and Quality departmental shared areas	2,188	17,388
BARD_IPC_MDL_044	6/30/2024	Documents from the Custodial Files of the first 30 Custodians	80,580	386,022
BARD_IPC_MDL_045	7/2/2024	Documents from the Custodial Files of the first 30 Custodians	164,819	1,072,257
BARD_IPC_MDL_046	7/2/2024	Documents from the Custodial Files of the first 30 Custodians, Veeva Vault Clinical, and documents from various corporate, R&D, Regulatory, Medical and Clinical Affairs,	96,345	526,075

		Sales, Marketing, and Quality departmental shared areas		
BARD_IPC_MDL_047	7/22/2024	Supplement of documents from Master Control	115	3,309
BARD_IPC_MDL_048	7/22/2024	Supplement of documents from Custodial files of the first thirty Custodians, SharePoints and shared drives; documents from recently identified shared areas; Technology Team Review (TTR) minutes and related documents from Patricia Braun's file	2,940	17,398
BARD_IPC_MDL_049	7/22/2024	Family members of documents originally produced in Production 042 that were mistakenly excluded due to tagging error	3,465	17,551
BARD_IPC_MDL_050	7/22/2024	Supplement of documents from Custodial files of the first thirty Custodians, SharePoints and shared drives; documents from recently identified shared areas and Non-Custodial Source Planview	19,753	123,299
BARD_IPC_MDL_051	7/22/2024	Replacement production for 1,559 documents, majority mistakenly produced as non-responsive slipsheets; fifteen documents originally withheld or redacted for privilege now produced in full	1,559	3,031
BARD_IPC_MDL_052	7/22/2024	Slipsheets or redacted versions of inadvertently produced privileged documents	46	274
BARD_IPC_MDL_053	7/26/2024	Redacted audio files	3	3
BARD_IPC_MDL_054	7/26/2024	Production of documents from the Custodial Files of the second 30 Custodians	50,834	204,402
BARD_IPC_MDL_055	8/1/2024	Replacement production for inadvertently produced privileged document	1	1
BARD_IPC_MDL_056	8/1/2024	Documents from Docushare and hard copy documents relating to 1999 PICC recall	10,589	234,056
BARD_IPC_MDL_DEP CV_001	8/1/2024	CVs of Chad Modra and Andrew Sheffield	2	2
BARD_IPC_MDL_057	8/6/2024	Documents Defendants are releasing from their privilege	11	17

		log and producing in full or with redactions		
BARD_IPC_MDL_058	8/9/2024	Documents from the Custodial Files of the second 30 Custodians	118,644	407,269
BARD_IPC_MDL_059	8/9/2024	Final, approved marketing materials from Veeva Vault and Veeva ZINC archive	306	2,846
BARD_IPC_MDL_060	8/9/2024	Supplement of documents from Custodial Files of the first 30 Custodians, Docushare, and various shared areas	871	37,430
BARD_IPC_MDL_061	8/9/2024	Supplement of documents from Custodial Files of the first 30 Custodians, including family members of documents previously produced without family members due to technical error during extraction	1,308	5,352
BARD_IPC_MDL_062	8/9/2024	Supplement of documents from Master Control	787	18,779
BARD_IPC_MDL_063	8/9/2024	Documents from the Custodial Files of the second 30 Custodians	146,566	611,002
BARD_IPC_MDL_DEP CV_002	8/9/2024	CV of James Freasier	1	1
BARD_IPC_MDL_064	8/15/2024	Documents from the Custodial Files of the second 30 Custodians	159,050	811,284
BARD_IPC_MDL_065	8/15/2024	Custodial files, Docushare, and various Regulatory, Quality, Medical Affairs, Research and Development, and Marketing and Sales shared areas relating to the Apheresis PowerFlow port	16,642	105,067
BARD_IPC_MDL_066	8/15/2024	Re-production in full (redacted or priv slipsheets) of apheresis documents previously produced as NR slipsheets	54	453
BARD_IPC_MDL_067	8/15/2024	Master Control supplemental production	183	18,144
BARD_IPC_MDL_068	8/19/2024	Replacement production for inadvertently produced privileged document	1	5
BARD_IPC_MDL_069	8/23/2024	Documents from the Custodial Files of the second 30 Custodians	1,981	13,873
BARD_IPC_MDL_070	8/23/2024	Documents from James Davis PST files that experienced a	4,820	25,046

		processing error during collection		
BARD_IPC_MDL_071	8/30/2024	Documents from identified files on Kelly Powers' laptop that did not properly process; final, approved port-related materials from ZINC; and U.S. port sales data from the MFG Pro and Global Sales Data Warehouse systems	1,904	10,246
BARD_IPC_MDL_072	8/30/2024	Documents originally produced as privilege slipsheets that are being released from the privilege log	13	50
BARD_IPC_MDL_073	8/30/2024	Veeva Clinical, iCertis Contracts and documents identified for privilege downgrade that were released from the privilege log	98	1,246
BARD_IPC_MDL_074	8/30/2024	Replacement production for inadvertently produced privileged documents	13	77
BARD_IPC_MDL_075	9/6/2024	Custodial production of ProofPoint and laptop data; Veeva Clinical CSV metadata	10,676	36,988
BARD_IPC_MDL_076	9/6/2024	Document being reproduced with modified redactions	1	161
BARD_IPC_MDL_077	9/11/2024	Documents previously withheld as privileged that were released from the privilege log in full or with redactions	15	33
BARD_IPC_MDL_078	9/11/2024	Replacement production for inadvertently produced privileged documents	79	1,021
BARD_IPC_MDL_079	9/11/2024	Slipsheets or redacted versions of inadvertently produced privileged documents	142	3,872
BARD_IPC_MDL_DEPCV_003	9/11/2024	CVs of Guillermo Altonaga, Sean Worthen, Ian Thomas, Cassie Singleton, and Andrea Acuna	7	21
BARD_IPC_MDL_080	9/13/2024	Documents being reproduced with modified redactions	33	33
BARD_IPC_MDL_081	9/13/2024	Documents from the identified Custodial Proofpoint sources, and documents from Powers and Burgmeier hard drives that did not properly process during initial collection	19,386	69,455

BARD_IPC_MDL_082	9/23/2024	Additional documents from Beasley's hard drive that did not properly process, documents from the recently identified Custodial Proofpoint sources, and documents from Custodial PSTs that experienced processing errors during collection	27,563	126,589
BARD_IPC_MDL_083	9/26/2024	Replacement images and related files for documents previously produced that had imaging errors	34	628
BARD_IPC_MDL_083 SUPP	9/26/2024	Replacement images and related files for documents previously produced that had imaging errors	77	662
BARD_IPC_MDL_084	9/26/2024	Documents from volume 078 being reproduced with redactions	21	677
BARD_IPC_MDL_085	9/24/2024	Documents from Vendor Material Information shared drive relating to IPC catheter materials	5	51
BARD_IPC_MDL_DEP CV_004	9/24/2024	CVs of Caron Lee Gleason, Susan Scott, and Matt Trebella	3	6
BARD_IPC_MDL_086	9/26/2024	Additional documents from Beasley's hard drive that did not properly process, documents from the recently identified Custodial Proofpoint sources, and documents from Custodial PSTs that experienced processing errors during collection	47,376	141,423
BARD_IPC_MDL_087	9/26/2024	Supplement of Master Control documents	93	2,028
BARD_IPC_MDL_088	9/27/2024	Documents from Beasley's hard drive that did not properly process, documents from the recently identified Custodial Proofpoint sources, and documents from Custodial PSTs that experienced processing errors during collection	58,221	293,968
BARD_IPC_MDL_089	10/2/2024	Documents reproduced with modified privilege redactions or with privilege redactions removed	9	25

BARD_IPC_MDL_090	10/4/2024	Documents from Custodial Files subject to the October 15th deadline; cleanup production of documents from Beasley's hard drive that did not properly process, documents from the recently identified Custodial Proofpoint and PSTs that experienced processing errors during collection	5,095	22,765
BARD_IPC_MDL_091	10/10/2024	Supplemental cleanup production of Custodial documents and family members of previously produced documents that experienced processing error during extraction	840	3,760
BARD_IPC_MDL_092	10/11/2024	Documents reproduced with privilege redactions modified or removed, and two documents determined not to be privileged	42	72
BARD_IPC_MDL_093	10/14/2024	Bard's Annual Reports for 2013 – 2016, BD's Annual Reports for 2017 – 2023, and supplement of two SOPs	13	1,227
BARD_IPC_MDL_094	10/14/2024	Documents from the Custodial Files subject to the October 15th deadline	8,469	54,143
BARD_IPC_MDL_095	10/15/2024	Clean up production of Custodial File documents	9	40
BARD_IPC_MDL_096	10/18/2024	Documents from embedded hyperlinks requested in Mr. Roberts' October 7th correspondence	310	2,357
BARD_IPC_MDL_DEP CV_005	10/18/2024	CVs of Kelly Christian, David Cise, Michael Curtis, Jocelyn Housley, and Ling Zou	5	13
BARD_IPC_MDL_DEP CA_001	10/18/2024	Kelly Christian's Consulting Agreement	1	4
BARD_IPC_MDL_DEP CV_006	10/28/2024	CVs of Annemarie Boswell, John Evans, Corey Neureuther, and Nitin Patil	4	10
BARD_IPC_MDL_DEP CA_002	10/28/2024	Annemarie Boswell, David Cise, John Evans, and Matt Trebella's Consulting Agreements	4	16
BARD_IPC_MDL_097	11/5/2024	Supplement of documents from Master Control	7	219

BARD_IPC_MDL_098	11/6/2024	Documents previously produced natively reproduced with redactions	3	27
BARD_IPC_MDL_099	11/8/2024	MedComp Port deposition materials previously produced in Angio Port litigation	602	32,211
BARD_IPC_MDL_100	11/8/2024	Angio Port deposition materials previously produced in MedComp litigation	545	24,309
BARD_IPC_MDL_101	11/13/2024	Privilege downgrades in response to plaintiffs' Exhibit 11 challenge	101	475
BARD_IPC_MDL_102	11/13/2024	Documents previously produced as privileged slipsheets reproduced in full or with redactions	25	187
BARD_IPC_MDL_103	11/15/2024	Documents that experienced processing error during extraction, including some family members of previously produced documents	771	10,766
BARD_IPC_MDL_DEP CV_007	11/15/2024	CVs of Matt Draper, Shelly Gilbert, Bret Hamatake, Brian Nishimoto, Jeff Patterson, Ben Raehl and Stephanie Schuffels	8	14
BARD_IPC_MDL_DEP CA_003	11/15/2024	Consulting Agreements with former employees Ed Burnside, Bret Hamatake, Jeff Peterson and Kelly Powers	4	16
BARD_IPC_MDL_105	12/2/2024	Documents (unrelated to Ex 11 challenges) previously produced as privileged slipsheets or redacted documents reproduced in full or with redactions	33	228
BARD_IPC_MDL_106	12/2/2024	Documents (unrelated to Ex 11 challenges) previously withheld as privileged that Defendants released from the privilege log in full or with redactions	29	159
BARD_IPC_MDL_107	12/2/2024	Replacement production for inadvertently produced privileged documents	26	229
Total			**1,444,409**	**14,903,300**

Exhibit B

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Co-Lead Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard Implanted Port Catheter Products Liability Litigation	MDL No. 3081 (Applies to All Actions)

PLAINTIFFS' NOTICE TO TAKE VIDEO DEPOSITION OF DEFENDANT BECTON, DICKINSON AND COMPANY PURSUANT TO FED.R.CIV.P. 30(b)(6)

TO DEFENDANT BECTON, DICKINSON AND COMPANY BY AND THROUGH ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to the provisions of Federal Rule of Civil Procedure 30(b)(6) and CMO No. 21 the Order establishing the Deposition Protocol ("Deposition Protocol"), Doc. 617, governing this litigation, Defendant Becton, Dickinson and Company is hereby required to designate and produce a person or persons to testify on behalf of Defendant on the matters set forth below under Topics for Examination at a time and place to be negotiated with Defendants pursuant to CMO No. 21 or such other date and location as may be agreed upon by counsel prior to said date. The deposition will continue from day-to-day, as necessary, pursuant to the deposition protocol entered in this case.

The deponent(s) will be requested to testify on the Topics of Examination specified in Exhibit A. Defendant shall designate one or more officers, directors, partners, managing agents, employees, or other persons knowledgeable about the topic(s) set forth in Exhibit A. The deposition will be recorded by videotape and stenographic methods pursuant to Federal Rules of Civil Procedure, Rule 30 and pursuant to the deposition protocol entered in this case. The deposition will be taken before a notary public or other officer authorized to administer oaths or otherwise authorized pursuant to the deposition protocol, for the purposes of discovery, for use at trial, or for such other purposes as permitted by the Federal Rules of Civil Procedure.

Duty to Designate

By designating a representative, Defendant indicates that its representative(s) has/have authority to speak on its behalf on the matters listed in this notice – not only to facts, but also to subject beliefs and opinions.

Duty to Substitute

If it becomes clear that a chosen representative is unable to respond to questions on the matters for which he or she has been designated, Defendant must immediately provide a substitute knowledgeable witness. This is required even if the initial designation was made in good faith.

Duty to Prepare

The testimony elicited in the deposition represents the Defendant's knowledge, not the individual deponent's knowledge. Defendant must conduct a thorough investigation in response to the deposition notice and must prepare a witness to testify to all matters "known or reasonably available to the organization." Therefore, if Defendant's designee is not knowledgeable about the matters specified in the deposition notice, it must nonetheless prepare such designee to give knowledgeable, binding answers.

"Reasonably available" information includes all documents that the organization has the authority, legal right, or practical ability to obtain. An inadequately prepared designated witness will amount to an impermissible refusal to answer and a sanctionable failure to appear.

DEFINITIONS AND INSTRUCTIONS

1. "Document" or "documents" includes information on paper or electronically stored— including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably useable form. This includes the original and all non-identical copies or drafts.

2. "Information" or "Communication(s)" means any kind of Information or Communication whatsoever, whether stored in an electronic medium or hard copy. Information and/or Communications shall include, without limitation files, documents, images, video,

metadata, or any combination thereof stored, created, or used on any Electronic Storage Device, disk, tape, (including backup tapes and other backup media), or other computer or digital storage medium, microfilm, microfiche, floppy, or any other storage or recording medium. ESI includes without limitation electronic mail, text messages, Microsoft Teams chats/messages, Slack chats/messages, Information stored on web pages or web servers, and database records. Information and/or Communication(s) shall also include written, printed, typed, photostatic, photographed, recorded, computer-generated, computer-stored, or otherwise maintained or reproduced Communication or representation, any data compilation in any form, whether comprised of letters, words, numbers, pictures, sounds, bytes, e-mails, electronic signals or impulses, electronic data, active files, deleted files, file fragments, or any combination thereof including, without limitation, all memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, projections, estimates, working papers, accounts, analytical records, reports and/or summaries of investigations, opinions or reports of consultants, opinions or reports of experts, opinions or reports of accountants, other reports, trade letters, press releases, comparisons, books, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, forecasts, drawings, diagrams, instructions, minutes of meetings or Communications of any type, including inter- and intra-office Communications, Microsoft Teams chats/messages, Slack chats/messages, questionnaires, surveys, charts, graphs, photographs, phonographs, films, tapes, discs, data cells, drums, printouts, all other compiled data which can be obtained (translated, if necessary, through intermediary or other devices into usable forms), documents maintained on, stored in or generated on any electronic transfer or storage system, any preliminary versions, drafts or revisions of any of the foregoing, and other writings or documents of whatever description or kind, whether produced or

authorized by or on behalf of You or anyone else, and shall include all non-identical copies and drafts of any of the foregoing. Information and Communication(s) include the transmittal of Information and/or Communication(s) by any means, including but not limited to face-to-face conversations, telephone conversations, meetings, and video conversations; correspondence, including but not limited to memoranda, telegrams, email (work email, including alternative work emails, as well as any home or personal email), transcribed voicemail, SMS, MMS or other "text" messages, messages on "social networking" sites (including but not limited to Instagram, Facebook, Google+, MySpace, LinkedIn, Twitter, and WhatsApp), instant or private messaging (on any platform), company proprietary computer applications, inter-office Communications, meeting notes, releases, statements, reports, publications, recordings and reproductions, conference or seminar materials, photographs, drawings, PowerPoint presentations, letters, slides, analyses, diagrams, contracts, and financial agreements. Communication shall include all data, including data found on a work or personal cell phone, PDA, tablet, or computer, cloud-based storage, server, back-up or archived server, data sets, removable data, including any applications and app data videos, recordings, web pages (including historical web pages), blogs, copy machine memory and fax memory, deleted (but not overwritten) files, online collaboration platforms, dynamic extranet, contact lists, client lists, discussion boards, file sharing, interactive web programs – all whether personal or professional. Information and/or Communications shall be interpreted broadly.

3. "Person" means any natural person, corporation, partnership, proprietorship, association, governmental entity, agency, group, organization, or group of persons.

4. "You" or "Your" refers to the Defendant to whom these discovery requests are addressed, including its officers, directors, employees, partners, representatives, agents,

contractors, consultants, attorneys, accountants, investigators, corporate parent, subsidiaries, affiliates, divisions or subdivisions, predecessors or successors-in-interest, and other persons or entities acting on that Defendant's behalf, at that Defendant's direction, or at that Defendant's request, or for that Defendant's benefit, or controlled by Defendant or any of the aforementioned.

5. "Device" means all models and sub-types of implanted ports, including the port-body and catheter, identified in Plaintiffs' First Amended Master Complaint. "Device" shall have the broadest possible meaning, whether in the singular or plural, to the above-described models and sub-types and any Components that may be used with those Devices and any predecessor, successor, or final or non-final derivation of these Devices.

6. "Components" means any element necessary to manufacture the Devices, including but not limited to polyol, barium sulfate, silicone, polyurethane, polyoxymethylene, Delrin®, ChronoFlex AL®, and/or titanium.

7. "And" or "or" shall be construed conjunctively or disjunctively as necessary to make the requests inclusive rather than exclusive. The use of the word "including" shall be construed to mean "without limitation."

8. Reference to the singular in any of these requests shall also include a reference to the plural, and reference to the plural shall also include a reference to the singular.

9. "Relating to," "relate to," "relating," "referring to," "refer to," "regarding," "referencing," "concerning," or "concern" shall mean evidencing, regarding, concerning, discussing, embodying, describing, summarizing, containing, constituting, showing, mentioning, reflecting, pertaining to, dealing with, relating to, referring to in any way or manner, or in any way logically or factually connecting with the matter described in that paragraph of

these demands, including documents attached to or used in the preparation of or concerning the preparation of the documents.

10. "Test" or "testing" includes any kind of examination, experiment, scientific analysis, or other inquiry or undertaking seeking to develop or acquire Information or data. It should include Information and data acquired from such tests regardless of the stated or original purpose of the test. The term is intended to include tests that have been completed and tests that are still in progress regardless of whether such activity took place within or outside the United States. The term "test" is often used in conjunction with the term "study" defined herein. A request for Information concerning a test or study should be construed as including, but is not limited to, the following documents: the protocol for the conduct of the test or study; a statement of the conditions under which the test or study was intended to be conducted; a statement of the conditions under which the test or study was actually conducted; documents requesting that the test or study be performed; documents ordering that the test or study be performed; documents containing the original raw test or study data; documents containing the written test or study report and all attachments thereto; documents containing the test or study specifications, including the pass- fail criteria; any summary, abstract, analysis, compilation, including evaluation or interpretation of the test or study; and all investigators or entities, universities and/or laboratories involved in the testing.

12. "Adverse event" means any undesirable experience associated with the use of a medical product in a patient.

13. "FDA" means the United States Food and Drug Administration, any committee, subcommittee or advisory committee thereto, and any person, employee or agent acting as a representative thereof.

14. "Foreign Government Agency" means any agency, committee, subcommittee or advisory committee of any government other than the United States of America, which bears responsibility or exercises authority over the manufacture, distribution, labeling, sale and/or marketing of medical devices or human health in any jurisdiction, and any employee or agent of that Foreign Government Agency.

15. "Relevant Time Period" means the time period from when You first developed, tested, designed, distributed, licensed, manufactured, marketed or sold the Devices to the present. Each topic is intended to cover the Relevant Time Period unless otherwise specified.

Dated: November 19, 2024

Respectfully submitted,

/s/ Adam M. Evans
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(Admitted Pro Hac Vice)
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Co-Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that, on November 19, 2024, a true and correct copy of the foregoing document was served by email upon counsel of record as follows:

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Rebecca L. Phillips
Rebecca L. Phillips

EXHIBIT A

TOPICS OF EXAMINATION

Pursuant to Rule 30(b)(6), the deponent(s) must have knowledge and shall be able to testify concerning the following subjects during the Relevant Time Period, unless otherwise specified:

Corporate Organization and Structure

1. Corporate organization and functional management structure (departments, divisions, groups, teams, etc.), including, but not limited to, functions relating to product development and design, clinical development, manufacturing process, production, storage, transportation, pharmacovigilance, materials science and selection, regulatory affairs, toxicology, quality assurance, post market surveillance, product testing (developmental, design, manufacturing, compliance, and post market), complaint management, marketing, sales and distribution, and public affairs regarding the Devices.

2. Insurance policies that may cover any of the claims in this lawsuit, including the individuals responsible for procuring and obtaining all insurance policies concerning product liability and/or personal injury matters.

3. Your net worth, financial condition, and solvency, including but not limited to, total assets, total liabilities, total profits, profits and profitability relating to the Devices, and total net worth from 2005 to the present, including all loans, lines of credit, issuance of bonds or equity issued or contemplated by You or Your subsidiaries.

4. Funding, budgets, and decision-making authority for polyurethane and silicone catheter-related projects, teams, departments, and the GIF program.

5. Employee compensation as related to the Devices.

Design and Manufacturing

6. Standard Operating Procedures ("SOPs") relating to product development and design, clinical testing, manufacturing process, production, materials science and selection, quality assurance, quality control, inspection of packaging and other products, and product testing (including developmental, design, and manufacturing) for the Devices.

7. Policy and procedure manuals, training manuals, personnel policies, and internal company documents that govern or describe any research, manufacturing, and design process related to the Devices and/or Components.

8. The complete design history file for the Devices, including each component part of the file, the custodian responsible for the file and the maintenance of the file.

9. The complete device master record for the Devices, including each component part of the file, the custodian responsible for the file, and the maintenance of the file.

10. Procedures of the Product Development Team for the Devices.

11. The Design Output file, including the specifications of the Devices.

12. Design verification of the Devices.

13. Design validation of the Devices.

14. The Design Review, Process Qualification, and Design Transfer regarding the Devices.

15. The Product Device Design Safety Assessment and the related policies and procedures regarding the Devices

16. Product Device Design Failure Modes Effects Analysis, Process Failure Modes Effects Analysis, and Application Failure Modes Effects Analysis regarding the Devices

17. The Product Device Design Requirements Matrix regarding the Devices.

18. The Product Device Qualitative and Quantitative Characteristics Worksheets, including but not limited to Hazard Worksheet and ranking tables related to the Devices.

19. The Clinical Validation Test Reports, and procedures for preparing and keeping Minutes and Agendas for Design Review Meetings regarding the Devices.

20. As it relates to design control and validation, Communications related to whether or not to design, develop, coordinate, create, participate in and/or fund any clinical registries regarding the Devices.

21. Any patents related to the Devices and its predecessor products.

22. Ingredients and/or raw materials in the Devices, as well as their characteristics, including, but not limited to the mixture of chemicals making up the Components of the Devices; polyols, additives of any kind; coatings and lubricants applied to the Devices, Components, or subcomponents; preservatives included in the polymers or applied to the polymers; stabilizers; radiopacity compounds; and agents which are intended to affect the body's host response to the biomaterials comprising the Devices. For the sake of clarity, this topic covers changes to the ingredients or materials over time, as well as interactions with third-parties regarding the ingredients or materials.

23. Respective relative concentrations of ingredients and/or raw materials in the Devices, including, but not limited to, the proportional content of silicone, polyurethane, polyoxymethylene, polyols, additives of any kind, radiopaque compounds, coatings, preservatives, stabilizers, antioxidants, and agents which are intended to affect the body's immune and inflammatory host responses to the biomaterials which comprise the Device and its Components.

24. Methods and/or processes for combining ingredients and/or raw materials in Components and/or subcomponents of the Devices, including but not limited to processes for adding radiopaque compounds, coatings, preservatives, stabilizers, antioxidants to silicone, polyurethane, polyoxymethylene, polyols, and/or other biomaterials and/or ingredients or raw materials used to construct those biomaterials.

25. Suppliers of Components and/or ingredients and/or raw materials used in the Devices, including but not limited to the port body, septum, and catheter, and the materials which comprise those Components.

26. Sterilization protocols, including sterilization validation processes and the identities of any third-party entities which provided goods or services in connection with the sterilization of the Devices.

27. Testing performed on the Devices or competitor devices and/or Components, subcomponents, ingredients, or raw materials, whether performed in-house or by a third-party, including but not limited to:

a. Chemical resistance testing performed on the Devices or competitor devices and/or Components, subcomponents, ingredients and raw materials, including but not limited to tests measuring alcohol resistance, alkalinity resistance, oxidative stress, degradation, material adsorption, environmental stress cracking, aging, and/or acidity resistance.

b. Rheologic and/or mechanical testing performed on the Devices or competitor devices and/or Components, subcomponents, ingredients, and/or raw materials, including but not limited to tests measuring shear stress, melt flow

index, flexural rigidity, torsional rigidity, elastic modulus, injection pressure tolerance, and/or stress cracking resistance;

c. Biocompatibility, biostability, and biodurability testing conducted in connection with the Devices or competitor devices, including any of the Components, ingredients and/or raw materials from which the Devices are constructed, whether conducted by a third party or You or Your agents;

d. Radiopacity testing conducted in connection with the Devices or any other products which include a silicone or polyurethane-containing catheter, including any of the Components, ingredients and/or raw materials from which the Devices are constructed, whether conducted by a third party or You or Your agents;

e. Extractability and Leachability testing conducted in connection with the Devices or any other products which include a silicone or polyurethane-containing catheter, including any of the Components, ingredients and/or raw materials from which the Devices are constructed, whether conducted by a third party or Your or its agents.

28. All projects related to polyurethane catheters, silicone catheters, or implanted port catheter devices (including each Component of the Device) that were intended to reduce the risk of fracture, kinking, infection, thrombosis, occlusion, or fouling of the device, catheter, or port body from thrombus, bacteria, or microorganisms. This includes information regarding the reason, purpose, concept, design, testing, results, redesign, improvement, regulatory efforts and outcomes, launch, expected revenue, budgets, expenses, patents, third-parties involved in, and termination of the projects. For the sake of clarity, this topic includes, but is not limited to, the following projects:

a. Anti-thrombotic (Thrombo-resistant) projects, including but not limited to, Parka Project, TRC, TR-1 and ATC, and DGP/r4 project;

b. Anti-microbial projects, including but not limited to, AMC, Covalon, and Acrymed;

c. Chronoflex Silk/Smooth Catheter Project;

d. Projects to strengthen or reinforce the catheter, including but not limited to, Groshong 2.0, "Pinch-proof" catheter, and Generation 2 PowerPort;

e. Resilient, Bard HP (High Purity);

f. Chronoflex Replacement(s);

g. Non-Fouling Projects.

29. For the design Failure Modes and Effects Analysis ("dFMEA") performed on the Devices, the process and method for performing a dFMEA analysis, including but not limited to the following topics regarding the risk of fracture, kinking, infection, thrombosis, occlusion, or fouling of the device, catheter, or port body from thrombus, bacteria, or microorganisms:

a. Method of determining of the occurrence rate of failure utilized in the dFMEA analysis;

b. The occurrence rate used in the dFMEA analysis;

c. The occurrence category used in the dFMEA analysis;

d. The method and determination of the detection rate (category) used in the dFMEA analysis;

e. The method and determination of the severity rate (category) used in the dFMEA analysis.

30. Medical literature, clinical literature, scientific literature, journal articles, white papers, manuscripts, texts, poster presentations, speech transcripts, and/or clinical studies that You or Defendants sponsored, supported, reviewed before contemplated publication, or contributed to in any way that is related to the Devices or their Components.

31. Financial metrics for evaluating any design/redesign of a port catheter product.

32. Feasibility of alternative designs of the Devices and manufacturing those designs.

Marketing and Advertising

33. Method and manner of communicating with Your sales force, physicians and healthcare providers regarding marketing materials, instructions for use of products, and warnings.

34. Communications with physicians and healthcare providers regarding instructions for use, warnings, surgery techniques, clinical failures for the Devices and competitors' devices.

35. Your promotional materials for the Devices, including physician brochures, professional information requests, web-based or video presentations, websites, Power Point presentations, apps for the iPad or smartphones, clinical study data summaries, dossiers, and advertisements.

36. Marketing, advertising, and/or sales materials and plans for the Devices and/or their Components. This includes testing or Studies done to support the marketing of the Devices.

37. Your network of independent sales agencies and direct sales representatives, including but not limited to territory managers, district managers, clinical specialists, field assurance individuals, and including management and compensation of same, including any sales incentives, directives, quotas and/or bonuses. This includes information regarding geographic sales regions, related contracts and exclusive rights to sell, commissions based on net sales, sales quotas, and use of Group Purchasing Contracts in sales.

38. Distribution of the Devices, including the size and management of inventories.

39. The competitive nature of the implantable vascular access device industry, to include comparisons of the Devices to similar competitive products from AngioDynamics, Smiths Medical, Cook Medical, MedComp, TeleFlex. B. Braun Medical, Covidien, and r4 Vascular.

40. Your market share for implantable port devices, including efforts to keep or grow that market share.

41. The revenue, sales, gross and net profits, and costs (domestically and globally) for the Devices.

42. The process for engaging, managing, and/or compensating physician consultants and product designers, including physicians' continued use of the Devices, submitted complaints, purpose of consulting agreement, content of consulting agreement, suitability for engagement as consultant, and market value of services.

Regulatory

43. The approval, management, administration, operation and compliance with any and all U.S. medical device regulations applicable to the Devices from the date You first started developing the Devices until the present.

44. All Communications or submissions between You and the FDA, including but not limited to, Communications about subject matter clearance to market any implantable port devices; changes to Device materials or Components the marketing, sale, promotion or advertising of implantable port devices, the review, analysis and summaries of post-marketing adverse event reports regarding the Devices, Communications in or about patient brochures, labeling and/or Instructions for Use, including but not limited to proposals or changes to the same for all Devices.

45. The processes and procedures used by You in connection with processing the Devices related adverse event reports, including the identification of policy manuals, SOPs, and safety or pharmacovigilance manuals.

46. The procedures for the intake, processing, handling, analyzing, investigating and reporting to the FDA and to any other U.S. governmental bodies reports of adverse events concerning the Devices.

47. The processes and procedures by which You receive and processes clinical trial adverse events from its clinical trials, including the processes by which You conduct follow-up investigations on adverse event reports from its clinical trials or post marketing surveillance.

48. The processes and procedures by which a determination is made by You as to whether an adverse event should or should not be found to be related to one of its Devices.

49. The identity and contents of all databases that contain adverse event reports, including summary or exempted reports, from any source. This includes the existence, maintenance, and location of records of all contacts with the FDA or Communications between You and the FDA related to adverse event reports, adverse event reporting, pharmacovigilance, or post marketing surveillance concerning the Devices.

50. The process and procedures for storing, testing and/or analyzing the Devices that have been returned to You due to complaints of malfunction, complications, or adverse events and the location of any and all such storage facilities.

51. Your practices and procedures for the review, submission, clearance and approval concerning the Devices relating to the following regulatory provisions:

a. Labeling, contraindications and adverse event warnings;

b. Post-marketing reporting and warnings;

c. Adverse event evaluations, assessments, reporting, databases, or other expertise related to adverse events;

d. The intake, investigation, processing, handling and reporting to the FDA and other governmental regulatory bodies of all adverse event reports;

e. Tracking, recording, reporting, handling, following up on complaints, problems, and adverse event reports relating to the Devices;

f. 510(k) compliance, submission, preparation, decision making or any other issues related to 510(k) compliance or submission.

52. Communications with foreign regulatory bodies, including the person(s) or entities (including but not limited to their titles, duties and dates of such responsibility) who was or is responsible for communicating with foreign regulatory bodies about the Devices from the date You first started developing the Devices until the present.

53. The approval, management, administration, operation and compliance with any and all foreign medical device regulations applicable to the Devices from the date You first started developing the Devices until the present.

Post-Market Surveillance

54. Your claims and complaint process, including but not limited to, the manner in which You receive and process claims and complaints about the Devices, how You track claims and complaints, investigate claims, how the claims and complaints are recorded or archived, any databases kept for this information, who keeps this information and processes it;

55. Complaints concerning implanted port catheters wherein the complaining party mentions any of the following:

a. catheter fracture;

b. catheter kinking;

c. catheter migration;

d. catheter perforation of vessels and/or organs;

e. catheter dislodgment;

f. catheter surface roughness and fouling;

g. catheter infection;

h. port infection;

i. sepsis, including septic shock and organ failure;

j. hemorrhage;

k. thrombosis or thromboembolism;

l. occlusion;

m. pulmonary embolism;

n. cardiac/pericardial tamponade;

o. cardiac arrhythmia and other symptoms similar to myocardial infarction;

p. death;

q. radiopacity;

r. degradation.

56. Policies and procedures for receiving, reviewing, evaluating, and investigating any written, electronic, or oral Adverse Event Reports that allege deficiencies related to the identity, quality, durability, reliability, safety, effectiveness, or performance of the Devices, including but not limited to:

a. literature review and healthcare-provider or patient surveys;

b. policies and procedures for determining reportability of Adverse Event Reports to the FDA, and/or other regulatory agencies, including foreign agencies, concerning the Devices during the Relevant Time Period;

c. policies and procedures for tracking, trending, and signal detection to determine additional actions to take based on Adverse Event Reports concerning the Devices or comparable competitor products during the Relevant Time Period;

d. policies and procedures for determining the root cause of an Adverse Event Report concerning the Devices during the Relevant Time Period;

e. the investigation, evaluation and determination as to whether there is a causal

connection between the design of the Devices and any adverse event or injuries;

f. any databases used to perform any of the above-described post-market surveillance activities concerning the Devices during the Relevant Time Period;

g. any third parties engaged or contracted to perform any of the above-described post-market surveillance activities concerning the Devices during the Relevant Time Period;

h. training provided regarding post-market surveillance, including training of sales representatives, field assurance individuals, clinical specialists, territory managers, district managers, sales managers and any employees regarding their proper handling of Adverse Event Reports concerning the Devices during the Relevant Time Period.

57. Your consideration of or implementation of a registry concerning the Devices during the Relevant Time Period.

58. Consideration or implementation of label changes, design changes, manufacturing changes, product holds, product recalls, or additional product testing or studies, whether or not based in part on analysis of Adverse Event Reports concerning the Devices during the Relevant Time Period, including policies and procedures.

59. Implementation of corrective action plans ("CAPAs") concerning the Devices during the Relevant Time Period, including any CAPAs created or implemented concerning the Devices during the Relevant Time Period, including policies and procedures.

60. Any failure investigations created or implemented concerning the Devices during the Relevant Time Period.

61. Implementation of Health Hazard Evaluations concerning the Devices during the

Relevant Time Period, including any Health Hazard Evaluations created or implemented concerning the Devices during the Relevant Time Period, including policies and procedures.

62. Implementation of Remedial Action Plans concerning the Devices during the Relevant Time Period, including any remedial action plans created or implemented concerning the Devices during the Relevant Time Period, including policies and procedures.

63. Implementation of Preventative Action Plans concerning the Devices during the Relevant Time Period, including any preventative action plans created or implemented concerning the Devices during the Relevant Time Period, including policies and procedures.

64. Implementation of Risk/benefit analyses concerning the Devices during the Relevant Time Period, including any Risk/benefit analyses performed concerning the Devices during the Relevant Time Period, including policies and procedures.

65. The sending of "Dear Doctor Letters" or "Dear Healthcare Provider" letters or their equivalent within the United States concerning the Devices during the Relevant Time Period, including any such letters considered or sent to doctors or healthcare providers in the United States concerning the Devices during the Relevant Time Period, as well as policies and procedures related to the same.

66. Your policies and procedures for tracking inventory concerning the Devices during the Relevant Time Period.

67. Interactions of all personnel, departments, groups, agents, partners, licensors, consultants, collaborators of Yours and/or any third party, including but not limited to any industry groups, advocacy groups and/or research groups, responsible for the preparation, development, submission, revision and/or negotiation of recall, CAPA, quality management, quality control, and/or quality assurance processes, procedures, materials, documents and/or data for all Devices.

68. Any Communications or submissions between You and the FDA that include as any part of their subject matter recalls, inspections, corrective actions, quality management, quality control, and/or quality assurance of the Devices.

69. Any survivorship analysis, trend reports, or any similar analysis, conducted with respect to the Devices for the relevant time period, including those completed by You, any agent, partner, licensor, consultant and/or collaborator of Yours; and/or any third party, including but limited to any industry groups, advocacy groups and/or research groups.

70. The applicable processes, location, organization, format and identifying information for all documents, materials or data related to and/or concerning any survivorship analysis, trend reports, or any similar analysis conducted with respect to the Devices for the relevant time period, including those completed by You, any agent, partner, licensor, consultant and/or collaborator of Yours; and/or any third party, including but limited to any industry groups, advocacy groups and/or research groups.

71. Any Communications or submissions between You and the FDA, or potential Communications with the FDA, that include as any part of their subject matter post market surveillance, deterioration, and/or survivorship rate of the Devices.

72. The documents and data that were relied on to calculate or support any deterioration and/or survivorship rates of the Devices.

73. The identity, title, function and the interactions of all personnel, departments, groups, agents, partners, licensors, consultants, collaborators of Yours and/or any third party, including but not limited to any industry groups, advocacy groups and/or research groups, responsible for any changes made to instructions, labeling, Instructions for Use, package inserts, warnings or any other written material provided to physicians, users and/or purchasers, including

Communications with the FDA and/or any foreign medical device regulatory body concerning such changes, for all Devices.

74. All recalls (actual or considered), inquiries, claims, notices, demands, complaints, or other Communications you have received from any individual, attorney, doctor, health care provider, branch, department, agency, office at other subdivision of the federal government such as the Food & Drug Administration, any state or federal attorneys general, any consumer "watchdog" organization, state agencies, and/or the Better Business Bureau, relating to or alleging injuries or damages caused by the Devices which allege defects, injuries, complications, and side effects such as those alleged in the First Amended Master Complaint in this case;

DOCUMENT REQUESTS

The designated witness shall produce in accordance with the deposition protocol the following documents:

1. The current resume for any corporate designee.

2. All information which the deponent has utilized or may need to refresh his or her recollection as to any of the issues concerning this lawsuit.

3. All information which was used to prepare the deponent for the deposition.

4. All information viewed by the deponent relating to the subject matters listed in this Notice that were viewed after receipt of this notice and prior to the deposition.

As to any information that has been previously produced in this action (other than those used to prepare the corporate designee), the information may be identified by specific bates numbers as to each document, provided the specific Bates Numbers are furnished to Plaintiffs' counsel.

Exhibit C

Elizabeth Falconer

From: Elizabeth Falconer
Sent: Friday, October 18, 2024 3:15 PM
To: scarson@bm.net; jelwell@bm.net
Cc: Rebecca.Phillips@lanierlawfirm.com; mas@ciresiconlin.com; aevans@dickersonoxton.com; PORT PPF PFS
Subject: Tamekia Franklin - PPF Delinquency Notice LTR Port MDL No. 3081
Attachments: Franklin, Tamekia_2024.10.18 PPF Delinquency Notice LTR Port MDL No. 3081.pdf

Counsel,

Please see attached correspondence regarding delinquent Plaintiff Profile Form in MDL 3081.

-Elizabeth

NELSON MULLINS

ELIZABETH ASHLYNN FALCONER SENIOR ASSOCIATE
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October 18, 2024

VIA EMAIL
Shanon J. Carson, Esq.
Jennifer Elwell, Esq.
Berger Montague PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
scarson@bm.net
jwelwell@bm.net

RE: Delinquent Plaintiff Profile Form, *In re Bard Implanted Port Catheter Products Liability Litigation*, 2:23-md-03081-DGC, MDL No. 3081

Dear Counsel:

Under Case Management Order ("CMO") No. 8, entered on November 22, 2023 (Doc.113), Plaintiff Tamekia Franklin was required to serve a Plaintiff Profile Form ("PPF") via MDL Centrality by October 14, 2024. *See* Exhibit A (CMO 8). To date, we have not received a PPF from plaintiff, and it also appears that you have not registered with MDL Centrality. As a result, we are sending this delinquency notice via email and not through MDL Centrality.

Pursuant to CMO 8, plaintiff has twenty-one (21) days from the date of this letter to submit a completed PPF and all accompanying records via MDL Centrality. As is provided for in CMO 8, we reserve the right to move to dismiss plaintiff's claims should plaintiff fail to comply with this deadline. *See* Exhibit A, CMO 8 at 4 ("If a Plaintiff does not submit a PPF within the time specific in this Order, Defendants shall send a communication through MDL Centrality stating that Defendants may request dismissal during a regular case management conference if a PPF and the accompany records are not received within 21 days.").

We look forward to hearing from you.

Very truly yours,

Elizabeth A. Falconer

EF
CC: Plaintiffs' Leadership Committee
portppf-pfs@nelsonmullins.com

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

IN RE: Bard Implanted Port Catheter Products Liability Litigation	MDL No. 3081 **CASE MANAGEMENT ORDER NO. 8** **PROFILE FORMS**

The Court enters this Case Management Order regarding the process for the use of Plaintiff Profile Forms and Defendants Profile Forms.

The parties have agreed upon the use of an abbreviated Plaintiff Profile Form ("PPF") (the PPF approved by the Court is Exhibit 1 attached to this Order) and an abbreviated Defendants Profile Form ("DPF") (the DPF approved by the Court is Exhibit 2 attached to this Order). Following the procedure below, the PPF and DPF shall be completed in each currently pending case and in all cases that become a part of this MDL by virtue of being filed in, removed to, or transferred to this Court on or after the date of this Order.

For any case filed in, removed to, or transferred to MDL 3081 on or before the date of this Order, the Plaintiff shall submit a completed PPF and all accompanying records to Defendants within 45 days of the date of this Order.

For any case filed in, removed to, or transferred to MDL 3081 after the date of this Order, the Plaintiff shall submit a completed PPF and all accompanying records to Defendants within 30 days of filing the Short-Form Complaint.

Plaintiffs and Defendants shall use the MDL Centrality online system accessible at www.mdlcentrality.com/BardPort to complete and serve PPFs and DPFs, as follows:

(a) Each Plaintiff shall, by counsel or as *pro se*, establish a secure online portal with the MDL Centrality online system and obtain authorized usernames and secure login passwords to permit use of MDL Centrality by such counsel or Plaintiff. Except as set forth herein, counsel for a Plaintiff or each *pro se* Plaintiff shall be permitted to view, search, and download on MDL Centrality only those materials submitted by that Plaintiff and by Defendants relating to that Plaintiff only, and not materials submitted by or relating to other Plaintiffs.

(b) Defendants shall establish a secure online portal with the MDL Centrality online system and obtain authorized usernames and secure login passwords to permit use of MDL Centrality by Defendants' counsel.

(c) Plaintiffs' Co-Lead Counsel and attorney designees in the Plaintiffs' Leadership Committee ("PLC"), as appointed by Plaintiffs' Co-Lead Counsel, shall have access to and be able to view, search, and download all materials submitted by all Plaintiffs and by all Defendants.

(d) Each Plaintiff and Defendants shall use MDL Centrality to obtain, complete, or upload data and serve the appropriate Profile Form online (including the upload of PDFs of documents required to be produced with the Profile Forms).

(f) Service of a completed Profile Form shall be deemed to occur when the submitting party has performed each of the steps required by MDL Centrality to execute the online submission of the materials and the submitting party has received confirmation on screen that the materials have been successfully submitted. Immediately upon submission of a PPF by a Plaintiff, MDL Centrality shall send notification of the submission to Defendants at portppf-pfs@nelsonmullins.com and portppf-pfs@mccarter.com. Immediately upon submission of a DPF by Defendants, MDL Centrality shall send notification of the submission to the Plaintiff's counsel of record at the email address(es) provided upon registration

for MDL Centrality, with a copy to the PLC by operation of an email distribution list provided to MDL Centrality by Plaintiffs' Co-Lead Counsel.

(g) If a party must amend a previously served Profile Form, all subsequent versions must be named accordingly ("First Amended Plaintiff Profile Form," "Second Amended Plaintiff Profile Form," etc.), and all iterations of a party's Profile Form must remain available and accessible to all parties to a case through trial, appeal (if any), or other resolution of the litigation. Immediately upon submission of an amended PPF, MDL Centrality shall send notification of the submission to Defendants at portppf-pfs@nelsonmullins.com and portppf-pfs@mccarter.com. Immediately upon submission of an amended DPF, MDL Centrality shall send notification of the submission to the Plaintiff's counsel of record at the email address(es) provided upon registration for MDL Centrality, with a copy to the PLC by operation of an email distribution list provided to MDL Centrality by Plaintiffs' Co-Lead Counsel.

(h) The Court may establish a secure online portal with the MDL Centrality online system and obtain an authorized username and secure login password to permit use of MDL Centrality by the Court.

(i) MDL Centrality should not be viewed as an alternate or supplemental docket in this case. It shall be used for the collection and presentation of discovery material that would not normally be filed in the Court's docket, such as PPFs, DPFs, Plaintiff and Defendant fact sheets, privilege logs, and correspondence related to such discovery matters. Any item that would ordinarily be filed in the Court's docket should be so filed. The Court will not regularly review or monitor MDL Centrality. Doing so is the responsibility of defense counsel and Plaintiffs' leadership counsel.

The use of MDL Centrality by any party shall not alter or otherwise waive or affect any attorney-client privilege or work-product doctrine protection otherwise available. Any notations placed on materials, comments entered, or documents stored or uploaded to MDL

Centrality by a user shall be considered to be the work product of such user unless and until the material is served on or purposefully disclosed to the opposing party through the use of MDL Centrality or otherwise. Pursuant to Rule 502(d) of the Federal Rules of Evidence, this Order with respect to privilege and work-product doctrine protection applies to any other federal or state proceeding.

Each Plaintiff is required to provide Defendants with a PPF that is complete in all respects, answering every question in the PPF and producing all accompanying records, even if a Plaintiff can answer the question in good faith only by indicating "not applicable," "N/A," or "unknown." The PPF shall be signed by the Plaintiff under penalty of perjury. If a Plaintiff is suing in a representative capacity, the PPF shall be completed by the person with legal authority to represent the estate or the person under legal disability. A Plaintiff's spouse with a claim for loss of consortium shall also sign the PPF under penalty of perjury.

A completed PPF shall be considered interrogatory responses under Fed. R. Civ. P. 33 and responses to requests for production under Fed. R. Civ. P. 34 and will be governed by the standards applicable to written discovery under Federal Rules 26 and 37. The questions and requests for documents in the PPF shall be answered without objections. This section does not prevent a Plaintiff from redacting information in produced documents based on a recognized privilege. However, if such information is redacted or withheld on the basis of privilege, Plaintiff shall provide Defendants with a privilege log that complies with Fed. R. Civ. P. 26(b)(5) simultaneously with the submission of the PPF.

If a Plaintiff does not submit a PPF within the time specified in this Order, Defendants shall send a communication through MDL Centrality stating that Defendants may request dismissal during a regular case management conference if a PPF and the accompanying records are not received within 21 days. Immediately upon submission of the communication, MDL Centrality shall send notification of the submission to the Plaintiff's counsel of record at the email address(es) provided upon registration for MDL Centrality, with a copy to the PLC by operation of an email distribution list provided to MDL Centrality by Plaintiffs' Co-Lead Counsel. No further contact from Defendants is required.

If no PPF is received within 21 days of the date of the communication being sent and the Plaintiff fails to contact Defendants' counsel to explain why further time is needed to complete the PPF, Defendants may raise a request to dismiss during a regular case management conference. Absent a showing of good cause for the failure to timely submit a PPF, the Plaintiff's case will be dismissed. Defendants may apply for their reasonable attorneys' fees and expenses incurred in seeking dismissal. No Plaintiff shall receive more than one extension to provide a PPF, absent written consent from Defendants.

If a Plaintiff serves a PPF that is not complete (including accompanying records requested), Defendants shall have 15 days from service of the incomplete PPF to identify deficiencies. Defendants' counsel shall send a deficiency letter through MDL Centrality identifying the alleged deficiencies. Immediately upon submission of the letter, MDL Centrality shall send notification of the submission to the Plaintiff's counsel of record at the email address(es) provided upon registration for MDL Centrality, with a copy to the PLC by operation of an email distribution list provided to MDL Centrality by Plaintiffs' Co-Lead Counsel. The Plaintiff shall have 15 days from the date of the email to serve a complete PPF. No further contact from Defendants is required.

If the Plaintiff fails to resolve the deficiencies and serve a complete PPF within the time allowed or fails to contact Defendants' counsel to explain why further time is needed to complete the PPF, Defendants may raise a request to compel a fully complete PPF during a regular case management conference. Defendants may apply for their reasonable attorneys' fees and expenses incurred in seeking to compel a fully complete PPF. No Plaintiff shall reeeive more than one extension to provide a fully completed PPF, absent written consent from Defendants.

Within 45 days of receipt of a complete PPF, including accompanying records, the Defendants shall submit a completed DPF to the Plaintiff. The completed DPF shall be sent via MDL Centrality. Immediately upon submission of the DPF, MDL Centrality shall send notification of the submission to the Plaintiff's counsel of record at the email address(es) provided upon registration for MDL Centrality, with a copy to the PLC by operation of an

email distribution list provided to MDL Centrality by Plaintiffs' Co-Lead Counsel. The parties agree that Defendants cannot comply with disclosure requirements of the DPF pertaining to manufacturing information and the Device History Record ("DHR") until the Plaintiff provides proof of the product code and lot number for the device at issue in the Plaintiff's case. The parties further agree that a Plaintiff shall not initiate the DPF deficiency processes described *infra* as to those required disclosures of the DPF until 45 days after such Plaintiff has provided Defendants with a completed PPF that sets forth the product code and lot number for the device at issue in such case.

A completed DPF shall be considered interrogatory responses under Fed. R. Civ. P. 33 and responses to requests for production under Fed. R. Civ. P. 34 and will be governed by the standards applicable to written discovery under Federal Rules 26 and 37. The questions and requests for documents in the DPF shall be answered without objections. This section does not prevent Defendants from redacting or withholding information based on a recognized privilege. However, if such information is redacted or withheld on the basis of privilege, Defendants shall provide the Plaintiff with a privilege log that complies with Fed. R. Civ. P. 26(b)(5) simultaneously with the submission of the DPF.

If Defendants do not submit a DPF within the time specified in this Order, the Plaintiff's counsel and/or Plaintiffs' Co-Lead Counsel shall send a communication through MDL Centrality stating that the Plaintiff may raise a request to compel if a substantially complete DPF is not received within 21 days. Immediately upon submission of the communication, MDL Centrality shall send notification of the submission to Defendants at portppf-pfs@nelsonmullins.com and portppf-pfs@mccarter.com. If no DPF is received within 21 days of the date of the email, the Plaintiff may raise a request to compel a DPF during a regular case management conference.

If Defendants serve a DPF that is not substantially complete, the Plaintiff shall have 15 days from service of the incomplete DPF to identify deficiencies. The Plaintiff's counsel and/or Plaintiffs' Co-Lead Counsel shall send a deficiency letter through MDL Centrality identifying the alleged deficiencies. Immediately upon submission of the letter, MDL

Centrality shall send notification of the submission to Defendants at portppf-pfs@nelsonmullins.com and portppf-pfs@mccarter.com. Defendants shall have 15 days from the date of the email to serve a substantially complete DPF. If Defendants fail to serve a substantially complete DPF within the time allowed or fail to contact the Plaintiff's counsel to explain why further time is needed to substantially complete the DPF, the Plaintiff may raise a request to compel a fully complete DPF during a regular case management conference.

Dated this 22nd day of November, 2023.

David G. Campbell
Senior United States District Judge

Exhibit D

Elizabeth Falconer

From: Jennifer P. Elwell <jelwell@bm.net>
Sent: Tuesday, November 5, 2024 2:50 PM
To: Elizabeth Falconer
Cc: Christina McCollum; Adam Evans; Chelsea Dickerson
Subject: Bard IPC: PPF Delinquency Notice for Tamekia Franklin
Attachments: 11-5-24 Response to PPF Delinquency Notice - Tamekia Franklin(20272763.1).docx

Counsel,

Please see attached letter in response to the PPF Delinquency Notice for Plaintiff Tamekia Franklin.

Kind Regards,
Jenny Elwell

Jennifer P. Elwell / *Senior Counsel*
215.875.3029 215.806.1970

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PHILADELPHIA, PA 19103

BERGER MONTAGUE

JENNIFER ELWELL / *SENIOR COUNSEL*
d 215.875.3029 | jelwell@bm.net

November 5, 2024

VIA EMAIL
Elizabeth Falconer
Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, GA 30363
elizabeth.falconer@nelsonmullins.com

Re: *In re Bard Implanted Port Catheter Products Liability Litigation*
Plaintiff Profile Form for Tamekia Franklin

Dear Ms. Falconer,

We are in receipt of your October 18, 2024, Delinquency Notice for Plaintiff Tamekia Franklin's Plaintiff Profile Form (PPF). To date, we have been unable to establish contact with Ms. Franklin for her to verify her Plaintiff Profile Form. As such, we have not registered her on MDL Centrality nor submitted a verified Plaintiff Profile Form.

As referenced in your letter and consistent with CMO 8, we understand that you reserve the right to move to dismiss plaintiff's claims should she fail to comply with the deadline. If we establish contact with Ms. Franklin, we will promptly register her on MDL Centrality and submit a verified Plaintiff Profile Form.

I'm happy to discuss further as needed.

Sincerely,

Jennifer Elwell

Exhibit E

September 26, 2024

VIA MDL CENTRALITY
Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, GA 30363

RE: ***In re: Bard Implanted Port Catheter Products Liability Litigation Scott Johnson***

Dear Counsel:

To accompany Plaintiff's Amended Plaintiff Fact Sheet, this letter is to inform the defense that Mr. Johnson passed away on September 2, 2024. Mrs. Johnson does not have a copy of the death certificate at this time. She is in the process of trying to obtain it. Plaintiff's counsel will produce the death certificate upon receipt. If you have any questions, please contact our office at eservice.legal@rwblawyers.com or (305)-374-6366.

Sincerely,

/s/Kimberly L. Boldt

Kimberly L. Boldt