

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**IN RE: BIOZORB DEVICE PRODUCTS  
LIABILITY LITIGATION**

**Case No. 1:22-cv-11895-ADB**

This Document Relates to: Plaintiff Kimberly Taylor (No. 1:23-cv-10260), Plaintiff Beth Deuel (No. 1:23-cv-10579), Cynthia Kresch (No. 1:23-cv-10260), and Pamela Gibson (No. 1:23-cv-10599).

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION  
TO PRECLUDE REBUTTAL EXPERT DISCLOSURES**

**I. INTRODUCTION**

Plaintiffs intend to serve rebuttal expert reports on May 28, 2025, pursuant to Fed. R. Civ. P. 26(a)(2)(D)(ii). Such rebuttal reports are allowed by the Federal Rules of Civil Procedure and do not violate the scheduling order, disrupt orderly trial preparation, or prejudice Defendant Hologic, Inc. Therefore, Defendant's motion to preclude Plaintiffs from serving rebuttal expert reports (ECF No. 252) should be denied.

**II. BACKGROUND**

On January 31, 2025, the Court entered a Scheduling Order to modify certain pre-trial deadlines, including the deadline for Plaintiffs and Defendant to serve expert reports. ECF No. 218. According to the Scheduling Order, Plaintiffs' and Defendant's deadlines to serve expert reports were March 24, 2025 and April 28, 2025 respectively. Deadlines for expert rebuttal reports were not addressed.

The Parties served expert reports per the deadlines set forth in the Scheduling Order. Following the disclosures, on May 7, 2025, Plaintiffs informed Defendant of their intent to serve rebuttal expert reports by May 28, 2025, in accordance with Fed. R. Civ. P. 26(a)(2)(D)(ii). On

May 12, 2025, the Parties met and conferred regarding Plaintiffs' rebuttal reports. During the meet-and-confer, Plaintiffs informed Defendant that: 1) Plaintiffs were not issuing rebuttal reports from all of their experts; 2) Plaintiffs intend to keep the rebuttal reports succinct and limited in scope; and 3) that Defendant could do short follow-up depositions via Zoom within a very short timeframe following receipt of rebuttal reports, should Defendant choose to if it needed to discover the basis and rationale for any expert's rebuttal opinions. On May 13, 2025, Defendant moved to preclude Plaintiffs from serving rebuttal expert disclosures. ECF No. 252.

### **III. ARGUMENT**

"Absent a stipulation or a court order," expert disclosures must be made "within 30 days after the other party's disclosure" if "the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party." Fed. R. Civ. P. 26(a)(2)(D). Applying this provision, the Court in *Crawford-Brunt v. Kruskall* determined that when a separate deadline for the disclosure of rebuttal expert reports is not set, "[t]hat meant, under Rule 26, that the parties could choose to disclose a rebuttal expert report within 30 days after disclosure of the original report." 489 F. Supp. 3d 4, 6-7 (D. Mass. 2020). Similarly here, the Scheduling Order entered on January 31, 2025 did not specify a deadline for expert rebuttal reports. ECF No. 218. As such, Rule 26 should apply, allowing Plaintiffs to submit evidence intended solely to contradict or rebut evidence within 30 days of Defendant's disclosures served on April 28, 2025.

Plaintiffs' intended expert rebuttal reports will be made more than 90 days before the date set for trial. *See* Fed. R. Civ. P. 26(a)(2)(D)(i). Moreover, Plaintiffs also intend to accommodate the expedient execution of these reports and any discovery arising therefrom, as Plaintiffs articulated to Defendant in their May 12, 2025 meet-and-confer. Therefore, Plaintiffs' expert

rebuttal reports will not disrupt orderly trial preparation nor prejudice Defendant.

#### IV. CONCLUSION

For all the reasons set forth herein, the Court should deny Defendant's Motion to Preclude Rebuttal Expert Disclosures.

Dated: May 27, 2025

Respectfully submitted,

/s/ Moze Cowper

C. Moze Cowper (*pro hac vice*)

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**CERTIFICATE OF SERVICE**

I, C. Moze Cowper, certify that on May 27, 2025, I caused a true copy of the foregoing document to be served electronically through the CM/ECF system to the registered participants as identified on the NEF.

/s/ Moze Cowper  
Moze Cowper