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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

**JOINT MEMORANDUM RE
ISSUES TO BE ADDRESSED AT
THE SEPTEMBER 18, 2025 CASE
MANAGEMENT CONFERENCE**

(Applies to All Actions)

Pursuant to Case Management Order No. 38 (“CMO 38”), the Parties submit this Joint Memorandum in advance of the Case Management Conference (“CMC”) scheduled for September 18, 2025. *See* Doc. 4738, at 1.

I. Case Statistics

There are 2,169 cases pending in the MDL. 80 cases have been dismissed from the MDL.

II. State-Court Litigation

There are 146 cases pending in the New Jersey MCL centralized before the Honorable Gregg A. Padovano.

There are 21 cases pending in the Superior Court of Maricopa County and consolidated before the Honorable Timothy J. Ryan. Scheduling orders have been entered in nine cases, and initial disclosures have been exchanged and discovery has begun in 14 cases. The first trial is currently set for August 3, 2026.

III. Discovery

The Parties provide the Court with updates regarding: (A) common-issue fact witness depositions; (B) common-issue expert witness depositions; (C) case-specific fact witness depositions; (D) case-specific treater depositions; (E) case-specific expert witness depositions; and (F) case-specific written discovery.

A. Common-Issue Fact Witness Depositions

As the Court is aware, Defendants’ Rule 30(b)(6) deposition of Dow was delayed by Dow’s Motion to Quash. The 30(b)(6) deposition of Dow was completed on August 20, 2025. All common-issue fact witness depositions have been completed, and the Parties have no issues regarding common-issue fact witness depositions to address with the Court at this time.

B. Common-Issue Expert Witness Depositions

All common-issue expert witness depositions have been completed, and the Parties have no issues regarding common-issue expert witness depositions to address with the Court at this time.

1 **C. Case-Specific Fact Witness Depositions**

2 Depositions of fact witnesses are to be completed by September 19, 2025 for
3 all Bellwether Group 1 cases, Doc. 2937, at 5, except for the Divelbliss case in
4 which the deadline is December 18, 2025, Doc. 3787, at 2. All fact witness
5 depositions are expected to be completed timely, and the Parties have no issues
6 regarding Bellwether Group 1 fact witness depositions to address with the Court at
7 this time.

8 **D. Case-Specific Treating Physician Depositions**

9 Depositions of treating health care providers are to be completed by
10 September 19, 2025 for all Bellwether Group 1 cases, Doc. 2937, at 5, except for
11 the Divelbliss case in which the deadline is December 18, 2025, Doc. 3787, at 2.
12 Aside from the potential impact of issues concerning the Parties' access to complete
13 medical records for certain health care providers as discussed in Sections V.F.a and
14 V.F.b below, the Parties have no additional issues regarding Bellwether Group 1
15 treating physician depositions to address with the Court at this time.

16 **E. Case-Specific Expert Witness Depositions**

17 Depositions of case-specific expert witnesses are to be completed between
18 September 23 and October 23, 2025 for all Bellwether Group 1 cases, Doc. 2937, at
19 5, except for the Divelbliss case in which depositions are to be completed between
20 November 24, 2025 and January 2, 2026, Doc. 3787, at 2. The Parties are working
21 cooperatively to schedule these depositions so that they may be completed timely
22 and have reached an agreement on time limits for case-specific expert depositions.
23 The Parties have no issues regarding Bellwether Group 1 case-specific expert
24 witness depositions to address with the Court at this time.

25 **F. Case-Specific Written Discovery**

26 **a. Dr. Dim's Production of Medical Records for Plaintiff Divelbliss**

1 **i. Plaintiffs' Position**

2 Although Plaintiffs have made many attempts to contact Dr. Dim to obtain
3 outstanding medical records and/or an affidavit that none exist, to date, Dr. Dim has
4 not been responsive to those attempts. On August 28, Defendants confirmed that
5 they are primarily seeking:

- 6 • A March 2016 EKG and any corresponding office notes;
7 • Pacemaker interrogation data from ten dates;
8 • Medical records associated with two office visits for which billing records
9 but for which no visit records have been produced; and
10 • An updated records custodian affidavit.

11 Plaintiffs continue to believe that all of those items can be obtained (or else an
12 affidavit obtained that the items do not exist) and quickly. Dr. Dim has a heavy
13 clinical practice and a history of being slow to respond to Plaintiffs' requests,
14 although he eventually does respond and is cooperative. Plaintiffs will continue
15 seeking the records with urgency, as their own expert reports are due on September
16 30.

17 **ii. Defendants' Position**

18 As reported during the August Case Management Conference, Defendants
19 have had difficulties obtaining pertinent medical records from Plaintiff Divelbliss's
20 primary treating cardiologist Dr. Dim. While no medical records from Dr. Dim have
21 been received since the August Case Management Conference, the Parties are
22 working cooperatively to obtain the outstanding records from Dr. Dim. Defendants
23 requested an update from the Plaintiffs by September 12, 2025. At this time, there
24 is no need for Court intervention.

25 **b. Redaction of Plaintiff Judy Hicks' Medical Records**

26 Following the Parties' agreement that Plaintiff would correct the improper
27 redactions, Defendants received several amended privilege logs along with updated
28 sets of Plaintiff Hicks' medical records containing fewer redactions. Plaintiff asserts

that the improper redactions are now corrected. Defendants' review of those privilege logs and corresponding record productions is ongoing, but no relief is sought at this time.

IV. Plaintiff Profile Forms

A. Plaintiffs' Position

a. Delinquent PPFs

Plaintiff leadership has reached out to all counsel who represent the plaintiffs Defendants have identified as having delinquent PPFs. As indicated in the table below, Plaintiffs have since served PPFs for some of these cases or have indicated one will be uploaded soon. Plaintiff provides the following updates:

Plaintiff / Case Name	Case Number	Plaintiffs' Response
Waters, Julie	2:25-cv-00307	Follow up to counsel made; response pending
Morton, Kevin	2:25-cv-00488	PPF served 09/12/25
Bogan, Sr., Marquette Dewayne (PR Angela)	2:25-cv-00861	PPF served 09/12/25
Bryant, Laurie	2:25-cv-02057	Plaintiff counsel uploaded responsive medical records to MDL-Centrality on 09/15/25. PPF pending; counsel indicated it would be served by 09/16/25.
Beath, Helen (PR Marlan Bonin)	2:25-cv-02206	Plaintiff counsel uploaded responsive medical records to MDL-Centrality on 09/15/25. PPF pending; counsel indicated it would be served by 09/16/25.

1	Stinson, Leila	2:25-cv-02353	Plaintiff counsel uploaded responsive
2			medical records to MDL-Centrality on
3			09/15/25. PPF pending; counsel
4			indicated it would be served by
5			09/16/25.
6	Williams, Erica	2:25-cv-02381	PPF served 09/11/25
7			
8	Wilson, Barbara (PR	2:25-cv-02435	Follow up to counsel made. Plaintiff
9	Deandra Aguiar)		counsel is having issues getting in
10			contact with the client.
11	Blackburn, Robin	2:25-cv-02525	Follow up to counsel made. Plaintiff
12			counsel has indicated they will upload
13			a PPF by 09/16/25.
14	Lillehei, Jennifer	2:25-cv-02524	Follow up to counsel made. Plaintiff
15			counsel is having issues getting in
16			contact with the client.

17

18 **b. Deficient PPFs**

19 Plaintiffs' Leadership has reached out to counsel representing Ms. Wells

20 about the Defendants' PPF deficiency allegations and plaintiffs' counsel's follow-

21 up letter indicating that the case would be dismissed. Plaintiff Leadership has not

22 yet heard back but will work with this attorney and Defendants to ensure the matter

23 is resolved.

24 **c. Incomplete PPFs**

25 Plaintiffs disagree with Defendants' contention that there are a seemingly

26 large number of what they allege are "incomplete" PPFs in the MDL where

27 plaintiffs have said they will supplement certain information. However, Plaintiffs

28 are willing and will continue to work with Defendants to resolve any issues.

B. Defendants' Position

a. Delinquent PPFs

At the time of filing, the plaintiffs below failed to serve a PPF within the time prescribed in Second Amended CMO 8. (See Doc. 2369 (Second Amended CMO 8); Doc. 113 (CMO 8)). Second Amended CMO 8 provides that absent a showing of good cause for failure to timely submit a PPF, the plaintiff's case will be dismissed. (Doc. 2369 at 6; Doc. 113 at 5). To date, the Plaintiffs in the chart below have not served a PPF. Defendants seek an order to show cause as why the Complaints filed by these Plaintiffs should not be dismissed. (See Doc. 2369 at 6; Doc. 113 at 5).

Plaintiff	Civil Action Number	PPF Due Date	Delinquency Letter Attached as Exhibit	Plaintiff's Response Due Date
Waters, Julie	2:25-cv-00307	03/03/2025	08/18/2025 (Exhibit 1)	09/08/2025
Jackson, Heather	2:25-cv-00489	03/17/2025	08/18/2025 (Exhibit 2)	09/08/2025
Bryant, Laurie	2:25-cv-02057	07/14/2025	08/01/2025 (Exhibit 3)	08/22/2025
Beath, Helen (D) (PR Marlan Bonin)	2:25-cv-02206	07/28/2025	08/04/2025 (Exhibit 4)	08/25/2025
Stinson, Leila	2:25-cv-02353	08/06/2025	08/22/2025 (Exhibit 5)	09/12/2025
Wilson, Barbara C. (D) (PR Deandra Aguiar)	2:25-cv-02435	08/11/2025	08/22/2025 (Exhibit 6)	09/12/2025
Lillehei, Jennifer Northrup	2:25-cv-02524	08/18/2025	08/22/2025 (Exhibit 7)	09/12/2025

b. Susan Wells (2:25-cv-02563)

On July 22, 2025, the administrator of the estate of Susan Wells filed a Short Form Complaint ("SFC") on behalf of Ms. Wells that does not identify a Bard port. See Exhibit 8 at § IV (Wells' SFC). Thereafter, on August 18, 2025, a deficient

profile form was submitted on behalf of Ms. Wells that likewise does not identify a Bard port. On September 2, 2025, Defendants served a PPF deficiency letter. *See* Exhibit 9 (Wells’ Deficiency Letter). In response to the deficiency letter, Defendants received a letter from plaintiff’s counsel indicating that he made the decision to discontinue representation of Ms. Wells based on his determination that the case “does not meet the eligibility requirements for the claim to proceed” in this MDL. *See* Exhibit 10 (Wells’ Response). To date, no medical records have been submitted on behalf of Ms. Wells. Accordingly, Defendants request that the Court issue an Order to show cause as to why Ms. Wells’ lawsuit should not be dismissed.

c. Incomplete PPFs

Defendants remained concerned about the increasing number of incomplete PPFs based on plaintiffs indicating that they “will supplement” (and have not) or that they have “produced all the records” they have. Defendants have reached out to Plaintiffs Leadership to meet and confer about this and will address any unresolved issues at the next Case Management Conference.

V. Defendant Profile Forms

A. Plaintiffs’ Position

a. Otzenberger, Ann – Verified Interrogatory Answer required by CMO No. 38

In Case Management Order No. 38, the Court ordered Defendant to submit a verified interrogatory response *under oath* pursuant Federal Rule of Civil Procedure 33(b)(3) that it has been unable to identify sales representative information in the Ann Otzenberger case, Case No. 25-cv-00149. (CMO No. 38, Dkt. 4738, ¶ 4, 08/18/25). The Defendant Profile Form Section II.B. represented, and Defendants made statement to the Court at the last case management conference hearing representing, that this information could not be found due to the passage of time and how long ago Ms. Otzenberger’s implant was in 2011.

On August 22, 2025, Defendant filed an interrogatory response in the Otzenberger matter. (Exh. 14). While the interrogatory response stated that Defendants have been unable to locate the requested information, the attached “Verification” produced by Defendant was flawed as it contained broad, limiting language that essentially rendered the answer unconfirmed and unverified. *Id.* Plaintiff will attempt to work with Defendant prior to the upcoming case management conference set for September 18, 2025 to see if these issues can be resolved. If they cannot, Plaintiff requests that the Court order Defendants to issue an updated verification that corrects these issues and confirms the information the Court ordered it to verify.

b. Overdue Complaint File Deficiencies – DPF Section V(2)

Defendants have failed to provide responsive information to Section V(2) of the DPFs produced in several cases. The table below identifies cases where this information has been overdue for at least 60 days following the date when Defendants’ original DPF was due:

Plaintiff Name	Case Number	Original Date Due
1. Jennifer Hrdina	2:25-cv-1057	06/16/2025
2. Brittany Detrick	2:25-cv-0924	06/05/2025
3. Wendy Thomas	2:25-cv-1359	07/06/2025
4. Gene Vigil	2:25-cv-1341	07/06/2025
5. Olga Melendez Aponte	2:25-cv-1303	06/12/2025

Plaintiffs request the Court order Defendants to produce the Complaint Files and complete responsive information to DPF Section V(2) for the above-listed cases within 30 days, or by the time of the next CMC, whichever is sooner.

B. Defendants’ Position

a. Otzenberger, Ann – Verified Interrogatory Answer

1 In Case Management Order No. 38 (Doc. 4738), the Court directed
2 Defendants in the **Otzenberger** case to “submit to Plaintiffs a verified interrogatory
3 answer under Federal Rule of Civil Procedure 33(b)(3) stating, under oath, that
4 Defendants have been unable to identify the missing sales representative
5 information after a diligent search.” Defendants did precisely that on August 22,
6 2025. Plaintiffs admit that Defendants did exactly what the Court directed, but then
7 allege in the Joint Memorandum that the “‘Verification’ produced by Defendant was
8 flawed.” Plaintiffs’ first draft of the Joint Memorandum, exchanged nearly three
9 weeks after Defendants served the verified interrogatory, was the first time Plaintiffs
10 raised any concerns with the verification.

11 First, Plaintiffs complain – without further explanation – that the verification
12 contains “broad, limiting language.” Contrary to Plaintiffs’ characterization,
13 however, the verification merely reiterates what Defendants have consistently stated
14 first in the original Profile Form, then in the discussion of the issue at the last case
15 management conference, and finally in the interrogatory response itself.
16 Specifically, the verification points out once again that the response is “necessarily
17 limited by the records and information still in existence.” It is difficult to understand
18 how that acknowledgement renders the response “unconfirmed and unverified”, as
19 Plaintiffs maintain. The verification goes on to note that Defendants will revise the
20 response if errors are discovered or “more accurate information” becomes available.
21 That statement simply acknowledges Defendants’ duty to supplement the response
22 under Fed. R. Civ. P. 26(e)(1)(A), which requires supplementation if a party
23 discovers a response is “incomplete or incorrect.”

24 Second, Plaintiffs complain that the response was “not notarized or signed
25 under oath.” That allegation overlooks 28 U.S.C. sec. 1746. Under that statute,
26 whenever a party is obligated by “rule, regulation, order, or requirement made
27 pursuant to law” to provide a sworn declaration or provide an oath, the party may
28 instead provide an “unsworn declaration” or “statement” reciting certain language.

1 The statute specifically permits the person attesting to the matter to “declare under
2 penalty of perjury” that the information is “true and correct.” Such a statement has
3 “like force and effect” as a sworn declaration or oath. That is precisely the language
4 utilized by Defendants in the verification of the interrogatory response at issue here.

5 **b. Complaint Files**

6 In their initial draft of the Joint Memorandum, Plaintiffs identified eight
7 complaint files which they claim have been “overdue” for 60 days or more.
8 Coincidentally, four of the eight files listed by Plaintiffs had been received by
9 Defendants’ counsel earlier that same week. Those files have now been produced to
10 Plaintiffs. Three more of the eight were received by Defendants’ counsel on Friday,
11 and were promptly produced to Plaintiffs. Defendants will produce the one
12 remaining complaint file (Jennifer Hrdina) from the original list within 30 days.

13 At 4:27 p.m. (EDT), on the date this submission was due to be filed, Plaintiffs
14 added four more complaint files for the first time. Defendants are investigating the
15 status of those files.

16 Defendants are committed to continuing in their efforts to reduce the backlog
17 of complaint files.

18 **VI. Inadequately Pleaded Complaints**

19 **A. Plaintiffs’ Position**

20 Plaintiff Leadership learned for the first time in the joint memo exchange that
21 Defendants are concerned about an alleged “proliferation” of cases being filed
22 without product ID. After the joint memo deadline for adding new information,
23 Defendants added new information and removed other information to their section
24 on this issue; Plaintiffs have not had the opportunity to respond.

25 On top of failing to alert leadership about the issue, meet and confer, or give
26 the Parties reasonable time to resolve concerns, Defendants’ position fails to take
27 into account several things: 1) the Parties’ early agreement regarding the interaction
28 between Short Form Complaints (“SFC”) and Plaintiff Profile Forms (“PPF”),

1 which has been honored until now; 2) Defendants’ representations to the Court
2 about the information they believe should be provided in SFCs; 3) the specifics of
3 the individual cases at issue—two cases have obtained product ID outside of
4 traditional medical records and six were filed by the same law firm; and 4) efficiency
5 in MDL practice.

6 First, the Parties agreed early in the MDL while negotiating the SFC and PPF
7 that the SFCs would *not* need to be amended if plaintiffs later discovered product
8 ID information or new injuries. Rather, the PPF would control, and plaintiffs would
9 only need to amend the PPF and provide updated information in the PPF. That
10 agreement has been honored throughout the case until now.

11 In answering PPFs, plaintiffs provide product identification information and
12 basic injury information sufficient to satisfy pleading standards, plus more detailed
13 information. (*Compare* SFC Form, at 3-4 (Dkt. 2365-1) *with* PPF Form, at 2-4 (Dkt.
14 2369-1)). Plaintiffs made sure to address the matter in the SFC and PPF negotiation
15 process as this situation arises sometimes in MDLs where a plaintiff obtains new
16 information after the case is initially filed. This can occur for a variety of reasons,
17 most often due to the receipt of additional medical records.

18 Second, the issue of what information should be provided in a SFC was
19 addressed to the Court in November of 2023, and the Court recorded that “[b]oth
20 sides appear to agree that plaintiffs should disclose the date of implant, *to the extent*
21 *the plaintiff knows it*, the model number or product code, *to the extent the plaintiff*
22 *knows it*, and complications that the plaintiff has experienced.” 11/16/23 Tr. at 11:9-
23 14 (emphasis added); *see also id.* at 13:19-14:18 (discussing how “a plaintiff may
24 be filing right up against the statute of limitations deadline and ... [w]ithin that 30
25 day time period there could be accumulation of medical records”). Defendants’
26 position now is particularly surprising given that Mr. North specifically expressed:
27 “We understand that there are going to be cases and situations where they’ve just
28 got to get it on file and we’re not going to go and file a motion to dismiss or

1 something like that for every short-form complaint that's missing information for
 2 some reason. We'll call them up and meet and confer and try to work it out." *Id.* at
 3 16:9-16.

4 Consistent with the Parties' early agreement and Defendants' statements in
 5 Court, Plaintiffs have served amended PPFs to confirm additional information
 6 received since the MDL began, and Defendants have not raised any issue
 7 previously.

8 Third, as to the eight cases about which Defendants newly complain, two
 9 plaintiffs *do* have product information sufficient to meet pleading standards, and the
 10 other six plaintiffs are represented by the same firm, who leadership was able to
 11 quickly reach and who promised to cure. A summary of case-specific information
 12 is below:

14 Plaintiff	Case No.	Date Filed	PPF Due	PPF Served	PID Status
15 James, Isla	2:25-cv- 16 02695	7/30/25; 17 9/12/25 18 (amended)	8/29/25	8/28/25	Port ID 19 card, client 20 recollection, 21 awaiting receipt of medical records
22 Flores, Reyna	2:25-cv- 23 02735	8/1/25	8/31/25	Not Served	Pending
24 Jones- 25 Barnres, 26 Charlene	2:25-cv- 02740	8/1/25	8/31/25	9/9/25	Pending
27 Liederer, 28 Brigitte	2:25-cv- 02815	8/7/25	9/6/25	Not Served	Pending

1	McCoy,	2:25-cv-	8/7/25	9/6/25	9/8/25	Photographs
2	Jamie (PR	02817				and records
3	Jonie McCoy)					produced
4						with PPF
5	Outsey-	2:25-cv-	8/7/25	9/6/25	Not Served	Pending
6	Askew,	02843				
7	Pamela (PR					
8	Kelsie					
9	Outsey-					
10	Askew)					
11	Williams,	2:25-cv-	8/7/25	9/6/25	Not Served	Pending
12	Zenobia	02844				
13	Thomas,	2:25-cv-	8/7/25	9/6/25	Not Served	Pending
14	Linda	02846				

15 As to Plaintiff Jonie McCoy, a personal representative of Decedent Jamie
16 McCoy Plaintiff produced a PPF on September 8, 2025 and produced records and
17 photographs documenting the product at issue is a Bard PowerPort Duo MRI with
18 product code 1829500.

19 As to Plaintiff Isla James, Plaintiff has an identification card that was
20 provided to her with one of her ports, and she specifically recalls that all ports she
21 has ever had implanted were Bard brand. To protect Ms. James's rights and
22 interests, Plaintiff's complaint was filed to meet a statute of limitations deadline,
23 and her case was filed based on good faith information and belief that the products
24 at issue are some variations of the PowerPort. However, Plaintiff did file a First
25 Amended Short Form Complaint on September 12, 2025 that provides clarification
26 on the alleged Bard products at issue, the approximate dates when these products
27 were implanted, and that product code information is pending. Moreover, Plaintiff
28

1 received a PPF Deficiency Notice on September 12, 2025 and will work diligently
2 to cure outstanding deficiencies.

3 As to the remaining six cases at issue, each of those plaintiffs is represented
4 by the same law firm. The law firm at issue is not in leadership, and when leadership
5 contacted the law firm, they were notified that the firm intended to add the product
6 information to the plaintiffs' PPFs, which has been the firm's practice to date and
7 about which Defendants had not previously complained. Plaintiff leadership is
8 confident that, given a reasonable amount of time, the issue will be corrected.

9 Fourth, Defendants' suggestion that Plaintiffs file Amended SFCs in each of
10 these cases is inappropriate, as it is inefficient and creates an unnecessary burden on
11 the Court and the parties—which is why the parties negotiated a contrary agreement
12 early in the case. If every plaintiff were required to file an Amended SFC to verify
13 additional information received after the SFC is filed, the Court would have to
14 process additional, unnecessary filings. This would clutter the Master Docket.
15 Contrary to the SFC, all PPFs are handled completely without the Court's
16 involvement in the separate MDL-Centrality portal. Plaintiffs' counsel would be
17 burdened by having to amend both documents, instead of only the PPF, whenever
18 new information is obtained on a claimant. This would cause more work on
19 Defendants' part as well if their involvement were required based on the status of
20 the case and amendment requirements under Federal Rule of Civil Procedure 15.

21 Defendants cite several cases saying dismissal is appropriate, but none of
22 these cases are from MDL proceedings and instead involved a single action and
23 product claim. Courts overseeing MDLs routinely acknowledge that unique
24 procedures such as abbreviated SFCs and later PPFs are needed to facilitate notice
25 pleading and efficient discovery while protecting both parties' interests. Plaintiffs
26 should not be penalized by creating additional procedural hurdles that are inherently
27 unnecessary and inappropriate in mass actions such as this, especially where case
28 management orders provide mechanisms for supplementation and correction later.

1 Where information gaps arise due to issues outside counsel's control, the established
2 MDL process allows for supplementation or voluntary dismissal, if necessary,
3 *without* Court intervention, consistent with the parties' prior negotiations and
4 operational needs of the litigation. Resorting to dismissal orders and additional
5 amendments is both unnecessary and contrary to MDL practice.

6 In sum, there is no apparent danger of a proliferation of cases being filed
7 without product ID, but, as should be clear from the multiple issues raised in this
8 joint memo, Defendants are consistently failing to communicate with Plaintiffs'
9 Leadership about issues before they raise them to the Court. Justice requires that
10 the eight plaintiffs at issue first be given an opportunity to produce a PPF (or
11 amended PPF where applicable) and provide further product information as part of
12 that process. Dismissal is inappropriate at this time, and the Defendants' request
13 should be denied.

14 **B. Defendants' Position**

15 There are a number of cases in this MDL where the plaintiff has failed to
16 identify both the product alleged to be defective and the date any port product was
17 allegedly implanted. Defendants originally identified eight cases filed in the last
18 month where the complaints failed to include that information. Plaintiffs have since
19 rectified the omission in two of the cases. However, six of those cases (filed by a
20 single law firm) remain deficient. Defendants are concerned about the proliferation
21 of this practice.

22 Admittedly, Case Management Order No. 7 (Doc. 112) streamlines the
23 typical pleading requirements of Fed. R. Civ. P. 8. To that end, CMO No. 7 allows
24 a plaintiff to initiate an action by filing a short form complaint that incorporates the
25 master complaint already on file in the MDL. Even that truncated procedure,
26 however, calls for the identification of the device at issue and the date it was
27 implanted.

1 In a typical product liability lawsuit, such omissions would be cause for
2 dismissal of the complaint. *See, e.g., Thorpe Design, Inc. v. Viking Corp.*, 2015 U.S.
3 Dist. LEXIS 123855 *6 (N.D. Cal. 2015) (dismissing a complaint for being “overly
4 vague as to what product is at issue.”); *see also G.P. v. Sears Roebuck & Co.*, 2014
5 U.S. Dist. LEXIS. 206884 *7 (C.D. Cal. 2014) (citing plaintiff’s failure to identify
6 “model at issue” as one basis for dismissal); *accord Markel Am. Ins. Co. v. Pac.*
7 *Asian Enters.*, 2008 U.S. Dist. LEXIS 60536 *15 (N.D. Cal. 2008). Defendants
8 submit that the same result should occur here. Despite the abbreviated pleading
9 requirements imposed by CMO No. 7, the short form complaints must still include
10 “factual allegations” supporting Plaintiffs’ claims. *See Ashcroft v. Iqbal*, 556 U.S.
11 662, 129 S. CT. 1937, 1950 (2009). No factual allegations could be more of the core
12 basis of a product liability claim than the identification of the product alleged to be
13 defective and the date the product was implanted.

14 Nonetheless, Plaintiffs offer several reasons why, in their view, the
15 deficiencies should not matter. First, they maintain that the parties had previously
16 agreed that short form complaints need not be amended to include information later
17 produced in the Plaintiffs’ Profile Form. While that may be true, any such
18 “agreement” does not excuse in the first instance a wholesale disregard of the
19 pleading requirements established for the short form complaint by CMO No. 7.
20 Second, Plaintiffs point to Defendants’ previous acknowledgment that a looming
21 statute of limitations may occasionally necessitate the filing of a complaint that is
22 “missing information for some reason.” *See* 11/16/23 Tr. At 16:9-16. While that
23 may also be true, such situations should be the exception, and not the rule, and the
24 filing of six such cases in a short period of time (by a single law firm) would appear
25 to be more of an unfortunate practice than an emergent necessity.

26 The fact remains that a short form complaint that does not identify a product
27 or a date of implant violates both the specific requirements of CMO No. 7 and the
28 pleading standards of Fed. R. Civ. P. 8. Defendants, therefore, respectfully request

that the Plaintiffs identified in the following chart be ordered to amend their complaints within ten days to provide the omitted information.

Flores, Reyna	2:25-cv-02735-DGC
Jones-Barnes, Charlene	2:25-cv-02740-DGC
Liederer, Brigitte	2:25-cv-02815-DGC
Outsey-Askew, Pamela (PR Kelsie Outsy-Askew)	2:25-cv-02843-DGC
Williams, Zenobia	2:25-cv-02844-DGC
Thomas, Linda	2:25-cv-02846-DGC

In the event a plaintiff fails to do so, Defendants request permission to file a motion to dismiss.

Defendants may identify additional cases with comparable deficiencies in the future.

VII. Rachael Poppell

A. Plaintiffs' Position

Four days prior to this response's drafting, Defendants for the first time raised with Ms. Rachel Poppell's counsel that Defendants believe that Ms. Poppell passed away shortly before counsel was able to file her complaint. Ms. Poppell's counsel is working to investigate and cure any issue. Defendants' request for dismissal is premature.

B. Defendants' Position

Defendants have discovered that Plaintiff Rachael Poppell was deceased at the time a short form complaint was filed in her name (Case No. 2:25-cv-0191). Specifically, Ms. Poppell passed away on December 28, 2024, and a short form complaint was filed on January 22, 2025. As a result, this action should be dismissed as a legal nullity due to the ostensible "Plaintiff's" lack of legal existence at the time of filing. Counsel's May 7, 2025 filing of an Amended Complaint identifying a representative (MDL No. 3081, Doc. 3470) does not cure the fact that this case was invalid when filed.

1 On September 8, 2025, counsel for Defendants emailed Plaintiff's counsel to
2 request that this case be dismissed. Plaintiff's counsel has responded only that he is
3 reviewing the issue. If this case has not been dismissed by the time of the Case
4 Management Conference, Defendants request permission to file a motion to dismiss
5 on the grounds that Ms. Poppell did not have the legal capacity to file a lawsuit at
6 the time a case was filed in her name.

1 Dated: September 16, 2025

Respectfully submitted,

2
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