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September 11, 2025

The Honorable David T. Schultz
United States Magistrate Judge
U.S. District Court, District of Minnesota
300 South Fourth Street
Minneapolis, MN 55415

RE: Bair Hugger Forced Air Warming Devices Products Liability Litigation, 0:15-md-02666-JNE-DTS
Meeka Elliott, 0:24-cv-02978-JNE-DTS
Jessie Irene Jackson, 0:22-cv-01404-JNE-DTS
Richard Stehm, 0:23-cv-01406-JNE-DTS
Tamera Swanson, 0:22-cv-03095-JNE-DTS

Dear Judge Schultz,

We write in response to Defendants 3M Company and Arizant Healthcare, Inc.'s (collectively 3M) discovery letter brief emailed on September 9, 2025, and filed on September 10, 2025 (ECF No. 3037). Langdon & Emison, LLC, is counsel for four (4) cases currently selected for the remand process, which are identified above. We oppose 3M's request that the Court require plaintiffs who direct-filed their cases in the MDL to travel to Minneapolis for their depositions absent a showing that they will suffer specific, genuine hardship.

Langdon & Emison, LLC, adopts and incorporates herein on behalf of Langdon & Emison, LLC's four (4) cases the response emailed by Christopher L. Coffin (attached as Exhibit 1).

Respectfully submitted,
LANGDON & EMISON

Brett A. Emison, *Partner*

EXHIBIT 1

PBC | PENDLEY BAUDIN & COFFIN
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September 10, 2025

The Honorable David T. Schultz
United States Magistrate Judge
U.S. District Court, District of Minnesota
300 South Fourth Street
Minneapolis, MN 55415

Re: *In re Bair Hugger Forced Air Warming Products Liability Litigation*, MDL No. 2666

Dear Judge Schultz:

I am writing in response to Defendants 3M Company and Arizant Healthcare, Inc.'s (collectively "3M") discovery letter brief submitted on September 9, 2025. My firms, Pendley, Baudin & Coffin and Coffin Law, are counsel for thirty-four (34) remand cases in Groups 1-3. We oppose 3M's request that the Court require plaintiffs who direct-filed their cases in the MDL to travel to Minneapolis for their depositions absent a showing that they will suffer specific, genuine hardship.

In December 2015, the Judicial Panel on Multidistrict Litigation centralized the *In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig.* in this District for coordinated pretrial proceedings. On April 29, 2016, the Court issued a Direct Filing Order which allowed for the direct filing of complaints into this District. *See* PTO 5, ECF 37. The Order stated that:

> The purpose of this Order is to minimize delays associated with transfer of actions involving Bair Hugger claims pending or originating in other federal district courts to this Court and to promote judicial efficiency. This Order is **intended solely to facilitate administrative convenience without otherwise altering the substantive or procedural rights of the parties**, except as otherwise provided for below.

Id. at 1 (emphasis added). One exception outlined by the Order was with regard to which substantive law should apply, providing that:

> With regard to the determination of the applicable substantive law for any action filed in this District pursuant to this Order and/or Pre-Trial Order #1, in the event of a dispute between the parties concerning the applicable substantive law, the Court will apply Minnesota choice-of-law rules unless the Plaintiff clearly identifies the following information in the initial complaint: (1) current residence; (2) date and location of surgery plaintiff claims Bair Hugger was used; and (3) the appropriate venue where the action would have been filed if direct filing in this District were not available. If the Plaintiff identifies that information, then the choice-of-law rules from the appropriate venue shall apply.

Id. at ¶ 2.

As specifically stated in the Order, the ability to direct file in the MDL was intended to be solely for administrative convenience and to ease the burden of the parties and the Court. It was not intended to change the substantive rights of the plaintiffs who filed in this District, when absent the direct filing order, the plaintiff would have filed in their home forum. Defendants are now attempting to hold this administrative convenience against plaintiffs. As noted by the Eighth Circuit:

> Special rules apply in MDL cases as to determining the forum state. In MDL cases, the forum state is typically the state in which the action was initially filed before being transferred to the MDL court. Granted, [plaintiff] filed her complaint directly in the district court, but this was only because of the Direct Filing Order; otherwise, she would have filed her complaint in the Northern District of Ohio, in which case the forum state would have been Ohio. The direct-filing mechanism in MDL litigation is for bureaucratic convenience and does not render the state of the MDL court the forum in direct-filed actions that would have been brought in another forum but for the direct-filing mechanism. Instead, the forum remains the state where the action would have been brought.

Axline v. 3M Co., 8 F.4th 667, 675 (8th Cir. 2021) (internal citations omitted). As your Honor is likely aware, requiring plaintiffs who direct-filed their cases in an MDL to be deposed in the district in which the MDL is located is highly unusual. Rather, standard practice is to depose the plaintiff in his or her home forum.[1] This practice is supported by the Court's Direct Filing Order and the Eighth Circuit's statement that the "forum state" in direct-filed cases is the forum in which the suit would have been brought absent the direct-filing order.

The cases relied upon by 3M are distinguishable and do not support this Court ordering plaintiffs to be deposed in this District. *Archer Daniels Midland Co. v. Aon Risk Servs. Inc. of Minn.*, 187 F.R.D. 578, 587-588 (D. Minn. 1999), was not consolidated as an MDL. Rather, *Archer* involved the determination as to the venue of general employees and 30(b)(6) designees of the plaintiff. *Id*. The court found that the plaintiff's general employees were subject to the "general rule that a deponent should be deposed near his or her residence, or principal place of work." *Id*. at 587. As to the 30(b)(6) designees, the court stated that "there is a well-recognized, general rule that a plaintiff is required to make itself available for deposition in the District in which the suit was commenced, because the plaintiff has chosen the forum voluntarily, and should expect to appear there for any legal proceedings, whereas the defendant, ordinarily, has had no choice in selecting the action's venue." *Id*. at 588. 3M failed to note that the court in *Archer* noted that "the selection of the forum for a plaintiff's deposition should not be rigidly formulaic for, in the interests of justice, we have great discretion in the location of taking a deposition and that discretion must be directed toward considering each case on its own facts and the equities of the particular situation." *Id*. at 588.

Unlike the plaintiff in *Archer*, the majority of plaintiffs in this MDL did not choose this venue. They only filed their cases in the MDL due to availability of the direct-filing order to avoid

[1] These Plaintiffs are part of the Group 1 remand process, where the ultimate path for these cases includes a transfer to the appropriate venue where the action would have been filed if direct filing in this District were not available. The parties have not consented to trying these matters in this District, which is precluded by the Supreme Court's *Lexecon* decision absent a waiver by both parties.

the administrative burdens (on both the parties and courts) of transfer via the Judicial Panel on Multidistrict Litigation (JPML). Had they filed in their home forum, their cases would have been transferred to this District through no choice or actions of their own. Defendants on the other hand did have input in selection of this venue as they supported centralization in this District where 3M resides. *See In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig*., 148 F. Supp. 3d 1383, at 1385 (U.S. Jud. Pan. Mult. Lit. 2015). In fact, as noted by the JPML this District was primarily chosen because 3M and Arizant "are headquartered in Minnesota and many witnesses and relevant documents are likely to be found there." *Id*. at 1386. 3M benefits from this litigation proceeding in this District and now unfairly attempts to shift burden and expenses to Plaintiffs, ignoring the purely administrative nature of PTO 5.

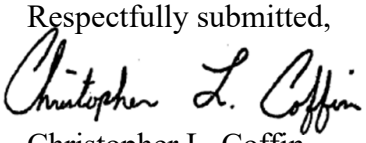
3M primarily relies on the non-binding decision *In re Chrysler Pacifica Fire Recall Prods. Liab. Litig*., 737 F. Supp. 3d 611, 617-619 (E.D. Mich. 2024) to support its position and requests that the Court adopt the framework set forth in *Pacifica*. The framework in *Pacifica* should not be applied to the present situation as the facts and circumstances in *Pacifica* are substantially different from those here. While *Pacifica* was an MDL, it was a class action in which eleven complaints were consolidated into a master complaint, naming sixty-nine class representatives. *Id*. at 614. Three of the class action complaints were directly filed in the MDL's venue prior to the formation of the MDL. *Id*.; *see also In re Chrysler Pacifica Fire Recall Prods. Liab. Litig*., 619 F. Supp. 3d 1349, at *1351 (U.S. Jud. Pan. Mult. Lit. 2022). The complaints were not filed pursuant to a direct filing order as no such order was implemented in that MDL. At the time of the court's decision, only fifty class representatives remained active in the litigation and the court's order requiring depositions to occur in Michigan would only apply to the finite number of potential class representatives. *Id*. Meanwhile there are 150 cases in the remand pool and thousands more in the MDL which could potentially be required to be deposed in Minnesota should the Court agree with 3M's position.

The court in *Pacifica* further noted that many of the plaintiffs who were proposed class representatives elected to file their suits within the Eastern District of Michigan and that, as purported class representatives, "the expense and burden of personal participation was foreseeable at the outset of their claims." *Id*. at 618. But in comparison to the present case, those plaintiffs actively chose to file their class action complaint in the Eastern District of Michigan prior to an MDL ever being created. The Plaintiffs we represent in Group 1 had no such choice of venue. While they had a choice to either file directly in this MDL pursuant to PTO 5 or file in their home forum, their cases would ultimately transfer to this District regardless pursuant to the JPML's consolidation order. The court in *Pacifica* justified its decision by noting that "[a]s potential class representatives, an allowance is made under Rule 23 for individual compensation to be paid to the named plaintiffs to offset the burden and expense incurred by representation of absent class members, in the event that the case proceeds on a class basis, and if they secure a recovery for the benefit of the class." *Id*. There is no such device or allowance for the individual remand cases in this mass tort MDL.

If 3M refuses to depose the plaintiff in their home forums (where the cases ultimately will be tried), which is almost universally done in MDLs, we propose an alternative solution that the depositions occur via Zoom in accordance with Rule 30(b)(4). *See* Fed. R. Civ. P. 30(b)(4) ("The parties may stipulate – or the court may on motion order – that a deposition be taken by telephone or other remote means"). 3M has agreed to conduct depositions via Zoom in remand and state

court cases (both plaintiff and treating physician depositions), and thus, we do not see a reason why that process cannot occur with the Groups 1-3 remand plaintiffs.

Respectfully submitted,



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