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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 IN RE: Bard IVC Filters Products
10 Liability Litigation,

No. MDL 15-02641-PHX-DGC

11 **CASE MANAGEMENT ORDER NO. 43**

12 (Tinlin Trial, Common Benefit Fund Fee
13 and Expense Accounts, Closing Date for
14 New Cases and Remand or Transfer, and
SNF Cases)

15 The Tinlin bellwether trial will begin on May 13, 2019. Doc. 12971 at 3-4. The
16 Court held a final pretrial conference with the parties on April 29, 2019. Doc. 17453. The
17 conference concerned issues raised in the parties' trial briefs and proposed final pretrial
18 order, and other matters. On the basis of the conference, the Court enters the following
19 orders:

20 1. Tinlin Trial.

21 a. By **May 8, 2019**, the parties shall file a joint witness list to give to the
22 prospective jurors on the first day of trial.

23 b. Plaintiffs shall file a memorandum regarding the ruling on MIL 1
24 (Docs. 16576, 17285) by the close of business on **May 1, 2019**. Defendants shall file a
25 response by the close of business on **May 3, 2019**. The memoranda are limited to three
26 pages each. No reply shall be filed.

27 c. By **May 6, 2019**, the parties shall jointly file proposed jury
28 instructions for the fraudulent concealment claim and revised proposed verdict forms.

1 d. By close of business on **May 3, 2019**, Defendants shall file a response,
2 limited to three pages, to Plaintiffs' argument that Wisconsin law does not allow a
3 manufacturer to allocate fault to third parties on strict product liability claims. Doc. 17357
4 at 2.

5 e. Plaintiffs shall notify the Court by the close of business on **May 1,**
6 **2019**, as to when the Tinlins will be testifying. Plaintiffs are directed to make advanced
7 arrangements with the courtroom deputy should the Tinlins wish to listen to any portion of
8 the trial by telephone.

9 f. By **May 3, 2019**, the parties shall jointly file a revised proposed
10 preliminary instruction regarding video appearance that includes Mr. Tinlin. *See*
11 Doc. 17436 at 8.

12 2. Motion for Common Benefit Fund Fee and Expense Accounts.

13 a. By **May 10, 2019**, the parties shall file a joint proposed order for the
14 establishment of common benefit fee and expense accounts and appointment of an escrow
15 agent. *See* Docs. 372 at 9, 16932 at 2-3. The Court will decide whether to increase
16 common benefit fee and cost assessments when the issue is fully briefed and the Court's
17 schedule permits. *See* Doc. 372 at 10.

18 b. Plaintiffs' request for a one-week extension to file a reply brief is
19 **granted.**

20 3. Closing Date for New Cases and Remand or Transfer of Cases.

21 a. The closing date for new cases to be transferred to or directly filed in
22 this MDL is **May 31, 2019**. *See* Doc. 16343 at 7.

23 b. The parties' joint memorandum identifying all cases in this MDL that
24 fall within the two settlement tracks, due **July 1, 2019** (*id.* at 6, ¶ 4(a)), shall (1) identify
25 each case not included in Track 1 or Track 2, and (2) state for each such case whether it
26 was transferred by the JPML or directly filed in this MDL, and identify the district from
27 which it was transferred by the JPML or the district to which it should be transferred if it
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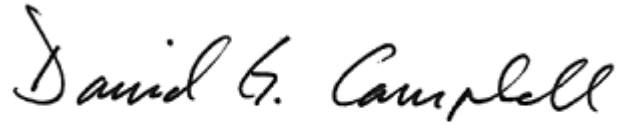
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was directly filed in the MDL (*see id.* ¶ 4(c)).

4. Simon Nitinol Filter (“SNF”) Cases.

In Case Management Order 42, the Court gave attorneys in SNF cases until May 1, 2019 to, among other things, organize into a Plaintiffs’ steering committee and designate lead counsel for SNF cases. *Id.* at 4. At the April 29 conference, attorney Nicole Maldonado appeared on behalf of attorneys with SNF cases. Based on the discussions with Ms. Maldonado and counsel for Defendants, the Court will not dismiss the SNF cases at this time. Ms. Maldonado shall file a report by **July 1, 2019** regarding the nature and status of the remaining SNF cases. The Court will then address how to proceed with the SNF cases.

Dated this 2nd day of May, 2019.



David G. Campbell
Senior United States District Judge