UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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| IN RE: COVIDIEN HERNIA MESH PRODUCTS LIABILITY LITIGATION NO. II,<br><br>This Document Relates To:<br><br>All Cases | MDL No. 1:22-md-03029-PBS |

**PLAINTIFFS' MOTION TO EXTEND THE DISCOVERY DEADLINES AND TO COMPEL DISCOVERY**

The Plaintiffs' Steering Committee ("PSC") respectfully moves this Court to extend the upcoming dates in the current scheduling order. The PSC's requested movement in the current scheduling order will extend the deadlines to allow sufficient time for Defendants to cure significant discovery deficiencies and for the PSC to review the newly produced documents and conduct depositions with a production that is relevant to the claims *and products* at issue in this MDL. As set forth in more detail below, movement of the scheduling order is for good cause and will prevent the significant prejudice that will occur to Plaintiffs if the scheduling order is not extended.

Further, pursuant to Local Rule of the District of Massachusetts 37.1, Fed. R. Civ. P. Rules 37(a), 26(a)(1) and 26(b)(1), the PSC respectfully asks the Court to compel Defendants to conduct a re-pull of documents in their possession, custody, and control using the critical search terms that were, unbeknownst to the PSC, never run as part of the original pull of documents.

The PSC has, in good faith, tried to resolve both issues without the Court's intervention, but to no avail.

## I. INTRODUCTION

In Plaintiffs' Renewed Motion to Quash [ECF No. 256] filed in January of 2024, the PSC expressed serious concerns about the deficiencies it was discovering in Defendants' production. *See generally* ECF No. 256 at 4–9. In that motion, the PSC listed some examples of deficiencies noted in the "custodial files" of the cross-noticed witnesses and feared that those deficiencies were "just the tip of the proverbial iceberg". *See id.* at 5. As described below, the PSC's fears were realized.

To reiterate, from the beginning of the MDL litigation, Defendants represented that there would be complete discovery that would be shared with the MDL that was previously produced in the state court ("Covidien Production"). The representation to the PSC was that the Covidien Production was robust, complete, ***and involved all products at issue***. Unfortunately, after months of pressing Defendants for basic information related to the Covidien Production (search terms, search methodology, custodians, etc.), the PSC learned for the first time on February 29, 2024 that the terms "ProGrip" and "Symbotex" were not used to collect (or update) the Covidien Production, *ever*. The omission of these two products from the collection was a shock to the PSC and could not have been discovered sooner because, until the end of February, despite the PSC's insistence, Defendants' counsel had not even received permission from their client to provide the PSC with the search terms used to collect the Covidien Production. *See* 2/29/2024 Email from M. Novacheck, attached as Exhibit A.

The significance of this omission cannot be overstated. To Covidien's counsel's credit, it was acknowledged that this was a significant oversight and that these terms were "critical" to this MDL. Indeed, these two terms (*i.e.*, products) are critical:

- As of December of 2023, of the 20 products at issue in this MDL, ProGrip

made up 25% of the docket and Symbotex made up 24% of the docket, making these two products combined *nearly half of the cases filed in the MDL. See* 12/19/23 CMC Tr. at 8, attached as Exhibit B.

- Of the six plaintiffs in the Bellwether Pool, two were implanted with a ProGrip and two were implanted with a Symbotex, meaning *over half of the Bellwether Pool is made up of plaintiffs implanted with these two products.*
- Given the significance of these products to the MDL, the PSC focused its June 2023 Science Day Tutorial on these two products, showing the Court two animations—ProGrip and Symbotex. *See, e.g.,* 6/14/2023 Hearing Tr. at 17, 32, 36, 44 (excerpts of the transcript attached as Exhibit C).

It is evident that, because of Defendants' omission, the PSC is missing many—if not most—of the relevant documents related to this MDL. The correction of this document deficiency cannot be haphazard. This deficiency—and its needed correction—alone justifies movement in the scheduling order.

In addition to the problematic omission of critical search terms, as described more thoroughly below, there are other significant deficiencies, discovery disputes, and/or general problems with the production, all of which add up, and lead the PSC to request an extension, a request the PSC does not make lightly.

Finally, on top of the numerous outstanding discovery issues and incomplete production, as this Court is aware, the PSC was effectively shut out of the international depositions to which it had previously agreed to cooperate. These depositions involved witnesses with significant roles in the production, design, manufacture, and marketing of the products at issue in the MDL and

now need to be rescheduled, which due to the document production issues, are tentatively planned for July and September of 2024. *See* Joint Status Report [ECF No. 283].

Given the (1) serious discovery deficiencies; (2) the time it will take for Defendants to correct the deficiencies, produce the data, and re-assess their discovery responses; (3) the time it will take for the PSC to review the additional production and re-assessed discovery responses; and (4) the need to schedule and conduct dozens of depositions after the PSC has had time to review the production, the PSC respectfully requests an extension of the entire scheduling order of 8 months after Defendants have certified—and the PSC is satisfied—that the discovery issues have been resolved. This extension will allow time to obtain the outstanding discovery, conduct depositions, and make both available to Plaintiffs' experts for review.

## II. BACKGROUND

### A. Discovery Background

In late 2022, the PSC agreed to an aggressive scheduling order with a discovery end date of April 8, 2024. At that time, the PSC felt comfortable with the end date because it (incorrectly) believed that the Covidien Production would be as robust and complete as Defendants represented, and that it would be produced in a manner that the PSC could easily analyze. Neither have proven to be true. In fact, due to the disorganization of the Covidien Production along with the Defendants' wholesale failure to include critical metadata like the "custodian" field (described in detail below), it has taken the PSC an inordinate amount of time to sift through data and piece together all of the issues described in this motion.

The numerous issues with the Covidien Production with no satisfactory explanation prompted the PSC to serve Requests for Production and Interrogatories. The Plaintiffs' First Set of Interrogatories [ECF No. 266-5] and First Set of Requests for Production [ECF No. 266-4]

sought relevant documents and information relating to **all 20** of the hernia mesh products that are the subject of this Covidien MDL covering topics such as development, testing, approval and evaluation of the materials used in the design of these hernia mesh products, and discovery of documents from Defendants' custodial persons involved in each aspect of design, testing, approval and marketing of the hernia mesh products.

The PSC has had multiple meet-and-confers with Defendants seeking to address the deficient document production. Through the meet and confer process, the PSC was assured that the Defendants' Responses to Plaintiffs' Interrogatories and Requests for Production would answer the PSC's outstanding questions and cure any apparent deficiencies by directing the PSC to where in the production the sought-after documents existed.

Seeing as the PSC had no knowledge of how the Covidien Production was gathered, including the search terms used, search methodology, custodians chosen, etc., the PSC hoped that Defendants' responses would both answer questions and, in the event that an oversight in the collection was revealed, also yield new document productions. Unfortunately, Defendants' responses only raised additional questions and yielded no new document productions. Instead, rather than initiating a new search for documents responsive to the PSC's discovery requests, Defendants merely went to the deficient subset of documents it already gathered (*i.e.,* the Covidien Production) and (in addition to multiple wholesale boilerplate objections), directed the PSC to the same production with the same glaring issues and gaping holes.

The PSC has been conferring with Defendants for months in an attempt to get answers to various critical questions related to the Covidien Production and to essentially piece together the puzzle that Defendants have created. *See, e.g.,* 2/27/24 Stokes Email, attached as Exhibit D. The conferral process has been fraught with frustration for the PSC as with each conferral, new issues

have been uncovered. It seems to the PSC that Defendants have avoided answering basic questions about the Covidien Production and, only after exhaustive questioning and conferrals, do Defendants reveal another missing piece to the puzzle. *Id.* In some instances, once the PSC figures out the nature of the deficiency, Defendants acknowledge the issue and promise to provide more, which takes time. In other instances, Defendants will contemplate whether they will turn over documents and extend the conferral process further, again taking more time. The current status of discovery is essentially a moving target as most issues are in the conferral stage. For the deficiencies that Defendants have acknowledged and agreed to correct, they have not done so yet or the parties are in disagreement about how the issues should be resolved.

**B. The Numerous Discovery Deficiencies/Production Problems/Disputes**

There are numerous deficiencies, general problems with the production, or, in some instances, basic disagreements as to the discoverability of certain topics. Most issues are in the conferral stage or are currently being addressed by Defendants, which is proving to be a very time-consuming process. Due to the sheer number of discovery issues, let alone their significance, it logically follows that there is good cause for an extension:

- Failure to Include Critical Search Terms in Covidien Production Pull: In addition to ProGrip and Symbotex discussed at length, *supra,* Defendants did not include the names of other products and/or component parts that are relevant to the MDL (*e.g.,* Dextile Anatomical Mesh, Parietene, Versatex, Prevadh). In addition, the PSC is currently compiling a list of additional terms that need to be added to adequately capture the claims in the MDL as it was not privy to any search terms until recently. All of this will take time.

- The Custodial File Issue: There are several issues related to the "custodial files" produced. In the PSC's January Renewed Motion to Quash, the gaps and deficiencies noted for the upcoming

deponents (as well as other employees with major roles), were highlighted for the Court. *See* ECF No. 256 at 5–6. There was general confusion as to the true contents of any individual's custodial file and significant gaps were discovered as well. Because of this, the PSC was forced to attempt to construct a "custodial file" from the production using various search terms and tools. This was inefficient, and the PSC suspected that each constructive "custodial file" it created would inevitably be inaccurate, leading to hundreds of extra hours in reviewing these files. Since that time, the PSC has learned that Covidien had a technical error that caused the "All Custodian" field (that is meant to identify all custodians associated with a document), to be inaccurate. Without this information, the PSC was unable to accurately determine what documents each custodian had in their possession. In addition, Covidien failed to provide the PSC with a separate "Custodian" field, which was uncovered by the PSC on a February 29th conferral conference. Defendants' counsel acknowledged this to be a serious problem and has represented that the additional field will resolve the issue of identifying the custodians for each document. However, the PSC just received the overlay data on March 6, 2024 and has not been able to fully analyze whether this indeed fixes this serious problem. To be sure, the PSC is skeptical that, given the initial data collection error by Covidien, this additional field will resolve the problem. Even if the new overlay resolves the issue, the analysis and preparation for depositions, with information the PSC did not have previously, will take additional time.

Further, related to the production of documents associated with certain individuals for whom Defendants have said they produced a custodial file—aside from being inappropriately identified in the first place, it is still unclear where the production stands with those individuals. It appears to the PSC that production is incomplete and ongoing as evidenced by the Ludovic Boure production who was one of the subjects of the PSC's January Motion where the PSC noted

significant gaps (*see* ECF No. 256 at 5–6). Defendants previously represented that there were no missing files, yet just this week, they produced one production containing 15,390 documents and another containing 8,187 documents, all of which are described as "custodial documents of Ludovic Boure." This demonstrates the haphazard, incomplete, and incomprehensible nature of Defendants' document production to date. There is simply no indication that any of the Defendants' employees had complete custodial files produced in the Covidien Production. And while the PSC applauds Defendants' recent production of documents related to Boure, this exemplifies the need for an extension to get the numerous discovery issues resolved and the outstanding questions answered.

Finally, related to the custodians identified as being produced, because the PSC only learned of names on this list on February 29, 2024, the PSC is still evaluating the list and identifying whether additional individuals need to be requested, which may increase once a re-pull using the search terms "ProGrip" and "Symbotex" is conducted consistent with the PSC's proposal requested below.

- Missing Emails After 2017: The PSC has noticed a suspiciously low number of emails after 2017 in the Covidien Production. On the February 29, 2024 conferral call, Defendants acknowledged the issue. In a follow-up email, Defendants indicated they were working to resolve the "ongoing gap issue" related to email volume after 2017. *See* 2/29/24 M. Nvacheck Email, attached as Exhibit E. On March 13, 2024, Defendants' counsel did update the PSC and indicated that they are working on the issue "with all deliberate speed". *See* 3/13/24 M. Novacheck Email, attached as Exhibit F. To date, this issue has not been resolved. The PSC certainly appreciates that Defendants are working with deliberate speed to correct this issue but it is not resolved, which is yet another reason that the scheduling order should be extended as the PSC proposes.

- Other Gaps in the Production: Aside from the post-2017 email gap issue identified above, there are other random holes in the Covidien Production. The PSC has asked for litigation holds applicable to surgical mesh litigation (both hernia and pelvic—which uses the same materials as hernia mesh) to try to explain why documents were not produced for certain years or portions of years. Defendants' counsel is discussing this with their client. *See* Ex. E at 3. To date, the PSC has not heard back. Therefore, the investigation of the random holes in the production is still ongoing.

- Design History Files (DHFs)-Incomplete/Disorganized, or Not Produced: The parties are actively meeting and conferring on the production of DHFs. Defendants have agreed in most instances to produce the DHFs previously withheld. To date, the missing DHFs have not been produced. Given the level of cooperation, unless the parties reach an *impasse* on current outstanding issues, DHFs will likely not be the subject of any future motion to compel. However, this is based on the representation made by Defendants that the DHFs are encompassed in the Bates ranges provided in response to the PSC's Requests for Production. There are about 20,000 pages of documents that make up what Defendants have labeled as DHF files. For any individual DHF, the Bates numbers range thousands of pages and they are broken up into hundreds of smaller documents. Further, there has been no index produced for any of the DHFs, which is making the review extremely time-consuming and taxing. It has proven to be impossible to determine if the supposed DHFs are complete as the PSC tries to essentially rebuild them. The lack of any index with a DHF leads the PSC to believe that the production is not complete as it is standard practice in the industry to maintain an index for a device's design history file. Defendants have promised to look into the index issue. While the PSC appreciates the cooperation on the DHFs, given the number of outstanding issues related to DHFs as well as the files' general disorganization, an

extension is warranted as good cause exists on the DHF issue alone.

- Sales Representatives' Files: There has been an ongoing discussion for months regarding the production related to sales representatives. Because Defendants have been unable to identify sales representatives that were detailing doctors for the bellwether products at the time of the launch of those products (arguably the most important time for purposes of establishing what was being told to doctors about the products), the PSC has asked that the complete sales representative file for each representative identified in the Defendant Fact Sheet be produced without a time limitation. Defendants have agreed to do this but have not done so to date. The PSC understands that this takes time, which is yet another reason that the PSC is seeking an extension. Each of these sales representatives needs to be deposed as part of the bellwether discovery process and the PSC needs the complete file in order to prepare adequately.

Relatedly, due to an agreement in the state court litigation (that the PSC learned about for the first time in February), there were 20 random sales representatives' custodial files produced. However, the PSC knows nothing about the relevance of those sales reps and has asked Defendants for basic information like the duration of their employment. *See* 2/13/24 Stokes Email, attached as Exhibit G. In response, Defendants initially asked the PSC to serve discovery on the documents produced, but after the PSC pointed out the circular nature of Defendants' "discovery on discovery" request, Defendants indicated they would gather the information. *See* 2/16/24 Stokes Email (Exhibit H) and M. Novacheck 2/27/24 Response (Exhibit I). While again the PSC is happy that Defendants are cooperating with its request, to date no answers have been provided. Further, it is not clear to the PSC whether these files are complete because it does not know the duration of the sales reps' employment. Again, all of this follow-up and unraveling of the production is taking a significant amount of time, warranting an extension.

- Privilege Log Issues: The PSC is currently reviewing the claims of privilege and has yet to set a conferral call with Defendants on the topic. There are significant issues that highlight the need for more time. Specifically, the PSC's review to date has revealed numerous deficiencies and documents/communications that do not appear to fall within the stated privilege. Even though the burden is on the producing party to establish the claim of privilege, Defendants have failed to adequately identify and describe the documents or communications in a manner that will enable the PSC to assess these claims. For instance, Defendants failed to provide the subject line, title or heading of the documents and communications listed, the email addresses for any individual on a communication, or even the type of document or communication for each item listed. Additionally, even with the limited information Defendants have provided, it is clear there are documents labeled as privileged that do not qualify. Many of the entries are labeled privileged as they supposedly contain communications with and legal advice from counsel regarding pending hernia mesh litigation, however, most merely cc an attorney, some do not even include an attorney, and others are dated long before there was a hernia mesh litigation involving Defendants (*e.g.,* dated 4/6/2009). Again, the privilege log issue is not currently ripe for adjudication, but the PSC anticipates the need for *in-camera* review of examples from these allegedly privileged documents.
- Other Questions and Issues as to the Methodology of the Collection:
    - Defendants have not identified their "legacy" or archived email databases or if they were searched or where they are stored.
    - Defendants have not identified their SharePoint files and have not searched their various non-email messaging systems even though there are scattered references to PulseConnect, Salesforce Chatter, Jabber, Microsoft Teams, and Yammer along with a Medtronic system named MIX

(Medtronic Information Exchange).

- Documents Defendants Have Refused to Produce/Ongoing Disputes: There are several topics/classification of documents Defendants are simply refusing to produce. While the parties are still in a conferral posture, and the PSC is hopeful that they can work out these outstanding disputes without declaring an *impasse*, the following issues may be the subject of a future motion to compel:

    - Pelvic Mesh Production.
    - Foreign Regulatory Documents/Admissions Made in Foreign Countries.
    - Post-2022 Documents.
    - Financial Information, Marketing Strategies, or Promotional Plans.
    - Physician Consultants.

Even with all of the ongoing issues described above, the only movement in the scheduling order to which the Defendants have said they would consider is an extension that puts the MDL on the same timeline as the MA state court litigation—a discovery end date of May 28, 2024. Importantly, the MA state court had a *two-year head start over* the MDL and was also not shut out of the recent international depositions. This is just not workable. Essentially, Defendants have given the PSC a deficient production and are now trying to run the clock out. The PSC will be severely prejudiced if the clock runs out before the issues with the production can be resolved. It will take months for the PSC to properly review the discovery once it is produced. Because of this, the PSC requests an 8-month extension from the date Defendants certify (and the PSC agrees) that the discovery issues are resolved.

**III. THE CURRENT DEADLINES MUST BE EXTENDED TO PREVENT PREJUDICE TO THE PLAINTIFFS.**

This Court has broad discretion in supervising pretrial litigation. To amend a scheduling order requires court approval, which requires a showing of good cause. "Good cause exists if a party can demonstrate that the schedule cannot be reasonably met despite the diligence of the party seeking the extension". *Smith v. Ethicon*, 2020 WL 6044548, 2020 U.S. Dist. LEXIS 189340 (D. Or. 2020) at *14-15. District Courts regularly extend and modify scheduling discovery deadlines where circumstances require same to prevent prejudice and upon a showing of good cause. *MAZ Partners LP v. Shear*, 208 F. Supp3d 384, 387 (D. Mass. 2016); *Koninklijke Philips N.V. v. Zoll Med. Corp*., 217 F. Supp. 3d 362, 366 (D. Mass. 2016).

Case Management Order No. 4 (Scheduling Order-1st Amended) (entered as ECF No. 58 on 11/07/22 and ECF No. 64 on 12/21/22), currently provides an end date for general corporate of April 8, 2024, with plaintiffs' expert disclosures due April 22, 2024. Due to the ongoing discovery issues, including the deficient document production and resulting inability to take complete and thorough depositions, the PSC cannot comply with these deadlines as they are no longer practical. Even after Defendants certify that the deficiencies have been cured, and assuming the PSC agrees, time will be required to allow for review of the resultant production and the completion of depositions. Further, additional time must be factored into the equation to allow Plaintiffs' experts the opportunity to review and consider such evidence when formulating their opinions. This process of document review, conducting depositions (both international and domestic), which will likely total to about 20-25 in number, including 30(b)(6) depositions, is estimated to take approximately 8 months *after* the Defendants can certify (and the PSC agrees) that the discovery deficiencies have been resolved. Assuming the best-case scenario regarding the Defendants'

production and the resolution of the numerous discovery issues, the international depositions alone will not be complete until 5 months after the current discovery end date.[1]

This is the first time the PSC has requested an extension and the PSC does not do so lightly as the PSC wants to try these cases to bring justice to the injured plaintiffs in this MDL. However, the PSC cannot adequately try the case with the current state of discovery. All of the outstanding discovery issues and depositions yet to be conducted lead to only one conclusion, the scheduling order must be extended to prevent prejudice to the Plaintiffs.

## IV. MOTION TO COMPEL DEFENDANTS TO DO A FULL "RE-PULL" USING PREVIOUSLY OMITTED SEARCH TERMS "PROGRIP" AND "SYMBOTEX"

For the majority of the discovery issues outlined above, the parties have been regularly conferring and working relatively cooperatively as Defendants attempt to fix the numerous issues (as described throughout this motion, this conferral process and the resulting corrections are taking time, which necessitates the requested extension). However, the parties are at an *impasse* related to how to address the omission of the critical search terms—ProGrip and Symbotex—from the collection of documents.

The PSC's position is that Defendants should run a search of *all* documents in their possession, custody, and control that include these search terms without any limiting connectors. Due to the unique nature of these terms, there is simply no need to apply any limiting connectors as doing so would only eliminate relevant and discoverable documents. The resulting "hits" should then be produced (apart from redactions of recognized privileges). Instead, Defendants have told the PSC that they will not do a "full re-pull" but rather search only within the current list of custodians (which the PSC only just received on February 29, 2024). Defendants' plan is to then

[1] As this Court is aware, the parties' optimistic assessment in their Joint Discovery Update is that international witnesses will take place in the late summer and early fall of 2024. *See* 3/15/2024 Joint Status Report [ECF No. 283].

further narrow the documents collected with limiting connector terms. After the connector terms limit and exclude what will certainly be relevant documents, a team of lawyers will make a subjective determination of the relevance of each document in this narrowed subset of documents and will produce only what the lawyers feel are "related to the case". On the parties' conferral call, when questioned about this subjective assessment of what is relevant to this case, counsel for Defendants used an example that underscored the problem: if, in Defendants' example, there is a hit that involves "someone not connected to this litigation" then Defendants would not produce that document. This is improper and should not be allowed. Despite the obvious ambiguity and subjectivity of the approach, it makes no practical sense. Using Defendants' example, if a surgeon in Alaska who is not a surgeon for any plaintiff in the MDL writes to Covidien questioning why all of his or her patients are experiencing significant complications after the Symbotex was implanted, that document is highly relevant to Defendants' notice, among other things. Yet, Defendants would not produce this document because that doctor is "not connected to this litigation." This is just one example among many that illustrate the problem with Defendants' approach. Accordingly, the parties need the Court's guidance here.

Federal civil discovery rules are designed to "further the interests of justice by minimizing surprise at trial by ensuring wide-ranging discovery of information". *Costa v. FCA United States LLC,* 2023 WL 2298703, 2023 U.S. Dist. LEXIS 36347 (D. Ma. 2023) at *7-8. Rule 26(b)(1) sets forth the scope of discovery; "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties relative access to relevant information, the parties resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery

outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable." Fed. R. Civ. P. Rule 26 (b)(1).

The law is plain and longstanding in this realm. For federal civil document requests, pursuant to Fed. R. Civ. P. Rule 34, a party may serve document requests to obtain information that is "relevant to any claim or defense". Information is "relevant" for federal civil discovery purposes if it "is reasonably calculated to lead to the discovery of admissible evidence." The limits in Rule 26 are to be "construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on any issue that is or may be in the case," *Bingham v. Supervalue, Inc*., 2014 WL 12792917, 2014 U.S. Dist. LEXIS 199626 (D. Mass. 2014) at *4-5 (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 US 340, 351 (1978)); *Tsatas v. Airborne Wireless Network, Inc*., 2022 WL 74003, 2022 U.S. Dist. LEXIS 3396 (D. Nev. 2022) at *4-5. When it is clear that relevant discovery has not been produced, Fed. R. Civ. P. Rule 37(a) permits an affected party to move for an order compelling disclosure or discovery. When considering a motion to compel discovery "the court may, for good cause, order discovery of any matter relevant to the subject matter involved in the action." *Costa v. FCA United States LLC,* 2023 WL 2298703, 2023 U.S. Dist. LEXIS 36347 (D. Ma. 2023) at *7-8.

Here, it is difficult to imagine a scenario in which a document that hits on the unique product name of "ProGrip" or "Symbotex" would not be relevant to this case. This is a federal MDL with over 1,000 cases that are increasing in number by the day. As stated previously, these two products make up about half of the MDL and over half of the bellwether pool. With both products still on the market, they are being implanted in—and injuring patients—every day. Therefore, the number of cases with these products at issue will only increase. Thus, the PSC's proposed approach will no doubt yield highly relevant, important discovery, that is proportional to

the needs of this MDL. In addition, seeing as Defendants want to task a group of lawyers to subjectively determine the relevance of each document, the PSC's approach will likely be quicker and less costly to Defendants than their misguided approach. At this stage, the question is one of discoverability, not admissibility. If Defendants have concerns about the eventual admissibility of any of the documents that hit on these search terms, there is an appropriate time and place to address that, which is *not* at the document production phase. Because Defendants' approach of only applying the critical search terms to a limited number of custodians, narrowing those hits with additional terms and connectors, and further narrowing those with a subjective lawyer review will undoubtedly withhold a significant number of relevant documents, Defendants' approach should be rejected.

The discovery sought is solely within the Defendants' possession and control. Given the current and projected size of this MDL to include thousands of claimants and considering that Defendants are a large medical device manufacturer who is no stranger to product liability litigation, there is no unusual burden on Defendants here. Discovery is open, and the subject demands in this motion to compel are proportional to the litigation involving many hernia mesh products manufactured and sold by Defendants over many years and are targeted to seek discovery relevant to these products.

## VI. CONCLUSION

The dramatically deficient document production by Defendants propels the immediate need for this motion to extend the discovery schedule and compel Defendants to produce proper, complete discovery to the propounded discovery demands by the PSC. Future document production will require substantial additional time by the PSC to acquire, sift, sort, and analyze the expected very large volume of document production that will result from this motion to compel.

There is also a need to reschedule a large number of depositions given the MDL's inability to participate in the international depositions. As a result, it is evident that good cause exists for an extension of the existing discovery deadlines to avoid prejudice to the PSC and Plaintiffs.

It is respectfully requested that based on good cause shown and the extensive deficiencies in Defendants' production, it is necessary for the Court to issue an order:

(1) extending all discovery and expert deadlines to 8 months after Defendants have certified—and the PSC agrees—the discovery issues have been resolved; and

(2) compelling Defendants to conduct a complete re-pull of all documents in their possession, custody, and control with the previously omitted search terms without any limiting connectors or subjective attorney review for relevance.

Dated: March 22, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 2024, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of this electronic filing to all counsel of record.

/s/ Kelsey L. Stokes
***Plaintiffs' Co-Lead Counsel***