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March 29, 2024

VIA ECF FILING

Honorable Nicholas G. Garaufis, District Judge
Honorable Marcia M. Henry, Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: MDL No. 3044, In re: Exactech Polyethylene Orthopedic Products
Liability Litigation, Case No. 1:22-md-03044-NGG-MMH

Dear Judge Garaufis and Magistrate Judge Henry:

We write on behalf of Plaintiffs in response to the Exactech Defendants' letter of March 22, 2024 (ECF No. 573) and pursuant to the Court's March 25, 2024 Minute Order. Plaintiffs do not consent to an *in camera*, off-record conference. While such conferences can be productive under certain, limited circumstances, Plaintiffs have found no authority supporting conducting such conferences over the objection of one of the parties. In fact, the authorities support the proposition that in the absence of agreement of all parties, conferences should be held in open court, on the record. See, e.g., 28 U.S.C. sec. 753(b) ("Each session of the court and every other proceeding ... shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method; Proceedings to be recorded under this section include ... (2) all proceedings in other cases had in open **court unless the parties with the approval of the judge shall agree specifically to the contrary...**")(emphasis added); see also *In re Troup*, 730 F.2d 464, 466 (6th Cir. 1984) ("We note, however, that the informal off-the-record hearing in the Judge's chambers was agreed to by all parties at the time and no objections were raised before the bankruptcy court nor before the District Court.").

To the extent Defendants apparently want to discuss issues related to a potential global settlement, any conference – *in camera* or otherwise - is unnecessary at this point. The parties have had only limited discussions and are nowhere close to reaching any proposed settlement. The parties have engaged a mediator and those discussions are proceeding in parallel with the litigation. Defendants have failed to identify any compelling reason to involve the Court in those

Page 2

discussions, particularly in light of the multiple potentially significant rulings the Court will be called upon to make in the litigation, including in bellwether trials. Manual for Complex Litigation, sec. 13.11, 4th Ed. (2004) (“[m]any judges rarely engage in substantive settlement negotiations in cases they are expected to try....”).

Accordingly, Plaintiffs respectfully request that the Court deny Defendants’ request for an *in camera* conference.

Very truly yours,

A handwritten signature in black ink, appearing to read "N. Kirkland Pope". The signature is fluid and cursive, with the first name "N." and last name "Pope" clearly legible.

N. Kirkland Pope

cc: All counsel of record via ECF