

Edward J. Fanning (admitted *pro hac vice*)  
McCARTER & ENGLISH, LLP  
Four Gateway Center  
100 Mulberry Street  
Newark, New Jersey 07102  
Telephone: (973) 639-8486  
EFanning@mccarter.com

Richard B. North, Jr. (admitted *pro hac vice*)  
NELSON MULLINS RILEY &  
SCARBOROUGH, LLP  
Atlantic Station  
201 17th Street, NW, Suite 1700  
Atlanta, GA 30363  
Telephone: (404) 322-6000  
Richard.North@nelsonmullins.com

*Attorneys for Defendants*

**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 JULY 9, 2024 CASE  
MANAGEMENT CONFERENCE**

(Applies to All Actions)

Pursuant to Case Management Order No. 23 (“CMO 23”), the Parties submit this Joint Memorandum in advance of the eighth Case Management Conference (“CMC”) scheduled for July 9, 2024. *See* Doc. 769, at 1.

**I. Case Statistics & PFS/DFS Group 1**

There are 322 cases pending in the MDL. 172 cases were eligible for bellwether selection based on their inclusion in the Initial Plaintiff Pool. 14 cases have been dismissed from the MDL.

On July 1, 2024, the parties exchanged lists of twenty-four cases for inclusion in the PFS/DFS Group 1. *See* CMO 10, Doc. 115, at 2. The deadline to notify the other side if any party does not agree to waive *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), with respect to any selected case is July 8<sup>th</sup>. Plaintiffs’ Fact Sheets are due no later than July 31, 2024.

#### **A. Defendants’ Position regarding State Court Litigation**

There are forty-seven cases pending in the Superior Court of New Jersey. The New Jersey state liaison re-filed an application for multicounty litigation (“MCL”) designation on May 17, 2024, which Defendants opposed on June 21<sup>st</sup>. Defendants’ opposition to the renewed MCL application largely rests on the fact that only ten of the forty-seven cases—fewer than a quarter—involve New Jersey residents. The remaining cases were all filed by non-residents who could have directly filed in the MDL but chose not to for strategic reasons.

Defendants have moved, or intend to move, to dismiss all of the non-resident plaintiffs’ complaints on *forum non conveniens* grounds. Defendants have also moved to dismiss an overwhelming number of the non-resident plaintiffs’ complaints on statute of limitation grounds, as more than seventy-five percent are facially time-barred. Oral argument on those issues is scheduled for August 15<sup>th</sup>.

Defendants are aware of at least one duplicative filing by a non-New Jersey resident in both the MDL and Superior Court of New Jersey. *See Workman v. Becton, Dickinson & Co.*, 2:24-cv-1521 (D. Ariz. June 24, 2024). On July 1<sup>st</sup>, Defendants contacted Ms. Workman’s counsel (Roman Balaban, Esq. in the MDL, and Michael Galpern, Esq. in New Jersey), and suggested that the New Jersey case be dismissed in favor of litigation in the MDL. Plaintiff Workman chose to dismiss her federal case instead.

There is one case pending in the Superior Court of Maricopa County filed by an Arizona resident. Defendants filed a responsive pleading on July 8<sup>th</sup>.

1           **B. Plaintiffs’ Position regarding State Court Litigation**

2           Complaints with claims substantially to those pending in cases in this MDL  
 3 continue to be filed in the Superior Court of New Jersey, and Plaintiffs take no  
 4 position as to those state court plaintiffs’ reasons for choosing to file in such venue.  
 5 While Plaintiffs acknowledge Defendants’ representations regarding their  
 6 contemplated motions to dismiss on various grounds, there are numerous  
 7 individuals with claims and potential claims over which this Court does or would  
 8 lack subject matter jurisdiction and where jurisdiction and venue are properly laid  
 9 in the Superior Court of New Jersey. While venue challenges by defendants are not  
 10 uncommon in circumstances such as these, such challenges have historically been  
 11 found to be meritless. See, e.g., *Smith v. Covidien LP et al.*( Civil Action No.  
 12 1781CV01845, Mass. Super., Feb. 10, 2022 (denying dismissal on *forum non*  
 13 *conveniens* grounds); *In Re Ethicon Proceed Hernia Mesh Cases Multi-County*  
 14 *Litigation* (denying leave omnibus motions to dismiss on limitations grounds prior  
 15 to case-specific discovery). Plaintiffs expect the volume of such cases to continue  
 16 to increase and intend to propose in the foreseeable future to submit a proposed  
 17 Order to this Court addressing processes for efficient coordination among the state  
 18 court cases and this MDL.

19           **II. Common-Issue Discovery**

20           **A. Defendants’ Position**

21           Defendants hereby provide a summary of the parties’ progress through  
 22 common-issue discovery. At this time, Defendants seek the Court’s intervention  
 23 only regarding Defendants’ obligation to provide dates for putative individual fact  
 24 witness depositions pursuant to CMO 21. See Point II.A.5.

25           **1. Defendants’ Production of Documents**

26           Defendants continue to work diligently to identify, collect, and produce  
 27 documents responsive to Plaintiffs’ Requests for Production (“RFP”). Attached  
 28 hereto as Exhibit A is a chart summarizing Defendants’ productions. Defendants

1 continue to express their concerns about cost and proportionality in this litigation.  
2 Although there are no discrete issues ripe for Court intervention at this time that  
3 implicate these proportionality concerns, Defendants reserve all rights to continue  
4 to raise these concerns and seek appropriate relief as common-issue discovery  
5 continues.

6 To date, Defendants have produced over 1,700,000 documents. The cost of  
7 document review performed by Epiq's contract attorney review team since the  
8 inception of this matter through June 30 is over \$4.1 million.

9 With respect to the TAR model for the second thirty Custodians, as promised,  
10 Defendants have shared the requested metrics with Plaintiffs. The parties have  
11 reached preliminary agreement on the predictive rank cutoff Defendants will apply  
12 to this TAR model. Defendants currently estimate they will spend approximately \$1  
13 million on contract attorney review to substantially complete the production of  
14 documents from the Custodial Files of the second set of thirty Custodians.<sup>1</sup>

## 15 **2. Status of Productions from Non-Custodial Sources**

16 In CMO 22, the Court adopted the parties' proposed substantial completion  
17 deadlines for the following non-custodial sources: (i) Master Control and Master  
18 Control Archive, June 17, 2024; (ii) EasyTrack and TrackWise, June 17, 2024; (iii)  
19 SharePoint and Shared Drives, July 1, 2024;<sup>2</sup> (iv) Veeva Vault Clinical, July 1,  
20 2024; and (v) Second Priority Sources, August 30, 2024. Defendants met the June  
21 17, 2024 deadline. While Epiq was in the process of generating the final two  
22 production volumes in advance of the July 1 deadline, Defendants identified a  
23 technical issue. Ms. Windfelder promptly raised the matter with Mr. Roberts who  
24

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25 <sup>1</sup> Approximately \$830,000 of this is captured in the \$4.1 million review expense  
26 incurred to date.

27 <sup>2</sup> As Defendants noted in the Parties' Joint Memorandum submitted in advance of  
28 the May 10, 2024 Case Management Conference, should Defendants identify  
additional shared drives or SharePoints, responsive documents will be produced as  
soon as practicable.

1 agreed the best course of action was to rerun the two volumes which resulted in the  
2 volumes being provided to Plaintiffs on July 2, 2024.

### 3 **3. Status of Productions from Custodial Files**

4 The deadline for substantial completion of production for the first thirty  
5 Custodians was July 1, 2024. *See* CMO 18, Doc. 525, at 4. The volumes impacted  
6 by the technical issue noted above included documents from the Custodial Files of  
7 the first thirty Custodians. The volumes were provided to Plaintiffs on July 2, 2024,  
8 Defendants anticipate making an additional small clean-up production of documents  
9 from these files within the next two weeks. Defendants do not anticipate this  
10 affecting the depositions scheduled to date.

11 With respect to the second thirty Custodians, Defendants shared the  
12 requested TAR metrics with Plaintiffs for these Custodians on July 1, 2024, and the  
13 parties have reached preliminary agreement on the predictive rank cutoff  
14 Defendants will apply. The substantial completion deadline for the second thirty  
15 Custodians is August 15, 2024. *See* CMO 18, Doc. 525, at 4.

### 16 **4. Plaintiffs' Second Set of Interrogatories**

17 Plaintiffs served their Second Set of Interrogatories on June 12, 2024.  
18 Defendants' responses and objections to the eleven Interrogatories contained within  
19 the Second Set are due Friday, July 19, 2024. The parties have met and conferred  
20 over the scope and breadth of these Interrogatories, and will continue to do so. There  
21 are no disputes ripe for the Court's resolution at this time.

### 22 **5. Depositions of Custodians**

#### 23 **a. Plaintiffs' Demand for Depositions for All Thirty** 24 **Custodians**

25 On June 3, 2024, Plaintiffs requested deposition dates for all thirty of the first  
26 set of Custodians, fourteen of whom are former Bard/BD employees. Plaintiffs  
27 purported to make that request in accordance with Paragraph 5(a) of CMO 21.  
28 Plaintiffs further requested that, pursuant to Paragraph 5(c) of CMO 21, Defendants

1 provide “the soonest available date(s) on which the depositions may occur  
2 consistent with [Paragraph] 6 therein.”

3 On June 10, 2024, Defendants responded that it was their understanding from  
4 prior discussions that Plaintiffs may or may not seek depositions of all thirty  
5 Custodians. For that reason (in addition to the significant proportionality concerns  
6 raised since the deposition protocol was entered), and in accordance with paragraphs  
7 5(b) and (c) of CMO 21, Defendants objected to Plaintiffs’ blanket request for the  
8 depositions of all thirty Custodians.

9 Notwithstanding those objections, Defendants nonetheless agreed to provide  
10 available dates for Custodians on a rolling basis as they were able to secure dates.  
11 Defendants emphasized to Plaintiffs the logistical challenges associated with  
12 scheduling thirty depositions comprised of both current and former employees all at  
13 once. That effort has required the efforts of multiple lawyers and personnel from  
14 Defendants to track down the witnesses and coordinate schedules. Despite those  
15 challenges, Defendants advised Plaintiffs that they would provide dates as soon as  
16 practicable, offering an initial group of available dates by June 21<sup>st</sup>, and continuing  
17 to offer dates thereafter as promptly as possible.

18 The parties met and conferred regarding this issue on June 12<sup>th</sup> and July 1<sup>st</sup>.  
19 Plaintiffs indicated that they disagreed with Defendants’ interpretation of CMO 21  
20 calling for a more iterative process whereby the Requesting Party would make  
21 request for dates for several individual witnesses at a time to allow the Responding  
22 Party sufficient time to either object or respond with dates.

23 Defendants have continued to work diligently. As of the date of this  
24 submission, Defendants have provided Plaintiffs with proposed dates and locations  
25 for twenty-three witnesses, several of whom are former employees.<sup>3</sup> Defendants

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26 <sup>3</sup> Plaintiffs served their first set of deposition notices on June 26th. Each notice  
27 contained an identical set of six document requests. Defendants served their  
28 objections to three document requests on July 1st. The parties have not yet conferred

1 have provided dates for all of the current employees from the initial set of  
 2 Custodians. The parties have agreed on dates and locations for eleven depositions.

3 **b. The Parties Did Not Contemplate Scheduling Thirty**  
 4 **Depositions at Once in CMO 21**

5 CMO 21's language suggests that the parties and Court envisioned  
 6 deposition requests on a witness-by-witness basis, thereby permitting the Receiving  
 7 Party to either schedule the deposition date or assert an objection regarding that  
 8 individual witness. Each pertinent provision of CMO 21 specifically speaks to "any  
 9 individual fact witness" in the singular, thus supporting Defendants' contention that  
 10 the intention of CMO 21 was for the Parties to confer on an individual witness-by-  
 11 witness basis. Accordingly, a plain reading of CMO 21 does not contemplate  
 12 anticipate mass requests for depositions of individual fact witnesses.

13 Plaintiffs' demand also conflicts with the spirit of CMO 21. From a practical  
 14 standpoint, Defendants must make contact with each witness and determine  
 15 available dates for a deposition that work for both the witness and defense counsel.  
 16 Plaintiffs' demand that Defendants undertake this process for 30 fact witnesses  
 17 simultaneously is unduly burdensome and impracticable, particularly with respect  
 18 to Defendants' former employees, many of whom left the company years ago and  
 19 require additional time and investigation to locate and determine availability.

20 Based on the foregoing, Defendants respectfully request this Court permit  
 21 Defendants to continue to provide the deposition dates for Custodians on a rolling  
 22 basis, which Defendants have endeavored to do subject to their reservation of rights  
 23 to object to particular depositions on proportionality grounds.<sup>4</sup>

24 \_\_\_\_\_  
 25 regarding those objections, but will endeavor to resolve them in advance of August  
 26 6th, which is the date of the first deposition.

27 <sup>4</sup> Defendants are in the process of identifying which Custodians will provide  
 28 duplicative or cumulative testimony of others in order to provide Plaintiffs with  
 substantive objections to particular depositions. Defendants seek to do as early as  
 practicable, but note that the parties will be able to make more informed decisions

1           **B. Plaintiffs' Position**

2           The Parties are making progress with discovery and, for the most part, are  
3 working cooperatively. The only potential dispute for the Court to resolve at this  
4 time concerns Defendants' breach of the Parties agreed-upon deposition protocol  
5 and failure to timely provide deposition dates to Plaintiffs. Plaintiffs are hopeful,  
6 however, that if all Parties cooperate in good faith, the dispute can be resolved  
7 without Court intervention, as explained below.

8                   **1. Defendants' Production of Documents**

9           The Parties have reached preliminary consensus concerning the scope of  
10 production for the second 30 custodial sources. Consensus resulted from  
11 Defendants' sharing of analytics and metrics related to their predictive coding  
12 workflow. A target predictive ranking score has been selected for the presumptive  
13 cut-off of document review. The informed compromises made by Plaintiffs have  
14 generated a document-review set with a calculated prevalence of 37 percent –  
15 meaning that more than one out of every three documents reviewed by Defendants  
16 is likely to be a responsive document.

17          Regarding the first 30 custodians, the Parties had previously reached  
18 agreement, and Defendants' substantial completion of the first 30 custodians was  
19 due on July 1. Plaintiffs understand that Defendants completed that substantial  
20 production on July 2, instead of July 1, due to technical difficulties with the  
21 production. Plaintiffs reserve their right to raise any issues that may arise from  
22 delayed production. Defendants are aware that anything less than complete  
23 substantial production as of July 1 may threaten deposition dates and/or require  
24 reopening of depositions.

25  
26  
27          \_\_\_\_\_ regarding this issue after the first few depositions are completed. Defendants reserve  
28 all objections related to the overall number of depositions, as well as Plaintiffs' request to depose any particular individual.



## 2. Depositions of Defendants' Custodians

The Parties are cooperating to schedule depositions of the first 30 custodians. Defendants' request for Court intervention is needless, especially because Defendants—not Plaintiffs—breached the protocol. After negotiating the specifics of the deposition protocol for several months, Defendants violated it by failing to provide deposition dates for each of the first 30 custodians within 14 business days of June 3, the date Plaintiffs requested deposition dates. (Doc. 617 at ¶ 5c). Defendants do not argue otherwise.

Instead, Defendants have provided only some of the required deposition dates on a rolling basis. Their failure to adhere to the letter of the deposition protocol impedes Plaintiffs' ability to appropriately plan for and assign depositions. As stated, however, the Parties are currently working together toward scheduling and hope that, with both Parties working in good faith, they can navigate any problems that may arise from Defendants' breach.

Although Defendants assert that Plaintiffs have violated the "spirit" of the deposition protocol by requesting 30 depositions at once, Defendants well know that it could have worked no other way. Plaintiffs have consistently stated their intent, including in open court, to depose all custodians. Because of the schedule set in this case, depositions of the first 30 custodians must take place in August and September. Further, because of deadlines built into the deposition protocol (to account for time getting dates, negotiations, objections, and document production) Plaintiffs must notice depositions almost two months in advance of the date ultimately set.

As to Defendants' suggestion that they thought Plaintiffs would not depose all custodians, they are mistaken. Plaintiffs have encouraged Defendants to make Plaintiffs aware *now* of any proportionality challenges to depositions. Plaintiffs have explained that the unique deposition scheduling in this case (staggered tranches of specific individuals) will make it difficult for Plaintiffs to agree later that one deponent may duplicate another who has already been deposed; Plaintiffs would

1 then have had no opportunity to choose between allegedly duplicative custodians.  
 2 Similarly, if Defendants object to the number of depositions, Plaintiffs need to know  
 3 *now* so they do not commit to deposing each of the first 30 deponents when  
 4 Defendants begin to argue that Plaintiffs should not be allowed to depose each of  
 5 the 60 custodians. Despite Plaintiffs' request for clarification, Defendants have  
 6 raised no such objections, and, as such, Plaintiffs intend to depose all custodians.

7 To the extent that Defendants have not provided all requested deposition  
 8 dates by the date of the hearing, Plaintiffs ask the Court to order Defendants to 1)  
 9 provide any remaining dates immediately, 2) adhere to the deposition protocol  
 10 moving forward, and 3) reasonably accommodate Plaintiffs with any scheduling  
 11 difficulties caused by Defendants' breach of the deposition protocol, including  
 12 moving some deposition dates into September or later as necessary.

### 13 **III. Plaintiff Profile Forms**

#### 14 **A. Defendants' Position**

15 The six (6) plaintiffs who were identified on page 22 of the May 22, 2024  
 16 Joint Memorandum (Doc. 751) and ordered in CMO 23 to provide information  
 17 about missing medical records (Doc. 769 at 3-4), responded and stated that all  
 18 responsive medical records in their possession were produced, that they had  
 19 requested additional records, and that they would supplement their production. To  
 20 date, none have supplemented. Defendants do not seek any relief at this this time.

21 There are two plaintiffs who failed to serve a PPF and failed to respond to  
 22 Defendants' letter within the time prescribed in CMO 8 (Doc. 113). Plaintiff Lorna  
 23 Koch, 2:24-cv-00899-DGC, filed her complaint on April 22, 2024. Pursuant to  
 24 CMO 8, her PPF was due to be served on May 22, 2024. *See* Doc. 113 at 1.  
 25 Defendants sent the letter attached as Exhibit B on May 29, 2024.<sup>5</sup> Plaintiff's  
 26

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27 <sup>5</sup> Plaintiffs' Leadership Committee is copied on all correspondence regarding  
 28 delinquent profile forms, including the correspondence sent to counsel for Plaintiff  
 Koch on May 22, 2024 and Plaintiff Bell on June 10th, 2024. *See* Exhibits B, C.

1 response was due on June 19, 2024. *See* Doc. 113 at 4. To date, Plaintiff Koch has  
 2 not served a PPF and has not requested an extension. Pursuant to CMO 8,  
 3 Defendants seek to dismiss the Complaint filed by Plaintiff Lorna Koch. *See* Doc.  
 4 113 at 5.

5 Plaintiff Audrey Bell, 2:24-cv-01052-DGC, filed her complaint on May 8,  
 6 2024. Pursuant to CMO 8, her PPF was due to be served on June 7th, 2024. *See*  
 7 Doc. 113 at 1. Defendants sent the letter attached as Exhibit C on June 10th, 2024.  
 8 Plaintiff's response was due on July 1, 2024. *See* Doc. 113 at 4. To date, Plaintiff  
 9 Bell has not served a PPF and has not requested an extension. Pursuant to CMO 8,  
 10 Defendants seek to dismiss the Complaint filed by Plaintiff Audrey Bell. *See* Doc.  
 11 113 at 5.

12 There are currently six (6) additional plaintiffs who have failed to serve a  
 13 PPF but are in the 21-day cure period set by CMO 8.. *See* Doc. 113 at 4.

14 There are six (6) plaintiffs who served PPFs that were incomplete and not in  
 15 compliance with CMO 8. The chart below identifies the plaintiff, case number, and  
 16 date the letter identifying the deficiencies was sent. None of the six plaintiffs  
 17 identified below have responded to the deficiency letter or supplemented their PPF.  
 18 Pursuant to CMO 8, Defendants seek an order compelling each of the six plaintiffs  
 19 to comply with CMO 8 and that they be ordered to comply by July 23, 2024.

21 Plaintiff and Case Number	22 Deficiency Letter
23 Aime III, Leo 2:24-cv-01101-DGC	6/7/2024
24 Hudson, Tammie 2:24-cv-01108-DGC	5/20/2024
25 Marks, Michael 2:24-cv-01063-DGC	6/10/2024
26 Roberto, Kimberly A 2:24-cv-000891-DGC	5/20/2024

Trevino, Michael Lee 2:24-cv-00917-DGC	6/7/2024
Leininger, Sean 2:24-cv-01166-DGC	5/21/2024

Finally, there are an additional nine (9) plaintiffs who served incomplete PPFs but are in the 15-day cure period set by CMO 8. *See* Doc. 113 at 5.

#### **B. Plaintiffs' Position**

Plaintiffs' Co-Lead Counsel has been in contact with the counsel representing the plaintiffs enumerated herein with the intention to resolve these alleged deficiencies and will provide an update to the Court during the July 9 Case Management Conference.

#### **IV. Exemplars**

At the end of May, Plaintiffs requested exemplars of certain IPCs for review and inspection. Defendants promptly undertook to identify a representative set of products and ascertain product availability and pricing. The parties conferred several times during June and have reached substantial agreement regarding the number and variation of exemplars to be provided to Plaintiffs. Specifically, Defendants have agreed to provide Plaintiffs with forty-nine exemplars comprised of many unique configurations. If additional exemplars are needed, the parties agreed to meet and confer.

#### **V. Successor Liability**

##### **A. Defendants' Position**

At the Initial CMC, Plaintiffs' Co-Lead Counsel raised the topic of successor liability, and stated that Plaintiffs "were interested to see if the defendants would be willing to meet and confer with plaintiffs on that subject and hopefully come to some understanding or stipulation that could be memorialized" to allow for "discovery and briefing [to] be structured accordingly." Initial CMC Tr., Doc. 53, at 44:14 to 45:11.

1 Plaintiffs served their First Set of Requests for Production regarding  
2 Corporate Liability on Defendants on December 8, 2023, and received Defendants'  
3 Responses and Objections on January 29, 2024. In accordance with CMO 18's  
4 requirement that the parties to "meet and confer regarding successor liability  
5 custodians and non-custodial sources by April 26<sup>th</sup>," Defendants provided Plaintiffs  
6 with their four proposed successor liability custodians on April 17<sup>th</sup>.

7 During that conferral, Defendants also raised Plaintiffs' suggestion that the  
8 parties attempt to reach some sort of stipulation regarding successor liability in order  
9 to avoid or narrow discovery. On June 10, 2024, Defendants provided Plaintiffs with  
10 a proposed stipulation that resolved Plaintiffs' concerns regarding satisfaction of  
11 any judgment or settlement reached with C. R. Bard, Inc. ("Bard"), Bard Access  
12 Systems, Inc. ("BAS"), and Bard Peripheral Vascular, Inc. ("BPV") (collectively,  
13 the "Bard Defendants").

14 The proposed stipulation, if agreed to by Plaintiffs, would:

15 1. Result in the withdrawal of Plaintiffs' Requests for Production  
16 regarding Corporate Liability without prejudice to the parties' need to confer over  
17 any proposed discovery necessary to effectuate the purpose of this Stipulation and  
18 resolve the central issues pertaining to successor liability as to BD. For example, as  
19 the Court suggested during the Sixth Case Management Conference, the parties  
20 could "reach a set of stipulated fact[s] . . . or agree that certain documents are  
21 controlling" for purposes of teeing up to the Court whether there has been a  
22 contractual assumption of liabilities by BD.

23 2. Require the parties to confer in advance of any bellwether trial  
24 regarding the identification of Defendants on verdict sheets (*e.g.*, possibly referring  
25 to Bard, BPV, and BAS collectively as the "Bard Defendants").

26 3. Confirm that, in the event that damages are awarded to a Plaintiff  
27 pursuant to a valid, final and enforceable judgment against any of the Bard  
28 Defendants (Bard, BPV, and/or BAS) following the exhaustion of any appeals or,

1 in the event that settlement is reached with any of the Bard Defendants, any financial  
2 obligations related to said judgment or settlement will be satisfied by one of the  
3 Bard Defendants.

4 Plaintiffs rejected the proposed stipulation, stating that they “don’t feel [they]  
5 get any benefit from it.” The parties met and conferred on July 1<sup>st</sup> to discuss  
6 Plaintiffs’ concerns. The parties agree they may be able to reach a modified  
7 stipulation related to the Bard Defendants. The parties further agree on the identity  
8 of three of Defendants’ four proposed successor liability custodians, and that the  
9 fourth custodian can be addressed following resolution of the stipulation. The  
10 parties agree that there will need to be limited successor discovery, but that they will  
11 work together to address the proper scope following finalization of any modified  
12 stipulation.

13 **B. Plaintiffs’ Position**

14 On June 10, Defendants offered a written stipulation regarding successor  
15 liability that surprisingly did not include the successor at issue—Defendant Becton,  
16 Dickinson and Company. Nonetheless, the Parties are endeavoring to reach an  
17 agreement that may narrow – but not end – successor-liability discovery. Absent a  
18 successor-liability stipulation that involves the successor, the Parties appear to agree  
19 that discovery regarding Defendant Becton, Dickinson and Company’s liability, both  
20 individually and as a successor, will inevitably continue. However, the Parties are  
21 currently considering potential date restrictions on such discovery, whether one  
22 potential custodian may be eliminated, and whether full discovery is necessary on the  
23 corporate relationship between the Bard entities. Defendants’ statement that the  
24 Parties have reached agreement on any of these issues is incorrect.

1 Dated: July 8, 2024

Respectfully submitted,

2 /s/ Adam M. Evans

/s/ Edward J. Fanning, Jr.

3 Adam M. Evans (MO #60895)

Edward J. Fanning, Jr.

4 (Admitted Pro Hac Vice)

(Admitted Pro Hac Vice)

5 Dickerson Oxtan, LLC

McCarter & English, LLP

6 1100 Main St., Ste. 2550

Four Gateway Center

7 Kansas City, MO 64105

100 Mulberry Street

8 Phone: (816) 268-1960

Newark, NJ 07102

9 Fax: (816) 268-1965

Phone: (973) 639-7927

10 Email: aevans@dickersonoxton.com

Fax: (973) 297-3868

Email: efanning@mccarter.com

11 /s/ Rebecca L. Phillips

/s/ Richard B. North, Jr.

12 Rebecca L. Phillips (TX #24079136)

Richard B. North, Jr.

13 (Admitted Pro Hac Vice)

(Admitted Pro Hac Vice)

14 Lanier Law Firm

Nelson Mullins Riley &

15 10940 W. Sam Houston Pkwy. N., Ste. 100

Scarborough, LLP

16 Houston, TX 77064

Atlantic Station

17 Phone: (713) 659-5200

201 17th St. NW, Ste. 1700

18 Fax: (713) 659-2204

Atlanta, GA 30363

19 Email: rebecca.phillips@lanierlawfirm.com

Phone: (404) 322-6155

Fax: (404) 322-6050

Email: richard.north@nelsonmullins.com

20 /s/ Michael A. Sacchet

21 Michael A. Sacchet (MN #0016949)

22 (Admitted Pro Hac Vice)

23 Ciresi Conlin LLP

24 225 S. 6th St., Ste. 4600

25 Minneapolis, MN 55402

26 Phone: (612) 361-8220

27 Fax: (612) 314-4760

28 Email: mas@ciresiconlin.com

/s/ James R. Condo

James R. Condo (#005867)

Snell & Wilmer L.L.P.

One East Washington Street, Suite 2700

Phoenix, AZ 85004

Phone: (602) 382-6000

Fax: (602) 382-6070

E-mail: jcondo@swlaw.com

***Co-Lead Counsel for Plaintiffs***

***Attorneys for Defendants***

# **Exhibit A**



**Defendants' Production of Documents**

<b>PRODUCTION</b>	<b>DATE</b>	<b>DESCRIPTION</b>	<b>DOCS</b>	<b>PAGES</b>
BARD_IPC_MDL_001	12/26/2023	<i>Cruz</i> Production	6,290	91,035
BARD_IPC_MDL_002a	1/5/2024	Prior Patent Litig. Production (I of IV)	211,955	993,418
BARD_IPC_MDL_003	1/5/2024	Prior Port Litig. Deposition Transcripts	48	1,794
BARD_IPC_MDL_002b	1/11/2024	Prior Patent Litig. Production (II of IV)	200,966	1,396,347
BARD_IPC_MDL_004	1/12/2024	CV of Information Infrastructure Rule 30(b)(6) Deponent & Related standard operating procedures ("SOPs")	18	241
BARD_IPC_MDL_005	1/17/2024	SOPs and corporate org document related to Information Infrastructure Deposition	4	50
BARD_IPC_MDL_006	1/19/2024	Information Infrastructure Document	1	9
BARD_IPC_MDL_002c	1/19/2024	Prior Patent Litig. Production (III of IV)	97,634	449,900
BARD_IPC_MDL_002d	1/24/2024	Prior Patent Litig. Production (IV of IV)	137,420	814,251
BARD_IPC_MDL_007	1/26/2024	510(k) submissions related to the Product Codes	19	4,599
BARD_IPC_MDL_008	2/2/2024	510(k) submissions and related docs for the Product Codes	498	15,508
BARD_IPC_MDL_009	2/9/2024	Corrective and Preventative Actions (CAPAs), Remedial Action Plans (RAPs), Situational Analyses (SAs), Health Hazard Evaluations (HHEs) / Health Risk Assessments (HRAs), and Failure Investigation reporting documentation associated with the Product Codes	293	8,583
BARD_IPC_MDL_010	2/16/2024	Marketing documents, SOPs, supplement of three 510(k)s	2,168	20,057
BARD_IPC_MDL_011	2/23/2024	Marketing team documents	4,316	24,239
BARD_IPC_MDL_012	2/29/2024	Design History Files, Instructions for Use, Patient Guides, and CAPAs	6,650	120,589
BARD_IPC_MDL_013	3/8/2024	Marketing shared drives, R&D shared drives, and Notes to File regarding various 510(k)'s	16,588	150,676

BARD_IPC_MDL_014	3/15/2024	Documents from Design History Files and SOPs collected from Master Control	394	3,471
BARD_IPC_MDL_015	3/15/2024	Marketing shared drives and R&D shared drives	16,030	114,792
BARD_IPC_MDL_016	3/22/2024	Marketing shared drives and R&D shared drives	11,907	238,458
BARD_IPC_MDL_017	3/30/2024	R&D, Regulatory, Clinical Affairs, and Marketing departmental shared drives	14,220	111,010
BARD_IPC_MDL_018	4/5/2024	Marketing, R&D, Regulatory, & Medical Affairs departmental shared drives	12,613	69,351
BARD_IPC_MDL_019	4/12/2024	Marketing & R&D departmental shared drives	14,982	60,484
BARD_IPC_MDL_020	4/20/2024	Documents from Master Control Archive	19,918	105,149
BARD_IPC_MDL_021	4/23/2024	R&D, Marketing, Regulatory, & Clinical Affairs departmental shared areas, and an export from WorkDay	6,927	64,542
BARD_IPC_MDL_022	4/26/2024	Documents from first 30 Custodial Files & Volume 1 of Defendants' Privilege Log	42,300	168,088
BARD_IPC_MDL_023	5/3/2024	Regulatory departmental shared drive documents	3,328	25,384
BARD_IPC_MDL_024	5/3/2024	Documents from Master Control Archive	26,254	125,322
BARD_IPC_MDL_025	5/10/2024	Documents from Master Control	18,336	373,712
BARD_IPC_MDL_026	5/10/2024	Documents from Custodial Files of first 30 Custodians	31,161	125,288
BARD_IPC_MDL_027	5/17/2024	Documents from Master Control Archive	7,719	31,555
BARD_IPC_MDL_028	5/17/2024	Documents from Custodial Files of first 30 Custodians	35,125	128,206
BARD_IPC_MDL_029	5/24/2024	Supplement of org charts and documents from R&D departmental shared drives	12,426	523,650
BARD_IPC_MDL_030	5/24/2024	Documents from Custodial Files of first 30 Custodians	42,128	150,536
BARD_IPC_MDL_031	5/31/2024	Documents from Master Control and Master Control Archive	14,502	283,356
BARD_IPC_MDL_032	5/31/2024	Documents from Custodial Files of the first thirty Custodians and R&D shared drives	41,432	172,221
BARD_IPC_MDL_033	6/7/2024	Documents from Custodial Files of first 30 Custodians	19,159	97,415

BARD_IPC_MDL_034	6/7/2024	Documents from Master Control and Master Control Archive	2,895	48,425
BARD_IPC_MDL_035	6/14/24	Documents from Custodial Files of first 30 Custodians	45,328	168,846
BARD_IPC_MDL_036	6/14/24	Documents from Master Control	1,408	20,619
BARD_IPC_MDL_037	6/14/24	Exports of port related adverse event reporting information from the TrackWise and Easy Track systems as well as documents from various R&D, Manufacturing and Regulatory shared drives	1,975	33,026
BARD_IPC_MDL_038	6/22/24	Documents from the Custodial Files of several of the first 30 Custodians	68,214	935,018
BARD_IPC_MDL_039	6/22/24	hard copy documents as well as documents from various corporate, R&D, Regulatory, Medical and Clinical Affairs, Marketing and Sales, and Quality departmental shared areas, as well as supplement of Notes to File relating to various 510(k)'s	16,007	100,316
BARD_IPC_MDL_040	6/26/24	hard copy documents as well as documents from various corporate, R&D, Regulatory, Medical and Clinical Affairs, Marketing, Sales, and Quality departmental shared areas	18,169	322,804
BARD_IPC_MDL_041	6/26/24	Supplement of documents from Master Control	11	277
BARD_IPC_MDL_042	6/28/24	Documents from the Custodial Files of the first 30 Custodians	148,260	714,545
BARD_IPC_MDL_043	6/28/24	hard copy documents as well as documents from various corporate, R&D, Regulatory, Medical and Clinical Affairs, Marketing, and Quality departmental shared areas	2,188	17,388
BARD_IPC_MDL_044	6/30/2024	Documents from the Custodial Files of the first 30 Custodians	80,580	386,022
BARD_IPC_MDL_045	7/2/2024	Documents from the Custodial Files of the first 30 Custodians	164,819	1,072,257
BARD_IPC_MDL_046	7/2/2024	Documents from the Custodial Files of the first 30 Custodians, Veeva Vault Clinical, and documents from various	96,345	526,075

		corporate, R&D, Regulatory, Medical and Clinical Affairs, Sales, Marketing, and Quality departmental shared areas		
<b>Total</b>			<b>1,721,928</b>	<b>11,408,904</b>

# **Exhibit B**



Elizabeth A. Falconer  
T: 404.322.6265  
elizabeth.falconer@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP  
ATTORNEYS AND COUNSELORS AT LAW

201 17th Street NW, Suite 1700  
Atlanta, GA 30363  
T: 404.322.6000 F: 404.322.6050  
nelsonmullins.com

May 29, 2024

**VIA EMAIL**

Stephen M. Reck Esq.  
Levin, Rojas, Camassar & Reck, LLC  
P.O. Box 431  
North Stonington, CT 06359  
[attorneyreck@yahoo.com](mailto:attorneyreck@yahoo.com)

**RE: Delinquent Plaintiff Profile Form, *In re Bard Implanted Port Catheter Products Liability Litigation*, 2:23-md-03081-DGC, MDL No. 3081**

Dear Counsel:

Under Case Management Order ("CMO") No. 8, entered on November 22, 2023 (Doc.113), Plaintiff Lorna Koch was required to serve a Plaintiff Profile Form ("PPF") via MDL Centrality by May 22, 2024. See Exhibit A (CMO 8). To date, we have not received a PPF from plaintiff, and it also appears that you have not registered with MDL Centrality. As a result, we are sending this delinquency notice via email and not through MDL Centrality.

Pursuant to CMO 8, plaintiff has twenty-one (21) days from the date of this letter to submit a completed PPF and all accompanying records via MDL Centrality. As is provided for in CMO 8, we reserve the right to move to dismiss plaintiff's claims should plaintiff fail to comply with this deadline. See Exhibit A, CMO 8 at 4 ("If a Plaintiff does not submit a PPF within the time specific in this Order, Defendants shall send a communication through MDL Centrality stating that Defendants may request dismissal during a regular case management conference if a PPF and the accompany records are not received within 21 days.").

We look forward to hearing from you.

May 29, 2024  
Page 2

Very truly yours,

A handwritten signature in blue ink that reads "Elizabeth Falconer". The signature is written in a cursive, flowing style.

Elizabeth A. Falconer

EF  
CC: Plaintiffs' Leadership Committee  
[portppf-pfs@nelsonmullins.com](mailto:portppf-pfs@nelsonmullins.com)

# **Exhibit C**





Elizabeth A. Falconer  
T: 404.322.6265  
elizabeth.falconer@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP  
ATTORNEYS AND COUNSELORS AT LAW

201 17th Street NW, Suite 1700  
Atlanta, GA 30363  
T: 404.322.6000 F: 404.322.6050  
nelsonmullins.com

June 10, 2024

**VIA EMAIL**

Stephen M. Reck, Esq.  
Levin, Rojas, Camassar & Reck, LLC  
PO Box 431  
North Stonington, CT 06359  
[attorneyreck@yahoo.com](mailto:attorneyreck@yahoo.com)

**RE: Delinquent Plaintiff Profile Form, *In re Bard Implanted Port Catheter Products Liability Litigation*, 2:23-md-03081-DGC, MDL No. 3081**

Dear Counsel:

Under Case Management Order ("CMO") No. 8, entered on November 22, 2023 (Doc.113), Plaintiff Audrey Bell was required to serve a Plaintiff Profile Form ("PPF") via MDL Centrality by June 7, 2024. See Exhibit A (CMO 8). To date, we have not received a PPF from plaintiff, and it also appears that you have not registered with MDL Centrality. As a result, we are sending this delinquency notice via email and not through MDL Centrality.

Pursuant to CMO 8, plaintiff has twenty-one (21) days from the date of this letter to submit a completed PPF and all accompanying records via MDL Centrality. As is provided for in CMO 8, we reserve the right to move to dismiss plaintiff's claims should plaintiff fail to comply with this deadline. See Exhibit A, CMO 8 at 4 ("If a Plaintiff does not submit a PPF within the time specific in this Order, Defendants shall send a communication through MDL Centrality stating that Defendants may request dismissal during a regular case management conference if a PPF and the accompany records are not received within 21 days.").

We look forward to hearing from you.

June 10, 2024  
Page 2

Very truly yours,

A handwritten signature in blue ink that reads "Elizabeth A. Falconer". The signature is written in a cursive, flowing style.

Elizabeth A. Falconer

EF

CC: Plaintiffs' Leadership Committee  
[portppf-pfs@nelsonmullins.com](mailto:portppf-pfs@nelsonmullins.com)