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

17
18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF ARIZONA**

20 IN RE: Bard Implanted Port Catheter
Products Liability Litigation

MDL No. 3081

21 **JOINT MEMORANDUM RE**
22 **ISSUES TO BE ADDRESSED AT**
23 **THE AUGUST 16, 2024 CASE**
24 **MANAGEMENT CONFERENCE**

(Applies to All Actions)

25
26 Pursuant to Case Management Order No. 24 (“CMO 24”), the parties submit
27 this Joint Memorandum in advance of the ninth Case Management Conference
28 (“CMC”) scheduled for August 16, 2024. *See* Doc. 956, at 1.

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

2 There are 416 cases pending in the MDL. 172 cases were eligible for
3 bellwether selection based on their inclusion in the Initial Plaintiff Pool. 18 cases
4 have been dismissed from the MDL.

5 On July 1, 2024, the parties exchanged lists of twenty-four cases for inclusion
6 in the PFS/DFS Group 1. *See* CMO 10, Doc. 115, at 2. No party declined to waive
7 *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). *See*
8 *Tr.*, July 9, 2024, at 4:2-12. Plaintiffs' deadline to serve Fact Sheets was July 31,
9 2024. *See* CMO No. 10, Doc. No. 115, at 3. Defendants' deadline to serve their Fact
10 Sheets is August 30, 2024. *Id.* The parties' first deadline to exchange lists of
11 proposed cases for Discovery Group 1 is December 10, 2024.

12 **A. Plaintiffs' Position Regarding State Court Litigation**

13 There are currently two cases pending in the Superior Court of Maricopa
14 County, Arizona, with claims substantially similar to those pending in cases in this
15 MDL. Numerous additional potential cases are currently under evaluation by
16 counsel for Plaintiffs, and it is expected that cases will continue to be filed into the
17 foreseeable future.

18 There are 49 cases pending in the Superior Court of New Jersey. The New
19 Jersey state liaison re-filed an application for multicounty litigation ("MCL")
20 designation on May 17, 2024, which Defendants opposed on June 21st. The parties
21 are still awaiting a decision from the Supreme Court of New Jersey Administrative
22 Office of the Courts regarding the renewed MCL application.

23 **B. Defendants' Position Regarding State Court Litigation**

24 The Court directed the parties to "confer about a possible stipulation to
25 coordinate discovery with the state-court cases and report on the status of their
26 discussions at the next [CMC]." CMO 24, Doc. 956, at 1.

27 With respect to New Jersey, Defendants respectfully submit that the entry of
28 a formal stipulation remains premature. Plaintiffs' renewed application for

1 multicounty litigation (“MCL”) designation and Defendants’ motions to dismiss
 2 remain pending. Oral argument on the motions to dismiss is scheduled for
 3 September 13th. Given that written and/or document discovery has not commenced
 4 in any state court case, the parties can continue to informally coordinate these cases
 5 as necessary until decisions are rendered.¹

6 There is one case pending in the Superior Court of Maricopa County in which
 7 Defendants have been served, which was filed by the Arizona State Court Liaison.
 8 Defendants filed a responsive pleading on July 8th. The parties intend to continue to
 9 engage in informal coordination with the MDL, as appropriate. The entry of a formal
 10 stipulation is premature.

11 **II. Common-Issue Discovery**

12 The parties continue to work through discovery issues. The parties currently
 13 seek the Court’s intervention on only two issues: (1) additional time required for
 14 three depositions (Point II.A.1 and Point II.B.4.c); and (2) the scope of corporate
 15 liability discovery (Point V).

16 **A. Plaintiffs’ Position**

17 **1. Plaintiffs’ Position on Reasonable, Additional Time for Only** 18 **Three of the First 30 Depositions**

19 Pursuant to Rule 30(d)(1) and consistent with CMO 21, Plaintiffs
 20 respectfully submit that “additional time ... [is] needed to fairly examine” three of
 21 the first 30 custodians. *See* Fed. R. Civ. P. 30(d)(1). Mindful of the Court’s prior
 22 ruling, Plaintiffs believe that a modest enhancement from the allotted six hours is
 23 required to fairly examine these select former employees. Despite agreeing to extra
 24
 25
 26

27 ¹ For example, Defendants have cross-noticed depositions in the New Jersey State
 28 Court Liaison’s cases. Defendants have also offered to have the MDL discovery be
 “deemed produced” in every case filed by the New Jersey State Court Liaison.

1 time when needed in *IVC*,² Defendants now oppose Plaintiffs’ request that the Court
2 authorize three additional hours for the depositions of David Cise (September 12,
3 2024), John Evans (September 30, 2024), and Kelly Powers (November 14, 2024).³

4 Fairness requires additional time to examine these three key witnesses. As
5 summarized in the chart below, Messrs. Cise, Evans, and Powers each played a
6 significant role in Defendants’ Research and Development (“R&D”) of implanted
7 port catheters during their decades-long tenures at Bard. Plaintiffs’ review of their
8 voluminous custodial files confirms their seminal role in multiple projects involving
9 numerous design defects and at least four injury modes—fracture, infection,
10 thrombosis, and necrosis. All three witnesses are former employees who will be
11 represented (and presumably prepared) by Defendants’ counsel. And they all reside
12 and work in Utah, beyond the Court’s subpoena power to compel them to testify in
13 person at trial. *See* Fed. R. Civ. P. 45(c)(1)(A). While six hours is workable for
14 nearly all employee depositions, these three depositions are the exception to that
15 rule. Plaintiffs respectfully request three additional hours (50% more time), which
16 is consistent with the fact that each witness has at least 50% more documents than

17
18 ² For example, Defendants agreed to a two-day deposition for a total of over 8.25
19 hours for Plaintiffs’ examination of former employee Jack Sullivan. *See IVC* Doc.
20 2239 at 3 (allotting Plaintiffs 6 hours to examine former employees).

21 ³ Defendants encourage a wait-and-see approach, but advance coordination is far
22 from unprecedented or ill-advised. *See, e.g., Wright & Miller, Fed. Prac. & Proc.*
23 *§ 2104.1* (3d ed. 2024) (“It might usually be appropriate to discuss the possible need
24 for longer depositions of some witnesses during the Rule 26(f) conference. Certainly
25 that is something that could be addressed in a discovery plan and in a Rule 16(b)
26 scheduling order.”); *see also Del Sol v. Whiting*, 2015 WL 12090268, at *5 (D. Ariz.
27 Mar. 10, 2015) (finding good cause not shown where party failed to “ma[ke] a
28 record *before* the deposition that an enlargement of time might be necessary”).
Given the need to coordinate with non-party witnesses and attorney schedules for
nearly 30 other depositions, it is more practical to coordinate an extension in
advance of the deposition. The deposition protocol itself contemplates resolving
such issues *ex ante*. *See* Doc. 617 at 6-7. And at yesterday’s deposition of Mr. James
Freasier, Defendants’ counsel initially agreed, in stark contrast to their position here.

most witnesses—for Cise and Evans, more than five times as many.⁴ These extraordinary circumstances warrant more than the ordinary six hours to fairly examine each witness and constitute good cause for additional time. *See* Fed. R. Civ. P. 30(d) (2000 Advisory Comm. Note) (“The rule directs the court to allow additional time where consistent with Rule 26(b)(2) if needed for a fair examination of the deponent.”).

Deponent	Title	Time at Bard	Location	Custodial File ⁵
David Cise	Program Manager, R&D	2004–2015 (11 years)	Herriman, UT	134,079 ⁶ = 9.8%, 5.1x average custodial file
John Evans	Principal Engineer, R&D	1998–2022 (24 years)	Salt Lake City, UT	151,039 = 11%, 5.8x average custodial file

⁴ Hours before the filing deadline, in a belated addition to their position statement, Defendants claimed “Plaintiffs do not suggest that they intend to show these witnesses 50% more exhibits.” *See infra* at 16. Quite the opposite. Plaintiffs very much anticipate that with 50% more time they would introduce 50% more exhibits.

⁵ From the 1.8 million documents produced to date, 1,366,187 come from the first 30 custodians’ files. Although this total does not include thousands more documents involving Messrs. Cise, Evans, and Powers from non-custodial sources (e.g., Shared Drive – Port Team, Master Control, etc.), Plaintiffs used that number to calculate the percentage of documents. Excluding two outliers—Andrea Acuna (146,166) and Annemarie Boswell (146,166)—the average custodial file size for the remaining first-tranche witnesses is 26,050, which is the baseline for the multiplier.

⁶ This total reflects 53,363 documents in Mr. Cise’s custodial files plus 80,716 documents from his “DCise Archive” produced as part of Mr. Evans’ custodial files. The additional 80,716 documents reallocated to Mr. Cise’s total have been deducted from Mr. Evans’ total.

Kelly Powers	Vice President, R&D	1993–2017 (24 years)	Sandy, UT	38,008 = 2.8%, 1.5x average custodial file
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Contrary to Defendants’ suggestion, Plaintiffs do not contend that these witnesses’ role in the case or the length of their tenure alone justifies additional time. Rather, it is the confluence of these unique circumstances, together with the nature and size of this MDL, that supports an extension. Defendants’ citation to single-incident cases are not comparable to an MDL involving hundreds of plaintiffs injured by dozens of products made of multiple defective materials with no less than four distinct injury modes. *See* Fed. R. Civ. P. 30(d) (2000 Advisory Comm. Note) (“In multi-party cases, the need for each party to examine the witness may warrant additional time.”).⁷ This is precisely the type of case and witness in which “a longer deposition period” is “certainly” appropriate. *See, e.g.,* Wright & Miller, *Fed. Prac. & Proc.* § 2104.1 (3d ed. 2024) (citing “consolidated action,” *Miller v. Waseca Med. Ctr.*, 205 F.R.D. 537 (D. Minn. 2002), where “additional time [was] needed for a fair examination,” *id.* at 542); *In re Uber Techs., Inc. Passenger Sexual Assault Litig.*, 2024 WL 3643253, at *4 (N.D. Cal. Aug. 1, 2024) (recognizing that “certain deponents, depending on the identity of the deponent and the subject matter of the deposition, may require in-depth questioning” and ruling that “Plaintiffs shall be allowed to designate fifteen (15) depositions that will last 14 hours for the combined

⁷ Defendants’ caselaw is otherwise distinguishable because the non-party witness—represented by independent counsel—*had already been deposed for over 7 hours*, in stark contrast to here. *See Kimera Labs, Inc. v. Jayashankar*, 346 F.R.D. 146, 147, 150 (S.D. Fla. 2024) (14 hours) (“Dr. Selinger has already provided more than the required seven hours of deposition time, and we see no reason to deviate further from Rule 30 in the circumstances presented here.”); *see also United States S.E.C. v. Kandelapas*, 2018 WL 4005201, at *1, 3 (N.D. Ill. 2018) (16 hours pre-suit, plus 7 in suit) (“[T]he SEC has not yet shown good cause as to why seven hours is insufficient to depose [defendant], particularly since the SEC previously questioned him for many hours in connection with its preliminary investigation.”).

examination by MDL and JCCP Plaintiff attorneys”). This problem should not be solved by sending Plaintiffs’ exhibits in advance; previewing Plaintiffs’ strategy is equally likely to lengthen the deposition given Defendants’ ability to coach the witness beforehand. Defendants’ fallback solution is a non-starter.

At bottom, Plaintiffs’ request—like Rule 30(d)(1) itself—is rooted in fairness and proportionality. *See* Fed. R. Civ. P. 30(d)(1) (citing Fed. R. Civ. P. 26(b)(1)). Guided by their careful review of Defendants’ documents, Plaintiffs have already withdrawn their deposition notice for one of the first-tranche custodians, Stephanie Klocke. Plaintiffs voluntarily relinquished those six hours of examination and now merely ask for nine more hours total across three witnesses. Nor do Plaintiffs universally seek additional time for all deponents with voluminous custodial files. But Plaintiffs’ review of these three custodians’ files justifies additional time to fairly examine them and properly preserve their testimony for both bellwether and remand trials. Plaintiffs will use any additional time awarded by the Court judiciously; they certainly will not waste it. Accordingly, for these tranche-one depositions only—Messrs. Cise, Evans, and Powers—Plaintiffs respectfully request that the Court permit additional time for their depositions.⁸

2. Plaintiffs’ Update on Other Common Discovery Issues

i. Written Discovery & Production

The Parties have to date cooperatively worked through myriad written discovery and production issues. One issue has recently arisen that the Parties have not had time to fully explore. On the day before the Parties were to swap drafts of this joint memo, Defendants realized that they did not make a complete production for one of the first 30 custodians, and that will likely cause Defendants to miss their substantial completion deadline for the second 30 custodians. The Parties anticipate discussing the issue more fully once Defendants have complete information on the

⁸ At this time, Plaintiffs do not anticipate needing additional time for second- and third-tranche depositions.

1 scope of the problem. The Parties are hopeful that they can work together to avoid
2 impact on depositions and will raise any issues with the Court as necessary.

3 To date, the Parties have been able to resolve other production issues. For
4 example, Plaintiffs identified missing, highly-relevant studies and missing, highly-
5 relevant attachments to threaded emails. Defendants have committed to correct and
6 are correcting those issues.

7 Plaintiffs have also begun to engage Defendants regarding a number of
8 deficiencies in their responses to Plaintiffs' Second Set of Interrogatories. For
9 example, Defendants initially failed to identify each products' Instructions for Use
10 in a production of nearly two million documents. Defendants have since
11 supplemented that response. The Parties will continue to engage in discussions and
12 will alert the Court if impasses arise.

13 The Parties have reached agreement on reasonable, additional custodians that
14 Plaintiffs identified through discovery and who were not originally disclosed by
15 Defendants. In order to ease any burden on Defendants, Plaintiffs have agreed to
16 certain limitations in time for those custodians (based upon Defendants'
17 representations about the individuals' work on port products).

18 The Parties have also begun having discussions regarding Defendants'
19 privilege log, which contains thousands of entries. As a result of those discussions,
20 Defendants have de-designated and produced a number of documents. The Parties
21 will continue to engage in discussions and will alert the Court if impasses arise.

22 *ii. Depositions*

23 Aside from the need for additional time, raised above, the Parties are
24 cooperating in scheduling/re-scheduling depositions of the first 30 custodians, and
25 those depositions have begun. Upon reviewing nearly 45,000 documents produced
26 by Defendants for one of the custodians that Defendants identified as an individual
27 with relevant information, Plaintiffs determined that the individual apparently
28 possessed little information regarding the products at issue and notified Defendants

1 that a deposition would not be necessary. Plaintiffs continue to review the nearly
2 two million documents produced by Defendants for other custodians.

3 Plaintiffs have requested dates for the second 30 custodians and will continue
4 to engage Defendants regarding scheduling. The Parties will alert the Court if
5 impasse arises.

6 **B. Defendants' Position**

7 Defendants hereby provide a summary of the parties' progress through
8 common-issue discovery.

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

10 Defendants continue to work diligently to identify, collect, and produce
11 documents responsive to Plaintiffs' Requests for Production ("RFP"). Attached
12 hereto as Exhibit A is a chart summarizing Defendants' productions. Defendants
13 remain very concerned about cost and proportionality in this litigation and have
14 raised those concerns during meet and confers with Plaintiffs.⁹ Although there are
15 no discrete issues ripe for Court intervention at this time, Defendants reserve all
16 rights to raise these proportionality concerns and seek appropriate relief.

17 ***a. Status of Productions from Non-Custodial Sources***

18 Defendants met the substantial completion deadlines established in CMO 22,
19 and anticipate meeting the August 30th deadline for the Second Priority Sources.¹⁰
20 Defendants substantially completed its production from DocuShare on August 1,
21 2024. *See* CMO 24, Doc. 956, at 2 (addressing production of documents from
22 DocuShare).

24 ⁹ To date, Defendants have produced over two million documents (more than 13
25 million pages). The cost of document review performed by Epiq's contract attorney
26 review team since the inception of this matter through July 31, 2024 is over \$4.6
27 million.

28 ¹⁰ Should Defendants identify additional shared drives or SharePoints, other Non-
Custodial Sources, responsive documents will be produced as soon as practicable.

1 Plaintiffs raise that they identified “highly-relevant” studies missing from
2 Defendants’ production. Defendants are only aware of one study that Plaintiffs
3 identified during the parties’ July 18th meet and confer. Defendants investigated and
4 advised Plaintiffs during the parties’ July 25th meet and confer that the study in
5 question resided in Docushare, which was produced a week later.

6 ***b. Status of Productions from Custodial Files***

7 The substantial completion deadline for the first 30 Custodians was July 1,
8 2024. *See* CMO 18, Doc. 525, at 4. Defendants made small clean-up productions of
9 documents from these files on July 23rd and August 9th. The substantial completion
10 deadline for the second 30 Custodians was August 15th. *See id.* With the exception
11 of the recently identified issue described below, Defendants also met that deadline,
12 but anticipate making an additional clean-up production of documents from these
13 files within two weeks.

14 On August 8, 2024, Defendants became aware that two Custodians in the
15 group of second thirty Custodians had multiple user records in the Proofpoint email
16 archive despite the fact that employees generally only have one record. Defendants
17 immediately commenced collection efforts for the additional email files of these two
18 Custodians. Additionally, as a result Defendants’ investigation to confirm no other
19 Custodian had multiple Proofpoint records, Defendants identified an issue with a
20 third Custodian’s email collection that resulted in two PST files not properly
21 processing. Defendants immediately commenced efforts to reprocess these two PST
22 files. The identification of these issues prompted Defendants to review all
23 Custodians’ Proofpoint data, which turned up thirteen additional Proofpoint data
24 sources for Custodians subject to the August 15, 2024 substantial completion
25 deadline. Defendants immediately commenced collection efforts for these
26 additional data sources. Defendants do not yet know the volume of email that will
27 be subject to the Technology Assisted Review workflows, but anticipate many of
28 the emails will dedupe against other Custodians’ email collections and/or against

1 these Custodians' other data sources, *e.g.*, PST files stored on their computers or in
2 home folders. Defendants have advised Plaintiffs of this issue and will provide them
3 with a substantial completion deadline once email threading is complete.

4 Defendants do not believe any of the supplemental productions will impact
5 the depositions, almost all of which have not taken place yet. However, should
6 Plaintiffs raise a concern about specific documents received after the substantial
7 completion deadlines, Defendants will meet and confer in good faith to address any
8 issues.

9 The Court directed the parties to meet and confer by July 15, 2024 regarding
10 whether any additional Custodial Files should be produced. *See* CMO 18, Doc. 525,
11 at 3-4. The parties have reached agreement regarding this third set of Custodians.
12 Specifically, Defendants agreed to produce responsive documents, to the extent they
13 exist, from the Custodial Files of five additional Custodians subject to the
14 imposition of date restrictions for two of those Custodians. The deadline for
15 Defendants to substantially complete document production from these Custodial
16 Files is October 15, 2024. *See id.* at 4.

17 Plaintiffs mention that they raised a potential issue of attachments missing to
18 threaded emails. Plaintiffs provided Defendants with two bates numbers, both of
19 which were part of the same email thread from February 2014. During a meet and
20 confer on August 8th, Ms. Windfelder advised Mr. Roberts that Defendants
21 investigated and confirmed that based on the examples provided there is no issue
22 with Epiq's email threading; rather the attachment of interest does not exist on
23 Defendants' servers, which is not surprising given that the Custodians who sent and
24 received the email were not subject to legal hold in 2014.

25 **2. Plaintiffs' Second Set of Interrogatories**

26 Defendants served their responses and objections to Plaintiffs' Second Set of
27 Interrogatories on July 22, 2024. Defendants dispute Plaintiffs' contention that their
28 responses are deficient. Defendants' identified specific bates numbers for

1 Instructions for Use for the 219 Product Codes identified in Exhibit A to the Master
2 Complaint. Notwithstanding, Defendants provided additional information to clear
3 up Plaintiffs' confusion, and have otherwise resolved the issues that Plaintiffs have
4 raised to date with respect to Defendants' responses and objections.

5 **3. Privilege Disputes**

6 Plaintiffs have served a number of privilege challenges, and the parties are
7 meeting and conferring on them. Defendants are following the guidance the Court
8 provided in an order on a number of identical or very similar issues in the Bard IVC
9 Filter MDL. Defendants are reviewing every challenge and document carefully, and
10 while a few documents have been produced, most are properly on the privilege log,
11 or properly redacted. Defendants will continue to meet and confer with Plaintiffs on
12 these issues.

13 **4. Depositions**

14 ***a. Defendants Have Provided Deposition Dates for Nearly All Sixty*** 15 ***Custodians***

16 On June 3, 2024, Plaintiffs requested deposition dates for all thirty of the first
17 set of Custodians. Notwithstanding Defendants' objections to the blanket request,
18 Defendants nonetheless agreed to provide available dates for Custodians on a rolling
19 basis as they were able to secure dates. Defendants emphasized to Plaintiffs the
20 logistical challenges associated with scheduling thirty depositions comprised of
21 both current and former employees all at once, and raised these concerns with the
22 Court at the last CMC. Nonetheless, on July 22nd, Plaintiffs again made a blanket
23 request for deposition dates for all thirty of the second set of Custodians.

24 As of the date of this submission, Defendants have provided Plaintiffs with
25 available deposition dates or last known contact information for fifty-nine of the
26 sixty prospective deponents. The parties have confirmed deposition dates and issued
27 deposition notices for twenty-four of the first thirty Custodians. The first deposition
28 took place on August 6th.

b. Defendants Object to the Deposition of Witnesses Who Will Provide Duplicative Testimony and Reserve the Right to Seek the Court's Intervention at the Appropriate Time

In light of the facts that (1) Plaintiffs seek to depose sixty current or former employees within four months (just eighty-three business days); (2) many of these employees serve in the same departments as others with overlapping time periods and functions (*e.g.*, R&D, Quality); (3) several of these witnesses can provide responsive and complete testimony regarding an entire subject area; and (4) there remains less than 420 cases in this MDL, Plaintiffs' request that all Custodians be deposed is not proportional to the needs of this MDL.

By letter dated July 29th, Defendants provided Plaintiffs with an initial list of Custodians whom Defendants believe will provide duplicative or cumulative testimony of others, in order to provide Plaintiffs with early, substantive objections to particular depositions. For R&D, Defendants identified nine of the twenty-eight prospective deponents whom Defendants believe will provide duplicative testimony. All nine of those individuals are former employees. For Quality and Field Assurance, Defendants identified five of the thirteen prospective deponents whose depositions would either be duplicative or disproportionate to the needs of this case. Defendants produced the deposition transcript from the one former employee in this group from a prior product liability action in lieu of her deposition.

For Corporate and Sales & Marketing, Defendants requested that Plaintiffs forgo depositions of four employees (two former) of the ten requested. Defendants submit that sufficient testimony will be elicited from the six other deponents. For Regulatory and Medical Affairs, Defendants identified two employees (one current, one former) of nine requested whom Defendants believe will offer duplicative testimony. Defendants produced the deposition transcript from the one former employee in this group from a prior product liability action in lieu of his deposition.

1 Finally, Defendants identified three individuals whose depositions would
2 constitute unnecessary apex depositions: Jim Beasley, former President, C. R. Bard,
3 Inc.; Padraic O'Brien, former President, BD Peripheral Intervention; and Kimberly
4 Hammond, Vice President, Chief Financial Officer, BD Interventional.¹¹

5 Defendants have offered to meet and confer with Plaintiffs regarding the
6 depositions of these twenty individuals. As of this date, Plaintiffs have only
7 withdrawn one of the sixty requested depositions. Defendants do not seek the
8 Court's intervention regarding any of these depositions at this time. However,
9 Defendants reserve the right to make an application for a protective order if and
10 when the completed depositions confirm that the witnesses identified in Defendants'
11 letter would offer duplicative testimony that is cumulative, unnecessary, and no
12 longer proportional to the needs of this case.¹²

13 *c. Defendants Do Not Consent to Plaintiffs' Request to Extend the*
14 *Depositions of Certain Witnesses Beyond the Time Limits*
15 *Established by this Court*

16 Plaintiffs have requested additional time to examine at least three of the first
17 thirty Custodians. Specifically, Plaintiffs request an additional three hours of
18 examination for David Cise, John Evans, and Kelly Powers (a total of nine hours
19 each, which may require a second day of deposition). Plaintiffs have also suggested
20 that there may also be a request to extend additional depositions in the future. This
21 Court should deny these requests. Notwithstanding Plaintiffs' contentions regarding
22

23 ¹¹ Following BD's acquisition of C. R. Bard, Inc., BPV remained a wholly-owned
24 subsidiary of C. R. Bard, Inc. Within BD's organizational structure, particular
25 business units are assigned to one of three segments. BPV falls within BD's
26 Interventional segment, and is now known colloquially as BD Peripheral
Intervention.

27 ¹² Defendants further reserve their right to add or remove prospective deponents
28 from their list of objections based on the actual testimony elicited from other
witnesses.

1 the volume of data within their Custodial Files and their respective roles and
 2 knowledge of IPCs, Plaintiffs should adhere to the time limitations establish by Rule
 3 30(d)(1) and the Deposition Protocol. *See* CMO 21, Doc. 617.

4 Rule 30(d)(1) states that “a deposition is limited to one day of 7 hours.” Fed.
 5 R. Civ. P. 30(d)(1). To merit additional time, Plaintiffs must demonstrate that
 6 additional time is “needed to fairly examine the deponent” and comports with Rule
 7 26(b)(1) and (2); or that “the deponent, another person, or any other circumstance
 8 [has] impede[d] or delay[ed] the examination.” *Id.* “The party seeking a court order
 9 to extend the examination, or otherwise alter the limitations, is expected to show
 10 good cause to justify such an order.” *Id.* (advisory comm. notes 2000).

11 A deponent’s putative status as “a ‘central figure in a case’” does not suffice
 12 as good cause for an extension of the seven-hour limit. *Kimera Labs, Inc. v.*
 13 *Jayashankar*, 346 F.R.D. 146, 148 (S.D. Fla. 2024) (quoting *C.H. by Hilligloss v.*
 14 *Sch. Bd. of Okaloosa Cnty., Fla.*, 2021 WL 8918070, at *2 (N.D. Fla. July 19, 2021)
 15 (“The fact that [the deponent] is a material witness does not justify going beyond
 16 the agreed upon time or the seven-hour time limit.”)). Nor does the prospect that the
 17 testimony will cover a long time-period or involve a significant number of exhibits
 18 constitute good cause. *See United States Sec. & Exch. Comm’n v. Kandalepas*, 2018
 19 WL 4005201, at *3 (N.D. Ill. Aug. 22, 2018) (“The court has little doubt that [the
 20 defendant] is a key witness or that the SEC has a long list of questions and
 21 documents covering a multi-year period to discuss with him. Nonetheless, the SEC
 22 has not yet shown good cause as to why seven hours is insufficient to depose [the
 23 defendant] . . .”).

24 Moreover, “[a] party generally should not seek additional time for a
 25 deposition before the deposition is taken.” *Arista Music v. Time Warner, Inc.*, 2010
 26 WL 11497095, at *3 (M.D. Tenn. Jan. 8, 2010) (quoting Moore’s Fed. Prac. 3d §
 27 30.45)). “Extending the duration of a deposition before it occurs provides leeway
 28 for inefficient questioning not necessarily directed at the most pertinent issues that

1 need to be explored.” *Stockwell v. Hamilton*, 2019 WL 7580996, at *1 (E.D. Mich.
2 July 18, 2019).

3 The assertion these three witnesses may have “50% more documents” in their
4 Custodial Files does not constitute “extraordinary circumstances” to extend the
5 length of the depositions. *See supra*, at 4-5. Notably, Plaintiffs do not suggest that
6 they intend to show these witnesses 50% more exhibits during these depositions.
7 But if Plaintiffs are concerned that the number of exhibits will extend the deposition,
8 Plaintiffs should “send copies of the documents to the witness sufficiently in
9 advance of the deposition so that the witness can become familiar with them” to
10 avoid the risk of exceeding CMO 21’s six-hour limit. Fed. R. Civ. P. 30(d) (2000
11 advisory comm. note).

12 For these reasons, Plaintiffs’ request for additional time should be denied.¹³

13 **III. Plaintiff Profile Forms**

14 **A. Plaintiffs’ Position**

15 Plaintiffs’ Co-Lead Counsel continues to communicate with the offices of
16 attorneys who have been served with deficiency notices with regard to PPFs and
17 provide assistance in curing valid deficiencies. Consistent with the Court’s previous
18 orders, Plaintiffs do not oppose an order compelling plaintiffs who have not
19

20 ¹³ Regarding the extended deposition of former employee, Jack Sullivan in *IVC*
21 *Filter*, Plaintiffs omit key context regarding that specific situation, wherein
22 Defendants voluntarily agreed to the expansion of the deposition due to unique
23 circumstances. The deposition was not a result of a Court order. Specifically, during
24 the deposition, Plaintiffs presented a document that Defendants believed at the time
25 to be privileged and subject to claw-back. Defense counsel did not permit Mr.
26 Sullivan to respond to questions about the document. In the days following the
27 deposition, Defendants investigated the situation and determined that the version of
28 the document that Plaintiffs had sought to introduce was in fact not privileged. As a
result of their error, Defendants withdrew the claim of privilege and allowed
Plaintiffs to reconvene the deposition. That single instance from the *IVC Filter*
litigation is very different from the situation at hand, where Plaintiffs seek additional
time in anticipation of being unable to finish their questioning of several witnesses
before those depositions have even begun.

1 responded to Defendants' deficiency letters regarding Profile Forms to provide full
2 and complete Profile Forms.

3 In the last Case Management Conference, two plaintiffs who had failed to
4 provide PPFs in the timeframes prescribed by CMO No. 8 were ordered to show
5 cause for the aforesaid failure. Plaintiffs' Co-Lead Counsel was apprised of the fact
6 that counsel lost communication with plaintiffs Bell and Koch, and after various
7 efforts to re-establish contact failed, counsel for same filed notices of voluntary
8 dismissal.

9 **B. Defendants' Position**

10 There are currently three (3) plaintiffs who have failed to serve a PPF but are
11 in the 21-day cure period set by CMO 8. *See* Doc. 113 at 4.

12 There are four (4) plaintiffs who served PPFs that were incomplete and not
13 in compliance with CMO 8. The chart below identifies the plaintiff, case number,
14 and date the letter identifying the deficiencies was sent. None of the four plaintiffs
15 identified below have responded to the deficiency letter or supplemented their PPF.
16 Counsel for Garza and Graham asked, and Defendants agreed, to a 45-day extension
17 to cure the identified deficiencies. The 45-day extension expired on August 5, 2024,
18 and Defendants still have not received a response to the deficiency letter or a
19 supplemental PPF for Garza and Graham. Pursuant to CMO 8, Defendants seek an
20 order compelling each of the four (4) plaintiffs to comply with CMO 8 and that they
21 be ordered to comply by August 21, 2024.

22 Plaintiff and Case	Deficiency
23 Number	Letter
24 Garza, Amber 2:24-cv-00700-DGC	6/5/2024
25 Graham, Janice 2:24-cv-00696-DGC	6/6/2024
26 Phillips, Marilyn 2:24-cv-01128-DGC	6/28/2024

Risas, Dawn
2:24-cv-01227-DGC

7/4/2024

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.

IV. Plaintiff Fact Sheets

A. Plaintiffs' Position

Plaintiffs are in receipt of deficiency notices in a variety of cases and are in the process of evaluating these notices and will confer with Defendants to see that valid deficiencies are timely cured.

B. Defendants' Position

As of the filing of this Joint Submission, Defendants have received 47 of the 48 Plaintiff Fact Sheets due on July 31, 2024. Plaintiff Linda Miller (2:24-cv-00724-DGC) did not serve a Fact Sheet as required by CMO. 17. Counsel for Linda Miller responded to Defendants' deficiency letter, stating that the PFS would be served "asap." Defendants have not received the PFS, but the time for Ms. Miller to cure the deficiency has not expired.

Defendants are reviewing the Plaintiff Fact Sheets and will comply with CMO 17 in sending deficiency letters. Because collecting medical records can be very time consuming, Defendants' first priority was to make sure that proper authorizations for the release of records were served. Defendants identified 9 plaintiffs whose authorizations have issues when uploaded from MDL Centrality or the plaintiff did not properly complete the authorizations for release of medical records as required by CMO 17. Defendants served a letter on the respective plaintiffs' counsel through MDL Centrality and by email and are working with the respective plaintiffs to resolve these issues. Additionally, Defendants' counsel and Plaintiffs' leadership are coordinating to attempt to resolve the deficiencies quickly so that the necessary information is provided.

1 **V. Successor Liability**

2 **A. Plaintiffs' Position**

3 **1. Plaintiffs' Requests for Production Are Relevant and**
4 **Proportional to the Needs of the Case**

5 This Court will remember that, when discovery began in this MDL,
6 Defendants sought to wholly block Plaintiffs from conducting any discovery into
7 successor liability. This Court decided that Plaintiffs were entitled to discovery into
8 successor liability. The problem today is that, in sum, Defendants' resistance
9 continues. They simply will not respond to 15 of Plaintiffs' 21 requests for
10 production. Defendants refuse to answer, for example, a request seeking
11 information about insurance and indemnity agreements—a request that parties
12 typically answer in initial disclosures and that Defendants separately committed to
13 answer when the Parties agreed not to draft initial disclosures in this MDL.
14 Defendants' objections to such basic discovery cannot stand.

15 To begin, Plaintiffs pleaded that BD is liable for defective implanted port
16 catheters both directly and as a successor and parent to the Bard Defendants,
17 including C.R. Bard, Bard Peripheral Vascular, and Bard Access Systems. Doc.
18 119, Master Compl. at 54-83 (direct) and 9-13, 83-85 (successor).

19 From the beginning of the dispute, Plaintiffs offered to negotiate a stipulation
20 that would eliminate the need for discovery into successor-liability issues.
21 Defendants did finally engage Plaintiffs on a potential stipulation regarding
22 successor liability, but Defendants consistently refused to include any language to
23 bind BD, the parent, as the successor. Thus, the Parties failed to negotiate a
24 comprehensive stipulation regarding successor liability.

25 However, the Parties have agreed/are very near agreement on some related
26 issues:

- 27 1. Plaintiffs have accepted Defendants' four chosen successor-liability
28 custodians.

1 2. Plaintiffs have agreed to limit successor liability discovery in time, dating
2 back to 2016, roughly two years before BD finally acquired the Bard
3 Defendants. This is memorialized in a proposed stipulation between the
4 Parties.

5 3. Plaintiffs were able to limit discovery in time because Defendants agreed
6 to streamline the issue of corporate liability with respect to the Bard
7 Defendants by, effectively, wrapping them into one for discovery,
8 motions practice, trial, etc. This is also memorialized in a proposed
9 stipulation between the Parties.¹⁴

10 As is evident, Plaintiffs have already considerably narrowed the scope of
11 successor-liability discovery.

12 The current dispute between the Parties regarding the scope of discovery is
13 that, even with the narrowed scope, Defendants refuse to respond to a majority of
14 Plaintiffs' requests for production regarding corporate liability. Plaintiffs' requests
15 are included as Ex. B. Defendants' blanket objection to Plaintiffs' requests for
16 production in meet and confers has been that the requests are irrelevant to the
17 question of successor liability or that the Parties' proposed stipulation about the
18 Bard Defendants somehow obviates the need for discovery about the relationship
19 between the Bard Defendants and BD. As it stands, the Parties must agree at least
20 that the proposed stipulation *does not* resolve the question of successor liability as
21 between the Bard Defendants and BD. Therefore, successor liability remains a
22 disputed material issue in this litigation.

23 Plaintiffs' successor-liability claims are premised on the following legal
24 theories:

25
26
27 ¹⁴ For the sake of clarity, Plaintiffs intend that the carefully negotiated language of
28 the proposed stipulation itself shall be controlling between the Parties, not the
 Parties' representations about the proposed stipulation in this joint memo.

- I. Express or Implied Assumption of Liabilities: Evidence includes but is not limited to contractual agreements and legal documents.
- II. Fraud: Evidence includes but is not limited to information that the successor engaged in a transfer with the intent to evade existing liabilities, for example, and that consideration for the transfer of assets was inadequate.
- III. De Facto Merger or Consolidation: Evidence includes but is not limited to information that the companies effectively operate as one, including, for example, with respect to the consolidation of assets, liabilities, operations, and control.
- IV. Mere Continuation/Continuity of Enterprise: Evidence includes but is not limited to information that the successor has effectively taken over the predecessor's operations and business activities. This includes, for example, evidence about overlapping directors, shareholders, personnel, and physical location.
- V. Product Line Exception: Evidence includes but is not limited to information that the successor took over a product line.

See, e.g., George Kuney, A Taxonomy and Evaluation of Successor Liability (Revisited), 18 Transactions: Tenn. J. Bus. L. 742 (2017).

Plaintiffs' disputed requests for production each track the required evidence for the legal theories pled:

- No. 1: Governing Documents (articles of association, bylaws, shareholder agreements);
- No. 3: Information Governing the Board of Directors, Officers, and Shareholders;
- No. 5: Identity of Shareholders;
- No. 6: Control and Use of IPC Intellectual Property;
- No. 7: Governing Body Meeting Minutes and Resolutions;
- No. 9: Annual Budgets;

- No. 12: Insurance and Indemnity Agreements;
- No. 13: Information about Relationship with Other Defendants;
- No. 14: Use of Cobranding, Trade Names, Trademarks, Goodwill;
- No. 15: Transfer of Post-Market Surveillance & FDA Compliance;
- No. 16: Contracts with Healthcare Facilities;
- No. 17: Role and Responsibilities in R&D, Design, Manufacture, Labeling, Marketing, Distributing, Selling;
- No. 18: Hiring of Employees;
- No. 19: Website Information; and
- No. 20: Ownership of Real Property & Physical Presence (Headquarters, Office Space, Manufacturing, etc.).

Each of these requests for production seeks relevant evidence regarding the relationship between Bard Defendants and BD, and Plaintiffs will be prejudiced if they are not allowed to discover that evidence.

Indeed, rather than truly attack the relevance or proportionality of any of Plaintiffs' requests individually, Defendants prematurely argue choice of law for successor liability, as discussed below in more detail. Defendants have not even outlined their relevance or proportionality issues with any of the individual requests that they here contest, although Plaintiffs have asked them to do so during meet and confers.

For these reasons, Defendants' request for protection must fail.

2. Plaintiffs' Multiple Theories of Successor Liability Are All Relevant to this MDL Because New Jersey Law Alone Does Not Control

Plaintiffs are entitled to discovery on successor liability given the myriad state laws applicable to the member cases in this MDL. Defendants argue for New Jersey law to apply in every case—a premature choice-of-law maneuver engineered to curtail Plaintiffs' discovery into just one of five theories of successor liability.

1 Defendants' argument usurps blackletter law, not to mention the Court's prior ruling
2 that successor liability requires fulsome discovery before adjudication on summary
3 judgment. To the extent Defendants contend that the Parties' proposed stipulation
4 renders "fulsome successor liability discovery" unnecessary, they are wrong. The
5 *proposed* stipulation does not moot the issue, much less address the elephant in the
6 room—bankruptcy.

7 The Federal Rules permit discovery "regarding any nonprivileged matter that
8 is relevant to any party's claim or defense, and proportional to the needs of the case."
9 *See* Fed. R. Civ. P. 26(b)(1). The Amended Master Long-Form Complaint pleads,
10 *inter alia*, theories of successor liability against BD on the basis of (1) express and
11 implied assumption of liability, (2) de facto merger or consolidation, (3) mere
12 continuation and continuity of enterprise, (4) fraud, and (5) BD's continued
13 production of Bard's IPC product line. *See* Doc. 494 ¶¶ 39-112, 565-88. BD never
14 moved to dismiss Plaintiffs' successor-liability claim or strike any of the
15 corresponding allegations regarding Plaintiffs' non-contractual theories of
16 successor liability. *See* Fed. R. Civ. P. 12(b)(6), (f). To the contrary, Defendants
17 themselves alleged as an affirmative defense that "Plaintiffs cannot rely on
18 principles of successor liability ... or any other similar theory to hold one or more
19 Defendants liable for the conduct of other Defendants." *See* Doc. 517-1 ¶ 61. By
20 virtue of those allegations, the nature and extent of BD's liability is very much a
21 material and hotly contested issue in this litigation.

22 Notably, Defendants do not challenge the relevance of successor-liability
23 discovery as a general matter. Defendants say that certain theories of successor
24 liability are irrelevant because they are purportedly predicated on the Bard
25 Defendants' insolvency. (How four discrete entities with distinct interests united in
26 such a position is question for another day.) Nor do Defendants identify with
27 particularity any alleged undue burden or expense associated with responding to
28 Plaintiffs' discovery requests. Defendants attempt to lure the Court into a premature

merits ruling that Plaintiffs cannot prevail on certain theories of successor liability—*i.e.*, de facto merger or consolidation, mere continuation and continuity of enterprise, fraud, and the product line exception. Defendants’ argument is flawed for at least two reasons. First, *Erie* requires application of several state laws, not the law of a single state. Second, even if New Jersey law monolithically controlled, the issue of successor liability would still involve factual questions that cannot be resolved at this embryonic stage.

Under *Erie*, “successor liability [is] an issue common to all cases, albeit one based on state law.” *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, 2022 WL 17853203, at *6 (N.D. Fla. Dec. 22, 2022). Defendants urge the Court to apply the law of a single jurisdiction—New Jersey—because, in their view, examining multiple states’ laws is inefficient, a majority of states apply the law of the state of incorporation in discovery disputes involving choice of law, and both Bard and BD are New Jersey corporations. But the “task is not to apply the rule [Defendants] think would be best, or the rule [they] think is reflected in the leading decisions from state courts around the country.” *Cf. In re Bard IVC Filters Prod. Liab. Litig.*, 969 F.3d 1067, 1076 (9th Cir. 2020). Because successor liability is an issue of state law—as Defendants rightly recognized in their prior filing, *see* Doc. 102 at 22-24—the Court must apply no more and no less than all 50 states’ laws.

“[I]t is within the very nature of coordinated or consolidated pretrial proceedings in multidistrict litigation for the transferee judge to be called upon to apply the law of more than one state,” notwithstanding any “potential complication that deciding the choice of law rules for [multiple] states creates for judicial efficiency.” *In re Exactech Polyethylene Orthopedic Prods. Liab. Litig.*, 2024 WL 991210, at *5 (E.D.N.Y. Mar. 7, 2024).¹⁵ This Court’s decision in *IVC* is not to the

¹⁵ The MDL court in *Exactech* evaluated “the choice of law rules of eighteen states ... to assess which state’s law govern[ed] veil-piercing claims” on a motion to dismiss; it did not, as Defendants wrongly suggest, merely apply some variation of

contrary. *See infra* at 33 (citing *In re: Bard IVC Filters Prod. Liab. Litig.*, 2016 WL 3970338, at *2 (D. Ariz. July 25, 2016)). As this Court knows, the “work-product doctrine” at issue there was “governed by federal law”; state law only came into play because Federal Rule of Evidence 501 incorporates by reference “state law govern[ing] privilege.” *See In re IVC*, 2016 WL 3970338, at *1; *see also In re Bard IVC Filters Prod. Liab. Litig.*, 2018 WL 4184950, at *2 (D. Ariz. Aug. 31, 2018) (“Although a federal court sitting in diversity applies the law of the forum state, the conduct of discovery and bifurcation are matters of federal procedural law.”) (citations omitted). For the same reason that this Court was reluctant to adjudicate statutes of limitations on a global motion to dismiss, the Court should not apply a single state’s law to successor liability. *See* Doc. 53 (9/20/23 Tr.) at 25:25-26:9. In short, Defendants have not cited a single case where an MDL court has adopted one jurisdiction’s substantive law as controlling over the merits of every plaintiffs’ successor-liability claim or defense (or even of a discovery dispute for that matter).¹⁶

a majority rule. *See id.* at *4; *see also In re Paraquat Prod. Liab. Litig.*, 2023 WL 3948249 (S.D. Ill. June 12, 2023). So too in *Yasmin*. There, the MDL court rejected the defendants’ argument for “wholesale application of federal attorney-client privilege law ... for purposes of convenience.” *In re Yasmin & Yas (Drospirenone) Prod. Mktg., Sales Prac. & Prod. Liab. Litig.*, 2011 WL 1375011 at *6-15 (S.D. Ill. Apr. 12, 2011). Instead, the MDL Court examined choice-of-law principles applicable to privilege disputes in all 50 states, the District of Columbia, and Puerto Rico and concluded that each jurisdiction would apply the same test when resolving choice-of-law issues regarding privilege. *See id.*

¹⁶ Contrary to Defendants’ argument, “the ‘internal affairs’ doctrine” does not “hold[] that issues governing successor liability should be resolved under the law of the state of incorporation.” *Cf. infra* at 34. In *Exactech*, the MDL court concluded the doctrine applied to corporate veil-piercing claims, not successor-liability claims. *See* 2014 WL 991210, at *3-9 & n.9. Even as to veil-piercing, the court conducted a state-by-state choice-of-law analysis, as it must, and applied the internal affairs doctrine because it was the law under “each relevant state’s choice of law rules.” *Id.* at *6.

1 It is well established that MDL courts apply the choice-of-law rules of the
 2 transferor court. *E.g.*, *Wahl v. General Elec. Co.*, 786 F.3d 491, 494 (6th Cir. 2015).
 3 Some states follow *lex loci delicti*. *E.g.*, *Risdon Enters., Inc. v. Colemill Enters.,*
 4 *Inc.*, 324 S.E.2d 738, 740 (Ga. 1984). Under the *lex loci* choice-of-law test, the law
 5 of the place of injury controls substantive issues. *See id.* In those cases, then, New
 6 Jersey law could never apply. Because numerous states' laws apply to cases in this
 7 MDL, it is not true that no Plaintiff can "rely on [the merger and continuation]
 8 exceptions given that C.R. Bard, BAS, and BPV still exist." *Cf.* Doc. 102 at 23.
 9 "The mere fact that a corporate entity has not been formally dissolved does not
 10 preclude a finding of a de facto merger" in many jurisdictions. *See Milliken & Co.*
 11 *v. Duro Textiles, LLC*, 887 N.E.2d 244, 256 (Mass. 2008).¹⁷ In those jurisdictions,
 12 the predecessor's dissolution is but one "factor to be equally weighed to determine
 13 whether a de facto merger occurred in a given case." *Vill. Builders 96, L.P. v. U.S.*
 14 *Labs., Inc.*, 112 P.3d 1082, 1089 (Nev. 2005). The same is true under multiple
 15 states' continuity of enterprise rule.¹⁸ Even the predecessors' insolvency is not a
 16 "fundamental precondition for the imposition of successor liability" in all
 17 jurisdictions, as Defendants incorrectly suggest.¹⁹

18 Assuming *arguendo* that New Jersey law somehow controlled all cases in
 19 this MDL, the merits of successor liability can still not be resolved as a mere
 20

21 ¹⁷ *See also, e.g.*, *Village Builders 96, L.P. v. U.S. Laboratories, Inc.*, 112 P.3d 1082,
 22 1089 (Nev. 2005); *Hamaker v. Kenwel-Jackson Mach., Inc.*, 387 N.W.2d 515, 518
 23 (S.D. 1986).

24 ¹⁸ *E.g.*, *Kendall v. Amster*, 948 A.2d 1041, 1051 (Conn. 2008) (multi-factor test);
 25 *Paradise Corp. v. Amerihost Dev., Inc.*, 848 So.2d 177, 180 (Miss. 2003) (same);
 26 *Savage Arms, Inc. v. Western Auto Supply Co.*, 18 P.3d 49, 55-56 (Alaska 2001)
 27 (same); *Andrews v. John E. Smith's Sons Co.*, 369 So.2d 781, 785-86 (Ala. 1979)
 28 (same).

¹⁹ *E.g.*, *Kendall*, 948 A.2d at 1051 (continuity of enterprise); *Paradise Corp.*, 848
 So.2d at 180 (same); *Rivers v. Stihl, Inc.*, 434 So.2d 766, 771-72 (Ala. 1983) (same).

1 relevancy dispute. The successor-liability inquiry is highly contextual and fact-
 2 specific, turning on the companies' statements and conduct, and their meaning, as a
 3 whole.²⁰ Defendants' own argument proves the point, as it requires the Court to
 4 evaluate the nature of the Bard Defendants' continued corporate existence and the
 5 adequacy of their capitalization under various legal standards. Such issues cannot
 6 be resolved on this incomplete factual record and without fulsome successor-
 7 liability discovery. *See, e.g., Skelton v. State Farm Ins. Co.*, 2007 WL 2692209, at
 8 *2 n.2 (D. Ariz. Sept. 11, 2007) ("A central purpose of discovery ... is for one party
 9 to obtain evidence relevant to its claims.").

10 To the extent Defendants contend that Plaintiffs' non-contractual theories of
 11 successor liability are equitable doctrines and "there is no present or future risk of
 12 injustice" or bankruptcy here, Defendants improperly invite the Court to revisit its
 13 ruling that "successor liability is an issue that will be addressed during general fact
 14 and expert discovery." Doc. 111 at 6. Though Defendants "believe[] that questions
 15 of successor liability can be narrowed or resolved," the Court has already ruled that
 16 Defendants should "address the issue" in a "motion[] for summary judgment," not
 17

18 ²⁰ *E.g., Martin v. TWP Enter. Inc.*, 132 A.3d 361, 371 (Md. Ct. Spec. App. 2016)
 19 ("The ... determination of successor liability and the applicability of the 'mere
 20 continuation' exception is a mixed question of fact and law, with a heavier factual
 21 component[.]"); *Duro Textiles*, 887 N.E.2d at 256 ("[A] determination whether a
 22 predecessor corporation continues to exist for purposes of successor liability is
 23 wholly fact specific."); *Chamlink Corp. v. Merritt Extruder Corp.*, 899 A.2d 90, 93
 24 (Conn. App. Ct. 2006) ("The issues of whether a purchaser is a mere continuation
 25 of the selling corporation is a question of fact."); *Vill. Builders*, 112 P.3d at 1087
 26 ("[C]ourts should engage in fact-specific, case-by-case analysis of the factors
 27 necessary to establish" successor liability); *Macris & Assoc., Inc. v. Neways, Inc.*,
 28 60 P.3d 1176, 1181 (Utah Ct. App. 2002) ("Whether successor liability and alter
 ego exist involve questions of fact[.]"); *Fisher v. Allis-Chalmers Corp. Prod. Liab.*
Trust, 116 Cal. Rptr. 2d 310, 315 (Cal. Ct. App. 2002) ("[S]how[ing] the exceptions
 that create successor liability do not apply ... [is] extremely fact sensitive."); *Bazan*
v. Kux Machine Co., 358 F. Supp. 1250, 1251 (E.D. Wis. 1973) ("Whether a
 transaction is in reality a sale of assets or a consolidation depends to a large extent
 on the circumstances surrounding each particular case.").

1 through narrowing discovery at this nascent stage. *See id.* Without knowing which
 2 Defendants are liable for which products, *see* Doc. 42 at 4, and the solvency of each
 3 Defendant, Plaintiffs cannot further cabin their already targeted discovery requests.

4 In the end, “a party is entitled to seek discovery on its theory of the facts and
 5 the law, and is not limited in discovery by the opponent’s theory.” *Big City Dynasty*
 6 *v. FP Holdings, L.P.*, 336 F.R.D. 507, 511 (D. Nev. 2020) (quoting Wright & Miller,
 7 *Fed. Prac. & Proc.* § 2011 (2010)). Under Plaintiffs’ theory of the facts and the law,
 8 BD is subject to successor liability. Ergo, Plaintiffs are entitled to successor-liability
 9 discovery. This is not so merely because the Bard Defendants may one day file for
 10 bankruptcy in an effort to shield themselves and BD from liability, although this is
 11 a legitimate concern given their inflexible resistance to successor-liability discovery
 12 and the burgeoning trend among corporate defendants. *Cf.* Doc. 102 at 17-18.
 13 Rather, it is because Plaintiffs’ Amended Master Complaint raises successor-
 14 liability claims under the state laws applicable to all cases in this MDL. *Compare*
 15 *In re Johnson & Johnson Talcum Powder Prod. Mktg., Sales Pracs., & Prod. Liab.*
 16 *Litig.*, 2024 WL 1914760, at *2 (finding subpoena requests for information about
 17 J&J’s solvency and financial condition irrelevant). For these reasons, Defendants
 18 should be directed to respond to Plaintiffs’ discovery requests regarding successor
 19 liability.

20 **B. Defendants’ Position**

21 **1. The Parties Have Reached an Agreement in Principle Regarding** 22 **a Stipulation as to Bard Defendants, but Disagree on the Scope of** 23 **Successor Liability Discovery**

24 The parties have reached an agreement in principle regarding a proposed
 25 stipulation pertaining to C. R. Bard, Inc. (“Bard”), Bard Access Systems, Inc.
 26 (“BAS”), and Bard Peripheral Vascular, Inc. (“BPV”) (collectively, the “Bard
 27 Defendants”). Pursuant to this proposed stipulation, the parties agree (1) to limit
 28 successor liability discovery to BD’s alleged liability for the actions of the Bard

1 Defendants based on information available after January 1, 2016; (2) that the Bard
2 Defendants may be identified collectively as “Bard” in depositions, pretrial motions,
3 and at trial in this MDL and any member cases, as well as on any verdict form
4 related to those cases; and (3) in the event that damages awarded to a Plaintiff
5 pursuant to a final judgment against the Bard Defendants or a settlement is reached
6 with any of the Bard Defendants, any financial obligations related to said judgment
7 or settlement will be satisfied by one or more of the Bard Defendants.

8 Although the parties have reached an agreement in principle regarding the
9 treatment of the Bard Defendants, they have differing views on the appropriate
10 scope of discovery as it pertains to BD’s alleged liability for the Bard Defendants’
11 actions moving forward.

12 Plaintiffs predicate their need for fulsome successor liability discovery on a
13 hypothetical risk: that, at some point in the future, the Bard Defendants may engage
14 in an improper “restructuring” or “bankruptcy” scheme to avoid satisfaction of any
15 final judgment, or to otherwise “upend this MDL at the eleventh hour.” Joint Memo,
16 Nov. 9, 2023, at 20, Doc. No. 102; *see also supra* at 28 (expressing concern that
17 “the Bard Defendants may one day file for bankruptcy in an effort to shield
18 themselves and BD from liability”). Based on that hypothetical risk, Plaintiffs
19 served exceedingly broad and burdensome discovery requests on BD and the Bard
20 Defendants pertaining to successor liability.

21 Defendants are prepared to engage in successor liability discovery, but
22 respectfully submit that it should be narrowed to focus on the central and common
23 issue of whether BD expressly or impliedly assumed the Bard Defendants’ liabilities
24 for the claims asserted in this MDL. For these reasons and those that follow,
25 discovery into Plaintiffs’ remaining theories of successor liability are neither
26 relevant nor proportional to the needs of this MDL.

2. Several Categories of Successor Liability Discovery are not Relevant or Proportional

Pursuant to the aforementioned proposed stipulation, the Bard Defendants have represented that one or more of them will satisfy any valid and enforceable final judgment entered against them. In addition, the Bard Defendants have agreed to produce certain discovery regarding their financial condition and solvency, which will show that these entities are heavily capitalized and have assets that well exceed any liabilities. The proposed stipulation and that agreed-upon discovery render nearly all of Plaintiffs' remaining discovery requests either irrelevant or not proportional to the needs of this case. That is so because the fundamental precondition for the imposition of successor liability—the inability to recover against a predecessor corporation—is not present.

Plaintiffs primarily rely on the four theories of successor liability recognized in the Restatement.²¹ See Master. Compl. ¶¶ 566-70, Doc. 494. As the Restatement acknowledges, “[a]lmost all of the reported decisions applying the bases of successor liability stated in this Section involve predecessors that transfer all of their assets to successors and then *dissolve or otherwise cease operations*.” *Restatement (Third) of Torts: Prod. Liab.* § 12 (1998) (emphasis added). In this MDL, the Court is faced with the opposite situation: predecessor corporations who have stipulated that they will satisfy any valid and enforceable final judgment, and are prepared to

²¹ “A successor corporation or other business entity that acquires assets of a predecessor corporation or other business entity is subject to liability for harm to persons or property caused by a defective product sold or otherwise distributed commercially by the predecessor if the acquisition”:

(a) is accompanied by an agreement for the successor to assume such liability; or

(b) results from a fraudulent conveyance to escape liability for the debts or liabilities of the predecessor; or

(c) constitutes a consolidation or merger with the predecessor; or

(d) results in the successor becoming a continuation of the predecessor.

Restatement (Third) of Torts: Prod. Liab. § 12 (1998)

1 produce discovery evidencing that they are adequately capitalized. Discovery into
2 theories reserved for tort claimants who must look to a successor corporation due to
3 the predecessor's inability to satisfy a judgment are not relevant.

4 In addition, Plaintiffs seek to hold BD liable on the theory that "C.R. Bard is
5 an alter ego of BD," as well as pursuant to the concept of piercing-the-corporate-
6 veil. *See* Master Compl. ¶¶ 61-78. A *prima facie* element of these concepts is proof
7 that adherence to the corporate form would further a fraud or injustice. *See, e.g.,*
8 *Specialty Companies Group, LLC v. Meritage Homes of Arizona, Inc.*, 492 P.3d
9 308, 310 (Ariz. 2021) ("[A] parent company [can be] held liable for the acts of its
10 subsidiary, if (1) there is unity of control between parent and subsidiary such that
11 one is the 'alter ego' of the other, and (2) observing the corporate form's privileges
12 and protections would be unjust."); *Richard A. Pulaski Const. Co., Inc. v. Air Frame*
13 *Hangars, Inc.*, 950 A.2d 868, 877-78 (N.J. 2008) ("Except in cases of fraud,
14 injustice, or the like, courts will not pierce a corporate veil."). There is no present
15 or future risk of injustice here. Again, the Bard Defendants have agreed in principle
16 to a stipulation for the satisfaction of any final judgment entered against it in this
17 MDL. There is no need to look to the parent corporation (BD) for satisfaction of
18 any judgment against the Bard Defendants in these circumstances.

19 Unmoved by the foregoing principles, Plaintiffs seek to push forward with
20 broad discovery into the relationship between BD and C. R. Bard to determine, for
21 example, whether there has been a "de facto" merger or disregard of the corporate
22 form.

23 Plaintiffs do not need this broad corporate discovery to prove their product
24 liability claims. Instead, Plaintiffs want these "documents to prepare in the event
25 [the Bard Defendants] file[] for bankruptcy." *In re Johnson & Johnson Talcum*
26 *Powder Prod. Mktg., Sales Pracs., & Prod. Liab. Litig.* ("Talcum Powder MDL"),
27 No. MDL 2738, 2024 WL 1914760, at *2 (D.N.J. Apr. 5, 2024) (quashing subpoena
28 directed to PwC demanding documents regarding evaluations of J&J's talc

liabilities); *see also* Joint Memo, Nov. 9, 2023, at 17, 20 (expressing concerns about future bankruptcy). This “discovery is irrelevant to the claims and defenses at issue.” *Talcum Powder MDL*, 2024 WL 1914760, at *2. And, as aptly noted, “speculation about what might or might not happen in the future is not a sufficient basis to permit irrelevant discovery in this case now.” *Id.*; *see also In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 566 (D. Ariz. 2016) (rejecting discovery that was based on “mere conjecture” and was “only potentially relevant—more hope than likelihood”). Plaintiffs do not cite any case where the parties engaged in fulsome successor liability discovery in the face of a proposed stipulation by the predecessor entities to satisfy any valid and enforceable judgment.²²

Plaintiffs contend that it is inappropriate to rely on the majority rule reflected in the Restatement that successor liability is not implicated where the predecessor corporation is still an active party. Plaintiffs instead submit that, because this is an MDL, common-issue discovery must account for all minority rules and nuances in certain jurisdictions. Not so for two reasons.

First, broad discovery into successor liability theories that only implicates plaintiffs from a subset of states does not “promote the just and efficient conduct of such actions”—particularly in light of the substantial amount of direct liability discovery being undertaken by the parties. 28 U.S.C. § 1407(a). Nor is proportional to the needs of this MDL given the relative low importance of a derivative theory of liability only applicable in a subset of states, as compared to other issues that impact all parties and concern direct liability. *See* Fed. R. Civ. P. 26(b)(1).

²² Plaintiffs’ reliance on *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, 2022 WL 17853203 (N.D. Fla. Dec. 22, 2022) is misplaced. *See supra*, at 24. There, the court explicitly determined that the parent corporation engaged in an improper “bankruptcy scheme” to pin liability on subsidiaries in order to “evade dissatisfactory legal rulings and verdicts in the MDL” after previously representing that it had “exclusive responsibility for all . . . liability in the MDL.” *Id.* at *3-7. Here, in contrast, the Bard Defendants have agreed in principle to a stipulation that one or more of them will satisfy any judgment entered against them.

Second, transferee courts in MDLs often resolve discovery disputes that implicate choice-of-law determinations by selecting the test that is the “best representative of the choice of law rules applied by the various states.” *In re: Bard IVC Filters Prod. Liab. Litig.*, 2016 WL 3970338, at *2 (D. Ariz. July 25, 2016) (citing *In re Yasmin and Yaz (Drospirenone) Marketing, Sales Pracs. and Prods. Liab. Litig.*, 2011 WL 1375011, at *7 (S.D. Ill. Apr. 12, 2011)). For successor liability issues, “the majority of states follow the ‘internal affairs’ doctrine and look to the law of the state of incorporation” *In re Exactech Polyethylene Orthopedic Prod. Liab. Litig.*, 2024 WL 991210, at *5-6 (E.D.N.Y. Mar. 7, 2024) (finding that “a majority of relevant [eighteen] states follow the ‘internal affairs’ doctrine and apply the substantive law of the state of incorporation for matters of internal corporate governance, such as piercing the corporate veil and holding parent corporations liable,” but that even under the most significant relationship test “the state of incorporation has a ‘unique interest’ in regulating the internal corporate governance structure” and therefore applies); *see also Secon Serv. Sys., Inc. v. St. Joseph Bank & Tr. Co.*, 855 F.2d 406, 413 (7th Cir. 1988) (noting that “in the vast majority of situations, the law of the state of incorporation governs attempts to disregard the corporate entity” (citation omitted)).

Both C. R. Bard and BD are New Jersey corporations. Accordingly, this Court can look to New Jersey law to determine the appropriate scope of discovery. With the exception of an express or implied assumption of liabilities, none of Plaintiffs’ other successor liability theories remain relevant in light of the Bard Defendants’ stipulation. With respect to the merger and continuation exceptions, an “essential characteristic” of these exceptions “is that one corporation survives while another ceases to exist.” *Pub. Serv. Elec. & Gas Co. v. Cooper Indus., LLC*, 678 F. Supp. 3d 611, 625-26 (D.N.J. 2023) (quoting *U.S. v. Gen. Battery Corp., Inc.*, 423 F.3d 294, 308 (3d Cir. 2005)). The “fraud” theory is likewise irrelevant given the stipulation and the proposed stipulation that the Bard Defendants to satisfy any valid

1 judgment or settlement against any of them. Finally, the product line exception (a
2 minority rule adopted in New Jersey and a few other states) is inapplicable because
3 there remains a remedy against the original manufacturer. *See Oticon, Inc. v.*
4 *Sebotek Hearing Sys., LLC*, 865 F. Supp. 2d 501, 510 (D.N.J. 2011) (“[T]he loss of
5 a remedy against the original manufacturer must be a prerequisite to the invocation
6 of the product line exception.” (quoting *LaFountain v. Webb Indus. Corp.*, 951 F.2d
7 544, 547 (3d Cir. 1991))). Accordingly, the appropriate scope of common-issue
8 discovery should be those RFPs related to assumption of liabilities.

9 * * *

10 To summarize, Defendants do not seek to “usurp[]” this Court’s prior ruling
11 regarding successor liability discovery. *Supra*, at 23. Instead, Defendants ask this
12 Court to narrow its scope in light of subsequent developments in this MDL—
13 namely, the Bard Defendants’ proposed stipulation to satisfy any valid and
14 enforceable judgment against it, which further undercuts the hypothetical risk upon
15 which Plaintiffs’ discovery is based.

16 Defendants do not seek a “merits” ruling or the conclusive resolution of the
17 choice of law issue related to successor liability. *Supra*, at 24. Instead, Defendants
18 ask this Court to resolve this discovery dispute for this state law issue by applying
19 the “best representative” choice-of-law rule. *Bard IVC Filter*, 2016 WL 3970338,
20 at *2. That rule in this instance is the “internal affairs” doctrine, which holds that
21 issues governing successor liability should be resolved under the law of the state of
22 incorporation. *See Exactech*, 2024 WL 991210, at *5-6. Because BD and C. R. Bard
23 are New Jersey corporations, this Court should apply New Jersey law in determining
24 the appropriate scope of common-issue discovery in this MDL as it relates to
25 successor liability. Principles of New Jersey law, as the likely majority rule, dictate
26 that successor liability discovery should be limited to the RFPs identified by
27 Defendants relating to express or implied assumption of liabilities.

3. Defendants Have Identified the Requests for Production that Correspond to the Proper Scope of Discovery

Notwithstanding Plaintiffs' hyperbolic assertions to the contrary, *see e.g., supra* at 28 (stating that Defendants have an "inflexible resistance to successor-liability discovery"), Defendants have agreed to produce non-privileged documents responsive to the following Requests for Production ("RFP") regarding Corporate Liability:

- RFP No. 2 (BD's corporate structure as it relates to Bard post-acquisition)
- RFP No. 4 (BD's acquisition of Bard);
- RFP No. 8 (BD's SEC filings discussing the acquisition);
- RFP No. 10 (Bard's financial condition and solvency post-acquisition);
- RFP No. 11 (documents related to Plaintiffs' allegation that BD assumed Bard's liabilities for claims related to IPCs); and
- RFP No. 21 (documents regarding "successor liability, reverse triangular mergers, etc. related to the Devices").²³

These RFPs correspond to the issues of assumption of liabilities and the Bard Defendants' financial condition and solvency. Defendants circulated search terms related to these RFPs on July 22nd.

Plaintiffs' characterization of Defendants' responses to Plaintiffs' First Set of RFPs regarding Corporate Liability as involving a "blanket objection" (*supra*, at 20) is simply untrue. During their conferrals over the stipulation, Defendants explained that the RFPs that do not relate to the issue of assumption of liabilities were not included in Defendants' proposal. Defendants further advised Plaintiffs that they would be willing to confer over whether any other RFPs fall within the scope of Defendants' proposed discovery or are otherwise necessary to accomplish

²³ Defendants identified these RFPs in their initial revisions to the proposed stipulation on July 22nd. Defendants' agreement to produce documents in response to these RFPs is subject to their general and specific objections, as well as other reasonable criteria and limitations to be agreed upon by the parties.

1 the purposes of the stipulation. Given this threshold dispute, the parties ultimately
 2 agreed that they were at an *impasse* that required judicial intervention.

3 Throughout the course of this litigation, Plaintiffs have served admittedly
 4 overbroad discovery demands that have required the parties to confer over
 5 appropriate narrowing. Plaintiffs' First Set of RFPs related to Corporate Liability is
 6 no different. For example, Plaintiffs request, *inter alia*, that Defendants:

- 7 • "Produce information sufficient to determine the identities of shareholders
 8 and/or stockholders, now and in the past." RFP No. 5.
- 9 • "Produce all Information related to, referring to, and/or embodying meeting
 10 minutes and/or resolutions (or the like) of Your and/or any other Defendants'
 11 governing bodies." RFP No. 7.
- 12 • "Produce all Information related to, referring to, and/or embodying instances
 13 in which You and/or any Defendant and/or any person or entity acting on
 14 Your behalf assigned or assumed or indemnified a debt, liability, contractual,
 15 or financial obligation on Your or any other Defendants' behalf." RFP No.
 16 11.
- 17 • "Produce all Information related to, referring to, and/or embodying any
 18 insurance and/or indemnity agreements and/or fulfilment of any such
 19 agreement involving You and/or any other Defendant." RFP No. 12.
- 20 • "Produce all Information related to, referring to, and/or embodying contracts
 21 and/or agreements with healthcare facilities that You, any other Defendant,
 22 or any representatives, agents, and/or contractors acting on Your or any other
 23 Defendants' behalf." RFP No. 16.

24 In light of the proposed stipulation regarding the Bard Defendants and
 25 anticipated discovery regarding the Bard Defendants' solvency, Defendants
 26 respectfully request that this Court adopt their position and hold that (1) common-
 27 issue discovery related to successor liability should be limited to the question of
 28 whether BD assumed the Bard Defendants' liabilities for IPCs; and (2) Plaintiffs'

RFPs related to other issues are no longer relevant and proportional to the needs of this MDL.

If this Court does not adopt Defendants' position, Defendants request this Court to direct the parties to continue their conferrals over appropriate search terms and other criteria to tailor Plaintiffs' RFPs to the relevant issues and needs of this case. To date, the parties have been largely successful in resolving written discovery disputes. Defendants do not anticipate this discovery being an exception once this global issue is resolved.²⁴

VI. Protocol for Certain Case-Specific Depositions to be Taken De Bene Esse

A. Plaintiffs' Position

Plaintiffs' Co-Lead Counsel have been recently apprised of the health status of certain plaintiffs in this MDL which may result in their unavailability or inability to testify on a future date. Believing that this counsels toward taking measures to preserve the testimony of such plaintiffs where warranted, Plaintiffs met and conferred with Defendants on this matter. The parties continue to confer on this issue in efforts

²⁴ Defendants disagree with Plaintiffs' assertion that "Defendants refuse to answer" Plaintiffs' RFP No. 12 regarding insurance and/or indemnity agreements. *See supra*, at 19. As written, the RFP seeks "all Information related to . . . **any** insurance and/or indemnity agreements and/or fulfilment of any such agreement" between Defendants—not just those insurance or indemnity agreements related to the claims at issue in this MDL. Defendants thus responded to that RFP by stating, in relevant part, that Defendants are "prepared to meet and confer to determine if Plaintiffs can particularize this Request and provide a more narrowly tailored request that reasonably identifies a basis for the requested information as it relates to the allegations in the Master Complaint in order to enable Defendant to conduct a reasonably diligent search." Ex. B, RFP No. 12.

Defendants respectfully submit that the Court does not need to resolve relevance or proportionality challenges on a request-by-request basis at this time. As they have with the majority of discovery disputes, the parties should be able to appropriately narrow the RFPs at issue without judicial intervention. During the course of those conferrals, Defendants will provide Plaintiffs with the necessary data to assess whether there is an undue burden or expense associated with a particular RFP.

1 to reach agreement on a protocol for preservation of the aforesaid testimony. The
 2 parties are confident that an agreement can be reached and submitted for the Court's
 3 approval.

4 **B. Defendants' Position**

5 Plaintiffs' Leadership raised this issue for the first time on August 7, 2024.
 6 Defendants agreed to meet and confer, but expressed the concern about conducting
 7 extensive case- specific discovery in cases that are not part of the Initial Plaintiff Pool,
 8 which will necessarily require the production of more information and documents.

9
 10 Dated: August 14, 2024

Respectfully submitted,

11 /s/ Adam M. Evans

/s/ Edward J. Fanning, Jr.

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Exhibit A

Defendants' Production of Documents

PRODUCTION	DATE	DESCRIPTION	DOCS	PAGES
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		
BARD_IPC_MDL_047	7/22/2024	Supplement of documents from Master Control	115	3,309
BARD_IPC_MDL_048	7/22/2024	Supplement of documents from Custodial files of the first thirty Custodians, SharePoint and shared drives; documents from recently identified shared areas; Technology Team Review (TTR) minutes and related documents from Patricia Braun's file	2,940	17,398
BARD_IPC_MDL_049	7/22/2024	Family members of documents originally produced in Production 042 that were mistakenly excluded due to tagging error	3,465	17,551
BARD_IPC_MDL_050	7/22/2024	Supplement of documents from Custodial files of the first thirty Custodians, SharePoint and shared drives; documents from recently identified shared areas and Non-Custodial Source Planview	19,753	123,299
BARD_IPC_MDL_051	7/22/2024	Replacement production for 1,559 documents, majority mistakenly produced as non-responsive slipsheets; fifteen documents originally withheld or redacted for privilege now produced in full	1,559	3,031
BARD_IPC_MDL_052	7/22/2024	Slipsheets or redacted versions of inadvertently produced privileged documents	46	274
BARD_IPC_MDL_053	7/26/2024	Redacted audio files	3	3
BARD_IPC_MDL_054	7/26/2024	Production of documents from the Custodial Files of the second 30 Custodians	50,834	204,402
BARD_IPC_MDL_055	8/1/2024	Replacement production for inadvertently produced privileged document	1	1
BARD_IPC_MDL_056	8/1/2024	Documents from DocuShare and hard copy documents relating to 1999 PICC recall	10,589	234,056
BARD_IPC_MDL_DEP CV_001	8/1/2024	CVs of Chad Modra and Andrew Sheffield	2	2

BARD_IPC_MDL_057	8/6/2024	Documents Defendants are releasing from their privilege log and producing in full or with redactions	11	17
BARD_IPC_MDL_058	8/9/2024	Documents from the Custodial Files of the second 30 Custodians	118,644	407,269
BARD_IPC_MDL_059	8/9/2024	Final, approved marketing materials from Veeva Vault and Veeva ZINC archive	306	2,846
BARD_IPC_MDL_060	8/9/2024	Supplement of documents from Custodial Files of the first 30 Custodians, Docushare, and various shared areas	871	37,430
BARD_IPC_MDL_061	8/9/2024	Supplement of documents from Custodial Files of the first 30 Custodians, including family members of documents previously produced without family members due to technical error during extraction	1,308	5,352
BARD_IPC_MDL_062	8/9/2024	Supplement of documents from Master Control	787	18,779
BARD_IPC_MDL_063	8/9/2024	Documents from the Custodial Files of the second 30 Custodians	146,566	611,002
BARD_IPC_MDL_DEP CV_002	8/9/2024	CV of James Freasier	1	1
Total			2,079,503	13,094,652

Exhibit B

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

IN RE: Bard Implanted Port Catheter
Products Liability Litigation

MDL No. 3081

(Applies to All Actions)

**DEFENDANT BECTON, DICKINSON, AND COMPANY'S RESPONSES AND
OBJECTIONS TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION
REGARDING CORPORATE LIABILITY**

1 Pursuant to Rule 26 and 34 of the Federal Rules of Civil Procedure, Defendant Becton,
2 Dickinson and Company (“Defendant” or “BD”) responds to Plaintiffs’ First Requests For
3 Production Regarding Corporate Liability as follows:
4

5 **PRELIMINARY STATEMENT**

6 Defendant Becton, Dickinson and Company provides the following objections and
7 responses pursuant to facts and information presently known. These Responses are provided
8 without prejudice to Defendant’s right to produce subsequently discovered information. Defendant,
9 along with Defendants C. R. Bard, Inc. (“Bard”), Bard Peripheral Vascular, Inc. (“BPV”), and Bard
10 Access Systems, Inc. (“BAS”), are collectively part of a large corporate structure with tens of
11 thousands of employees over numerous locations. Moreover, implanted port catheter devices were
12 introduced more than two decades ago. It is impossible for Defendant to represent that all
13 employees who may have relevant information have been identified and/or contacted. Defendant’s
14 search will not extend, nor can it reasonably be expected to extend, to all of the personnel, past and
15 present, employed by Defendant, nor any and all documents, particularly given the unreasonably
16 broad, burdensome and disproportionate scope of the information requested. As investigation and
17 document review continue, Defendant anticipates that it may discover additional facts, witnesses,
18 and evidence that are not set forth in these Responses, but that may be responsive to one or more
19 of Plaintiffs’ Requests for Production. The Responses to Plaintiffs’ Requests for Production are
20 made upon Defendant’s information and belief, after reasonable investigation according to Federal
21 Rules 26 and 34. Defendant reserves the right to: (a) amend or supplement its Responses as
22 investigation and discovery progress and as Defendant obtains information regarding additional
23 facts, witnesses, and evidence; (b) conduct additional investigation and discovery regarding facts,
24 witnesses, and evidence that are not mentioned in these Responses; and (c) produce any additional
25 evidence at trial or in connection with any pre-trial proceedings.
26
27
28

1 Discovery in this MDL has just begun and Defendant's investigation continues. Any
2 undertaking to produce responsive documents should not be construed as a confirmation that
3 responsive documents exist. Rather, such representation means that Defendant will conduct a
4 reasonable search for, and, if they exist, produce responsive, non-privileged documents, subject to
5 the objections set forth herein, and subject and pursuant to the terms, manner, and time of the
6 Protective Order [Dkt. No. 116], ESI Order [Dkt. No. 117], and Case Management Orders entered
7 in this litigation. To the extent Defendant objects or refuses to produce documents or information
8 in response to any given Request, and to the extent that Plaintiffs takes issue with any such objection
9 or refusal, Defendant is prepared to meet and confer with Plaintiffs to determine whether a
10 reasonable, mutually acceptable compromise might be reached.
11

12 **GENERAL OBJECTIONS**

13
14
15 1. Defendant incorporates each of the following General Objections into its response
16 to each Request for Production. In addition to these General Objections, Defendant may also state
17 specific objections to Requests for Production where appropriate, including objections that are not
18 generally applicable to all Requests for Production. By setting forth such specific objections,
19 Defendant does not intend to limit or restrict the General Objections. To the extent Defendant
20 agrees to provide information responsive to the Requests for Production to which it objects, such
21 response shall not constitute a waiver by Defendant of any general or specific objection. Counsel
22 for Defendant offers to meet and confer with Plaintiffs' counsel regarding any and all objections.
23

24 2. Defendant objects to each Request for Production to the extent it imposes upon
25 Defendant obligations that are inconsistent with or beyond those imposed by the Federal Rules of
26 Civil Procedure, the Local Rules, or any applicable Order of the Court.
27
28

1 3. Defendant objects to the breadth of Plaintiffs' Requests. The breadth of Plaintiffs'
2 Requests is unreasonable, unduly burdensome, and serves only to harass and impose an undue
3 burden on Defendant. Defendant will endeavor to respond to each Request; however, in doing so it
4 does not intend to waive, and does not waive, its standing objection to the requests as unreasonable
5 and unduly burdensome.

7 4. Defendant objects to each Request for Production as overbroad to the extent it seeks
8 "any and all" documents, or information "relating to, referring to, or embodying" the requested
9 subject matter, and therefore in violation of Fed. R. Civ. P. 34(b)(1)(A) and Fed. R. Civ. P. 26(b)(1).

11 5. Defendant objects to each Request for Production to the extent it seeks information
12 that is "unreasonably cumulative or duplicative, or can be obtained from some other source that is
13 more convenient, less burdensome, or less expensive." Fed. R. Civ. P. 26(b)(2)(C)(i).

15 6. Defendant objects to each Request for Production to the extent it seeks information
16 and documents beyond the scope of the common issues in this MDL as articulated by the JPML in
17 its Transfer Order [Dkt. No. 65]¹ on the grounds that such Requests are overly broad and seek
18 information irrelevant to the present litigation.

20 7. Defendant objects to each Request for Production to the extent it seeks information
21 and documents concerning Defendant's products that Plaintiffs have not alleged they have used
22 and suffered injury from and, therefore, are not at issue in this MDL. By way of example, Defendant
23 objects to producing specific information and documentation related to Product Code A710962,
24

25
26 ¹ "All actions can be expected to share factual questions arising from allegations that defendants manufacture the
27 catheter component of their port devices with a concentration of barium sulfate that is too high, which reduces the
28 material integrity of the catheter, and can lead to injuries, including infection, fracture of the catheter, migration of the
catheter, and thrombosis. All actions share common issues of fact regarding whether the design of Bard's port catheters
involves a concentration of barium sulfate that reduces the material integrity of the catheters and can cause injury,
whether defendants adequately tested the devices, and whether defendants adequately monitored and reported adverse
events relating to product failures." [Dkt. No. 65.]

1 PowerFlow™ Apheresis Device at this time, on the grounds that searching for, collecting, and
2 producing such information is unduly burdensome, not proportional to the needs of the case, and
3 the burden and expense of such discovery outweighs its likely benefit. As of the date these
4 responses were served, there is no Plaintiff in the MDL that has claimed any injury as a result of
5 the implantation or use of the A710962, PowerFlow Apheresis Device and information and
6 documents related to this Device including, but not limited to, regulatory, design, and manufacture,
7 are largely unique to this Device. Accordingly, Defendants object to producing such information
8 and documentation at this time. In the event a Plaintiff in this MDL identifies the A710962,
9 PowerFlow Apheresis Device as the alleged cause of his or her injuries at a later time, Defendant
10 will meet-and-confer with Plaintiffs regarding this issue.
11

12
13 8. Defendant objects to each Request for Production to the extent it seeks information
14 and documents concerning alleged injuries or adverse events purportedly caused by Defendant's
15 products that Plaintiffs have not alleged they have suffered and, therefore, are not at issue in this
16 MDL.
17

18 9. Defendant objects to each Request for Production to the extent it seeks or requires
19 the review of information that is not relevant to any party's claims or defenses or that is
20 disproportionate to the needs of this case. Where Defendant objects on the basis of proportionality,
21 Defendant offers to meet and confer with Plaintiffs to address whether the requested discovery is
22 proportional to the needs of the case as required by Fed. R. Civ. P. 26(b)(1).
23

24 10. Defendant objects to each Request for Production to the extent it seeks production
25 or disclosure of information or documents subject to the attorney-client privilege, work product
26 doctrine, or any other applicable privilege, rule, doctrine or immunity, whether created by statute
27 or common law.
28

1 11. Defendant objects to each Request for Production to the extent it seeks discovery of
2 electronically stored information that is not reasonably accessible due to undue burden or cost, in
3 violation of Fed. R. Civ. P. 26(b)(2)(B) and to the extent it seeks to impose on Defendant obligations
4 not imposed by the Federal Rules of Civil Procedure or the ESI Order entered in this litigation.
5

6 12. Defendant may, in response to certain of Plaintiffs' Requests for Production,
7 identify persons with knowledge of and/or who participated in certain facts or events who are or
8 were employed by Defendant but who reside outside the United States. Foreign privacy laws,
9 regulations, or rules, over which Defendant has no control, may prevent or limit Defendant from
10 making these individuals available to testify, and will have a substantial impact on the nature and
11 extent of information and documents that Defendant can produce that reside exclusively outside
12 the United States. By identifying any such persons in response to a direct request, Defendant does
13 not and cannot represent that it can make these persons available to testify, and/or produce related
14 documents.
15

16
17 13. Plaintiffs' Requests are overly broad and unduly burdensome to the extent they
18 require Defendant to disclose information that identifies a research subject, or information that
19 relates to the past, present, or future physical or mental health or condition of any individual except
20 a Plaintiff, and that identifies that individual (collectively, "Identifying Health Information").
21 Federal law and international law recognize that research subjects and patients receiving health care
22 have a protectable privacy interest in information that personally identifies them.
23

24 14. Plaintiffs' Requests are overly broad and unduly burdensome to the extent they
25 require Defendant to disclose information that would identify any person, except Plaintiffs,
26 associated with an adverse event involving a medical device. Federal law recognizes that voluntary
27
28

1 reports and other persons associated with adverse events have a protectable privacy interest in
2 information that identifies them (“Report-Identifying Information”).

3
4 15. Plaintiffs’ Requests for Production are overly broad, unduly burdensome, and seek
5 information that is irrelevant and not proportional to the needs of the case considering the specific
6 criteria set forth in Fed. R. Civ. P. 26(b)(1) to the extent they do not contain a reasonable geographic
7 limitation. Defendant objects to each Request for Production to the extent it seeks information
8 relating to activities outside the United States because such foreign activity is not relevant to
9 Plaintiffs’ – U.S. residents – causes of action, and thus are not reasonably calculated to lead to the
10 discovery of admissible evidence. Accordingly, unless otherwise indicated, Defendant limits its
11 responses to United States related information and documents.
12

13
14 16. Defendant objects to each Request for Production to the extent it calls for “all”
15 documents or information or “any” or “each” document or piece of information, when all relevant
16 facts can be obtained from fewer than “all” or “any” documents or information. Such Requests for
17 Production are harassing, overbroad, unduly burdensome, oppressive, and are neither reasonably
18 calculated to lead to the discovery of admissible evidence nor proportional to the need of the case.
19 See *Carter v. Archdale Police Dep’t*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2,
20 2014) (collecting cases finding requests using the terms “relating to” or “concerning” a subject are
21 “overbroad since ... all documents ‘relate’ to all others in some remote fashion”). Responding to
22 such Requests for Production would require a massive search for documents and information in
23 numerous places, including potentially the Custodial Files of tens of hundreds of current and former
24 employees and Non-Custodial Sources (as these terms are defined in the ESI Order). Further,
25 Defendant objects to the extent that Requests for Production for “all” or “any” documents or
26 information calls for the production of multiple copies of the same document or of duplicative and
27
28

1 cumulative information. In responding to these Requests for Production, Defendant is willing to
2 conduct searches that are reasonable in scope and reasonably designed to locate responsive
3 information.
4

5 17. Defendant objects to each Request for Production to the extent that it purports to
6 require Defendant to engage in an investigation for or to obtain documents or information that are
7 not in its possession, custody, or control, in violation of Fed. R. Civ. P. 34(a)(1).
8

9 18. Defendant objects to each Request for Production to the extent it seeks materials or
10 information that are equally available to Plaintiffs through public sources, third parties not under
11 Defendant's control, or other sources that are more convenient, less burdensome, and/or less
12 expensive.
13

14 19. Defendant objects to each Request for Production to the extent it contains terms
15 and/or phrases that are vague or ambiguous. Defendant further objects to the extent a Request is so
16 vague and/or ambiguous Defendant cannot determine what information is sought and, therefore,
17 cannot provide a meaningful response.
18

19 20. Defendant objects to each Request for Production to the extent it seeks a legal
20 conclusion or requires Defendant to formulate a legal conclusion in order to fully respond.
21

22 21. Defendant objects to each Request for Production to the extent it seeks information
23 of a proprietary, sensitive, confidential, trade secret, or otherwise protected nature, including
24 private and confidential information. To the extent Defendant agrees to produce such documents
25 and/or provide such information it will be subject to and in reliance upon the Protective Order
26 entered by the Court.
27
28

1 22. Defendant further objects to each Request for Production to the extent it seeks
2 documents or information that Defendant is prohibited from disclosing by contract, order, statute,
3 rule, regulation, or other law.
4

5 23. By responding that it will produce documents or provide information in response to
6 a particular Request for Production, Defendant does not warrant that it has responsive materials or
7 that such information exists, only that it will conduct a reasonable search and make available
8 responsive, non-privileged documents consistent with their objections. No objection, or lack
9 thereof, is an admission by Defendant as to the existence or non-existence of any documents or
10 information. To the extent responsive, privileged documents exist, Defendant will produce a
11 privilege log in accordance with the ESI Order, any other agreed upon protocol negotiated by the
12 Parties, and consistent with the Federal Rules of Civil Procedure.
13

14 **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

15
16 24. Defendant objects to the definition of “Communication” on the grounds it is
17 overbroad, unduly burdensome, vague, and ambiguous to the extent it includes “postings,
18 instructions, conferences, or seminars or any other exchange of Information.” Defendant further
19 objects to the definition as it purports to expand the scope of discovery as defined by the Federal
20 Rules, any applicable Local Rule, and controlling case law.
21

22 25. Defendant objects to the definition of “Components” to the extent that it includes
23 any element of the Devices that does not relate to Plaintiffs’ allegations as set forth in the JPML’s
24 Transfer Order [Dkt. No. 65] that the concentration of barium sulfate in the catheter component of
25 Defendants’ Devices identified in Plaintiffs’ Master Complaint is too high.
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27
28

1 26. Defendant objects to the definition of “Devices” to the extent that it includes any
2 devices that do not relate to Plaintiffs’ allegations as set forth in the JPML’s Transfer Order [Dkt.
3 No. 65] that the concentration of barium sulfate in the catheter component of Defendants’ Devices
4 identified in Plaintiffs’ Master Complaint is too high. For purposes of these Responses, Defendant
5 construes “Devices” to be the implanted port catheter devices identified by product code in Exhibit
6 A to Plaintiffs’ Master Complaint.
7

8 27. Defendant objects to the definitions of “Defendant,” “Defendants,” “You,” and
9 “Your” as overly broad and unduly burdensome as they purport to expand the scope of discovery
10 as defined by the Federal Rules, any applicable Local Rule, and controlling case law. Defendant
11 further objects to the extent these definitions seek to impose an obligation on Defendant to respond
12 for any person or entity other than Defendant, to the extent these seek information not within
13 Defendant’s possession, custody, or control, in violation of Fed. R. Civ. P. 34(a)(1), and to the
14 extent they purport to require Defendant to undertake an investigation to ascertain the same. These
15 Requests for Production are directed to Defendant only, and Defendant responds to these Requests
16 only on behalf of itself and not for any other entity or person.
17
18

19 28. Defendant objects to the definition of “Information” or “Communication(s)” on the
20 grounds it is vague, ambiguous, overly broad, unduly burdensome, and disproportionate to the
21 needs of this litigation. Defendant further objects to the definition as it purports to expand the scope
22 of discovery as defined by the Federal Rules, any applicable Local Rule, and controlling case law.
23 Defendant also objects to the extent this definition seeks information or documents not with
24 Defendant’s possession, custody, or control and to the extent it purports to require Defendant to
25 undertake and investigation to ascertain the same.
26
27
28

1 29. Defendant objects to the definition of “relating to,” “relate to,” “relating,” “referring
2 to,” “refer to,” “regarding,” “referencing,” “concerning,” or “concern” on the grounds it is overly
3 broad in violation of Fed. R. Civ. P. 34(b)(1)(A). Defendant also objects to the definition as unduly
4 burdensome, disproportionate to the needs of this litigation pursuant to Fed. R. Civ. P. 26(b)(1).

5
6 30. Defendant objects to the definition of “study” or “studies” on the grounds it is vague,
7 ambiguous, overly broad, unduly burdensome, and disproportionate to the needs of this litigation.
8 This definition is not reasonably limited by location or time and also incorporates no fewer than
9 ten categories of information to be supplied in connection with the use of this defined term.

10
11 31. Defendant objects to the definition of “test” or “testing” on the grounds it is vague,
12 ambiguous, overly broad, unduly burdensome, and disproportionate to the needs of this litigation.
13 This definition is not reasonably limited by location or time and also incorporates no fewer than
14 ten categories of information to be supplied in connection with the use of this defined term.

15
16 32. Defendant objects to Instruction No. 1 on the grounds Plaintiffs’ request for nearly
17 44 years of information is overly broad, unduly burdensome, and seek information that is irrelevant
18 and not proportional to the needs of the case considering the specific criteria set forth in Fed. R.
19 Civ. P. 26(b)(1). Further, Plaintiffs’ Requests are overly broad in that they seek information that
20 post-date Plaintiffs’ alleged injury. Subject to and without waiving these objections, Defendant will
21 use reasonable and proportionate efforts to identify relevant, reasonably available documents that
22 are responsive to these Requests for Production as appropriately limited and not otherwise subject
23 to an objection. Unless otherwise indicated, Defendant limits all of its Responses to these requests
24 to January 1, 2018 through December 2023. To be clear, in responding to these requests, Defendant
25 will not place a 2018 date restriction on its search or production of responsive documents;
26 Defendant will produce documents up through December 31, 2023. In the event Defendant provides
27
28

documents outside of the time period specified herein, providing or producing such documents shall in no way be deemed to be an admission as to their relevance or be deemed a waiver of Defendant's objection to producing documents outside of 2018 to 2023. Further, in limiting its Responses to this timeframe, Defendant concedes neither that it had responsibility for the topics addressed in this Request for Production at any or all points in time from 2018 to present nor that it has any responsive documents from this time period.

33. Defendant objects to Instruction No. 2 on the grounds it seeks to impose a greater or different obligation on Defendant than that required by Fed. R. Civ. P. 26(b)(5)(A). To the extent responsive, privileged documents exist, Defendant will produce a privilege log in accordance with the ESI Order, any other agreed upon protocol negotiated by the Parties, and consistent with the Federal Rules of Civil Procedure.

34. Defendant objects to Instruction No. 4 to the extent it seeks to impose a greater or different obligation on Defendant than the Federal Rules of Civil Procedure.

35. Defendant objects to Instruction No. 5 on the grounds it is vague, ambiguous, overly broad, and unduly burdensome as it seeks to expand Defendant's discovery obligations beyond that permitted by the Federal Rules.

REQUESTS FOR PRODUCTION CORPORATE LIABILITY

Request for Production No. 1: Produce all Information related to, referring to, and/or embodying Your and/or any other Defendants' creation or formation, including but not limited to articles of incorporation, articles of association, bylaws, shareholder agreements, and any amendments, addendums, exhibits (or the like) to any of the foregoing.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also

improperly seeks production of “Information related to, referring to, and or/embodiment” Defendant’s “creation or formation” regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep’t*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms “relating to” or “concerning” a subject are “overbroad since ... all documents ‘relate’ to all others in some remote fashion”). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request to the extent it seeks information not within this Defendant’s possession or control. Defendant further objects to this Request as the terms “creation,” “formation,” “articles of incorporation,” “articles of association,” “bylaws,” and “shareholder agreements” are vague, ambiguous, and undefined. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 16, 17, 18, 19, and 20, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, and 33.

Subject to and without waiving any objections, Defendant states that it will conduct a reasonable search for documents within its possession, custody, or control and will produce, to the extent they exist, Defendant’s articles of incorporation, articles of association, and bylaws, and any addenda, exhibits or amendments thereto. In addition, Defendant will produce responsive, non-privileged documents from agreed upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional search terms to be agreed upon by the Parties, which may include documents responsive to this Request. By way of further response, Defendant has also reproduced documents previously produced in the *Cruz* products liability litigation and the port patent litigation, which may contain documents that are responsive to this Request. Aside from the documents referenced above, Defendant is not producing in response to this Request any other documents.

Request for Production No. 2: Produce all Information related to, referring to, and/or embodying Your and/or any other Defendants’ corporate structure, including but not limited to parent companies, subsidiaries, divisions, and/or affiliated entities.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs’ Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs’ Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs’ overbroad Request also improperly seeks production of “Information related to, referring to, and or/embodiment” Defendant’s “corporate structure” regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep’t*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms “relating to” or “concerning” a subject are “overbroad since ... all documents ‘relate’ to all others in some remote fashion”). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request to the extent it seeks information not

1 within this Defendant's possession or control. Defendant further objects to this Request as
 2 the terms "corporate structure," "parent companies," "subsidiaries," "divisions," and/or
 3 "affiliated entities" are vague, ambiguous, and undefined. Defendant does not interpret this
 4 Request as seeking information protected from disclosure under the attorney-client privilege
 5 and/or attorney work product doctrine. However, to the extent this Request read literally
 6 seeks such materials, Defendant also objects to this Request on those grounds. Defendant
 7 further objects to this Request as duplicative and/or redundant of Request for Production No.
 1 Regarding Corporate Organization, Budgeting, & Litigation Matters. In addition,
 2 Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 16, 17, 18,
 3 19, 20, and 21, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, and
 4 33.

5 Subject to and without waiving any objections, Defendant states that it cannot respond to the
 6 Request as presently drafted. Defendant is prepared to meet and confer to determine if
 7 Plaintiffs can particularize this Request and provide a more narrowly tailored request that
 8 reasonably identifies a basis for the requested information as it relates to the allegations in
 9 the Master Complaint in order to enable Defendant to conduct a reasonably diligent search.
 10 Notwithstanding, Defendant will produce responsive, non-privileged documents from agreed
 11 upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional
 12 search terms to be agreed upon by the Parties, which may include documents responsive to
 13 this Request. By way of further response, Defendant has also reproduced documents
 14 previously produced in the *Cruz* products liability litigation and the port patent litigation,
 15 which may contain documents that are responsive to this Request. Aside from the documents
 16 referenced above, Defendant is not producing in response to this Request any other
 17 documents.

18 **Request for Production No. 3:** Produce all Information related to, referring to, and/or embodying
 19 the formation, selection, membership, and/or dissolution of any board of directors, officers, and/or
 20 shareholders for each defendant.

21 For the sake of clarity, this request seeks information including but not limited to information
 22 sufficient to determine the identities of officers, directors, and/or shareholders.

23 **RESPONSE: Objection.** Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this
 24 Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague,
 25 ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is
 26 also not limited by the nature or quality of the information to be produced, such that it seeks
 27 documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also
 28 improperly seeks production of "Information related to, referring to, and or/embodying"
 Defendants' "board of directors, officers, and/or shareholders" regardless of whether the
 information sought could be obtained by production of fewer documents. *See Carter v.*
Archdale Police Dep't, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014)
 (collecting cases finding requests using the terms "relating to" or "concerning" a subject are
 "overbroad since ... all documents 'relate' to all others in some remote fashion"). This
 Request also seeks exhaustive discovery over multiple decades without limitation, rendering
 this Request unduly burdensome, not stated with reasonable particularity, and beyond the
 scope of permissible discovery. Defendant further objects to this Request to the extent it seeks
 information not within this Defendant's possession or control. Defendant further objects to
 this Request as the terms "formation," "selection," "membership," "dissolution," "board of

directors,” “officers,” and “shareholders” are vague, ambiguous, and undefined. Defendant specifically objects to the production of documents related to its shareholders, as well as the selection of its board of directors and officers, as overbroad, unduly burdensome, vague, ambiguous, and seeking information irrelevant to the present litigation. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 16, 17, 18, 19, and 21, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, and 33.

Subject to and without waiving any objections, see the publicly available documents to which Plaintiffs have access, including but not limited to, Defendant’s Form 10-K annual reports and Form S-4 registration statement filed on May 23, 2017. Defendant’s Form 10-Ks are publically available from the U.S. Securities and Exchange Commission at <https://www.sec.gov/edgar/browse/?CIK=10795&owner=exclude>. Defendant will produce responsive, non-privileged documents from agreed upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional search terms to be agreed upon by the Parties, which may include documents responsive to this Request. By way of further response, Defendant has also reproduced documents previously produced in the Cruz products liability litigation and the port patent litigation, which may contain documents that are responsive to this Request. Aside from the documents referenced above, Defendant is not producing in response to this Request any other documents.

Request for Production No. 4: Produce all Information related to, referring to, and/or embodying any purchase, acquisition, and/or merger between You and any other Defendant or other person or entity related to any transfer.

For the sake of clarity, this request seeks all Information generally and, more specifically, Information related to and/or embodying contracts and/or agreements, consideration therefor, insurance, transfer of assets and/or liabilities, strategic plans, creation of new divisions, communications, intellectual property, and/or technology.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs’ Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs’ Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs’ overbroad Request also improperly seeks production of “Information related to, referring to, and or/embodying any purchase, acquisition, and/or merger” regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep’t*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms “relating to” or “concerning” a subject are “overbroad since ... all documents ‘relate’ to all others in some remote fashion”). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request to the extent it seeks information not within this Defendant’s possession or control. Defendant further objects to this Request as the terms “purchase,” “acquisition,” “merger,” and “transfer” are vague, ambiguous, and

undefined. Defendant further objects to the separate paragraph included in this Request setting forth additional demands under the guise of being “[f]or the sake of clarity.” While phrased as a single discovery request, this Request’s attempted incorporation of additional categories of Information render the Requests harassing, overbroad, unduly burdensome, oppressive, and not proportional to the needs of the case. Defendant further objects to this Request on the grounds the additional categories of Information demanded render the Request so broad, vague, and ambiguous that Defendant cannot determine what information is sought. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 16, 17, 18, 19, 20, 21, and 22, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, and 33.

Subject to and without waiving any objections, Defendant states that it will conduct a reasonable search for documents within its possession, custody, or control and will produce the agreement pertaining to BD’s acquisition of C. R. Bard, Inc. Defendant will produce responsive, non-privileged documents from agreed upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional search terms to be agreed upon by the Parties, which may include documents responsive to this Request. By way of further response, Defendant has also reproduced documents previously produced in the *Cruz* products liability litigation and the port patent litigation, which may contain documents that are responsive to this Request. Aside from the documents referenced above, Defendant is not producing in response to this Request any other documents.

Request for Production No. 5: Produce information sufficient to determine the identities of shareholders and/or stockholders, now and in the past.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs’ Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs’ Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request as the terms “shareholders” and “stockholders” are vague, ambiguous, and undefined. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 16, 17, 18, 19, and 21, as well as Objections to Instructions and Definitions Nos. 28 and 35.

Subject to and without waiving any objections, Defendant states that it cannot respond to the Request as presently drafted. Defendant is prepared to meet and confer to determine if Plaintiffs can particularize this Request and provide a more narrowly tailored request that reasonably identifies a basis for the requested information as it relates to the allegations in the Master Complaint.

Request for Production No. 6: Produce all Information related to, referring to, and/or embodying control, usage, licensure, assignment, and/or ownership of intellectual property related to the Devices, including but not limited to patents and trademarks.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' theory of liability in this litigation arises from allegations that Defendants manufacture the catheter component of their Devices with a concentration of barium sulfate that is too high, which reduces the material integrity of the catheter, and can lead to injuries, including infection, fracture of the catheter, migration of the catheter, and thrombosis. Yet, this Request seeks information pertaining to all Devices without limitation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also seeks production of "all Information that relates to, refers to, or embodying" intellectual property regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms "relating to" or "concerning" a subject are "overbroad since ... all documents 'relate' to all others in some remote fashion"). This Request also seeks exhaustive discovery over multiple decades and across the world without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant also objects to this Request insofar as it seeks information outside of the United States, which is not relevant to Plaintiffs' claims and is disproportionate to the needs of the litigation. Defendant further objects to this Request to the extent it seeks information not within this Defendant's possession or control. Defendant further objects to this Request as the terms "control," "usage," "licensure," "assignment," "ownership," and "intellectual property" are vague, ambiguous, and undefined. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, and 22, as well as Objections to Instructions and Definitions Nos. 26, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, Defendant will produce responsive, non-privileged documents from agreed upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional search terms to be agreed upon by the Parties, which may include documents responsive to this Request. By way of further response, Defendant has also reproduced documents previously produced in the *Cruz* products liability litigation and the port patent litigation, which may contain documents that are responsive to this Request. Aside from the documents referenced above, Defendant is not producing in response to this Request any other documents.

Request for Production No. 7: Produce all Information related to, referring to, and/or embodying meeting minutes and/or resolutions (or the like) of Your and/or any other Defendants' governing bodies.

For the sake of clarity, this request seeks Information from the meetings of, including but not limited to, the board of directors, shareholders, and/or corporate officers.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also seeks production of "all Information that relates to, refers to, or embodying meeting minutes and/or resolutions" regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms "relating to" or "concerning" a subject are "overbroad since ... all documents 'relate' to all others in some remote fashion"). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request to the extent it seeks information not within this Defendant's possession or control. Defendant further objects to this Request on the grounds it seeks information subject to the attorney-client or work product privileges and to the extent it seeks information precluded from disclosure pursuant to contractual agreement or court order. Defendant further objects to this Request as the terms "meeting minutes," "resolutions," and "governing bodies" are vague, ambiguous, and undefined. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, Defendant states that it cannot respond to the Request as presently drafted. Defendant is prepared to meet and confer to determine if Plaintiffs can particularize this Request and provide a more narrowly tailored request that reasonably identifies a basis for the requested information as it relates to the allegations in the Master Complaint.

Request for Production No. 8: Produce all Information related to, referring to, and/or embodying Your and/or any other Defendants' annual reports.

For the sake of clarity, this request seeks Information regarding any and all annual reports, whether directed to investors, the SEC, or otherwise, as well as any more frequently made reports (e.g., quarterly reports).

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also seeks production of "all Information that relates to, refers to, or embodying" annual reports regardless of whether the information sought could be obtained by production of fewer

documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms “relating to” or “concerning” a subject are “overbroad since ... all documents ‘relate’ to all others in some remote fashion”). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request to the extent it seeks information not within this Defendant’s possession or control. Defendant further objects to the separate paragraph included in this Request setting forth additional demands under the guise of being “[f]or the sake of clarity.” While phrased as a single discovery request, this Request’s attempted incorporation of additional categories of Information render the Requests harassing, overbroad, unduly burdensome, oppressive, and not proportional to the needs of the case. Defendant further objects to this Request on the grounds the additional categories of Information demanded render the Request so broad, vague, and ambiguous that Defendant cannot determine what information is sought. Defendant further objects to this Request as the term “annual reports” is vague, ambiguous, and undefined. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, see the publicly available documents to which Plaintiffs have access, including but not limited to, Defendant’s Form 10-K annual reports and Form S-4 registration statement filed on May 23, 2017. Defendant’s Form 10-Ks are publically available from the U.S. Securities and Exchange Commission at <https://www.sec.gov/edgar/browse/?CIK=10795&owner=exclude>. Additional documents may be found at <https://investors.bd.com/sec-filings/annual-reports>.

Request for Production No. 9: Produce all Information related to, referring to, and/or embodying Your and/or any other Defendants’ annual budgets.

For the sake of clarity, this request seeks Information generally and more specifically, including but not limited to, balance sheets, income statements, and profit and loss statements; as well as information sufficient to determine any flow of or sharing of resources between Defendants, including but not limited to payments made by Your and/or any other Defendant for any of Your or any other Defendants’ debts, liabilities, salaries, and/or other expenses.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs’ Request is overbroad, unduly burdensome, vague, ambiguous, seeks information irrelevant to the present litigation, and is premature. Plaintiffs’ Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs’ overbroad Request also improperly seeks production of “Information related to, referring to, and or/embodying . . . annual budgets” regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms “relating to” or “concerning” a subject are “overbroad since ... all documents ‘relate’ to all others in some remote fashion”). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request as the term “annual budgets” is vague,

ambiguous, and undefined. Defendant further objects to this Request to the extent it seeks information not within this Defendant's possession or control. Defendant further objects to the separate paragraph included in this Request setting forth additional demands under the guise of being "[f]or the sake of clarity." While phrased as a single discovery request, this Request's attempted incorporation of additional categories of Information render the Requests harassing, overbroad, unduly burdensome, oppressive, and not proportional to the needs of the case. Defendant further objects to this Request on the grounds the additional categories of Information demanded render the Request so broad, vague, and ambiguous that Defendant cannot determine what information is sought. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, Defendant states that it cannot respond to the Request as presently drafted. Defendant is prepared to meet and confer to determine if Plaintiffs can particularize this Request and provide a more narrowly tailored request that reasonably identifies a basis for the requested information as it relates to the allegations in the Master Complaint. Notwithstanding, *see* Defendant's Objections and Responses to Request for Production Regarding Corporate Organization, Budgeting, and Litigation Nos. 5 and 6. Aside from the documents referenced above, Defendant is not producing in response to this Request any other documents.

Request for Production No. 10: Produce all Information related to, referring to, and/or embodying the financial condition and solvency of any Defendant (both now and in the past).

For the sake of clarity, this request seeks Information including but not limited to Defendant's net worth, annual profits, annual revenue from the Devices, annual profits from the Devices, profit margins on the Devices, etc.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, seeks information irrelevant to the present litigation, and is premature. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also improperly seeks production of "Information related to, referring to, and or/embodying the financial condition and solvency of any Defendant" regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms "relating to" or "concerning" a subject are "overbroad since ... all documents 'relate' to all others in some remote fashion"). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request to the extent it seeks information not within this Defendant's possession or control. Defendant further objects to this Request as the terms "financial condition" and "solvency" are vague, ambiguous, and undefined. Defendant further objects to the separate paragraph included in this Request

1 setting forth additional demands under the guise of being “[f]or the sake of clarity.” While
 2 phrased as a single discovery request, this Request’s attempted incorporation of additional
 3 categories of Information render the Requests harassing, overbroad, unduly burdensome,
 4 oppressive, and not proportional to the needs of the case. Defendant further objects to this
 5 Request on the grounds the additional categories of Information demanded render the
 6 Request so broad, vague, and ambiguous that Defendant cannot determine what information
 7 is sought. Defendant does not interpret this Request as seeking information protected from
 8 disclosure under the attorney-client privilege and/or attorney work product doctrine.
 9 However, to the extent this Request read literally seeks such materials, Defendant also objects
 10 to this Request on those grounds. In addition, Defendant incorporates by reference General
 11 Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as Objections to
 12 Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

13 Subject to and without waiving any objections, Defendant states that it cannot respond to the
 14 Request as presently drafted. Defendant is prepared to meet and confer to determine if
 15 Plaintiffs can particularize this Request and provide a more narrowly tailored request that
 16 reasonably identifies a basis for the requested information as it relates to the allegations in
 17 the Master Complaint. Notwithstanding, *see* Defendant’s Objections and Responses to
 18 Request for Production Regarding Corporate Organization, Budgeting, and Litigation Nos.
 19 5 and 6. Aside from the documents referenced above, Defendant is not producing in response
 20 to this Request any other documents.

21 **Request for Production No. 11:** Produce all Information related to, referring to, and/or embodying
 22 instances in which You and/or any Defendant and/or any person or entity acting on Your behalf
 23 assigned or assumed or indemnified a debt, liability, contractual, or financial obligation on Your or
 24 any other Defendants’ behalf.

25 **RESPONSE: Objection.** Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this
 26 Request on the grounds Plaintiffs’ Request is overbroad, unduly burdensome, vague,
 27 ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs’ Request is
 28 also not limited by the nature or quality of the information to be produced, such that it seeks
 documents with little to no relevance to this litigation. Plaintiffs’ overbroad Request also
 improperly seeks production of “Information related to, referring to, and or/embodying”
 assumptions or assignments of debts, liabilities, or financial obligations regardless of whether
 the information sought could be obtained by production of fewer documents. *See Carter v.*
Archdale Police Dep’t, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014)
 (collecting cases finding requests using the terms “relating to” or “concerning” a subject are
 “overbroad since ... all documents ‘relate’ to all others in some remote fashion”). This
 Request also seeks exhaustive discovery over multiple decades without limitation, rendering
 this Request unduly burdensome, not stated with reasonable particularity, and beyond the
 scope of permissible discovery. Defendant further objects to this Request to the extent it seeks
 information not within this Defendant’s possession or control. Defendant further objects to
 this Request as the terms “assigned,” “assumed,” “indemnified,” “debt,” “liability,”
 “contractual,” and “financial obligation” are vague, ambiguous, and undefined. Defendant
 does not interpret this Request as seeking information protected from disclosure under the
 attorney-client privilege and/or attorney work product doctrine. However, to the extent this
 Request read literally seeks such materials, Defendant also objects to this Request on those

1 grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6,
2 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, and 22, as well as Objections to Instructions and Definitions
3 Nos. 27, 28, 29, 32, 33, and 34.

4 Subject to and without waiving any objections, Defendant states that it cannot respond to the
5 Request as presently drafted. Defendant is prepared to meet and confer to determine if
6 Plaintiffs can particularize this Request and provide a more narrowly tailored request that
7 reasonably identifies a basis for the requested information as it relates to the allegations in
8 the Master Complaint in order to enable Defendant to conduct a reasonably diligent search.
9 Notwithstanding, Defendant will produce responsive, non-privileged documents from agreed
10 upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional
11 search terms to be agreed upon by the Parties, which may include documents responsive to
12 this Request. By way of further response, Defendant has also reproduced documents
13 previously produced in the *Cruz* products liability litigation and the port patent litigation,
14 which may contain documents that are responsive to this Request. Aside from the documents
15 referenced above, Defendant is not producing in response to this Request any other
16 documents.

17 **Request for Production No. 12:** Produce all Information related to, referring to, and/or embodying
18 any insurance and/or indemnity agreements and/or fulfilment of any such agreement involving You
19 and/or any other Defendant.

20 **RESPONSE: Objection.** Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this
21 Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague,
22 ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is
23 also not limited by the nature or quality of the information to be produced, such that it seeks
24 documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also
25 improperly seeks production of "Information related to, referring to, and or/embodying"
26 insurance and/or indemnity agreements regardless of whether the information sought could
27 be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No.
28 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding
requests using the terms "relating to" or "concerning" a subject are "overbroad since ... all
documents 'relate' to all others in some remote fashion"). This Request also seeks exhaustive
discovery over multiple decades without limitation, rendering this Request unduly
burdensome, not stated with reasonable particularity, and beyond the scope of permissible
discovery. Defendant further objects to this Request to the extent it seeks information not
within this Defendant's possession or control. Defendant further objects to this Request as
the terms "insurance agreements," "indemnity agreements," and "fulfillment" are vague,
ambiguous, and undefined. Defendant does not interpret this Request as seeking information
protected from disclosure under the attorney-client privilege and/or attorney work product
doctrine. However, to the extent this Request read literally seeks such materials, Defendant
also objects to this Request on those grounds. In addition, Defendant incorporates by
reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as
Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, Defendant states that it cannot respond to the
Request as presently drafted. Defendant is prepared to meet and confer to determine if
Plaintiffs can particularize this Request and provide a more narrowly tailored request that
reasonably identifies a basis for the requested information as it relates to the allegations in

the Master Complaint in order to enable Defendant to conduct a reasonably diligent search. Notwithstanding, Defendant will produce responsive, non-privileged documents from agreed upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional search terms to be agreed upon by the Parties, which may include documents responsive to this Request. By way of further response, Defendant has also reproduced documents previously produced in the *Cruz* products liability litigation and the port patent litigation, which may contain documents that are responsive to this Request. Aside from the documents referenced above, Defendant is not producing in response to this Request any other documents.

Request for Production No. 13: Produce all Information related to, referring to, and/or embodying Your relationship with any other Defendant, including any representatives, agents, and/or contractors acting on Your or any other Defendants' behalf.

For the sake of clarity, this request seeks Information generally and, more specifically, Information including but not limited to employment policies; regulatory compliance responsibility or oversight; manufacturing and quality assurance responsibility or oversight; public relations responsibility or oversight; insurance and indemnity agreements; product development, advertising, promotion, and marketing; oversight and/or cooperation related to election of board, directors, and/or officers.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also improperly seeks production of "Information related to, referring to, and or/embodying" Defendant's relationship with other defendants regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms "relating to" or "concerning" a subject are "overbroad since ... all documents 'relate' to all others in some remote fashion"). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request as the terms "relationship," "representatives," "agents," and "contractors" are vague, ambiguous, and undefined. Defendant further objects to the separate paragraph included in this Request setting forth additional demands under the guise of being "[f]or the sake of clarity." While phrased as a single discovery request, this Request's attempted incorporation of additional categories of Information render the Requests harassing, overbroad, unduly burdensome, oppressive, and not proportional to the needs of the case. Defendant further objects to this Request on the grounds the additional categories of Information demanded render the Request so broad, vague, and ambiguous that Defendant cannot determine what information is sought. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

1 Subject to and without waiving any objections, Defendant states that it cannot respond to the
 2 Request as presently drafted. Defendant is prepared to meet and confer to determine if
 3 Plaintiffs can particularize this Request and provide a more narrowly tailored request that
 4 reasonably identifies a basis for the requested information as it relates to the allegations in
 5 the Master Complaint in order to enable Defendant to conduct a reasonably diligent search.
 6 Notwithstanding, Defendant will produce responsive, non-privileged documents from agreed
 7 upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional
 8 search terms to be agreed upon by the Parties, which may include documents responsive to
 9 this Request. By way of further response, Defendant has also reproduced documents
 10 previously produced in the *Cruz* products liability litigation and the port patent litigation,
 11 which may contain documents that are responsive to this Request. Aside from the documents
 12 referenced above, Defendant is not producing in response to this Request any other
 13 documents.

14 **Request for Production No. 14:** Produce all Information related to, referring to, and/or embodying
 15 branding, cobranding, use of trade names, trademarks, and/or goodwill involving You and any
 16 Defendant and/or anyone acting on Your or any Defendant's behalf.

17 **RESPONSE: Objection.** Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this
 18 Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague,
 19 ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is
 20 also not limited by the nature or quality of the information to be produced, such that it seeks
 21 documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also
 22 improperly seeks production of "Information related to, referring to, and or/embodying
 23 branding, cobranding, use of trade names, trademarks, and/or goodwill" regardless of
 24 whether the information sought could be obtained by production of fewer documents. *See*
 25 *Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2,
 26 2014) (collecting cases finding requests using the terms "relating to" or "concerning" a
 27 subject are "overbroad since ... all documents 'relate' to all others in some remote fashion").
 28 This Request also seeks exhaustive discovery over multiple decades without limitation,
 rendering this Request unduly burdensome, not stated with reasonable particularity, and
 beyond the scope of permissible discovery. Defendant further objects to this Request as the
 terms "branding," "cobranding," "use of trade names," "trademarks," and "goodwill" are
 vague, ambiguous, and undefined. Defendant does not interpret this Request as seeking
 information protected from disclosure under the attorney-client privilege and/or attorney
 work product doctrine. However, to the extent this Request read literally seeks such materials,
 Defendant also objects to this Request on those grounds. In addition, Defendant incorporates
 by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well
 as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

29 Subject to and without waiving any objections, *see* Defendant's Objections and Response to
 30 Plaintiffs' Requests for Production Regarding Warnings & Regulatory Compliance No. 1. In
 31 addition, Defendant will produce responsive, non-privileged documents from agreed upon
 32 Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional search
 33 terms to be agreed upon by the Parties, which may include documents responsive to this
 34 Request. By way of further response, Defendant has also reproduced documents previously
 produced in the *Cruz* products liability litigation and the port patent litigation, which may
 contain documents that are responsive to this Request. Aside from the documents referenced
 above, Defendant is not producing in response to this Request any other documents.

Request for Production No. 15: Produce all Information related to, referring to, and/or embodying the transfer of responsibility for post market surveillance and/or compliance with FDA regulations for the Devices.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also improperly seeks production of "Information related to, referring to, and or/embodying the transfer of responsibility for post market surveillance and/or compliance with FDA regulations" regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms "relating to" or "concerning" a subject are "overbroad since ... all documents 'relate' to all others in some remote fashion"). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request as the terms "transfer of responsibility," "post market surveillance," and "compliance with FDA regulations" are vague, ambiguous, and undefined. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as Objections to Instructions and Definitions Nos. 26, 27, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, Defendant will produce responsive, non-privileged documents from agreed upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional search terms to be agreed upon by the Parties, which may include documents responsive to this Request. By way of further response, Defendant has also reproduced documents previously produced in the *Cruz* products liability litigation and the port patent litigation, which may contain documents that are responsive to this Request. Aside from the documents referenced above, Defendant is not producing in response to this Request any other documents.

Request for Production No. 16: Produce all Information related to, referring to, and/or embodying contracts and/or agreements with healthcare facilities that You, any other Defendant, or any representatives, agents, and/or contractors acting on Your or any other Defendants' behalf.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also improperly seeks production of "Information related to, referring to, and or/embodying contracts and/or agreements with healthcare facilities" regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases

finding requests using the terms “relating to” or “concerning” a subject are “overbroad since ... all documents ‘relate’ to all others in some remote fashion”). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request as the terms “contracts,” “agreements,” “healthcare facilities,” “representatives,” agents,” and “contractors” are vague, ambiguous, and undefined. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, and 22, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, Defendant states that it cannot respond to the Request as presently drafted. Defendant is prepared to meet and confer to determine if Plaintiffs can particularize this Request and provide a more narrowly tailored request that reasonably identifies a basis for the requested information as it relates to the allegations in the Master Complaint.

Request for Production No. 17: Produce all Information related to, referring to, and/or embodying each defendants’ role and responsibility in R&D, design, manufacturing, labeling, marketing, distributing, and selling the Devices.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs’ Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs’ Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs’ overbroad Request also improperly seeks production of “Information related to, referring to, and or/embodying each defendants’ role and responsibility” regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep’t*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms “relating to” or “concerning” a subject are “overbroad since ... all documents ‘relate’ to all others in some remote fashion”). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request as the terms “role,” “responsibility,” “R&D,” “design,” “manufacturing,” “labeling,” “marketing,” distributing,” and “selling” are vague, ambiguous, and undefined. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such materials, Defendant also objects to this Request on those grounds. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as Objections to Instructions and Definitions Nos. 26, 27, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, Defendant states that it cannot respond to the Request as presently drafted. Defendant is prepared to meet and confer to determine if

1 Plaintiffs can particularize this Request and provide a more narrowly tailored request that
 2 reasonably identifies a basis for the requested information as it relates to the allegations in
 3 the Master Complaint. Notwithstanding, Defendant will produce responsive, non-privileged
 4 documents from agreed upon Custodial Files and Non-Custodial Sources that hit upon
 5 reasonable and proportional search terms to be agreed upon by the Parties, which may
 6 include documents responsive to this Request. By way of further response, Defendant has also
 7 reproduced documents previously produced in the *Cruz* products liability litigation and the
 8 port patent litigation, which may contain documents that are responsive to this Request.
 9 Aside from the documents referenced above, Defendant is not producing in response to this
 10 Request any other documents.

11 **Request for Production No. 18:** Produce all Information related to, referring to, and/or embodying
 12 the hiring and/or employment of Defendants' employees to the extent related to any other
 13 Defendant and/or any person or entity acting on Your or their behalf.

14 For the sake of clarity, this request seeks information including but not limited to information about
 15 the hiring or transition of employees from one entity to another in conjunction with any purchase,
 16 acquisition and/or merger.

17 **RESPONSE: Objection.** Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this
 18 Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague,
 19 ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is
 20 also not limited by the nature or quality of the information to be produced, such that it seeks
 21 documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also
 22 improperly seeks production of "Information related to, referring to, and or/embodying the
 23 hiring and/or employment of Defendants' employees," regardless of whether the information
 24 sought could be obtained by production of fewer documents. *See Carter v. Archdale Police*
 25 *Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases
 26 finding requests using the terms "relating to" or "concerning" a subject are "overbroad
 27 since ... all documents 'relate' to all others in some remote fashion"). This Request also seeks
 28 exhaustive discovery over multiple decades without limitation, rendering this Request unduly
 burdensome, not stated with reasonable particularity, and beyond the scope of permissible
 discovery. Defendant further objects to this Request as the terms "hiring" and "employment"
 are vague, ambiguous, and undefined. Defendant does not interpret this Request as seeking
 information protected from disclosure under the attorney-client privilege and/or attorney
 work product doctrine. However, to the extent this Request read literally seeks such materials,
 Defendant also objects to this Request on those grounds. In addition, Defendant incorporates
 by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, and 22,
 as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, Defendant will produce responsive, non-
 privileged documents from agreed upon Custodial Files and Non-Custodial Sources that hit
 upon reasonable and proportional search terms to be agreed upon by the Parties, which may
 include documents responsive to this Request. By way of further response, Defendant has also
 reproduced documents previously produced in the *Cruz* products liability litigation and the
 port patent litigation, which may contain documents that are responsive to this Request.
 Aside from the documents referenced above, Defendant is not producing in response to this
 Request any other documents.

Request for Production No. 19: Produce all Information related to, referring to, and/or embodying each Defendant's website (both now and in the past).

For the sake of clarity, this request seeks Information including but not limited to content regarding the Devices (e.g., product pages regarding Device specifications, IFUs, etc.), as well as any Information regarding branding and/or the corporate relationship between the Defendants (e.g., "About Us" pages, press releases regarding the merger, copyright information).

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also improperly seeks production of "Information related to, referring to, and or/embodying each Defendant's website" regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms "relating to" or "concerning" a subject are "overbroad since ... all documents 'relate' to all others in some remote fashion"). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request as the term "website" is vague, ambiguous, and undefined. Defendant further objects to the separate paragraph included in this Request setting forth additional demands under the guise of being "[f]or the sake of clarity." While phrased as a single discovery request, this Request's attempted incorporation of additional categories of Information render the Requests harassing, overbroad, unduly burdensome, oppressive, and not proportional to the needs of the case. Defendant further objects to this Request on the grounds the additional categories of Information demanded render the Request so broad, vague, and ambiguous that Defendant cannot determine what information is sought. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, 34, and 35.

Subject to and without waiving any objections, Defendant states that it cannot respond to the Request as presently drafted. Defendant is prepared to meet and confer to determine if Plaintiffs can particularize this Request and provide a more narrowly tailored request that reasonably identifies a basis for the requested information as it relates to the allegations in the Master Complaint in order to enable Defendant to conduct a reasonably diligent search. Notwithstanding, *see* the publicly available documents to which Plaintiffs have access to through, *inter alia*, the Internet Archive's digital archive of webpages at www.web.archive.org and the following website URLs: www.bardaccess.com, www.portadvantage.com, www.portready.com, www.bardpv.com, www.crbard.com, www.bd.com, and eifu.bd.com. Defendant will also produce responsive, non-privileged documents from agreed upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional search terms to be agreed upon by the Parties, which may include documents responsive to this Request. By way of further response, Defendant has also reproduced documents previously produced in the *Cruz* products liability litigation and the port patent litigation, which may contain documents that are responsive to this Request.

Request for Production No. 20: Produce Information sufficient to determine the ownership (both now and in the past) of real estate, real property, and/or the physical presence of each Defendant (e.g., headquarters, office space, manufacturing facilities, etc.).

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request as the terms "ownership," "real estate," "real property," "physical presence," "headquarters," "office space," and "manufacturing facilities," are vague, ambiguous, and undefined. In addition, Defendant incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20, and 21, as well as Objections to Instructions and Definitions Nos. 27, 28, 29, 32, 33, and 34.

Subject to and without waiving any objections, Defendant states that it will conduct a reasonable search for documents within its possession, custody, or control and will produce documents identifying real estate and/or real property owned by Defendant. In addition, Defendant will produce responsive, non-privileged documents from agreed upon Custodial Files and Non-Custodial Sources that hit upon reasonable and proportional search terms to be agreed upon by the Parties, which may include documents responsive to this Request. By way of further response, Defendant has also reproduced documents previously produced in the *Cruz* products liability litigation and the port patent litigation, which may contain documents that are responsive to this Request. Aside from the documents referenced above, Defendant is not producing in response to this Request any other documents.

Request for Production No. 21: Produce all Information related to, referring to, and/or embodying any strategizing regarding successor liability, reverse triangular mergers, etc. related to the Devices.

RESPONSE: Objection. Defendant, pursuant to F.R.C.P. 26(b) and 34, objects to this Request on the grounds Plaintiffs' Request is overbroad, unduly burdensome, vague, ambiguous, and seeks information irrelevant to the present litigation. Plaintiffs' Request is also not limited by the nature or quality of the information to be produced, such that it seeks documents with little to no relevance to this litigation. Plaintiffs' overbroad Request also improperly seeks production of "Information related to, referring to, and or/embodying any strategizing" regardless of whether the information sought could be obtained by production of fewer documents. *See Carter v. Archdale Police Dep't*, No. 1:13CV613, 2014 WL 1774471, at *5 (M.D.N.C. May 2, 2014) (collecting cases finding requests using the terms "relating to" or "concerning" a subject are "overbroad since ... all documents 'relate' to all others in some remote fashion"). This Request also seeks exhaustive discovery over multiple decades without limitation, rendering this Request unduly burdensome, not stated with reasonable particularity, and beyond the scope of permissible discovery. Defendant further objects to this Request as the terms "strategizing," "successor liability," and "reverse triangular mergers" are vague, ambiguous, and undefined. Defendant does not interpret this Request as seeking information protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. However, to the extent this Request read literally seeks such

1 materials, Defendant also objects to this Request on those grounds. In addition, Defendant
2 incorporates by reference General Objections Nos. 3, 4, 5, 6, 9, 10, 11, 15, 16, 17, 18, 19, 20,
3 and 21, as well as Objections to Instructions and Definitions Nos. 26, 27, 28, 29, 32, 33, and
34.

4 Subject to and without waiving any objections, Defendant states that it cannot respond to the
5 Request as presently drafted. Defendant is prepared to meet and confer to determine if
6 Plaintiffs can particularize this Request and provide a more narrowly tailored request that
7 reasonably identifies a basis for the requested information as it relates to the allegations in
8 the Master Complaint in order to enable Defendant to conduct a reasonably diligent search.
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1 Dated: January 29, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on January 29, 2024, a true and correct copy of the foregoing document was served by email upon counsel of record as follows:

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