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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  
**CASE MANAGEMENT  
ORDER NO. 16**  
**(Joint Records Collection)**

Based upon the stipulation and agreement of the parties, it is hereby **ORDERED** as follows:

1. The parties to this litigation have jointly agreed to use The Marker Group, Inc. (“Marker”) to collect medical, insurance, Medicare, Medicaid, prescription, Social Security, workers’ compensation, and employment records for individual plaintiffs from third-parties designated as custodians for such records by Plaintiffs or Defendants C. R. Bard, Inc., Becton Dickinson and Company, Bard Access Systems, Inc. and Bard Peripheral Vascular, Inc. (“Defendants”).

2. All plaintiffs who are included in the PFS/DFS Group of the Bellwether process (as set forth in Case Management Order No. 10) must complete, date, and execute the agreed-upon forms of party authorizations attached to this Order as Exhibit A (the “Authorizations”). Those plaintiffs may not object to the form, execution, or issuance of the Authorizations. In completing the authorizations, the individual plaintiff shall authorize production of records from the date five years prior to implant for all records described in the Authorizations.

1           3.     Each Plaintiff required to execute Authorizations under this Order must  
2 provide the original completed and executed Authorizations to Marker on the date that his  
3 or her Plaintiff Fact Sheet (“PFS”) is due to be served on Defendants. Each Plaintiff must  
4 also serve copies of the same to Defendants with his or her PFS.

5           4.     If a custodian to whom an Authorization is presented refuses to provide  
6 records in response to the Authorization, Marker will notify the parties (in accordance with  
7 its vendor agreement with the parties). The individual plaintiff’s attorney shall attempt to  
8 resolve the issue with the custodian, such that the necessary records are promptly provided.  
9 To the extent any custodian requires a release other than the Authorizations, the individual  
10 plaintiff whose records are sought must complete the custodian-specific authorization form  
11 within ten (10) days after it has been provided by Marker or Defendants unless he or she  
12 objects to the form. If the individual plaintiff objects to the custodian-specific form, the  
13 parties shall meet and confer in an effort to resolve the objection.

14           5.     Marker will send all custodians from whom records are sought the form of  
15 certificate of acknowledgment attached as Exhibit B (the “Acknowledgement”). The  
16 Acknowledgement will serve as evidence of authenticity and satisfy the requirements of  
17 authentication under Federal Rule of Evidence 901(a). All other evidentiary objections are  
18 preserved, and any party retains the right to offer proof that the certified documents are not  
19 complete or are otherwise inaccurate.

20           6.     Marker will obtain records and host them in a secure database, accessible to  
21 Plaintiffs and Defendants, according to the parties’ vendor agreement with Marker. Any  
22 party may request any of ancillary services from Marker at its own expense.

23           7.     Upon receipt of records and placement into the secure database, Marker will  
24 notify designated individuals for Plaintiffs and Defendants (via email) that documents have  
25 been posted for Plaintiffs’ review on Marker’s website. Plaintiffs shall have seven (7)  
26 calendar days after such notice from Marker (the “Review Grace Period”) to review records  
27 for privilege and compliance with the applicable date range for the records. During the  
28 Review Grace Period, Plaintiffs will identify any documents for which they claim a

1 privilege exists or that fall outside of the applicable date range for the records. In the event  
2 that Plaintiffs' counsel in good faith finds that the volume or content of the documents  
3 posted cannot be sufficiently reviewed within the Review Grace Period, Plaintiffs will  
4 notify Defendants and Marker, within the applicable Review Grace Period, of a request for  
5 extension of time to review the documents. Thereafter, the parties will meet and confer  
6 regarding Plaintiffs' request for an extension. If the parties are unable to agree, Plaintiffs  
7 will apply to the Court for relief during the Review Grace Period. Such application shall  
8 extend the Review Grace Period until resolution by the Court.

9 8. Prior to the end of the Review Grace Period, Plaintiffs will notify Defendants  
10 and Marker if they contend that there are privileged documents within the group or that  
11 there are documents that fall outside of the applicable date range for the records.

12 9. Absent notification by Plaintiffs to Marker of a claimed privilege, agreement  
13 to extend the Review Grace Period, or a request for relief made to the Court within the  
14 Review Grace Period, Marker will automatically make the documents accessible to  
15 Defendants on the day after the Review Grace Period ends.

16 10. If Plaintiffs notify Defendants of a privilege claim, Plaintiffs' counsel will  
17 produce to Defendants, via email, a privilege log identifying the documents as to which  
18 privilege is asserted, the bases for the claimed privilege, and whether Plaintiffs will be  
19 producing redacted versions of any of the documents within five (5) business days of the  
20 notice. Plaintiffs will contemporaneously produce to Marker any redacted documents and  
21 instruct Marker in writing to either make the redacted documents available to both parties  
22 on Marker's website or to withhold from Defendants the entire set or portion of records  
23 based upon Plaintiffs' claim of privilege until further notice.

24 11. In the event that Plaintiffs inadvertently fail to claim a legal privilege they  
25 contend attaches to any record, Plaintiffs shall request a clawback of those documents by  
26 Defendants, meet and confer with Defendants counsel regarding those documents and, if  
27 the parties agree, direct Marker to destroy the designated records.

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1           12. If Plaintiffs notify Defendants of a claim that certain documents fall outside  
2 of the applicable date range for the records, Plaintiffs' counsel will produce to Defendants,  
3 via email, a log identifying all such documents (including their dates). Plaintiffs will  
4 contemporaneously instruct Marker in writing to withhold those documents from  
5 Defendants until further notice based upon Plaintiffs' claim that they fall outside of the  
6 applicable date range for such records.

7           13. The parties will meet and confer on any claims that documents are privileged  
8 or fall outside of the applicable date range for the records, and if not resolved, place a joint  
9 call to the Court to seek resolution of the issue.

10           14. Defendants will pay the total costs associated with records collection from  
11 each custodian, including the records-copying and provision charges from the custodians  
12 and Marker's collection service fees. Plaintiffs may download collected records from the  
13 repository by paying Marker's fees for a copy of those records without contributing to the  
14 costs incurred by Defendants to obtain the records from custodians. In the event that  
15 Defendants believe that Plaintiffs' downloading of records exceeds that which the parties  
16 contemplated in agreeing to this Order, Defendants may meet and confer with Plaintiffs'  
17 Co-Lead Counsel. If the parties cannot resolve the dispute, they shall contact the Court on  
18 how to resolve the issue.

19           15. Any party may choose to discontinue the use of the joint vendor, Marker, at  
20 any time upon thirty (30) days' notice to the other parties and the Court. The parties shall  
21 promptly confer about the withdrawing party's decision and the solution for continued  
22 records collection in the MDL, and shall, within ten (10) days of the withdrawal, notify the  
23 Court of the agreed-upon solution or seek the Court's assistance if no agreement is reached.  
24 The withdrawing party will remain responsible for the costs of any records ordered prior  
25 to the withdrawal to the extent otherwise required by this Order.

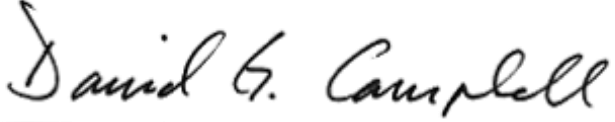
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1           16. Each party retains the right to issue subpoenas and to employ other means  
2 for discovery if required by any custodian to obtain records.

3           Dated this 8th day of March, 2024.

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7 David G. Campbell  
8 Senior United States District Judge  
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