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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. 21

(Deposition Protocol)

(Applies to All Actions)

Plaintiffs and Defendants (the “Parties”) submit the following protocol for depositions taken in the above-captioned litigation:

1. Scope and Applicability. This Order shall apply to all cases currently pending in MDL No. 3081 and to all related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned hereto. This Order is binding on all Parties and their counsel in all cases currently pending or subsequently made part of these proceedings and will govern each case in this MDL. This Order shall also apply to all non-party witnesses.

2. Governing Law. Discovery shall be governed by the applicable provisions of the Federal Rules of Civil Procedure, except as otherwise provided herein or in any other Case Management Order. Unless specifically modified herein, nothing in this Order shall be construed to abrogate, modify, or enlarge the Federal Rules of Civil Procedure.

1 **3. Stipulations.** The Parties may agree to alter, amend, or modify any
2 practice relating to the noticing or conducting of a deposition, including but not limited
3 to the provisions in this Order.

4 **4. Number of Depositions.** Leave is granted under Rule 30(a)(2)(A)(i) to
5 exceed the limits on the number of depositions a party may take in this MDL proceeding.
6 Should any party believe that the number of depositions requested has become
7 burdensome or unreasonable, the Parties will meet and confer regarding a reasonable
8 and proportional number of depositions a party may take as part of common fact
9 discovery or case-specific discovery.

10 **5. Notice.** Each deposition notice in the MDL proceeding must comply with
11 the notice provisions of Federal Rule of Civil Procedure 30(b). The deposition notice
12 must include the name, address, and telephone number of an attorney point of contact
13 designated by the party noticing the deposition, as well as the date, time, and location of
14 the deposition. The notice must clearly state whether the deposition will be videotaped
15 in addition to being recorded by stenographic means. It must also state whether the
16 deposition will be taken remotely.

17 a. **Deposition Point Persons.** Depositions and matters related to
18 depositions shall be coordinated by Point Persons designated for
19 Plaintiffs and Defendants. The Parties will cooperate to expand
20 notifications as necessary and convenient, but for a communication
21 concerning the notice or scheduling of a deposition to be effective,
22 it must be made by email to the Point Persons. Point Persons are
23 designated below in paragraph 25. Plaintiffs shall provide
24 Defendants' Point Persons with the names of any individual fact
25 witness they seek to depose or, in the case of a 30(b)(6) deposition
26 request, with the subject matters for which a deposition is
27 requested. Likewise, Defendants shall provide Plaintiffs' Point
28 Persons with the names of witnesses they seek to depose. The day

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on which a party provides the names of the individual fact witnesses or 30(b)(6) requests is the date that shall be used for the purpose of applying deadlines in paragraph 5, including subparagraphs (a)-(c).

b. Within seven (7) days of receipt of a request for an individual fact witness deposition, or fourteen (14) days of receipt of a 30(b)(6) request under paragraph (a) above, if the party to whom such a request has been made (the “Receiving Party”) objects to the deposition of the requested deponent(s) or 30(b)(6) topic(s), the Receiving Party’s Point Persons shall notify the Point Persons for the party requesting the deposition (the “Noticing Party”) and provide available times for a meet and confer to occur within three (3) business days of stating the objection(s), unless otherwise agreed by the Parties. If the Parties are not able to reach resolution, the Parties will schedule a call with the Court for resolution of the dispute. The deposition shall not proceed until the objection is resolved between the Parties or by order of the Court.

c. Assuming no objection, unless otherwise agreed by the Parties, the Receiving Party shall within fourteen (14) business days of a request for an individual fact witness deposition, or within twenty-one (21) business days of receipt of a 30(b)(6) deposition request, provide the soonest available date(s) on which the deposition may occur consistent with paragraph 6 herein. If an objection was previously raised but is resolved between the Parties, the Receiving Party shall provide the soonest available dates on which the deposition may occur within three (3) business days of resolution consistent with paragraph 6. Once the Point Persons have agreed upon a date for a deposition, the noticing party may serve the deposition notice as set forth herein.

1 **6. Scheduling.** Counsel shall use their best efforts to cooperate in scheduling
2 depositions at mutually convenient times and places.

3 a. To the extent possible, a notice of deposition in the course of
4 general fact discovery that includes a simultaneous request to
5 produce documents should be served at least forty (40) calendar
6 days before the deposition. Responsive information and documents
7 must be produced at least five (5) business days before the
8 deposition. If any party believes that a request for production will
9 reasonably take more than 40 days to complete, that party shall
10 promptly request a meet and confer.

11 **7. Expert Deposition Notices.** To the extent an expert deposition notice
12 includes a request for production, the written response and document and information
13 production shall be produced no later than five (5) business days before the scheduled
14 deposition date. This does not obviate the Parties' obligations to disclose all materials
15 reviewed (including any original analyses and/or data) contemporaneously with the
16 expert report pursuant to Federal Rule of Civil Procedure 26.

17 **8. Use of Depositions.** Depositions originally noticed during common-issue
18 fact discovery in this MDL may be used for any purpose in appropriate state court cases.

19 **9. Cross-Notices Between State Court Cases and This Proceeding.**

20 a. In order to avoid duplicative discovery, prevent redundancy, and
21 prevent the unnecessary expenditure of judicial resources and the
22 resources of the Parties, depositions originally noticed in this MDL
23 may be cross-noticed in appropriate state court cases. The Parties
24 shall use their best efforts to attempt to coordinate the scheduling
25 of depositions with state court plaintiffs so that each deponent shall
26 only appear for a single deposition. Nothing in this paragraph shall
27 be construed to delay the scheduling of depositions in the MDL.
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1 b. The Parties shall endeavor to coordinate with cross-noticed state
2 court proceedings; however, it is the intent of this Order that
3 counsel for MDL Plaintiffs shall be the primary examiner in such
4 coordinated depositions. If a deposition is cross-noticed in a state
5 court proceeding or proceedings, counsel for the parties noticing
6 and cross-noticing the deposition should make a good faith effort
7 to complete the deposition within seven (7) hours and avoid
8 duplication of examination of the deponent. While MDL Plaintiffs’
9 time for deposition shall not be limited by any such cooperation,
10 should additional time beyond the seven hours be required to
11 complete the examination, the Parties will endeavor in good faith
12 to agree to a reasonable extension of time to complete the
13 deposition. Nothing in this provision shall be construed as an
14 injunctive or equitable order affecting state court proceedings;
15 rather, this provision is intended to reflect this Court’s desire for
16 voluntary state-federal coordination.

17 **10. Cooperation.** The Parties shall meet and confer in good faith to resolve
18 all issues regarding the scheduling and taking of depositions. No party shall
19 unreasonably impede depositions. Any disputes that are unresolved by the Parties
20 meeting and conferring shall be resolved by the Court.

21 **11. Objections After Notice.** Any objection to a deposition notice after it is
22 served shall be served no later than five (5) days after the notice is served. Following
23 service, objections shall be limited to the form of the notice and/or deviations from the
24 Parties’ negotiated agreement. The deposition shall not proceed until the objection is
25 resolved between the Parties or by order of the Court.

26 **12. Depositions of Corporate Representatives Pursuant to Rule (30)(b)(6).**
27 If a witness who was deposed in his/her individual capacity is also designated as a Rule
28 30(b)(6) representative, or if a witness who testified as a Rule 30(b)(6) designee is

1 subsequently deposed in his or her individual capacity, the Parties will use their best
2 efforts to coordinate to avoid unnecessary multiple depositions of the same witness. The
3 Parties shall meet and confer in good faith regarding appropriate and reasonable
4 modifications to time limits for depositions of any witnesses who are deposed in both
5 their individual and representative capacities. For the sake of clarity, nothing in this
6 provision is intended to prevent the deposition of an individual in both his or her
7 individual capacity and as a corporate representative. Each deposition shall be
8 independent and permitted the full time allowed under the Federal Rules of Civil
9 Procedure, but questioning of a witness deposed in both his/her individual and corporate-
10 representative capacities (or vice versa) shall not be duplicative.

11 **13. Time.** Absent a different agreement by the Parties or an order by the Court
12 pursuant to Federal Rule of Civil Procedure 30(d)(1), there will be a limit of one day of
13 seven (7) hours on the record allotted for each deposition, inclusive of any time for
14 re-direct or rebuttal. For all current employees, agents, and consultants of Defendants or
15 former employees, agents, and consultants of Defendants who are represented at the
16 deposition by counsel for a Defendant (including any counsel retained or paid for by a
17 Defendant), both sides shall be permitted to question the witness, and the deposition time
18 shall be allocated as follows: six (6) hours to the noticing party or parties and one
19 (1) hour to the defending party or parties. The deposition shall be conducted as follows:
20 questioning by the noticing party or parties; questioning, if any, by the defending party
21 or parties; and follow-up questioning, if any, by the noticing party or parties. To the
22 extent the defending party or parties do not question the witness, the noticing party or
23 parties may use their remaining time. If any party believes that circumstances exist to
24 alter the allocation of time, it shall notify the other party not later than ten (10) days prior
25 to the deposition date; the Parties shall meet and confer as to whether to reallocate time
26 and, if so, on the reallocation. The Parties may agree to modify the total number of days
27 or hours per witness where additional time is needed to examine the witness fairly, but
28 absent agreement of the Parties, a witness may not be required to be on the record for

1 more than seven (7) hours in any given day. Absent unusual circumstances, including
2 but not limited to late production of relevant documents, no witness testifying in his or
3 her individual capacity (only) shall be required to give more than one deposition in the
4 MDL, except by order of the Court or agreement by the Parties. This does not prevent a
5 party from noticing an individual for a separate deposition if that individual is testifying
6 in a representative capacity (e.g., corporate representative) as set forth in paragraph 12.

7 **14. Continuance of Deposition.** Subject to the time limitations set forth in
8 paragraph 13 and the availability of the deponent, if a deposition is not completed by
9 7:30 p.m. (in the time zone where the deponent is located) on the date noticed, the Parties
10 and the witness may agree to extend the deposition beyond 7:30 p.m. However, if both
11 Parties and the witness are not in agreement to extend the deposition beyond 7:30 p.m.,
12 the deposition shall continue the next day until it is completed.

13 **15. Deposition Procedures.**

- 14 a. **General.** Unless otherwise agreed by the Parties, depositions shall
15 only take place on business days (Monday through Friday,
16 excluding legal holidays).
- 17 b. **Attendance.** The Parties are encouraged to limit the number of
18 attorneys at any given deposition. Counsel who have only marginal
19 interest in a proposed deposition or who expect their interests to be
20 adequately represented by other counsel should elect not to attend.
21 In addition, the Parties may have a client representative present.
22 Counsel for a party or non-party witness shall have the right to
23 exclude from depositions any person who is not authorized to
24 receive CONFIDENTIAL or HIGHLY CONFIDENTIAL
25 documents or information pursuant to the Protective Order. Such
26 right of exclusion shall be applicable only during periods of
27 examination or testimony during which CONFIDENTIAL or
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HIGHLY CONFIDENTIAL documents or information are being used or discussed.

- c. **Examination.** Plaintiffs’ Leadership Counsel shall designate no more than two attorneys for Plaintiffs who will be permitted to question the witness at the deposition. Defendants shall likewise designate no more than two attorneys who will be permitted to question the witness at the deposition.

- d. **Multiple Questioners.** Subject to the limitations in paragraph 5(c), if more than one attorney for a party elects to question a witness, the questioning attorneys shall use best efforts to ensure that questioning proceeds sequentially in an organized fashion. For example, the second attorney questioning the witness may ask questions only after the first attorney questioning the witness has concluded his/her examination; the first attorney questioning the witness may not ask additional questions thereafter except to the extent the first attorney is designated to ask rebuttal questions. The two examiners shall endeavor to avoid purely duplicative lines of questioning. Counsel shall cooperate so that examinations by multiple attorneys for the MDL do not exceed the allotted time. The total time used for questioning may not exceed that provided in paragraph 13.

- e. **Notice of Intent to Attend a Deposition.** In order for counsel to make arrangements for adequate deposition space, counsel who intends to attend a deposition in person should advise counsel for the noticed party or non-party no fewer than three (3) business days prior to the deposition, whenever feasible.

16. Cost. The noticing party shall bear the initial expense of both videotaping (should it choose to videotape the deposition) and stenographic recording. The Parties

1 shall pay for their own copies of transcripts and videotapes of depositions. For
2 depositions requiring a translator, the noticing party shall be responsible for payment.
3 For depositions of physicians, the noticing party shall be responsible for payment for
4 time. Each party shall be responsible for paying its retained experts for their time
5 attending depositions.

6 **17. Additional Cameras.** Any party, at its own expense and with notice 24
7 hours before the deposition to defending counsel, may arrange for not more than two
8 additional cameras at videotaped depositions—one to record the examining attorney (if
9 the examining attorney consents) and one to record the exhibits. Nothing in this order
10 shall be deemed a decision as to whether the videotapes of the lawyers may be shown at
11 trial. Counsel’s objections to showing the videotape of counsel at the time of trial are
12 reserved.

13 **18. In-Person Depositions.** The parties are encouraged but not required to
14 conduct depositions remotely. Counsel shall have the option to attend all expert
15 depositions in person. For in-person depositions of anyone other than a third party, the
16 defending party will be responsible for arranging a deposition venue within reasonable
17 proximity to the city in which the deponent resides or works, or as otherwise agreed to
18 by the Parties. The defending party will bear the costs associated with the use of the
19 deposition space at the selected venue. The venue must be disclosed to the examining
20 party no later than ten (10) calendar days before the deposition. The venue must include
21 a main deposition room and a breakout room or area for the examining party’s counsel.

22 a. The vendor providing stenographic and/or videotape services for
23 the deposition will also make available a streaming video link for
24 any non-examining counsel representing a party in this litigation to
25 observe the deposition remotely by internet. Any non-examining
26 counsel representing a party in this litigation who is observing the
27 deposition remotely must have signed the Protective Order entered
28 in this litigation. Any such counsel must also sign on to the

1 deposition through the video link using her/his full name and
2 identifying her/his law firm in parenthesis after her/his name (i.e.,
3 Jane Doe (Doe Law Firm)). Additionally, any non-participating
4 counsel representing a party in this litigation who is observing the
5 deposition remotely must be on mute at all times throughout the
6 deposition and is not permitted to speak on the record at any time.
7 Counsel for the Parties is not permitted to post the link on a website
8 or otherwise make the link publicly available or circulate the link
9 outside of their respective offices. Additionally, only the
10 videographer or court-reporting service shall capture video and/or
11 audio of the deposition. No attendees shall make any recordings
12 (video or audio) or take any pictures or screen captures of the
13 deposition.

14 **19. Remote Depositions.** The following provisions shall govern remote
15 depositions subject to this Order:

- 16 a. A Remote Deposition means that a deposition will be taken via
17 video or internet-video-conference technology with all persons
18 involved in the deposition being in separate locations (including but
19 not limited to defending attorneys or anyone assisting defending
20 attorneys who shall be in a separate location or room from the
21 witness being defended). A Remote Deposition taken pursuant to
22 this Order shall be deemed to have taken place before an
23 appropriate officer despite the court reporter not being in the same
24 physical location as the witness, as long as the court reporter attends
25 the deposition by the same remote means as other participants and
26 is able to hear and communicate with the other attendees. To the
27 extent permitted by the law of the state in which the witness is
28 located, the witness may be sworn in remotely with the same effect

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as an oath administered in person. After the deposition has been taken, no party shall object to the remote nature of the deposition or the procedures used to swear in the witness.

- b. All deposition notices must identify the vendor that will host and record the Remote Deposition (the “Remote Deposition Vendor”) and contain a general description of how those attending may access the remote connection being used (e.g., GoToMeeting, Zoom, WebEx). The party noticing the deposition shall make best efforts to provide the witnesses and all other attendees with detailed instructions regarding how to participate in the Remote Deposition at least three (3) calendar days before the deposition.
- c. To avoid any potential disruptions of a Remote Deposition, those attending shall silence notifications for applications not in use, including but not limited to videotelephony and videoconferencing applications, instant messaging, and/or e-mail notifications. The Court recognizes that microphones must remain on for certain attendees (such as the witness, the court reporter, the attorney taking the deposition, and the attorney defending the deposition) when the deposition is on the record. Other attendees should mute microphones when not speaking. Participating attorneys may be visible to all other participants during the deposition.
- d. The fact that a deposition was noticed to take place remotely and was recorded remotely shall not, by itself, be sufficient to prevent the Remote Deposition from being admitted at trial with the same effect as a deposition video that was recorded in person.
- e. Full and complete copies of deposition exhibits may be provided electronically and shall be provided to the witness and counsel who are attending the deposition via Remote Deposition technology

1 through file sharing software provided by the court reporter. A
2 witness will likely be required to use a keyboard, mouse, or other
3 similar means to open and/or advance the pages of an exhibit. The
4 fact that a witness was provided with an electronic copy of an
5 exhibit will be an insufficient basis to object to the admissibility of
6 that exhibit at trial, unless a specific objection is raised at the time
7 of the deposition. Nothing in this paragraph is intended to limit the
8 manner by which the examining attorney may choose to use an
9 exhibit at a deposition.

- 10 f. The Remote Deposition Vendor will record the witness's
11 deposition testimony using the best technological means available,
12 including by remote video capture/recording to the extent the
13 deposition is noticed to be recorded by video. With the exception
14 of the videographer and court reporter, the deposition may not
15 otherwise be recorded electronically without the consent of the
16 Parties.

17 **20. Objections.** All objections other than the form of the question and the
18 responsiveness of the answer are reserved to the time of trial and are not waived,
19 including objections to foundation. Counsel shall otherwise comply with Federal Rule
20 of Civil Procedure 30(c)(2) concerning objections at depositions. An objection by one
21 party reserves the objection for all Parties. Disputes arising during depositions that
22 cannot be resolved by agreement and that if not immediately resolved will significantly
23 disrupt the discovery schedule shall be presented via telephone call to Judge Campbell's
24 chambers. The presentation of the issue and the Court's ruling will be recorded as part
25 of the deposition. If Judge Campbell is not available, the Parties will continue with the
26 deposition, making a full reservation of rights on the record concerning the dispute at
27 issue to preserve it for a ruling by the Court at the earliest possible time.

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1 Documents containing or concerning confidential or highly confidential
2 information protected by the applicable Protective Order may be used at a deposition
3 only pursuant to and in strict compliance with the Protective Order.

4 Private conferences between deponents and their attorneys are improper while a
5 question is pending, except for the purpose of determining whether privilege should be
6 asserted.

7 **21. Third-Party Subpoenas.** The entirety of this Order must be attached to
8 any subpoena or notice that relates to the deposition of a third-party witness.

- 9 a. With respect to depositions of former employees, agents, or
10 consultants of a Defendant who are not represented at the
11 deposition by counsel for a Defendant (including any counsel
12 retained or paid for by a Defendant), both sides shall be permitted
13 to question the witness. The deposition time shall be allocated as
14 follows: five (5) hours to Plaintiffs and two (2) hours to Defendants.
15 If any party believes that circumstances exist to alter the allocation
16 of time, it shall notify the other party no later than ten (10) days
17 prior to the deposition date; the Parties shall meet and confer as to
18 whether to reallocate time and, if so, on the reallocation. Where a
19 former employee, agent, or consultant of a Defendant is represented
20 by a Defendant's counsel (including any counsel not representing
21 the Defendant but retained or paid for by the Defendant) at the
22 deposition, the provisions in paragraph 13 shall apply. Further,
23 with respect to such former employees, agents, and consultants
24 represented at deposition by a Defendant or counsel provided by a
25 Defendant, the parties will meet and confer on a witness-by-witness
26 basis to determine whether a third-party subpoena is required and
27 whether Defendants' counsel or counsel provided by a Defendant
28 may accept service of that subpoena.

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- b. With respect to any Plaintiffs’ treating physicians being deposed in case-specific discovery, the parties shall divide the time evenly. Such depositions shall be scheduled for seven (7) hours unless otherwise agreed to by the Parties and the witness.
- c. For all other third-party depositions, the Parties shall meet and confer in advance of the deposition to agree upon an appropriate division of time. In addition, if a party believes it has a legitimate interest in the confidentiality of documents responsive to the subpoena, it shall raise this issue with opposing counsel so that it may be addressed and resolved as necessary.

22. Marking of Deposition Exhibits. Any document marked as an exhibit during a deposition shall be marked with a sequential number. Any exhibit marked shall include a bates stamp or production number to the extent that the document was produced with a bates stamp or production number. If the same document is marked as an exhibit more than once in the course of depositions taken in the MDL, counsel for the Parties shall meet and confer in a good faith effort to eliminate duplicative exhibits before the trial of any individual case in this MDL.

23. Stenographic Recording. A certified court reporter shall stenographically record all deposition proceedings and testimony. The court reporter shall administer the oath or affirmation to the deponent. A written transcript by the court reporter, together with an index of all exhibits marked or referred to during the deposition, shall constitute the official record of the deposition for purposes of Federal Rule of Civil Procedure 30(e) (submission to the witness) and Federal Rule of Civil Procedure 30(f) (filing, exhibits). The transcript shall also contain the name of any attorney and any other person attending the deposition together with the name of his or her firm or organization, business address and, if applicable, the name of the person or corporation he or she represents.

1 **24. Correcting and Signing Depositions.** Federal Rule of Civil Procedure
2 30(e) shall apply. If requested by the deponent and/or a party, the transcript of a
3 deposition shall be submitted to the deponent for correction and signature and shall be
4 corrected and signed within thirty (30) days after receiving the final transcript of the
5 completed deposition.

6 **25. Deposition Communications.** Communications pertaining to the
7 scheduling and taking of depositions shall be sent to all of the Point Persons identified
8 below:

9 a. **For Plaintiffs:**

10 Diane Watkins - dwatkins@wcllp.com
11 Katy Krottinger - katy@monsourlawfirm.com
12 Rebecca Phillips - rebecca.phillips@lanierlawfirm.com
13 Michael Sacchet - mas@ciresiconlin.com
14 Adam Evans - aevans@dickersonoxton.com
15 Chelsea Dickerson - cdickerson@dickersonoxton.com

16 b. **For Defendants:**

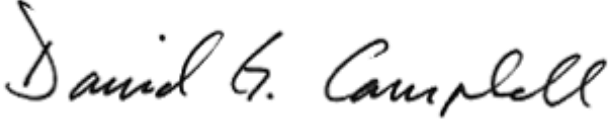
17 Edward Fanning - efanning@mccarter.com
18 Wilfred Coronato - wcoronato@mccarter.com
19 Angela Della Rocco - adellarocco@mccarter.com
20 Makenzie Windfelder - mwindfelder@mccarter.com
21 Stefanie Kaplan - skaplan@mccarter.com
22 Richard North - Richard.north@nelsonmullins.com
23 Elizabeth (Kate) Helm - kate.helm@nelsonmullins.com
24 Brandee Kowalzyk - brandee.kowalzyk@nelsonmullins.com
25 Matthew Lerner - matthew.lerner@nelsonmullins.com
26 Maria Turner - maria.turner@nelsonmullins.com

27 **26. Compliance with Protective Order.** Nothing herein is intended to (nor
28 shall it) modify the terms of the Protective Order, which will govern the treatment of
documents and information designated pursuant to the Protective Order. If a deponent is
to produce or be asked about any documents that have been designated
“CONFIDENTIAL” or “Highly Confidential: Attorneys’ Eyes Only” pursuant to the
Protective Order entered in this action, and the deponent is a person who must sign the

1 Protective Order before reviewing “CONFIDENTIAL” or “Highly Confidential:
2 Attorneys’ Eyes Only” documents, a copy of the Protective Order shall be provided to
3 the deponent before such documents are shared.

4 **27. Modification of This Order.** This Order is subject to modification by
5 agreement of Parties subject to Court approval or by further order of this Court.

6 Dated this 23rd day of April, 2024.

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11 David G. Campbell
12 Senior United States District Judge
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