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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. 7

**MASTER COMPLAINT, MASTER
ANSWER, DIRECT FILING AND
SHORT-FORM COMPLAINT, AND
WAIVER OF SERVICE**

(Applies to All Actions)

This Order applies to all cases currently pending in MDL 3081 and to all related actions that have been or will in the future be originally filed in, transferred to, or removed to this Court and assigned thereto. This Order is binding on all parties and their counsel in all such cases.

The parties previously submitted a Master Complaint (Doc. 93-1) and Short-Form Complaint (Doc. 93-2). As set forth in Case Management Order No. 6, the Court has required the parties to revise those proposed pleadings. Plaintiffs shall file a revised Master Complaint by **December 1, 2023**. Defendants shall have until **December 15, 2023**, to file a Master Answer.

The Master Complaint shall be an “administrative convenience,” not an “operative pleading.” *See, e.g., Bell v. Publix Super Markets, Inc.*, 982 F.3d 468, 489-90 (7th Cir. 2020) (citing *Gelboim v. Bank of Am. Corp.*, 574 U.S. 405, 413 n.3 (2015); *In re Refrigerant Compressors Antitrust Litig.*, 731 F.3d 586, 586, 588, 590-92 (6th Cir. 2013)). The Master

1 Complaint shall become operative by virtue of a Plaintiff filing a Short-Form Complaint
2 that incorporates by reference the Master Complaint.

3 For any case filed in, transferred to, or removed to MDL 3081 on or before the date
4 of this Order, the Plaintiff shall have 30 days from the date of this Order to file an amended
5 complaint using the Short-Form Complaint. If any such case fails to comply, Plaintiffs'
6 Co-Lead Counsel shall promptly advise the Plaintiff to file an amended complaint using the
7 Short-Form Complaint. If the Plaintiff fails to do so, Plaintiffs' Co-Lead Counsel shall
8 notify the Court in connection with the next case management conference and the Court
9 may issue a show-cause order as to why the case should not be dismissed. In the event that
10 any Plaintiff was a member of a multi-plaintiff complaint prior to transfer to or removal to
11 this MDL, each Plaintiff must file a separate Short-Form Complaint.

12 After the date of this Order, any Plaintiff whose case would be subject to transfer to
13 or removal to MDL 3081 may file their case directly in this Court by using the Short-Form
14 Complaint. If such a case is filed in this Court without the use of the Short-Form Complaint,
15 Plaintiffs' Co-Lead Counsel shall promptly advise the Plaintiff to file an amended complaint
16 using the Short-Form Complaint. If the Plaintiff fails to do so, Plaintiffs' Co-Lead Counsel
17 shall notify the Court in connection with the next case management conference and the
18 Court may issue a show-cause order as to why the case should not be dismissed.

19 For any case transferred to or removed to MDL 3081 after the date of this Order, the
20 Plaintiff shall have 30 days from the date of transfer or removal to file an amended
21 complaint using the Short-Form Complaint. If any such case fails to comply, Plaintiffs'
22 Co-Lead Counsel shall promptly advise the Plaintiff to file an amended complaint using the
23 Short-Form Complaint. If the Plaintiff fails to do so, Plaintiffs' Co-Lead Counsel shall
24 notify the Court in connection with the next case management conference and the Court
25 may issue a show-cause order as to why the case should not be dismissed. In the event that
26 any Plaintiff was a member of a multi-plaintiff complaint prior to transfer to or removal to
27 this MDL, each Plaintiff must file a separate Short-Form Complaint.

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1 For purposes of the application of statutes of limitation and/or repose, a Plaintiff will
2 be deemed to have filed his or her complaint as of the date of filing of that Plaintiff's first-
3 filed complaint, not the date of filing of the Master Complaint or a Short-Form Complaint
4 (unless the Short-Form Complaint is the Plaintiff's first-filed complaint).

5 Defendants are not required to file answers to Short-Form Complaints. An Entry of
6 Appearance shall be filed 30 days after the filing of the Plaintiff's Short-Form Complaint.
7 An Entry of Appearance shall constitute a denial of all allegations in the Short-Form
8 Complaint and will be deemed to incorporate the Master Answer, including all defenses
9 included in the Master Answer. As a result, following the filing of an Entry of Appearance,
10 any Plaintiff who wishes to voluntarily dismiss any case filed in, transferred to, or removed
11 to this MDL must comply with Federal Rule of Civil Procedure 41(a)(1)(A)(ii). By filing
12 an Entry of Appearance in response to a Short-Form Complaint in lieu of an Answer,
13 Defendants do not waive any jurisdictional and/or service defenses.

14 Civil actions in this MDL were transferred to this Court by the Judicial Panel on
15 Multidistrict Litigation (the "Panel") for coordinated or consolidated pretrial proceedings
16 pursuant to 28 U.S.C. § 1407. Upon completion of the pretrial proceedings related to a civil
17 action as determined by this Court, any pending case originally transferred by the Panel will
18 be remanded to the Panel for transfer back to the original transferor jurisdiction. If the case
19 was directly filed in or removed to this MDL, the case shall be transferred pursuant to 28
20 U.S.C. § 1404(a) or § 1406(a) to the District identified in the Short-Form Complaint (the
21 "designated forum"), provided the parties choose not to waive *Lexecon, Inc. v. Milberg*
22 *Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). The fact that a case was filed directly
23 in this Court and MDL proceeding shall not constitute a determination by this Court that
24 jurisdiction or venue are proper in this District and shall not result in this Court being
25 deemed the "transferor court" for purposes of this MDL. Prior to transfer, Defendants may
26 object to the designated forum specified in the Short-Form Complaint based on venue or
27 jurisdiction (including a lack of personal jurisdiction under *Daimler AG v. Bauman*, 571
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1 U.S. 117 (2014), and its progeny), and propose an alternative jurisdiction for the Court's
2 consideration.

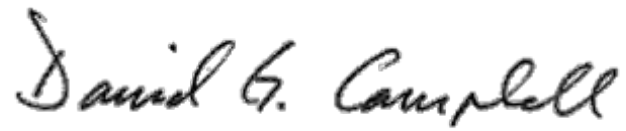
3 In cases in which the parties provide *Lexecon* waivers, and consent to dispositive
4 proceedings in this Court, the choice-of-law rules of the designated forum in the Short-Form
5 Complaint will govern any choice-of-law issue. Defendants may object to the designated
6 forum and propose an alternative venue for choice-of-law purposes.

7 Subject to the conditions set forth in this Order, Defendants Becton, Dickinson and
8 Company; C.R. Bard, Inc.; Bard Access Systems, Inc.; and Bard Peripheral Vascular, Inc.
9 (collectively, "Defendants") waive service of process in cases filed in, transferred to, or
10 removed to this Court using the Short-Form Complaint and in which they are named as
11 Defendants and one or more implanted port catheter devices either manufactured or
12 distributed by Defendants is alleged to be at issue. For such cases, Plaintiffs shall send a
13 Short-Form Complaint and a request for waiver of service pursuant to the provisions of
14 Federal Rule of Civil Procedure 4 to Edward Fanning by email to efanning@mccarter.com;
15 Richard B. North, Jr. by email to richard.north@nelsonmullins.com; and Maria Turner by
16 email to maria.turner@nelsonmullins.com. A filed Short-Form Complaint and request for
17 waiver shall be served via email within 30 days of filing of the Short-Form Complaint.
18 Counsel for Defendants shall return the signed waiver requests to the Court within the time
19 permitted by Rule 4. Plaintiffs submitting a request for waiver of service shall not seek to
20 hold Defendants in default for failure to timely answer or otherwise respond to a complaint
21 in which service has been accomplished pursuant to the terms of this order without first
22 giving Defendants written notice to the same individuals listed above of the alleged default
23 and 10 business days in which to cure any alleged default.

24 Prior to a Plaintiff's attorney filing a Short-Form Complaint in this Court, that
25 attorney must register for or already have a District of Arizona CM/ECF log-in name and
26 password. If the Plaintiff's attorney does not already have a District of Arizona CM/ECF
27 log-in name and password, that attorney must file the Short-Form Complaint in paper form
28 with the Clerk of Court and simultaneously file an Application of Attorney for Admission

1 to Practice Pro Hac Vice pursuant to LRCiv 83.1(b)(2) (including all necessary attachments
2 and filing fee).

3 Dated this 22nd day of November, 2023.

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8 David G. Campbell
9 Senior United States District Judge
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