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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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IN RE: Bard IVC Filters Products Liability Litigation,

No. MD 15-02641

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CASE MANAGEMENT ORDER NO. 17

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(Stipulation and Order Concerning Protective Order and Redactions of Material from Defendants' Expedited ESI Production)

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14   To expedite document production of ESI from Defendants, the parties, through

15   their respective counsel, have agreed to a primarily "no-eyes-on" document production as

16   to relevancy while still performing a privilege review for ESI Defendants will be

17   producing subsequent to this Order. That procedure requires certain changes to protection

18   and requirements in the protective order (Doc. 269) and Case Management Order No. 7

19   and corresponding Exhibit A (Doc. 401) for ESI produced pursuant to this process. To the

20   extent that any of the below provisions are inconsistent with either the protective order

21   (Doc. 269) or Case Management Order No. 7 and corresponding Exhibit A (Doc. 401), the

22   below provisions shall control all documents produced pursuant to this Order.

23   THEREFORE, IT ORDERED as follows:

24   The parties have agreed on an ESI production process (the "Process"). All ESI

25   produced by Bard pursuant to the Process will be subject to the following terms:

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1   1. At the time of production, Bard will identify the documents or ESI as being

2 produced pursuant to the Process and subject to the restrictions of this Case Management

3 Order ("CMO").

4   2. Plaintiffs will maintain all documents and ESI produced pursuant to the

5 Process as confidential and not use the documents or ESI for any purpose outside of their

6 own review and analysis until they have complied with this CMO.

7   3. Until Plaintiffs identify the documents or ESI for use, access to the

8 documents and ESI is limited to attorneys and staff at PLC firms and their consultants

9 who execute the attached addendum and agree to be subject to the restrictions of this

10 CMO.

11   4. If Plaintiffs intend to use a document or ESI identified by Defendants as

12 produced pursuant to the Process for any purpose other than as set forth in paragraph 2

13 above, they shall notify Defendants in writing (or by email) of their intent to use the

14 document or ESI, identifying the document or ESI by production Bates number(s). Once

15 Plaintiffs have done so, the document or ESI shall be deemed conditionally designated as

16 "Confidential" under the protective order (Doc. 269) and subject to the restrictions of that

17 Order (including filing under seal). Such designation shall not negate the additional

18 protections and procedures afforded by Paragraphs 6, 7, 9, and 10 of this CMO.

19   5. Defendants shall thereafter have 30 days to affirmatively designate the

20 document or ESI as Confidential pursuant to the Protective Order (doc. 269) in which case

21 it will be treated as Confidential under that Order as of the date of initial production. Such

22 designation may be made by separate writing that identifies the document or ESI by

23 production Bates number(s). Plaintiffs may challenge such confidentiality designations in

24 accordance with the terms of the Protective Order (doc. 269).

25   6. Defendants shall have the right to identify any document, file, or other form

26 of ESI produced pursuant to the Process as both being irrelevant to the matters in dispute

27 in this MDL and containing trade secret or other confidential information and to "claw

28 back" such ESI or documents from the production. After Plaintiffs identify a particular

1   document, file, or other ESI for intended use pursuant to Paragraph 4, Defendants shall

2   have 30 days to seek claw back of the particular document pursuant to this paragraph; this

3   latter requirement does not apply to documents, files, and other ESI produced pursuant to

4   the Process that have not been identified for use by Plaintiffs pursuant to Paragraph 4,

5   which may be clawed back at any time.

6   7.   Defendants shall have the right to identify any such documents or ESI as

7   subject to the requirements of CMO No. 7 (Doc. 401) and to require the redaction of the

8   information set forth in that Order; in that event, Defendants shall provide Plaintiffs with a

9   redacted version of the subject documents or ESI with the same production Bates

10   number(s) and Plaintiffs shall destroy any unredacted copies or versions of the document

11   that they possess.

12   8.   Plaintiffs shall have the right to challenge any designation by Defendants

13   under paragraphs 6 or 7 by submission of the ESI or document to the Court under seal and

14   any filings that refer to the protected substance of the ESI or document must, likewise, be

15   made under seal.

16   9.   Federal Rule of Evidence 502(d) protection for privileged information

17   produced pursuant to the Process:

18   a. Pursuant to Federal Rule of Evidence 502(d), production or disclosure

19   pursuant to the Process of the substance or content of documents, materials,

20   or other information that is protected by the attorney-client privilege, work-

21   product protection, or any other privilege or protection shall not amount to

22   waiver of the privilege and/or protection in this MDL, or in any other

23   federal or state proceeding.

24   b. If Plaintiffs identify a document, material, or other information in the

25   documents and ESI produced pursuant to the Process that reasonably

26   appears to be protected by any privilege or other protection, they shall

27   promptly notify Defendants in writing or email. If the Defendants

28   determine that the document, material, or other information is privileged or

1   otherwise protected, it shall make such an assertion in writing within 30

2   days of receipt of notification. Once the privilege or protection is asserted,

3   the parties shall follow the process discussed in Federal Rule of Civil

4   Procedure 26(b)(5)(B). Failure to assert the privilege or protection within

5   30 days of receipt of notification shall amount to waiver of any privilege or

6   protection only of the document, material, or other information identified in

7   the notification, subject to Federal Rule of Evidence 502(a).

8   c. For any document, material, or other information produced or disclosed

9   during discovery, and not identified pursuant to section (b) of this

10   Paragraph, Defendants shall assert any claim of privilege or protection in

11   writing (including by email) within 30 days after Plaintiffs identify the

12   material for use pursuant to Paragraph 4 of this CMO. Once the privilege or

13   protection is asserted, the parties shall follow the process discussed in

14   Federal Rule of Civil Procedure 26(b)(5)(B). Failure to assert the privilege

15   or protection shall amount to waiver of the privilege or protection only of

16   the document, material, or other information used, subject to Federal Rule of

17   Evidence 502(a).

18   d. Unless waived under sections (b) or (c), at any time, a party that produces

19   any document, material, or other information that it believes to be protected

20   by the attorney-client privilege, work-product protection, or any other

21   privilege or protection may assert the privilege or protection in writing.

22   Once the privilege or protection is asserted in writing, the parties shall

23   follow the process discussed in Federal Rule of Civil Procedure

24   26(b)(5)(B).

25   10.   To the extent that the documents or ESI produced pursuant to the Process

26   contain any adverse event reporter names or information of a patient who is not a party to

27   this litigation and which would otherwise be redacted in accordance with CMO No. 7,

28   Plaintiffs and their counsel and agents shall not contact the patient or reporter of an

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1   adverse event unless and until the parties go through the processes outlined in Paragraphs

2   6 and 8 of this CMO with respect to the redaction of information and this Court

3   determines the information is not subject to redaction.

4   Dated this 13th day of September, 2016.

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6   *David G. Campbell*
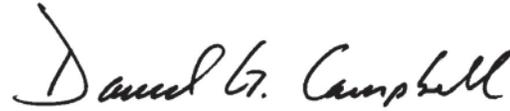
7   _____
                      David G. Campbell
                  United States District Judge

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<u>EXHIBIT A</u>

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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**IN RE: BARD IVC FILTERS
PRODUCTS LIABILITY LITIGATION**

No. MD-15-02641-PHX-DGC

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**AGREEMENT TO MAINTAIN
CONFIDENTIALITY**

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    I, _____ (Name), have been given and have read a copy of the

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Case Management Order No. __, dated _____, 2016 in the case of MDL No.

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2641, pending in the United States District Court District of Arizona. I understand and

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will strictly adhere to the contents of said Order. I understand that produced material

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disclosed to me is subject to the Order of this Court and that I am prohibited from

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copying, disclosing, or otherwise using such material except as provided by said court

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Order. I understand that my unauthorized disclosure of any information protected by the

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Order or contact of a patient or reporter of an adverse event in violation of the Order may

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constitute contempt of court and I agree to be personally subject to the jurisdiction of this

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Court for the purpose of enforcing my obligations under this Agreement, the Order, and

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any contempt proceeding that may be instituted for my violation of the terms of this

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Acknowledgment and the Order. I also understand that my signature on this "Agreement

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to Maintain Confidentiality", indicating my agreement to be bound by the terms of the

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Case Management Order, is required before I may be allowed to receive and review any

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produced document and materials that are produced pursuant to the Process as set forth in

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the Case Management Order.

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Date: _____   Print Signature:_____

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                                               Signature:_____

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