IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

IN RE: Bard Implanted Port Catheter Products Liability Litigation	MDL No. 3081 **AMENDED CASE MANAGEMENT ORDER NO. 4** (Common Benefit Matters)

I. SCOPE OF ORDER

This Order is entered to provide for the fair and equitable sharing among Plaintiffs and their counsel of the burden of services performed and expenses incurred by attorneys acting for the common benefit of all Plaintiffs in the above-captioned multidistrict litigation. The Court expresses no opinion regarding whether payment of any common-benefit fees or expenses will ever be appropriate. This Order merely provides guidance so that, should the issue become ripe during or after the closure of MDL 3081, any attorney applying for common-benefit fees or expenses will have notice of the standards that will be employed in assessing those applications. The Court may issue additional procedures, limitations, and guidelines in the future, if appropriate.

A. Governing Principles and the Common-Benefit Doctrine

"It is beyond dispute that the Court may establish fee structures designed to compensate [lead counsel] for their work on behalf of all plaintiffs involved in [this MDL]." *In re Bard IVC Filters Prods. Liab. Litig.*, 603 F.Supp.3d 822, 832 (D. Ariz. 2022)

(alteration in original) (quoting *In re Gen. Motors LLC Ignition Switch Litig.*, 477 F.Supp.3d 170, 189-90 (S.D.N.Y. 2020)), *aff'd*, 81 F.4th 897 (9th Cir. 2023). The Court's authority to establish such fee structures derives from the United States Supreme Court's common-benefit doctrine, as established in *Trustees v. Greenough*, 105 U.S. 527 (1881); refined in, *inter alia*, *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1885), *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939), *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970), and *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); and approved and implemented in the MDL context in, *inter alia*, *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006 (5th Cir. 1977), and *In re MGM Grand Hotel Fire Litigation*, 660 F.Supp. 522 (D. Nev. 1987).

The Court's authority to establish a fund and to order contributions also derives from its equitable authority and inherent managerial power over this litigation. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 914 F.3d 623, 644 (9th Cir. 2019); *In re Diet Drugs Prod. Liab. Litig.*, 582 F.3d 524, 546-47 (3d Cir. 2009); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991); *In re Air Crash Disaster*, 549 F.2d at 1008; *In re Vioxx Prods. Liab. Litig.*, 802 F.Supp.2d 740, 770 (E.D. La. 2011); MANUAL FOR COMPLEX LITIGATION § 14.121 (4th ed. 2004); *see also In re Bard IVC Filters*, 603 F.Supp.3d at 832 (citing *In re Bos. Sci. Corp., Pelvic Repair Sys. Prods. Liab. Litig.*, 2019 WL 385420, at *5 (S.D.W. Va. Jan. 30, 2019) ("A separate source of authority for MDL courts to assess attorneys' fees in common benefit fund cases comes from the inherent managerial power over the consolidated litigation.")).

Common-benefit work product includes all work performed for the benefit of all Plaintiffs, including pre-trial matters, discovery, trial preparation, a potential settlement process, and all other work that advances this litigation to conclusion. Evaluating contribution to the common benefit is a qualitative analysis because "not all types of work are created equal." *In re Vioxx*, 802 F.Supp.2d at 772. Although some work is less time consuming in hours spent, it has a greater impact on the litigation. Hours spent drafting critical briefs, presenting oral arguments, or preparing for and taking depositions of key

witnesses, for example, generally provide greater common benefit than hours reviewing and coding documents. The Court expresses no opinion at this time whether payment for common-benefit fees is or will be appropriate, but if at some future date the Court does find such an award appropriate, the analysis will be guided by the value of the work performed and how it contributed to the common benefit. *See, e.g., In re 3M Combat Arms Earplug Prods. Liab. Litig.*, No. 3:19-md-2885, Doc. 488, at *3 (N.D. Fla. July 12, 2019).

B. Application of this Order

This Order applies to all cases now pending and any case later filed in, transferred to, or removed to this Court and treated as part of the coordinated proceeding known as *In re: Bard Implanted Port Catheter Products Liability Litigation*, MDL 3081. This Order further applies to each attorney who represents a Plaintiff with a case now pending in or later filed in, transferred to, or removed to this Court, regardless of whether the Plaintiff's attorney signs the "Participation Agreement," attached hereto as Exhibit A.

This Order shall also apply to any private lienholder who obtains reimbursement from any Plaintiff whose case is subject to this Order because that lienholder is benefiting from the common-benefit work performed by Participating Counsel. Such entities shall be subject to this Order regardless of execution of the Participation Agreement, as they are seeking to obtain part of the recovery obtained by a Plaintiff who is subject to this Order and the jurisdiction of this Court. Counsel or any private lienholder shall pay amounts consistent with the terms of Paragraph IV.B.3. of the Bard IPC Fee Fund and the Bard IPC Expense Fund, as those terms are defined below. Private lienholders' counsel shall not be eligible to make a claim to receive any distribution from the Bard IPC Fee Fund or the Bard IPC Expense Fund.

C. Participation Agreement (Exhibit A)

Exhibit A, attached hereto and incorporated herein, is a voluntary agreement between and among Plaintiffs' attorneys who have cases pending in the MDL and/or in state court. The Participation Agreement is a private and cooperative agreement between and among Plaintiffs' attorneys only ("Participating Counsel"); it is not an agreement with

Defendants or their counsel. Participating Counsel shall automatically include all present and future members of Plaintiffs' Leadership Counsel ("PLC"), as designated in Case Management Order No. 1 ("CMO No. 1"), by virtue of their appointment by the Court as Plaintiffs' Co-Lead Counsel, Plaintiffs' Executive Committee ("PEC"), Plaintiffs' Liaison Counsel, Plaintiffs' Steering Committee ("PSC"), and any other attorney who executes the Participation Agreement. Executed Participation Agreements must be provided to and maintained by Plaintiffs' Co-Lead Counsel and the Common-Benefit Special Master.

All Plaintiffs' attorneys who currently have cases pending in this Court or in any state court shall, within 30 days of this Order, designate whether or not they are a Participating Counsel or a Non-Participating Counsel by signing the Participation Agreement. Any Plaintiffs' attorney who does not yet have a Bard Implanted Port Catheter ("IPC") case filed in any federal or state court shall designate whether or not they are a Participating Counsel or a Non-Participating Counsel by signing the Participation Agreement: (a) within 30 days of the date their first case is filed in or otherwise docketed in this Court via direct filing, transfer, or removal; or (b) within 30 days of the date their first case is filed in any state court, if that lawyer intends to voluntarily become a Participating Counsel at the fee and expense percentages set forth herein. Failure to execute the Participation Agreement indicating that an attorney will be a Participating Counsel within the time frame set forth in this paragraph may result in higher percentages for common-benefit assessment as a result of such later participation. Any such higher percentages must be approved by the Court.

Participating Counsel shall be entitled to receive all common-benefit work product created by those attorneys who have also executed, or have been deemed to have executed, the Participation Agreement, regardless of the venue in which Participating Counsel's cases are pending. In return, Participating Counsel agrees to pay common-benefit assessments from the gross recoveries obtained in all filed, unfiled, and tolled cases and/or claims in state and/or federal court in which they have a fee interest, regardless of the size of that fee interest. All Participating Counsel are bound by the terms, conditions, and

obligations of this Order, as well as any other future common-benefit orders of this Court, regardless of whether this MDL is ongoing or closed. *See In re Bard IVC Filters*, 603 F.Supp.3d at 831-39; *see also In re Gen. Motors*, 477 F.Supp.3d at 192; *In re Bos. Sci. Corp.*, 2019 WL 385420, at *5; *In re Vioxx*, 760 F.Supp.2d at 648. Counsel who do not execute the Participation Agreement are not entitled to receive common-benefit work product and may be subject to an increased assessment on all Bard IPC cases in which they have a fee interest if they receive common-benefit work product or otherwise benefit from such work product.

The Court recognizes the jurisdictional rights and obligations of the state courts to conduct their state-court litigation as they so determine and that such litigations may include counsel who are Participating Counsel. Neither the Participation Agreement nor this Order shall be cited by a party to the Participation Agreement in any other court in support of a position that adversely impacts the jurisdictional rights and obligations of the state courts and state-court Participating Counsel.

D. Assessments

From time to time, as necessary to fund common-benefit activity in this litigation, the Common-Benefit Committee established by the PLC and consisting of members thereof, in consultation with the Common-Benefit Special Master, must make assessments and may receive and hold funds in the Bard IPC Expense Fund. Once notice of an assessment is provided, the assessed firms will have 30 days to deposit their respective assessments into the Bard IPC Expense Fund.

If, after 30 days, a firm has not deposited its assessment, Participating Counsel from that firm will be ineligible for common-benefit work while the firm is delinquent in its assessment and any common-benefit work performed while the firm is in arrears will not be eligible for compensation. Failure to deposit assessments on a timely basis will also be considered during the Court's annual leadership reappointment process.

If a firm fails to deposit its assessment within 60 days of receiving notice of an assessment and the firm does not demonstrate to the satisfaction of the Common-Benefit

Committee and Common-Benefit Special Master good cause for such delinquency, Participating Counsel from that firm may be rendered ineligible for any compensation for common-benefit work or expenses.

II. COMMON-BENEFIT EXPENSES

A. Qualified Time and Expenses Eligible for Reimbursement

In order to be eligible for reimbursement, common-benefit time and expenses must meet the requirements of this section and the limitations set forth in the Participation Agreement. Specifically, the time and expenses must be: (a) for the common benefit; (b) appropriately authorized by Plaintiffs' Co-Lead Counsel, as defined in footnote 1 of the Participation Agreement; (c) timely submitted within the defined limitations set forth in this Order; and (d) verified by a partner or shareholder in the submitting firm.

For necessary scrutiny of time and expense submissions, Participating Counsel must use the Excel forms provided as Exhibits B and C to this Order. This means that each monthly submission will consist of one Excel file, within which there will be two "sheets" (marked by tabs at the bottom): "Monthly Expense Report" and "Monthly Time Report." In all reports, the person who performed each task should be identified in the column called "Last Name, First Name" by their complete last name, a comma, and their complete first name (e.g., Smith, John). Please do not use abbreviations or initials in this column. In all reports, the date must be provided in month/day/year format (e.g., 9/25/2023).

Time and expense submissions are to be made on the 15th day of each month, beginning on November 15, 2023, at which date all qualifying time and expenses up to and including October 31, 2023, must be e-mailed to SMBIPC@ccadr.com. Thereafter, each submission should contain all time and expenses incurred during the calendar month prior to the submission date (i.e., the December 15, 2023 submission should include all time and expenses incurred during the month of November 2023).

Submissions of time and expenses made after the 15th day of the month following the month in which the time or expenses were incurred may be rejected. Only time and expenses as defined in the Participation Agreement will be considered for common-benefit

consideration. Subject to the terms of the Participation Agreement, Participating Counsel's expenses will be considered for common-benefit expenses commencing August 15, 2023, the date of issuance of this Court's Order scheduling an initial case management conference. *See* Doc. 4. To the extent Participating Counsel incurred expenses prior to August 15, 2023, for the common benefit of all cases (e.g., activities associated with completing the items to comply with CMO No. 1), Participating Counsel shall submit such expenses on November 15, 2023. As with all time and expense submissions, only that time and those expenses incurred for the common benefit of all cases, consistent with the terms of the Participation Agreement, shall be considered. Any common-benefit work accrued before August 15, 2023, will be evaluated pursuant to the same criteria, scrutiny, audit, and guidelines as common-benefit work commencing August 15, 2023. In evaluating whether to pay for common-benefit work incurred before August 15, 2023, the Court will consider the extent to which the work truly benefited Plaintiffs who joined the MDL; the extent to which the work was duplicated by work incurred after August 15, 2023, and submitted for reimbursement; the extent to which the submitting attorneys received compensation for the work from settlements completed before August 15, 2023; and other relevant factors.

B. Shared and Held Common-Benefit Expenses

1. Shared Costs

Shared Costs are costs incurred for the common benefit of all Plaintiffs. Shared Costs will be paid out of a separate Bard IPC Expense Fund established and administered by Plaintiffs' Co-Lead Counsel and funded through monetary assessments, as described in Paragraph I.D., by all members of the PLC defined in CMO No. 1 and others as determined by Plaintiffs' Co-Lead Counsel. All Shared Costs must be approved by Plaintiffs' Co-Lead Counsel prior to payment. Shared Costs include: (a) certain filing and service costs related to common issues; (b) deposition, court-reporter, and video-technician costs for non-case-specific depositions; (c) costs necessary for creation and maintenance of a document depository; the operation and administration of the depository; the search, categorization, and organization of documents, depositions, and evidence; and any equipment required for

the depository; (d) Plaintiffs' Co-Lead Counsel administrative matters (e.g., expenses for equipment, technology, courier services, telecopier, electronic service, photocopy and printing, secretarial/temporary staff, etc.); (e) PLC group administrative matters such as meetings and conference calls; (f) accountant and administrative consultant and auditing fees; (g) generic expert-witness and consultant fees and expenses; (h) printing, copying, coding, and scanning, including out-of-house or extraordinary firm costs; (i) research by outside third-party vendors, consultants, and/or attorneys; (j) translation costs; (k) bank or financial-institution charges; (l) certain investigative services; (m) special-master and/or mediator charges; and (n) such other costs as the Court deems appropriate for the efficient prosecution of this MDL common to all Plaintiffs.

If a dispute arises regarding whether a cost is a Shared Cost to be paid from the Bard IPC Expense Fund, the Common-Benefit Special Master, in consultation with the Common-Benefit Committee, will make the final determination to pay or reject the expense. All proposed contracts with vendors must be reviewed and approved by the Common-Benefit Committee in order for that vendor to be eligible for payment from the Bard IPC Expense Fund.

2. Held Costs

Held Costs are costs incurred in connection with authorized common-benefit work but that will be carried by each Participating Counsel in MDL 3081 through the pendency of the MDL. Held Costs are those that do not fall into any of the above categories of Shared Costs but are incurred for the benefit of all Plaintiffs. Held costs can also include unreimbursed but authorized Shared Costs. No specific client-related costs shall be considered as Held Costs.

C. Authorization and Submission

The Participation Agreement sets forth the guidelines for authorizing and submitting expenses for the common benefit. All Participating Counsel seeking reimbursement of Held Costs shall follow those guidelines. When submitting expenses pursuant to the guidelines set forth in the Participation Agreement, no entry should contain more than one

expense category identified in Exhibit B. If, on the same day, one person incurs two expenses that fall into two different categories, then two separate entries for that person on that date should be noted, each with the appropriate expense description and category code. Likewise, when practical, no listed expense entry should include expenses incurred by more than one person. If multiple people incur the same expense for the same category, a separate entry should be noted for each person, unless a single person paid the expense for multiple people. Every expense entry should be as detailed and specific as possible. Expense entries without sufficient detail may be rejected by Plaintiffs' Co-Lead Counsel and/or the Common-Benefit Special Master.

D. Limitations on Expenses

1. Travel Limitations

Except in extraordinary circumstances approved in advance by Plaintiffs' Co-Lead Counsel, all travel reimbursements are subject to the following limitations:

i. Airfare: Only the price of a coach seat for a reasonable itinerary will be reimbursed. Business/First Class Airfare will not be fully reimbursed, except for international flights, which requires prior approval by Plaintiffs' Co-Lead Counsel in order to be considered for reimbursement. Use of a private aircraft will not be reimbursed, but reimbursement may be sought for the cost of a coach seat for a comparable itinerary. If Business/First Class Airfare is used on domestic flights, then the difference between the Business/First Class Airfare and the coach fare must be shown on the travel reimbursement form, and only the coach fare will be reimbursed; absent such documentation, the expense may not be reimbursed.

ii. Hotel: Hotel room charges for the average available room rate of a business hotel, including the Hyatt, Westin, and Marriott hotels, in the city in which the stay occurred will be reimbursed. Luxury hotels will not be fully reimbursed but will be reimbursed at the average available rate of a business hotel.

iii. Meals: Meal expenses, including gratuities, must be reasonable and shall not exceed the applicable maximum daily M&IE rate for the locality per person as set by GSA Per Diem Rates (e.g., $156/day for Phoenix in October 2023). There will be no reimbursement for alcoholic beverages, mini-bar items, or movies.

iv. Cash Expenses: Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, pay telephone, etc.) will be reimbursed up to $50.00 per trip, as long as the expenses are properly itemized.

v. Rental Automobiles: Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles were available. If luxury automobiles are selected when non-luxury vehicles were available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form, and only the non-luxury rate may be claimed, unless a larger-sized vehicle is needed to accommodate several counsel or equipment; absent such documentation, the expense may not be reimbursed.

vi. Mileage: Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate per mile paid by the member's firm. The maximum allowable rate will be the maximum rate allowed by the IRS as of the date of the trip.

vii. Uber/Taxi: The use of Uber/Lyft or other ride-share services shall be at the standard rate, unless the standard rate is not available due to availability or surge-rate implementation. Use of Uber Black and/or Uber Select or any advanced level of rate charge shall not be utilized unless there is no available alternative or unless they are required for the transport of large groups of individuals. In the event Black, Select, or other upgraded services are used, names of the individuals participating in the rides should be listed.

2. Non-Travel Limitations

i. Client Recruitment: Expenses for advertising or other expenses for the purposes of marketing, client recruitment, or client acquisition are not reimbursable as common-benefit expenses.

ii. Firm Overhead Costs: Firm overhead costs (including but not limited to expenses for office supplies or equipment, standard phone or internet service, maintenance of firm website, etc.) are not reimbursable as common-benefit expenses.

iii. Shipping, Courier, and Delivery Charges: All claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.

iv. Postage Charges: A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.

v. In-House Photocopy: A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 15 cents per page.

E. Verification

Expense submissions in the form of Exhibit B shall be certified by a partner or shareholder in each firm attesting to the accuracy of such submissions. Attorneys shall keep receipts for all expenses. Credit-card receipts are an appropriate form of verification if accompanied by a declaration from counsel that the expense was incurred and paid for the common benefit.

III. COMMON-BENEFIT WORK

A. Qualified Work Eligible for Reimbursement

Only Participating Counsel are eligible for reimbursement for time and efforts expended for the common benefit. Participating Counsel shall be eligible for reimbursement for time and efforts expended for common-benefit work if the time and efforts are: (a) for the common benefit; (b) appropriately authorized by Plaintiffs' Co-Lead Counsel, as described in footnote 1 of the Participation Agreement; (c) timely submitted within the defined limitations set forth in this Order; and (d) verified by a partner or shareholder in the submitting firm. Any common-benefit work accrued before August 15, 2023, will be evaluated pursuant to the same criteria, scrutiny, audit, and guidelines as common-benefit work commencing August 15, 2023. In evaluating whether to pay for common-benefit work incurred before August 15, 2023, the Court will consider the extent to which the work truly benefited Plaintiffs who joined the MDL; the extent to which the work was duplicated by work incurred after August 15, 2023, and submitted for reimbursement; the extent to which the submitting attorneys received compensation for the work from settlements completed before August 15, 2023; and other relevant factors.

Any counsel intending to seek reimbursement for time and efforts expended for common-benefit work agrees to the terms and conditions herein, including submitting to this Court's jurisdiction and agreeing that this Court has plenary authority regarding the award and allocation of common-benefit fees and expense reimbursements in this matter, regardless of whether the MDL is ongoing or closed. *See, e.g.*, *In re Bard IVC Filters*, 603 F.Supp.3d at 831-39.

B. Compensable Common-Benefit Work

As this litigation progresses and common-benefit work product continues to be generated, Plaintiffs' Co-Lead Counsel may assign Participating Counsel with common-benefit work. Common-benefit work shall include only work specifically assigned by Plaintiffs' Co-Lead Counsel. Examples of common-benefit work include but are not limited to the following work as assigned by Plaintiffs' Co-Lead Counsel: drafting consolidated pleadings; legal research and briefing; authorized court appearances; oral argument; active participation in PLC meetings, conference calls, and communications; maintenance of and working in the document depository; document review and coding; preparing, responding to, and dealing with common-benefit discovery; expert retention and development; preparing for and conducting authorized depositions of Defendants, third-party witnesses, and experts; and activities associated with preparation for trial and the trial of any cases designated as "common-benefit trials" by Plaintiffs' Co-Lead Counsel.

C. Authorization and Time Keeping

Participating Counsel intending to seek payment of common-benefit attorneys' fees shall follow the guidelines set forth in the Participation Agreement and approved by Plaintiffs' Co-Lead Counsel. All common-benefit time must be authorized and accurately and contemporaneously maintained. For example, as detailed in the Participation Agreement, time submissions must use tenth-of-an-hour increments (e.g., 0.1) and include sufficient detail to identify the precise task and how it relates to common-benefit work. Each time entry must be categorized using one of the categories in Exhibit C. When possible, a more specific category should be used instead of a more general category. Under no circumstances should Participating Counsel make up new categories. Plaintiffs' Co-Lead Counsel and/or the Common-Benefit Special Master will provide further guidance as necessary.

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IV. PLAINTIFFS' LITIGATION FEE AND EXPENSE FUNDS

A. Establishing the Fee and Expense Funds

At an appropriate time, Plaintiffs' Co-Lead Counsel shall ask the Court to direct that two interest-bearing accounts be established to receive and disburse funds as provided in this Order (the "Funds"). The first fund shall be designated the "Bard IPC Fee Fund" and the second fund shall be designated the "Bard IPC Expense Fund." The Funds will be held subject to the direction of the Court.

By subsequent order of this Court, the Court will appoint a qualified certified public accountant ("CPA") to serve as escrow agent over the Funds, to keep detailed records of all deposits and withdrawals, and to prepare tax returns and other tax filings in connection with the Funds. Such subsequent order shall specify the hourly rates to be charged by the CPA and the CPA's assistants, who shall be utilized where appropriate to control costs. The CPA shall submit quarterly detailed bills to the Court and to Plaintiffs' Co-Lead Counsel. Upon approval by the Court, the CPA's bills shall be paid from the Bard IPC Expense Fund and shall be considered a Shared Cost. Plaintiffs' Co-Lead Counsel shall provide a copy of this Order and later orders to the CPA.

B. Payments Into the Fee and Expense Funds

1. General Standards

All Plaintiffs and their attorneys who are subject to this Order and who agree to settle, compromise, dismiss, or reduce the amount of a Bard IPC claim or, with or without trial, recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, with respect to Bard IPC claims, are subject to an assessment of the Gross Monetary Recovery, as provided herein. This assessment shall apply to all of the cases of the Plaintiffs' attorneys who are subject to this Order, whether as sole counsel or co-counsel, including all filed, unfiled, and tolled cases and/or claims in state and/or federal court in which the Plaintiffs' attorneys have a fee interest, regardless of the size of the interest or whether this MDL is ongoing or closed.

2. Gross Monetary Recovery

Gross Monetary Recovery includes any and all amounts paid to Plaintiffs (either directly or through Plaintiffs' counsel) by Defendants through a settlement or pursuant to a judgment. In measuring the Gross Monetary Recovery," the parties are to (a) exclude court costs that are to be paid by the Defendants; (b) include any payments to be made by the Defendants on an intervention asserted by third-parties, such as to physicians, hospitals, or other healthcare providers in subrogation related to treatment of a Plaintiff, and any governmental liens or obligations (e.g., Medicare/Medicaid); and (c) include the present value of any fixed and certain payments to be made in the future.

3. Assessment Amount

Given the incipient nature of this litigation and the volume of work necessary to complete it by September 2026, the assessment amount is 10%, which includes 8% for attorneys' fees and 2% for expenses. *See, e.g.*, *In re Bard IVC Filters Prods. Liab. Litig.*, 2021 WL 565336, at *4 (D. Ariz. Feb. 11, 2021); *In re Bard IVC Filters Prods. Liab. Litig.*, No. MDL 15-02641-PHX-DGC, Doc. 18038, at *3 (D. Ariz. May 31, 2019) (increasing fee assessment from 6% to 8% and maintaining 2% expense assessment for total holdback of 10%). The 10% assessment represents a "holdback," *see, e.g.*, *In re Zyprexa Prods. Liab. Litig.*, 467 F.Supp.2d 256, 266-67 (E.D.N.Y. 2006), as applied in many recent MDLs, *see, e.g.*, *In re Social Media Adolescent Addiction/Personal Injury Prods. Liab. Litig.*, No. 4:22-md-3047-YGR, Doc. 169, at *21-22 (N.D. Cal. Mar. 6, 2023) (10% holdback); *In re Philips Recalled CPAP, Bi-Level Pap, and Mechanical Ventilator Prods. Liab. Litig.*, No. 2:21-mc-01230-JFC, Doc. 717, at *3 (W.D. Pa. Aug. 29, 2022) (same); *In re Allergan Biocell Textured Breast Implant Prods. Liab. Litig.*, No. 2:19-md-02921-BRM-ESK, Doc. 370, at *13 (D.N.J. Dec. 6, 2021) (same); *In re Ethicon Physiomesh Flexible Composite Hernia Mesh Prods. Liab. Litig.*, No. 1:17-md-02782-RWS, Doc. 662, at *4 (N.D. Ga. Sept. 11, 2020) (same); *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prods. Liab. Litig.*, No. 3:11-md-02244-K, Doc. 1031, at *10 (N.D. Tex. July 22, 2019) (same); *In re Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Prods. Liab. Litig.*, No. 2:18-md-

02846-EAS-KAJ, Doc. 70, at *6 (E.D. Ohio Dec. 11, 2018) (same); *cf. In re Atrium Med. Corp., C-Qur Mesh Prods. Liab. Litig.*, No. 1:16-md-02753-LM, Doc. 1324, at *1 (D.N.H. Mar. 15, 2022) (12% holdback); *In re Proton-Pump Inhibitor Prods. Liab. Litig.*, No. 2:17-md-02789-CCC-LDW, Doc. 683, at *1 (D.N.J. Aug. 5, 2021) (same); *In re Xarelto Prods. Liab. Litig.*, No. 2:14-md-02592-EEF-MBN, Doc. 17636, at *1 (E.D. La. Apr. 3, 2020) (same); *In re Zostavax Prods. Liab. Litig.*, No. 2:18-md-02848-HB, Doc. 502, at *6 (E.D. Pa. Feb. 12, 2020) (same).

However, if any counsel fails to timely execute the Participation Agreement, such counsel and members of counsel's firm may be subject to an increased assessment. Moreover, if a Non-Participating Counsel receives common-benefit work product or otherwise benefits from the common-benefit work product, such counsel and the cases in which counsel has a fee interest may be subject to an increased assessment.

4. The Parties' Obligations

Upon learning of a case being filed in any state court, Defendants' Counsel shall promptly forward a copy of the state-court complaint to Plaintiffs' Co-Lead Counsel so that Plaintiffs' Co-Lead Counsel can notify the state-court attorneys of this Order and offer them the opportunity to become Participating Counsel.

Plaintiffs' Co-Lead Counsel shall provide Defendants' Counsel, the Common-Benefit Special Master, and the Court or its designee with a list of cases and/or counsel who have entered into written agreements with the PLC by executing the Participation Agreement. This same list shall be made available to all Plaintiffs' counsel with cases in the MDL, as well as any other Plaintiffs' counsel who signs the Participation Agreement, upon request. In the event there is a dispute as to whether a case should be on the list, Plaintiffs' Co-Lead Counsel shall seek to resolve the matter with the particular Plaintiff's counsel informally, and if that is unsuccessful, upon motion to the Court.

Defendants and their counsel shall not distribute any settlement proceeds to any Plaintiff (or anyone on behalf of a Plaintiff, including Plaintiff's counsel) until after (1) Defendants' counsel notifies Plaintiffs' Co-Lead Counsel in writing of the existence of

a settlement and the name of the individual Plaintiff and Plaintiff's attorney (without disclosing the amount of the settlement); and (2) Plaintiffs' Co-Lead Counsel has advised Defendants' counsel in writing whether or not the individual Plaintiff's attorney's cases are subject to an assessment and the amount (stated as a percentage of the recovery) of the assessment pursuant to this Order. Plaintiffs' Co-Lead Counsel shall share this information only with each other and shall otherwise keep this information confidential. For cases subject to an assessment, Defendants are directed to withhold an assessment from any and all amounts paid to Plaintiffs and their counsel and to pay the assessment directly into the Funds as a credit against the settlement or judgment. No orders of dismissal of any Plaintiff's claim, subject to this Order, shall be entered unless accompanied by a certificate of Plaintiff's and Defendants' counsel that the assessment, if applicable, will be withheld and will be deposited into the Funds at the same time the settlement proceeds are paid to settling counsel. If, for any reason, the assessment is not or has not been so withheld, the Plaintiff and his/her counsel are jointly responsible for paying the assessment into the Fund promptly.

Plaintiffs' Co-Lead Counsel shall keep track of settlements and deposits into the Funds for those settlements. Plaintiffs' Co-Lead Counsel shall provide the Court monthly reports showing the aggregate of the monthly deposits, disbursements, interest earned, financial institution charges, if any, and current balance. If necessary, Plaintiffs' Co-Lead Counsel may request that the Court require Defendants to disclose to the Court the amounts of the settlements reached with each Plaintiff in order to confirm that appropriate assessments have been deposited in the Funds.

V. DISTRIBUTIONS

A. Court Approval

The amounts deposited into the Bard IPC Fee Fund and the Bard IPC Expense Fund shall be available for distribution to Participating Counsel who have performed professional services or incurred expenses for the common benefit in accordance with this Order and the Participation Agreement. No amounts will be disbursed without review and

approval by the Court, or such other mechanism as the Court may order. Specifically, such sums shall be distributed only upon order of this Court. This Court retains jurisdiction over any common-benefit award or distribution, regardless of whether this MDL is ongoing or closed. *See, e.g.*, *In re Bard IVC Filters*, 603 F.Supp.3d at 831-39.

B. Application for Distribution

Each Participating Counsel who does common-benefit work has the right to present their claim(s) for compensation and/or reimbursement prior to any distribution approved by this Court. Any counsel who does not sign the Participation Agreement shall not be eligible to receive common-benefit payments for any work performed or expenses incurred.

At the appropriate time, this Court shall request that Plaintiffs' Co-Lead Counsel make recommendations to this Court for distributions to Participating Counsel who have performed common-benefit work. Plaintiffs' Co-Lead Counsel shall employ the services of the Common-Benefit Special Master who will serve in an advisory and consulting capacity to Plaintiffs' Co-Lead Counsel and PLC. The Common-Benefit Special Master shall periodically audit the time submissions of Participating Counsel whose consultation and advice regarding billing practices will be shared with Participating Counsel so as to ensure the appropriate methods, content, and substance of time submissions consistent with the guidelines set forth in this Order. Plaintiffs' Co-Lead Counsel, in consultation with the Common-Benefit Special Master, shall determine the most fair and efficient manner by which to evaluate all of the time and expense submissions in making their recommendation to this Court. This Court will give due consideration to the recommendation of the Plaintiffs' Co-Lead Counsel in conjunction with such expert consultation, advice, and recommendations.

To the extent that the billing records of any Participating Counsel or any Plaintiff's attorney are shared with Plaintiffs' Co-Lead Counsel, the CPA, the Common-Benefit Special Master, or the Court (subject to appropriate protections when filing), such records retain their status as work-product materials and are not discoverable by Defendants.

VI. QUARTERLY REPORTS TO THE COURT

Plaintiffs' Co-Lead Counsel and/or the Common-Benefit Special Master shall provide the Court with quarterly reports on the fees and expenses submitted by various Plaintiffs' counsel for eventual reimbursement from the Funds in this case. The reports shall be organized so the Court can review the attorneys' fees incurred for various categories of work in the case and the attorneys who incurred them, and so the Court can review the expenses submitted for reimbursement. The first report shall be provided on June 17, 2024 and shall cover through February 2024, with successive reports to be submitted on the last weekday of May (except for 2024), August, November, and February thereafter and shall cover through the preceding quarter, continuing until the conclusion of this litigation.[1]

Dated this 3rd day of May, 2024.

David G. Campbell
Senior United States District Judge

[1] Before amendment, CMO 4 required the first report to be provided at the end of the second full week of May 2024 with successive reports to be submitted at the end of the second full week of August, November, February, and May thereafter. Doc. 88 at 18.

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)

EXHIBIT A TO CMO 4
(Common-Benefit Participation Agreement)

THIS AGREEMENT is made this _____ day of _____ 202__, by and between the Plaintiffs' Leadership Counsel ("PLC") (consisting of Plaintiffs' Co-Lead Counsel, Liaison Counsel, Plaintiffs' Executive Committee ("PEC"), and Plaintiffs' Steering Committee ("PSC")) appointed by the United States District Court for the District of Arizona in MDL 3081 and _____ [Name of the Firm Executing the Agreement] ("Participating Counsel").

WHEREAS, the United States District Court District for the District of Arizona has appointed PLC to facilitate the conduct of pretrial proceedings in the federal actions relating to the use, marketing, and sales of Bard Implanted Port Catheters;

WHEREAS, PLC, in association with other attorneys working for the common benefit of Plaintiffs, have developed or are in the process of developing work product that will be valuable in all proceedings and benefit all Plaintiffs alleging injury caused by use of the Bard Implanted Port Catheters ("Common-Benefit Work Product"); and

WHEREAS, the Participating Counsel are desirous of acquiring the Common-Benefit Work Product and establishing an amicable working relationship with PLC for the mutual benefit of their clients;

NOW THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

I. SCOPE OF AGREEMENT

A. Purpose

This Common-Benefit Participation Agreement ("Participation Agreement") is a private cooperative agreement between Plaintiffs' attorneys to share Common-Benefit Work Product pursuant to the Case Management Order Establishing Common-Benefit Fee and Expense Funds ("Common-Benefit Order") and this Participation Agreement. Any Plaintiffs' attorney who executes this Agreement ("Participating Counsel") is entitled to receive the Common-Benefit Work Product created by those attorneys who have also executed, or have been deemed to have executed, this Participation Agreement, regardless of the venue in which Participating Counsel's cases are pending.

B. Rights and Obligations of Participating Counsel

Upon execution of this Participation Agreement, PLC will provide Participating Counsel access to the Common-Benefit Work Product, including access to the document depository and full access and availability of work product within the private, secure, and confidential Plaintiffs-only website. Participating Counsel agrees not to disclose Common-Benefit Work Product to Non-Participating Counsel. Participating Counsel agrees that all cases in which Participating Counsel has a fee interest, including filed, unfiled, and tolled cases, and/or claims filed in state and/or federal court, are subject to the terms of this Participation Agreement, regardless of whether this MDL is ongoing or closed. Participating Counsel shall produce a list that correctly sets forth the name of each client represented by Participating Counsel and/or in which Participating Counsel has an interest in the attorney fee, regardless of what that interest is, who has filed a civil action arising from the use, marketing, and/or sale of Bard Implanted Port Catheters. Such list shall include the court and docket number of each such case. Participating Counsel shall also produce a list that contains the name of each client represented by Participating Counsel and/or in which Participating Counsel has an interest in the attorney fee,

regardless of what that interest is, who has not yet filed a civil action but who has a claim against Defendants arising from the use, marketing, and/or sale of Bard Implanted Port Catheters. Participating Counsel shall supplement the lists on a quarterly basis and provide the lists to Plaintiffs' Co-Lead Counsel. The initial list shall be provided within 15 days of signing this Participation Agreement and must be supplemented every 90 days thereafter.

II. AGREEMENT TO PAY AN ASSESSMENT ON GROSS RECOVERY

Subject to the terms of this Participation Agreement and the terms of the Court's Common-Benefit Order, all Plaintiffs and their attorneys who agree to settle, compromise, dismiss, or reduce the amount of a claim, or, with or without trial, recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, for any Bard Implanted Port Catheter claims are subject to an assessment of the Gross Monetary Recovery, as provided herein.

A. Assessment Amount

The assessment amount shall be ten (10) percent of the Gross Monetary Recovery in each case, with eight (8) percent for common-benefit attorneys' fees and two (2) percent for common-benefit expenses. This amount represents a "holdback." *See, e.g.*, *In re Zyprexa Prods. Liab. Litig.*, 467 F.Supp.2d 256, 266-67 (E.D.N.Y. 2006). By entering this Participation Agreement, the undersigned understands and avers to not move, join, or otherwise support a motion that seeks a common-benefit fee assessment in excess of 8%, nor a motion that seeks common-benefit expenses in excess of 2%, unless it should become apparent that fees in excess of 8% or expenses in excess of 2% are required to reasonably and adequately advance the litigation.

To obtain the benefit of this assessment amount, all Plaintiffs' counsel with a case pending in this MDL or in any state court at the time of entry of the Common-Benefit Order shall execute this Participation Agreement within 30 days of the entry of the Common-Benefit Order. Any Plaintiffs' attorney who does not have a Bard Implanted Port Catheter case filed in any state or federal court at the time of entry of the Common-

Benefit Order shall execute this Participation Agreement (a) within 30 days of the date their first case is filed in or otherwise docketed in this Court via transfer or removal; or (b) within 30 days of the date their first case is filed in any state court, whichever occurs earlier. Failure to execute the Participation Agreement within these time frames may result in an increased assessment as determined by Plaintiffs' Co-Lead Counsel and subject to the Court's approval.

B. Gross Monetary Recovery

Gross Monetary Recovery includes any and all amounts paid to Plaintiffs (directly or through Plaintiffs' counsel) by Defendants pursuant to a settlement or judgment. In measuring the Gross Monetary Recovery, the parties are to (a) exclude court costs that are to be paid by Defendants; (b) include any payments to be made by Defendants on an intervention asserted by third-parties, such as to physicians, hospitals, or other healthcare providers in subrogation related to treatment of a Plaintiff, and any governmental liens or obligations (e.g., Medicare/Medicaid); and (c) include the present value of any fixed and certain payments to be made in the future.

C. Covered Cases

The assessment amount set forth above and in the related Common-Benefit Order shall apply to all cases now pending or later filed in, transferred to, or removed to this Court and treated as part of the coordinated proceeding known as *In re: Bard Implanted Port Catheter Products Liability Litigation*, MDL 3081, regardless of whether the Plaintiffs' attorney is Participating Counsel or not. Counsel who sign this Participation Agreement further agree that the assessment shall apply to all filed, unfiled, and tolled cases, and/or claims filed in state and/or federal court in which they have a fee interest, regardless of the size of that fee interest or whether this MDL is ongoing or closed. Counsel who do not sign the Participation Agreement are not entitled to receive Common-Benefit Work Product and may be subject to an increased assessment on all Bard Implanted Port Catheter cases in which they have a fee interest if they receive any Common-Benefit Work Product or otherwise benefit from the work product created by

PLC and other Participating Counsel working with the MDL. Non-Participating Counsel shall not be eligible to receive common-benefit payments for any work performed or expenses incurred.

D. Attorney Fee Lien

With respect to each client represented in connection with Bard Implanted Port Catheter claims that are filed, unfiled, and tolled cases, and/or claims filed in state and/or federal court, consistent with I.B. and I.C. of the Common-Benefit Order, each Participating Counsel shall agree to have Defendants deposit or cause to be deposited in the Bard IPC Fee Fund and Bard IPC Expense Fund established by the MDL Court (the "Funds") a percentage of the gross amount recovered by each such client that is equal to the assessment amount. In the event Defendants do not deposit the assessed percentage into the Funds, Plaintiff and Plaintiff's Participating Counsel shall deposit or cause to be deposited in the Funds a percentage of the gross amount recovered by each such client that is equal to the assessment amount. Participating Counsel, on behalf of themselves, their affiliated counsel, and their clients, hereby grant and convey to PLC a lien upon and/or a security interest in any fee generated as a result of any recovery by any client who they represent in connection with any Bard Implanted Port Catheter-induced injury and Bard Implanted Port Catheter marketing and sales practices, to the full extent permitted by law, in order to secure payment in accordance with the provisions of this Participation Agreement. Participating Counsel will undertake all actions and execute all documents that are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

E. Attorney-Client Contracts

Both PLC and Participating Counsel recognize the importance of individual cases and the relationship between case-specific clients and their attorneys. Regardless of the type of settlement or conclusion eventually made in either state or federal cases, PLC will recommend to this Court that appropriate consideration be given to individual case contracts between attorneys and their clients.

III. COMMON-BENEFIT EXPENSES

A. Qualified Expenses Eligible for Reimbursement

To be eligible for reimbursement of common-benefit expenses, such expenses must be: (a) for the common benefit; (b) appropriately authorized[1] and timely submitted; (c) within the defined limitations set forth in this Participation Agreement and the Common-Benefit Order; and (d) verified by a partner or shareholder in the submitting law firm.

B. Authorization and Submission

To seek reimbursement of common-benefit expenses incurred on matters common to all claimants in MDL 3081 and authorized by Plaintiffs' Co-Lead Counsel, Participating Counsel must complete and send Exhibit B ("Monthly Expense Report") to the Common-Benefit Special Master on the 15th day of each month, beginning on November 15, 2023. Submissions must be e-mailed to SMBIPC@ccadr.com. Each submission should contain expenses incurred during the calendar month prior to the submission date (i.e., the December 15, 2023 submission should include all expenses incurred during the month of November 2023). However, the first submission on November 15, 2023, should include all expenses incurred on matters common to all claimants through October 31, 2023. Untimely submission may result in a waiver of said expenses. Unsubstantiated expenses may be disallowed, as recommended by the Common-Benefit Special Master and/or Plaintiffs' Co-Lead Counsel.

C. Verification

Exhibit B shall be certified by a partner or shareholder in each firm, and such certification should attest to the accuracy of the submissions. Attorneys shall keep receipts for all expenses. Credit-card receipts are an appropriate form of verification if accompanied by a declaration from counsel that the expense was incurred and paid for the common benefit.

[1] For the purposes of this Participation Agreement, "authorized" or "approved" in terms of common-benefit expenses and common-benefit work shall mean authorized and approved by Plaintiffs' Co-Lead Counsel.

IV. COMMON-BENEFIT WORK

A. Qualified Work Eligible for Reimbursement

To be eligible for reimbursement, time expended must be: (a) for the common benefit; (b) appropriately authorized, per footnote 1 of this Participation Agreement, and timely submitted; (c) within the defined limitations set forth in this Participation Agreement and the Common-Benefit Order; and (d) verified by a partner or shareholder in the submitting law firm. Moreover, if counsel fails to timely submit capital contributions as may be requested by Plaintiffs' Co-Lead Counsel throughout this litigation, such counsel and members of counsel's firm shall not be allowed to submit common-benefit time or expenses for reimbursement. Unsubstantiated costs may be disallowed, as recommended by the Common-Benefit Special Master and/or Plaintiffs' Co-Lead Counsel.

B. Counsel Involved

Participating Counsel are prohibited from sharing Common-Benefit Work Product with Non-Participating Counsel. Counsel eligible to perform common-benefit work includes Plaintiffs' Co-Lead Counsel, members of the PEC and PSC, Co-Chairs and authorized members of MDL Committees, and other Participating Counsel subject to the written approval of Plaintiffs' Co-Lead Counsel.

C. Authorization

Time spent on matters common to all claimants in the MDL must be assigned by Plaintiffs' Co-Lead Counsel, directly or via authority specifically provided by Plaintiffs' Co-Lead Counsel to a Chair of a sanctioned committee to be eligible for consideration as common-benefit time. No time spent on developing or processing individual issues in any case for an individual client (claimant) will be considered or should be submitted; nor should time spent on unauthorized work be submitted for consideration.

(1) Examples of Authorized and Unauthorized Work

a. Depositions of corporate witnesses: Any attorney not designated as one of the authorized questioners or otherwise

authorized to attend a deposition on behalf of PLC shall not submit time or expenses for preparing for or attending such deposition, as such attendance is deemed to be on behalf of that attorney's individual clients.

b. Periodic PLC, MDL, or Full-Committee Conference Calls and Meetings: Such calls and meetings are held so that individual attorneys are kept up-to-date on the status of the litigation, therefore participation by listening to such calls is not common-benefit work. Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients, and that is a reason to participate in such calls and meetings. The attorneys designated by Plaintiffs' Co-Lead Counsel to run those calls are working for the common benefit by keeping other lawyers informed and educated about the case, and their time will be considered common-benefit time. Nothing in this paragraph shall be construed to prevent members of PLC from submitting common-benefit time for participation in PLC communications that are germane to all members of PLC and are necessary to fulfill their PLC obligations.

c. Periodic Status Conferences: Periodic status conferences are held so that the litigation continues to move forward and legal issues are resolved with the Court. Individual attorneys are free to attend any status conference held in open court in order to keep up-to-date on the status of the litigation, but participation by attending and listening to such conferences is not common-benefit work. Each attorney has an obligation to stay informed about the litigation so that they can best

represent their clients. Mere attendance at a status conference, whether in-person or via remote means, will not be considered a common-benefit expense or common-benefit time. The attorneys designated by Plaintiffs' Co-Lead Counsel to address issues that will be raised at a given status conference or requested by Plaintiffs' Co-Lead Counsel to be present at a status conference are working for the common benefit, and their time will be considered common-benefit time.

d. Identification and Work-Up of Experts: Participating Counsel are encouraged to identify experts in consultation with the Chairs of the responsible subcommittees. If a Participating Counsel travels to and retains an expert without the knowledge and approval of Plaintiffs' Co-Lead Counsel, the MDL may not need or use that expert, and the associated time and expense may not be considered common-benefit time or expenses, and therefore may not be compensable.

e. Attendance at Various Seminars: Attendance at a seminar that has an agenda item about the Bard Implanted Port Catheter MDL is not common-benefit work or a common-benefit expense.

f. Document Review: In the MDL, only document review specifically assigned to an attorney and authorized by Plaintiffs' Co-Lead Counsel or one of the Chairs of a sanctioned committee will be considered common-benefit work. If an attorney elects to review documents that have not been assigned to that attorney by Plaintiffs' Co-Lead Counsel or one of the committee Chairs, that review is not considered common-benefit work.

g. Review of Pleadings and Orders: Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients, and review of pleadings and orders is part of that obligation. Only those attorneys designated by Plaintiffs' Co-Lead Counsel to review and summarize those pleadings or orders for the MDL are working for the common benefit, and their time will be considered common-benefit time. All other counsel are reviewing those pleadings and orders for their own benefit and the benefit of their own clients, and the review is not considered common-benefit work. Nothing in this paragraph shall be construed to prevent members of PLC from submitting common-benefit time for reviewing orders that are germane to all members of the PLC and review of which is necessary to fulfill their PLC obligations.

h. Review of Discovery Requests and Responses: Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients, and that is a reason to review discovery requests and responses served in this litigation. Only those attorneys designated by Plaintiffs' Co-Lead Counsel to review and summarize discovery requests and responses for the MDL are working for the common benefit, and their time will be considered common-benefit time. All other counsel are reviewing those discovery requests and responses for their own benefit and the benefit of their own clients, and the review is not considered common-benefit work.

i. Bellwether Trials: While the work-up of individual cases is not considered common-benefit work, in the event that a case is selected as part of an approved bellwether trial process in the MDL or state-court proceeding, the time and expenses in trying the case (including work performed as part of the approved bellwether process) may be considered common-benefit work at the discretion of Plaintiffs' Co-Lead Counsel to the extent it complies with the other provisions of the Common-Benefit Order and this Participation Agreement.

D. Time Keeping and Submission of Time Records

To seek reimbursement of common-benefit time incurred on matters common to all claimants in MDL 3081 and authorized by Plaintiffs' Co-Lead Counsel, Participating Counsel must complete and send Exhibit C ("Monthly Time Report") to the Common-Benefit Special Master on the 15th day of each month, beginning on November 15, 2023. Submissions must be e-mailed to SMBIPC@ccadr.com. Each submission should contain all time incurred during the calendar month prior to the submission date (i.e., the December 15, 2023 submission should include all time incurred during the month of November 2023). However, the first submission on November 15, 2023, should include all time incurred on matters common to all claimants through October 31, 2023. Exhibit C shall be certified by a partner or shareholder in each firm, and such certification should attest to the accuracy of the submissions. Untimely submission may result in a waiver of said time. Time entries that are not sufficiently detailed may not be considered for common-benefit reimbursement, including but not limited to "block billing." Submissions will be audited by Plaintiffs' Co-Lead Counsel and/or the Common-Benefit Special Master.

The following guidelines are intended for all activities performed and expenses incurred by Participating Counsel in MDL 3081:

1. All time and expense submissions must be incurred only for work authorized under this Participation Agreement.
2. All expense submissions must be made in the form of Exhibit B.
3. All time submissions must be made in the form of Exhibit C.
4. Exhibits B and C must be submitted on the 15th day of each month, beginning on November 15, 2023. Each submission should contain all time and expenses incurred during the calendar month prior to the submission date (i.e., the December 15, 2023 submission should include all time and expenses incurred during the month of November 2023), though the first submission on November 15, 2023, should include all time and expenses incurred through October 31, 2023. All time and expense submissions should be accompanied by contemporaneous records and verified by a partner or shareholder in the submitting firm. Submissions of time and expenses made after the 15th day of the month following the month in which the time or expenses were incurred may be rejected.
5. Participating Counsel's time and expenses will be considered for common-benefit recovery commencing August 15, 2023, the date of the issuance of the Court's Order scheduling an initial case management conference. If Participating Counsel performed work and incurred expenses prior to that date for the common benefit of all cases, Participating Counsel shall submit such time and expenses on November 15, 2023. Only time and expenses incurred for the common benefit of all cases, consistent with the terms of this Participation Agreement and the Common-Benefit Order, shall be considered for reimbursement.
6. All time and expense submissions must be e-mailed in the designated form of Exhibits B and C to SMBIPC@ccadr.com so that such

submissions can be reviewed, compiled, and submitted to the Court at the appropriate time.

7. Failure to provide submissions in a timely manner may result in a waiver of attorneys' fees and expenses claimed for the time period that is the subject of the submission. Failure to submit time and expense records in in accordance with Exhibits B and C will result in a notice of deficiency, after which the submitting firm shall have 15 days to cure the deficient submission. Absent prior approval from Plaintiffs' Co-Lead Counsel or special circumstances, failure to cure the deficiency within the 15-day period shall result in (a) that month's submission being rejected, and (b) the submitting firm waiving compensation for the time and expenses submitted that month. Upon a determination by Plaintiffs' Co-Lead Counsel and/or the Common-Benefit Special Master that a Participating Law Firm repeatedly fails to comply with the requirement to timely submit time and expense records in the required format, that Participating Law Firm may be barred from performing future common-benefit work.

8. Time spent compiling the data for the time and expense submissions is not considered common-benefit time and shall not be submitted.

E. Distribution of Fees

1. No Individual Right to the Funds: No party or attorney has any individual right to any common-benefit funds except to the extent directed by order of this Court. Common-benefit funds will not constitute the property of any party or attorney or be subject to garnishment or attachment for the debts of any party or attorney except when and as directed by Court order. These limitations do not preclude a party or attorney from transferring, assigning, or creating a security interest in potential disbursements from the fund if

permitted by applicable state laws and if subject to the conditions and contingencies of this Participation Agreement.

2. Court Approval: The amounts deposited in the Bard IPC Fee Fund and Bard IPC Expense Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the common benefit. The MDL Court retains jurisdiction over any common-benefit award, regardless of whether the MDL is ongoing or closed. Each Participating Counsel who does common-benefit work has the right to present their claim(s) for compensation and reimbursement prior to any recommendation to the Court. It is expected that due consideration of payment of common-benefit fees and expenses will be given to the recommendation of Plaintiffs' Co-Lead Counsel, after consultation with and recommendations of the Common-Benefit Special Master.

Dated: _____

/s/ _____
Firm Name:
Attorney Name:

PLAINTIFFS' LEADERSHIP COUNSEL

/s/ Adam M. Evans _____
Adam M. Evans
Plaintiffs' Co-Lead Counsel

/s/ Rebecca L. Phillips _____
Rebecca L. Phillips
Plaintiffs' Co-Lead Counsel

/s/ Michael A. Sacchet _____
Michael A. Sacchet
Plaintiffs' Co-Lead Counsel

IN RE BARD IMPLANTED PORT CATHETER LITIGATION
MONTHLY EXPENSE REPORT

Firm Name: ______________________________________
Date: ______________________________________

Categories:

(1) Investigations/Factual Research
(2) Attorney Meetings/Strategy
(3) Leadership Case Management
(4) Court Appearances
(5) Pleadings
(6) Written Discovery
(7) Document Review
(8) Legal Research/Memoranda
(9) Scientific Research
(10) Motions/Briefs
(11) Depositions
(12) Oral Argument
(13) Experts/Consultants
(14) Settlement/Mediation
(15) Bellwether Selection
(16) Trial Preparation
(17) Trial
(18) Appeal
(19) Travel
(20) Miscellaneous

ONLY USE ONE CATEGORY PER ROW; ADD ROWS AS NECESSARY

ALL ORIGINAL RECIEPTS MUST BE ATTACHED TO THIS EXPENSE SHEET

Last Name, First Name	Date of Service:	Category Code:	Detailed Description of Expenses	Amount
			Total:	$0.00

I attest that the expenses above are accurate and authorized for common-benefit work in MDL 3081.

/s/ ______________________________________ Dated: ____________________
Signature (E-Signature)

IN RE BARD IMPLANTED PORT CATHETER LITIGATION
MONTHLY TIME REPORT

Firm Name: ____
Date: ____

Categories:
(1) Investigations/Factual Research
(2) Attorney Meetings/Strategy
(3) Leadership Case Management
(4) Court Appearances
(5) Pleadings
(6) Written Discovery
(7) Document Review
(8) Legal Research/Memoranda
(9) Scientific Research
(10) Motions/Briefs
(11) Depositions
(12) Oral Argument
(13) Experts/Consultants
(14) Settlement/Mediation
(15) Bellwether Selection
(16) Trial Preparation
(17) Trial
(18) Appeal
(19) Travel
(20) Miscellaneous

Titles:
(P) Partner
(C) Counsel
(A) Associate
(PL) Paralegal
(LC) Law Clerk

ONLY USE ONE CATEGORY PER ROW; ADD ROWS AS NECESSARY

TIME SHOULD BE REPORTED IN TENTH-OF-AN-HOUR INCREMENTS

FOR ANY COMMON-BENEFIT TIME REPORTED FOR MEETINGS, CALLS, ETC., THE DESCRIPTION SHOULD INCLUDE THE PARTICPANT'S ROLE IN THE MEETING, CALL, ETC.

Last Name, First Name	Title	Date of Service:	Category Code:	Detailed Description of Work Performed	Time Spent
				Total:	0.0

I attest that the time above is accurate and authorized for common-benefit work in MDL 3081.

/s/ ____
Signature (E-Signature)

Dated: ________________________