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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

**SECOND AMENDED CASE
MANAGEMENT ORDER NO. 7**

**(Master Complaint, Master Answer, Direct
Filing, 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 (CMO) 6, the Court required the parties to revise those proposed pleadings. Plaintiffs filed a revised Master Complaint (Doc. 119) and Short-Form Complaint (Doc. 121-1), and Defendants filed a revised Master Answer (Doc. 160-1). As set forth in CMO 15, the Court recently directed Plaintiffs to file an Amended Master Complaint that adds the port reservoir claims. Doc. 465 at 2. Plaintiffs filed an Amended Master Complaint on March 15, 2024 (Doc. 494), and Defendants filed an Amended Master Answer on March 29, 2024 (Doc. 517-1).

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

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

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

24 For any case transferred to or removed to MDL 3081 after the date of this Order,
25 the Plaintiff shall have 30 days from the date of transfer or removal to file an amended
26 complaint using the Short-Form Complaint. If any such case fails to comply, Plaintiffs’
27 Co-Lead Counsel shall promptly advise the Plaintiff to file an amended complaint using
28 the Short-Form Complaint. If the Plaintiff fails to do so, Plaintiffs’ Co-Lead Counsel shall

1 notify the Court in connection with the next case management conference and the Court
2 may issue a show-cause order as to why the case should not be dismissed. In the event that
3 any Plaintiff was a member of a multi-plaintiff complaint prior to transfer to or removal
4 to this MDL, each Plaintiff must file a separate Short-Form Complaint.

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

9 Defendants are not required to file answers to Short-Form Complaints. An Entry of
10 Appearance shall be filed 30 days after the email service of the Plaintiff's Short-Form
11 Complaint. An Entry of Appearance shall constitute a denial of all allegations in the Short-
12 Form Complaint and will be deemed to incorporate the Master Answer, including all
13 defenses included in the Master Answer. As a result, following the filing of an Entry of
14 Appearance, any Plaintiff who wishes to voluntarily dismiss any case filed in, transferred
15 to, or removed to this MDL must comply with Federal Rule of Civil Procedure
16 41(a)(1)(A)(ii). By filing an Entry of Appearance in response to a Short-Form Complaint
17 in lieu of an Answer, Defendants do not waive any jurisdictional and/or service defenses.

18 Civil actions in this MDL were transferred to this Court by the Judicial Panel on
19 Multidistrict Litigation (the "Panel") for coordinated or consolidated pretrial proceedings
20 pursuant to 28 U.S.C. § 1407. Upon completion of the pretrial proceedings related to a
21 civil action as determined by this Court, any pending case originally transferred by the
22 Panel will be remanded to the Panel for transfer back to the original transferor jurisdiction.
23 If the case was directly filed in or removed to this MDL, the case shall be transferred
24 pursuant to 28 U.S.C. § 1404(a) or § 1406(a) to the District identified in the Short-Form
25 Complaint (the "designated forum"), provided the parties choose not to waive *Lexecon*,
26 *Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). The fact that a case
27 was filed directly in this Court and MDL proceeding shall not constitute a determination
28 by this Court that jurisdiction or venue are proper in this District and shall not result in

1 this Court being deemed the “transferor court” for purposes of this MDL. Prior to transfer,
2 Defendants may object to the designated forum specified in the Short-Form Complaint
3 based on venue or jurisdiction (including a lack of personal jurisdiction based on *Daimler*
4 *AG v. Bauman*, 571 U.S. 117 (2014), and its progeny), and propose an alternative
5 jurisdiction for the Court’s consideration.

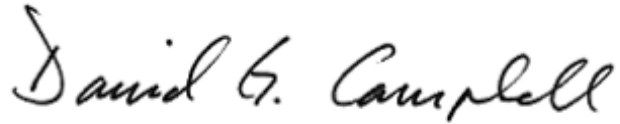
6 In cases in which the parties provide *Lexecon* waivers, and consent to dispositive
7 proceedings in this Court, the choice-of-law rules of the designated forum in the Short-
8 Form Complaint will govern any choice-of-law issue. Defendants may object to the
9 designated forum and propose an alternative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

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

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1 Prior to a Plaintiff's attorney filing a Short-Form Complaint in this Court, that
2 attorney must register for or already have a District of Arizona CM/ECF log-in name and
3 password. If the Plaintiff's attorney does not already have a District of Arizona CM/ECF
4 log-in name and password, that attorney must file the Short-Form Complaint in paper form
5 with the Clerk of Court and simultaneously file an Application of Attorney for Admission
6 to Practice Pro Hac Vice pursuant to L.R. Civ. 83.1(b)(2) (including all necessary
7 attachments and filing fee).

8 Dated this 4th day of April, 2024.

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12 David G. Campbell
13 Senior United States District Judge
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