

1 ERIC W. SWANIS, ESQ.
 Nevada Bar No. 6840
 2 GREENBERG TRAUERIG, LLP
 10845 Griffith Peak Drive, Suite 600
 3 Las Vegas, Nevada 89135
 4 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002
 5 Email: swanise@gtlaw.com

6 CASEY SHPALL, ESQ.
 7 *Admitted pro hac vice*
 GREGORY R. TAN, ESQ.
 8 *Admitted pro hac vice*
 GREENBERG TRAUERIG, LLP
 9 1144 15th Street, Suite 3300
 10 Denver, Colorado 80202
 Telephone: (303) 572-6500
 11 Email: shpallc@gtlaw.com
tangr@gtlaw.com

12 *Counsel for Defendants*

GREENBERG TRAUERIG, LLP
 10845 Griffith Peak Drive
 Suite 600
 Las Vegas, Nevada 89135
 Telephone: (702) 792-3773
 Facsimile: (702) 792-9002

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 14 **IN THE UNITED STATES DISTRICT COURT**
 15 **FOR THE DISTRICT OF NEVADA**

16 PEGGY COLLINS,

17 Plaintiffs,

18 v.

19 C. R. BARD, INC.; BARD PERIPHERAL
 20 VASCULAR, INCORPORATED,

21 Defendants.

CASE NO. 2:19-cv-01864-RFB-BNW

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23
24 **PROPOSED STIPULATED PROTECTIVE ORDER**

25 The parties, through their respective counsel, stipulate to the entry of a protective order
 26 to govern the dissemination of documents, materials, and other information, including the
 27 substance and content thereof, designated by any party as confidential and produced by any

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1 party in support of motions, in response to written discovery, or during any formal or informal
2 discovery in this litigation subject to the terms as set forth below.

3 **WHEREAS**, the parties to this action, through their respective counsel, have agreed
4 that a protective order preserving the confidentiality of certain documents and information
5 should be entered by the Court.

6 **THEREFORE, IT IS ORDERED** as follows:

7 **I. Definitions**

8 1. **Confidential Information.** “Confidential Information” is defined herein as
9 any information that constitutes, reflects, discloses, or contains: (1) a “trade secret or other
10 confidential research, development, or commercial information” that is suitable for protection
11 under Federal Rule of Civil Procedure 26(c)(1)(G); and (2) information that may be protected
12 from disclosure under a party’s constitutional right of privacy such as confidential and private
13 psychiatric, psychological, medical condition and/or employment information.

14 2. **Trade Secret.** A party, in designating information “Confidential” because it
15 contains a “Trade Secret,” shall designate only information that meets the definition of trade
16 secret contained in 18 U.S.C. § 1839:

17 the term “trade secret” means all forms and types of financial,
18 business, scientific, technical, economic, or engineering
19 information, including patterns, plans, compilations, program
20 devices, formulas, designs, prototypes, methods, techniques,
21 processes, procedures, programs, or codes, whether tangible or
22 intangible, and whether or how stored, compiled, or memorialized
23 physically, electronically, graphically, photographically, or in
24 writing if –

25 (A) the owner thereof has taken reasonable
26 measures to keep such information secret; and

27 (B) the information derives independent
28 economic value, actual or potential, from not being
 generally known to, and not being readily
 ascertainable through proper means by, the public.

1 3. **This Action.** “This Action” means *Peggy Collins v. C. R. Bard, Inc., et al.*,
2 Case No. 2:19-cv-01864-RFB-BNW, pending in the United States District Court District of
3 Nevada.

4 **II. Information Within the Scope of the Protective Order**

5 4. This Protective Order shall govern all hard copy and electronic materials, the
6 information contained therein, and all other information produced or disclosed during This
7 Action, including all copies, excerpts, summaries, or compilations thereof, whether revealed
8 in a document, deposition, other testimony, discovery response or otherwise, by any party to
9 This Action or its representatives (the “Supplying Party”) to any other party or parties to This
10 Action or their representatives (the “Receiving Party”), whether provided voluntarily,
11 pursuant to formal discovery procedures, or otherwise. The Parties agree that confidentiality
12 of materials at trial will be determined by the Court after a separate briefing and/or argument
13 process.

14 5. The scope of confidentiality protections afforded under this Protective Order
15 does not include any trial exhibits or trial testimony entered into evidence during the case
16 known as *Phillips v. C. R. Bard, Inc., et al.*, No. 3:12-cv-00344-RCJ-WGC (D. Nev. June 1,
17 2015), as to which that Court entered an Order denying Bard’s motion to seal trial exhibits
18 and trial transcripts.

19 In addition, this Protective Order does not apply to any document that was admitted
20 into evidence during the three MDL Bard IVC filter bellwether cases *In Re: Bard IVC Filters*
21 *Products Liability Litigation, MDL 2641*, listed in the MDL Court’s Suggestion of Remand
22 and Transfer Order (Second), Dkt. No. 3 (Exhibit 2 – Admitted Exhibit List from Bellwether
23 Trials and Documents No Longer Subject to Protective Order). To the extent only a portion
24 of a document was admitted, only that portion of the document that was admitted shall not be
25 subject to protection.

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1 Notwithstanding the foregoing, this Protective Order does not address or alter whether
2 or not Defendants may argue that non-confidential documents should still be entitled to
3 protection under the work-product doctrine and/or the attorney-client communication
4 privilege.

5 **III. Designating Information As “Confidential” Pursuant to This Protective Order**

6 6. **Documents.** Any Supplying Party producing documents that contain
7 information that meets the definition of Confidential Information as provided in Paragraphs 1
8 and 2 herein, may designate the contents of the documents as “Confidential” prior to or at the
9 time of production by placing the following designation on the documents:
10 “CONFIDENTIAL – Subject to Protective Order.” Where a document consists of more than
11 one page, each page of the document shall be designated as such. Any document or
12 information for which it is impracticable or impossible to affix such a legend may be
13 designated by written notice to that effect with a reasonable description of the material in
14 question including a BATES number, where applicable.

15 7. If a Supplying Party makes documents or information available for inspection,
16 rather than delivering copies to another party, no “Confidential” designation is required in
17 advance of the initial inspection. For the purposes of initial inspection only, the documents
18 shall be considered “CONFIDENTIAL.” Upon production of the inspected documents, the
19 Supplying Party shall designate which of the produced or copied documents and materials are
20 or contain Confidential Information pursuant to Paragraph 6 of this Order.

21 8. **Written Discovery.** If responses to written discovery contain Confidential
22 Information as defined in Paragraph 1 and 2 of this Protective Order, the Responding Party
23 may designate the responsive documents and information, as set forth in Paragraph 6, with
24 specific indication of the page and line references of the material that is “Confidential” under
25 the terms of this Protective Order.

26 9. **Depositions.** The parties may designate as Confidential any deposition
27 transcript, or portions thereof, in This Action that meets the definition of Confidential
28 Information provided in Paragraphs 1 and 2 of this Protective Order. Counsel for the

1 designating party shall advise the court reporter and the parties on the record during the
2 deposition or by letter no later than thirty (30) calendar days after the court reporter provides
3 the parties with the final deposition transcript. If any portion or all of a deposition transcript
4 is designated as Confidential Information, the court reporter shall label the cover page of the
5 original and one copy of the transcript to state that Confidential Information is contained
6 therein, and shall label as “Confidential” each page of the transcript and/or exhibits to the
7 deposition transcript that constitute “Confidential Information.” Confidential designations of
8 transcripts or portions thereof, apply to audio, video, or other recordings of the testimony. The
9 court reporter shall clearly mark any transcript or portion thereof prior to the expiration of the
10 30-day period as “DO NOT DISCLOSE – SUBJECT TO FURTHER CONFIDENTIALITY
11 REVIEW.” Deposition transcripts or portions thereof will be treated as Confidential
12 Information until expiration of the 30-day period. If any party does not designate the
13 transcript as “Confidential” either at the time of the deposition or within the 30-day period
14 defined above, no portion of the entire transcript will be deemed “Confidential” and the “DO
15 NOT DISCLOSE- SUBJECT TO FURTHER CONFIDENTIALITY REVIEW” legend shall
16 be removed. The 30-day period may not be extended without mutual agreement of the parties.

17 **10. Confidential Information Produced by Third Parties.** A party in This
18 Action may designate as Confidential any document, information, or testimony produced or
19 supplied by any person or entity not a party to This Action, that constitutes or meets the
20 definition of Confidential Information as defined in Paragraphs 1 and 2 of this Protective
21 Order. The party claiming confidentiality shall designate the information as such within thirty
22 (30) days of its receipt of such information. Any party receiving information from a third
23 party shall treat such information as Confidential Information during this thirty (30) day
24 period while all parties have an opportunity to review the information and to determine
25 whether it should be designated as confidential. Any party designating third party information
26 as Confidential Information shall have the same rights, duties, and obligations, as a Supplying
27 Party under this Protective Order.

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1 11. **Publicly Available Information.** The confidentiality restrictions and
2 confidentiality obligations set forth herein shall not apply to information that is at the time of
3 production or disclosure, or subsequently becomes, through no wrongful act on the part of the
4 Receiving Party, generally available to the public through publication or otherwise. This
5 includes information published during public hearings and trials, if the Supplying Party does
6 not move to seal or appeal any order denying such motion to seal within the time permitted
7 under the applicable rules. Notwithstanding the foregoing, this Protective Order does not
8 address or alter whether or not Defendants may argue that non-confidential documents should
9 still be entitled to protection under the work-product doctrine and/or the attorney-client
10 communication privilege.

11 **IV. Limitations on Use of Confidential Information**

12 12. All Confidential Information shall be used for the purpose of this lawsuit only,
13 and except as permitted by this Order, the parties and their respective attorneys, as well as
14 experts or consultants, shall not give, show, or otherwise divulge or disclose the Confidential
15 Information, or any copies, prints, negatives or summaries thereof to any person or entity.
16 Notwithstanding the foregoing provisions of this paragraph, nothing in this Order shall
17 prevent the use of any of the documents or electronically stored information (“ESI”) produced
18 pursuant to this Protective Order in other actions brought by the plaintiff’s counsel, so long
19 as a comparable protective order is entered in those other actions.

20 13. Confidential Information pursuant to this Protective Order shall be treated by
21 the parties, their counsel, and any other signatory to this Protective Order as being confidential
22 and private. Any copy of Confidential Information shall have the same status as the original.
23 The disclosure and use of Confidential Information shall be confined to the permissible
24 disclosures and uses set forth in this Protective Order, and no one shall disclose or use
25 Confidential Information in a manner inconsistent with the terms and the intent of this
26 Protective Order.

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1 14. Confidential Information may be disclosed only to the following persons and
2 shall be used solely for the litigation of This Action and may not be disclosed to anyone not
3 authorized under this paragraph:

4 a. Parties, their representatives, in-house counsel and regular
5 employees who are actively engaged in, or actively overseeing This Action;

6 b. Counsel of record, their associated attorneys, and support staff,
7 including paralegal and secretarial personnel who are working on This Action;

8 c. Experts and consultants (including their employees/contractors)
9 who are consulted or retained by a party to assist in the litigation of This Action;

10 d. Third-party contractors and their employees who are consulted or
11 retained by one or more parties to provide litigation-support or copy services in
12 connection with the litigation of This Action

13 e. Witnesses or prospective witnesses in This Action;

14 f. Court reporters, videographers, and other persons involved in
15 recording deposition testimony in This Action;

16 g. The Court and its personnel, including any mediators and/or
17 special masters appointed by the Court, or if an appeal, the court with appellate
18 jurisdiction; and

19 h. Jurors in This Action.

20 15. Prior to the disclosure of any Confidential Information to any person identified
21 in Paragraph 14 above (except the Court and its personnel and jurors in This Action), the
22 disclosing party will provide each potential recipient of Confidential Information with a copy
23 of this Protective Order, which said recipient shall read. Upon reading this Protective Order,
24 such person shall sign an Agreement to Maintain Confidentiality (“Confidentiality
25 Agreement”), attached to this Order as **Exhibit A**, acknowledging that he or she has read this
26 Protective Order and shall abide by its terms. Notwithstanding the foregoing provision,
27 Confidential Information may be disclosed to a witness who will not sign an Confidentiality
28 Agreement in a deposition at which the party who has designated the Confidential Information

1 is represented or has been given notice that Confidential Information produced by the party
2 may be used. These Confidentiality Agreements are strictly confidential and shall be
3 maintained by counsel for each party and only with good cause shown and separate court
4 order will the Confidentiality Agreements be disclosed to the opposing side. Persons who
5 come into contact with Confidential Information for clerical or administrative purposes, and
6 who do not retain copies or extracts thereof, are not required to execute Confidentiality
7 Agreements but must comply with the terms of this Protective Order.

8 16. All persons receiving or given access to Confidential Information in accordance
9 with the terms of this Order consent to the continuing jurisdiction of this Court for the
10 purposes of enforcing this Order and remedying any violations thereof.

11 17. Confidential Information shall not be placed or deposited in any sort of data
12 bank that is made available for indiscriminate or general circulation to lawyers, litigants,
13 consultants, expert witnesses or any other persons not working on This Action and not
14 signatories to this Protective Order. This paragraph and the other provisions of this Order
15 shall not apply to materials which, if challenged by any party, the Court rules are not entitled
16 to protection. This paragraph does not limit or restrict in any way the manner in which a party
17 may store and make Confidential Information available to the attorneys, support staff, experts,
18 and any other persons or entities working on This Action, provided the general terms of this
19 Order are followed.

20 18. The parties and their counsel as well as their technical consultants and experts
21 shall also not sell, offer, advertise, publicize nor provide under any condition any Confidential
22 Information produced by any other party to any competitor of any defendant or to any
23 employee or any competitor (irrespective of whether they are retained as an expert by a party
24 in This Action).

25 19. In the event that either of the parties is served by a non-party with a subpoena
26 for Confidential Information that was originally provided and claimed as Confidential by
27 another party, the Receiving Party will give notice to the Supplying Party, where reasonably
28 possible, no less than ten (10) business days prior to disclosure by providing a copy of the

1 subpoena, to allow a reasonable opportunity for the Supplying Party to object to such
2 production before any production takes place.

3 20. If a Receiving Party learns of any unauthorized disclosure of Confidential
4 Information, it shall take reasonable efforts to immediately (a) inform the Supplying Party in
5 writing of such disclosure, including to whom the material was disclosed; (b) make a
6 reasonable effort to retrieve all copies of the Confidential Information only to the extent the
7 Receiving Party has control over the unauthorized disclosed documents; (c) and to the extent
8 the Receiving party has control over the person or persons to whom unauthorized disclosures
9 were made, inform the persons of the terms of this Protective Order.

10 **V. Changes in and Objections to Designation of Information**

11 21. **“Clawback” of Irrelevant Confidential Information.** If a Supplying Party
12 produces any document containing Confidential Information that they identify to the
13 Receiving Party as irrelevant, the Supplying Party may notify the Receiving Party of the
14 Irrelevant Confidential Information in writing. If a portion of the document contains
15 information relevant to This Action, the Supplying Party shall also supply the Receiving Party
16 with a new copy of the document which shall be substituted for the earlier produced document.
17 Upon receipt of the substitute document, the Supplying Party shall promptly return or destroy
18 the earlier produced document. Upon receipt of the Supplying Party’s written notice, the
19 Receiving Party shall, within a reasonable time, not exceed twenty (20) days, (a) treat such
20 material in accordance with this Order; (b) take reasonable steps to notify any person to whom
21 the Receiving Party disclosed such information of the new confidential designation; (c) take
22 reasonable steps to procure the return of all copies of such material from any such persons
23 who are not entitled to receipt of Confidential Information under the terms of this Protective
24 Order; (d) request in writing that such person procure the return of such information from any
25 person to whom such person may have disclosed the information.

26 22. **Challenges to Designation of Confidential Information.** A Receiving Party
27 may challenge a Supplying Party’s designation or re-designation by notifying the Supplying
28 Party in writing that the confidentiality designation does not meet the definition of

1 “Confidential Information.” The designation by any party of Confidential Information raises
2 no presumption that the information or documents are entitled under the law to protection. If
3 any party contends, in writing, that any document, material, ESI, or other thing has been
4 erroneously designated as Confidential Information, the party who designated the information
5 as Confidential Information shall initiate a meet and confer within ten (10) days with the
6 opposing party and the parties shall make a good faith effort to resolve issues relating to such
7 designations. After the meet and confer, the party who designated the information as
8 Confidential Information shall file a motion with the Court within thirty (30) days of receiving
9 such written notification establishing that the information is entitled to protection as
10 Confidential Information under the law. If the designating party fails to timely file such a
11 motion within the allotted thirty (30) day period, the document, ESI, material, or other thing,
12 which is designated as Confidential Information, shall forthwith be produced and be deemed
13 not to be Confidential Information. Any information or thing being challenged as
14 inappropriately designated as Confidential Information shall nonetheless be treated as
15 Confidential Information unless and until either (a) the designating party gives written
16 permission to do otherwise, (b) the designating party fails to file a motion establishing that
17 the challenged material is subject to protection as Confidential Information under the law
18 within the thirty (30) day time period, or (c) the Court rules that the document, material, ESI,
19 or other thing shall not be treated as confidential. Should the Court rule that any item
20 designated as Confidential Information is not entitled to protection under the law, the
21 designating party shall, within fourteen (14) days after all appeals are exhausted, provide the
22 party challenging the confidential designation with copies of each item free of any language
23 indicating that the item is subject to a Protective Order. A Receiving Party shall only challenge
24 documents under this Paragraph that they have a good faith basis for using in This Action.

25 23. Nothing in this Protective Order shall be deemed to shift the burden of proof to
26 the party challenging the confidential designation with regard to whether the materials
27 produced pursuant to this Protective Order are entitled to protection under the law as
28 Confidential Information.

1 **VI. Filing Under Seal**

2 24. **Where a Party Files Documents and Contends the Documents Should be**
3 **Kept Sealed.** Where a party intends to file documents that contain Confidential Information
4 with the Court, said party must file a motion for an order sealing the documents consistent
5 with applicable law and comply with the provisions of FRCP 5.2 and LR IC 6-1 of the local
6 rules. A copy of the motion must be served on all parties that have appeared in the case.

7 25. **Where a Party Files Documents Claimed as Confidential by Another Party.**
8 A party that files or intends to file with the Court Confidential Information produced by
9 another party but does not intend to request to have the records sealed, must do the following:

- 10 a. Make arrangements consistent with FRCP 5.2 and LR IC 6-1 of
11 the local rules to lodge the documents under seal.
- 12 b. File redacted copies of the documents (if appropriate) so that they
13 do not disclose the contents of the records that are subject to the confidentiality
14 agreement or protective order;
- 15 c. Serve a copy of the motion on all parties that have appeared in the
16 case; and
- 17 d. Give written notice to the party that produced the documents that
18 the documents will be placed in the public court file unless the party files a
19 timely motion to seal records.

20 If the party that produced the Confidential Information and was served with the
21 abovementioned notice fails to file a motion to seal the records within fifteen (15) days of
22 receipt of the notice referenced in Subparagraph 25.d. or to obtain a court order extending the
23 time to file such motion, the clerk must promptly remove all the documents filed under seal
24 pursuant to this provision from the envelope or container where they are located and place
25 them in the public file. If the party files a motion or an application to seal within fifteen (15)
26 days of receipt of the notice referenced in Subparagraph 25.d. days or such later time as the
27 Court has ordered, these documents are to remain conditionally under seal until the Court
28 rules on the motion or application and thereafter are to be filed as ordered by the Court.

1 This section shall not apply with respect to documents admitted into evidence as
2 exhibits at the trial of this matter. The Supplying Party reserves the right, however, to petition
3 the Court for protection with respect to such documents admitted into evidence as exhibits at
4 trial.

5 **VII. Miscellaneous Provisions**

6 26. **Amending or Modifying Protective Order.** By written agreement of the
7 parties, or upon motion and order of the Court, the terms of this Protective Order may be
8 amended or modified. This Protective Order shall continue in force until amended or
9 modified by consent or agreement of the parties or by order of the Court, and shall survive
10 any final judgment or settlement in This Action, including but not limited to any final
11 adjudication of any appeals petitions for extraordinary writs, unless otherwise vacated or
12 modified by the Court. The Court shall have continuing jurisdiction over the terms and
13 provisions of this Protective Order.

14 27. **After Final Adjudication.** Upon written demand by the Supplying Party made
15 within thirty (30) days after final adjudication of This Action, including but not limited to,
16 any final adjudication of any appeals and petitions for extraordinary writs, the Receiving Party
17 shall assemble and return all Confidential Information to the Supplying Party or, alternatively,
18 shall destroy all such material at the Supplying Party's expense. The Receiving Party shall
19 verify the complete destruction or return to the Supplying Party all such Confidential
20 Information by executing and mailing to counsel for the Supplying Party an Acknowledgment
21 in the form attached hereto as **Exhibit B**. A copy of each such executed Acknowledgment
22 shall be maintained by counsel for the Receiving Party and counsel for the Supplying Party.
23 Notwithstanding the foregoing provisions of this paragraph, the Receiving Party may
24 maintain its privileged communications, work product, Confidentiality Agreements and
25 Acknowledgments pursuant to the Protective Order, materials required to be retained pursuant
26 to applicable law, and all court-filed documents even though they contain Confidential
27 Information, but such materials shall remain subject to the terms of this Protective Order.
28 This provision may not be invoked while the plaintiff's attorneys of record have active

1 pending cases relating to IVC Filters manufactured by C. R. Bard, Inc. and/or Bard Peripheral
2 Vascular, Inc.

3 28. The terms of this Protective Order do not preclude, limit, restrict, or otherwise
4 apply to the use of Confidential Information at trial. The use of Confidential Information
5 during trial will be addressed in a later agreement between the parties, or, if they cannot reach
6 an agreement, by further order of the Court.

7 29. Nothing in this Order shall be deemed a waiver of any parties' right to oppose
8 any motion by any other party for a protective order or to oppose any objection to the
9 disclosure of any information or documents on any legal grounds, including, but not limited
10 to, the grounds that the party seeking the protective order has neither timely nor adequately
11 objected to disclosure of such documents and information or moved for a protective order.

12 30. This Protective Order does not relieve any party of its obligations to respond to
13 otherwise proper discovery in This Action. Nothing contained in this Order, or any action
14 taken pursuant to it shall waive or impair any party's right to assert claims of privilege or
15 work product protection, or the right of any party to object to the relevancy of admissibility
16 of documents or information sought or produced into assert objections to requested discovery
17 on grounds other than Confidential Information. This Protective Order also shall not affect
18 or create any presumption with respect to the right of any party from seeking or obtaining
19 additional protection with respect to any documents, materials, or information where allowed
20 by law.

21 31. **Electronically Stored Information ("ESI") Document Production Review**
22 **Process.** To expedite document production of ESI from Defendants, the parties, through
23 their respective counsel, have agreed to a primarily "no-eyes-on" document production as to
24 relevancy while still performing a privilege review for ESI which Defendants will be
25 producing subsequent to this Protective Order. The Parties recognize that a substantial portion
26 of the documents that will be produced in This Action were initially produced in *In re: Bard*
27 *IVC Filters Products Liability Litigation*, MDL No. 2641, in the United States District Court
28 District of Arizona ("IVC Filter MDL"), pursuant to a "no-eyes-on" document production as

1 to relevancy in order to expedite production in the MDL. As a result, the Receiving Party
2 agrees to make a good faith effort to apply the terms of this Protective Order consistent with
3 that production. The Parties further agree that any additional document productions in This
4 Action may be made pursuant to this “no-eyes-on” review/ESI production process (the
5 “Process”).

6 32. The Parties and their counsel agree to the entry of the Protective Order in This
7 Action, and to the Process, which shall govern the production of documents, materials, and
8 other information, including the substance and content thereof; and use of any such
9 documents, materials, and other information during discovery, in conjunction with court
10 filings or hearings, during any other pre-trial activity, and during trial. The Parties and their
11 counsel have also agreed that all ESI produced by Defendants pursuant to the Process will be
12 subject to the following terms:

13 a. At the time of production, Defendants will identify the documents
14 or ESI as being produced pursuant to the Process and subject to the restrictions
15 of this Paragraph (the “Process ESI”).

16 b. Nothing in this Protective Order shall prevent the use of any
17 Process ESI in other actions brought by the Plaintiff’s counsel, so long as a
18 substantially comparable protective order is entered in those other actions.

19 c. Prior to using any document or ESI from the Process ESI as part
20 of a filing, at a deposition, or at a trial or hearing in this matter, Plaintiffs shall
21 make a good faith effort to identify whether the document or ESI contains any
22 information that is subject to redaction under Paragraphs 33-34 (“Redaction
23 Requirements”) of this Protective Order and corresponding **Exhibit C**
24 (“Redaction Protocol”) and to redact any such information in accordance with
25 this Order and redaction protocol.

26 d. Defendants shall independently have the right to identify any
27 documents or ESI from the Process ESI, including documents identified by
28 Plaintiffs pursuant to Subparagraph 32.c. above, as subject to the Redaction

1 Requirements and Redaction Protocol and to require the redaction of the
2 information set forth therein; in that event, Defendants shall provide Plaintiffs
3 with a redacted version of the subject documents or ESI with the same
4 production Bates number(s) and Plaintiffs shall destroy any unredacted copies
5 or versions of the document that they possess.

6 e. Defendants shall have the right to identify any document, file, or
7 other form of ESI produced pursuant to the Process as both being irrelevant to
8 the matters in dispute in this case and containing trade secret or other
9 confidential information and to “claw back” such ESI or documents from the
10 production. After Plaintiffs use a document or ESI from the Process ESI as part
11 of a filing, at a deposition, or at a trial or hearing in this matter, Defendants shall
12 have 30 days to seek claw back of the particular document pursuant to this
13 Paragraph; this latter requirement does not apply to Process ESI that has not been
14 used by Plaintiffs as part of a filing, at a deposition, or at a trial or hearing in this
15 matter, which may be clawed back at any time.

16 f. Plaintiffs shall have the right to challenge any designation or claw
17 back by Defendants under Subparagraphs 32.d. or 32.e. above by submission of
18 the ESI or document to the Court under seal, and any filings that refer to the
19 protected substance of the ESI or document must, likewise, be made under seal.

20 g. i. The production in This Action, use in This Action, or any other
21 disclosure in This Action of the substance or content of documents,
22 materials, or other information that is protected by the attorney-client
23 privilege, work-product protection, or any other privilege or protection
24 shall not amount to waiver of the privilege and/or protection in This
25 Action, or in any other federal or state proceeding, and Plaintiff and
26 Plaintiff’s counsel stipulate that they will not argue in any other action or
27 proceeding, whether in federal or state court, that the production, use, or
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1 other disclosure of such documents, materials, or other information in
2 This action constitutes waiver of the privilege or protection.

3 ii. If the Receiving Party identifies a document, material, or
4 other information that reasonably appears to be protected by any privilege
5 or other protection, they shall promptly notify the Supplying Party in
6 writing. If the Supplying Party determines that the document, material,
7 or other information is privileged or otherwise protected, it shall make
8 such an assertion in writing within 30 days of receipt of notification.
9 After being notified, the Receiving Party must promptly return, sequester,
10 or destroy the specified information and any copies it has; must not use
11 or disclose the information until the claim is resolved; must take
12 reasonable steps to retrieve the information if the party disclosed it before
13 being notified; and may promptly present the information to the court
14 under seal for a determination of the claim. Failure to assert the privilege
15 or protection within 30 days of receipt of notification shall amount to
16 waiver of any privilege or protection only of the document, material, or
17 other information identified in the notification.

18 Unless waived under subsection (ii) above, at any time, a party that produces any
19 document, material, or other information that it believes to be protected by the attorney-client
20 privilege, work-product protection, or any other privilege or protection may assert the
21 privilege or protection in writing. After being notified, the Receiving Party must promptly
22 return, sequester, or destroy the specified information and any copies it has; must not use or
23 disclose the information until the claim is resolved; must take reasonable steps to retrieve the
24 information if the party disclosed it before being notified; and may promptly present the
25 information to the court under seal for a determination of the claim.

26 h. To the extent that the documents or ESI produced pursuant to the
27 Process contain any adverse event reporter names or information of a patient
28 who is not a party to this litigation and which would otherwise be redacted in

1 accordance with the Redaction Requirements of this Protective Order, Plaintiffs
2 and their counsel and agents shall not contact the patient or reporter of an adverse
3 event unless and until the parties go through the processes outlined in
4 Subparagraphs 32.e. and 32.g. above with respect to redaction of information
5 and this Court determines the information is not subject to redaction.

6 **33. Redaction of Adverse Event Reporter, HIPAA, and Other Information**
7 **Pursuant to Exhibit C.** Defendants have produced in the IVC Filter MDL and may produce
8 in This Action additional and updated adverse event reports and complaint files maintained
9 pursuant to 21 U.S.C. § 360i, 21 C.F.R. § 803.18 and 21 C.F.R. § 820.1-.250, as well as
10 documents relating to those adverse events and complaint files. To the extent that Defendants
11 are able to identify whether these reports and complaint files relate to the Plaintiff at the time
12 they are produced in This Action, the parties and their respective counsel have consented to
13 and agreed that the Defendants shall refrain from redacting the following identifiable
14 information, as defined in 21 C.F.R. § 20.63(f), in the below circumstance:

15 a. Identifiable information of the Plaintiff in this litigation shall not
16 be redacted, pursuant to 21 C.F.R. § 20.63(f)(1)(iii).

17 Otherwise, in accordance with 21 C.F.R. § 20.63(f) and other applicable laws, statutes,
18 and regulations, the Defendants shall only redact such information as is set forth in the agreed
19 Redaction Protocol attached to this Protective Order as **Exhibit C**, and Plaintiffs shall have
20 the right to object to any redactions made.

21 The parties acknowledge that this Stipulated Order is intended to and does satisfy the
22 written consent requirement of the federal regulations.

23 a. Any documents containing any reporter or personal identifying
24 information shall be designated and branded as confidential in accordance with
25 this Order. To the extent that any adverse event reporter information or patient
26 information belonging to any individual or entity who is not a party to this
27 litigation is disclosed, because such information is not required to be redacted in
28 accordance with this Protective Order (see Paragraph 29-30), the Receiving

1 Party and their counsel and agents shall not contact the patient or reporter
2 involved in an adverse event.

3 b. Any additional documents or ESI Defendants produce in This
4 Action will be produced subject to this Order and marked Confidential. Thus,
5 any documents or ESI containing any adverse event reporter, personal
6 identifying information, or any other information protected from disclosure as
7 described in **Exhibit C** shall continue to be treated as confidential in accordance
8 with this Order.

9 34. If the Receiving Party intends to file with the Court, use at a deposition, or
10 otherwise disclose a document to a nonparty (consistent with the terms of this Order), the
11 Receiving Party shall make a good faith effort to redact that document consistent with
12 **Exhibit C** prior to such disclosure. After such filing or other use, the Supplying Party shall
13 have fifteen (15) days to provide the Receiving Party with an amended copy of the document
14 with any additional redactions it deems necessary pursuant to **Exhibit C**. If an amended copy
15 is provided, the Receiving Party will ensure that the original copy is replaced with the
16 amended copy in the court filing or deposition.

17 35. Each party shall retain all rights and remedies available to it under the law for
18 the enforcement of this Protective Order against anyone who violates it.

19 36. Nothing in this Protective Order shall be construed to prevent this Court from
20 disclosing any facts the Court relies upon in making any findings or issuing any ruling, order,
21 judgment, or decree.

22 37. Within thirty (30) days of any information that has been claimed as Confidential
23 Information being de-designated or made publicly available, the Supplying Party shall
24 provide notice of the Confidential Information that has been de-designated and/or made
25 publicly available. Such notice shall be made by identifying bates numbers or by other means
26 such as identifying categories of information where the identification of bates numbers are
27 not possible or not feasible. Publicly available includes documents that have been filed with
28 any court or entered as an exhibit during trial not under seal, provided, however that the

1 Supplying Party is not required to provide notice of de-designation with regard to such
2 documents until any motion or request to seal those documents is denied. This paragraph
3 only applies to the extent that the Supplying Party knew or should have known that the
4 information claimed as Confidential Information was de-designated or made publicly
5 available.

6 Respectfully submitted this 20th day of December 2019.

7 MARTIN BAUGHMAN, PLLC

GREENBERG TRAUERIG, LLP

8 By: /s/ Ben C. Martin

By: /s/ Eric W. Swanis

9 Ben C. Martin, Esq.

ERIC W. SWANIS, ESQ.

10 bmartin@martinbaughman.com

swanise@gtlaw.com

11 Laura J. Baughman, Esq.

Nevada Bar No. 6840

12 lbaughman@martinbaughman.com

10845 Griffith Peak Drive

13 Thomas Arbon, Esq.

Suite 600

14 tarbon@martinbaughman.com

Las Vegas, Nevada 89135

15 3710 Rawlins Street

CASEY SHPALL, ESQ.

16 Suite 1230

shpallc@gtlaw.com

17 Dallas, Texas 75219

Admitted pro hac vice

GREGORY R. TAN, ESQ.

18 *Counsel for Plaintiff*

Admitted pro hac vice

tangr@gtlaw.com

GREENBERG TRAUERIG, LLP

1144 15th Street, Suite 3300

Denver, Colorado 80202

Telephone: (303) 572-6500

Counsel for Defendants

