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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LINDA COOLEY,  
  
Plaintiff,  
  
v.  
  
C.R. BARD, INC. and BARD  
PERIPHERAL VASCULAR, INC.,  
  
Defendants.

Case No.: 22-cv-1754-MMA-KSC  
  
**ORDER GRANTING JOINT  
MOTION FOR A PROTECTIVE  
ORDER [Doc. No. 20]**

The parties jointly move for the entry of a protective order. *See* Doc. No. 20. For good cause shown, the motion is **GRANTED** on the following terms:

**I. Definitions**

- 1. Confidential Information.** “Confidential Information” is defined herein as any information that constitutes, reflects, discloses, or contains: (1) a “trade secret” or other confidential research, development, or commercial information” that is suitable for protection under Federal Rule of Civil Procedure 26(c)(1)(G); and (2) information that may be protected from disclosure under a party’s constitutional

1 right of privacy such as confidential and private psychiatric, psychological, medical  
2 condition and/or employment information.

- 3 2. **Trade Secret.** A party, in designating information “Confidential” because it  
4 contains a “Trade Secret”, shall designate only information that meets the definition  
5 of trade secret contained in 18 U.S.C.A. §1839 (West):

6 the term “trade secret” means all forms and types of financial, business, scientific,  
7 technical, economic, or engineering information, including patterns, plans,  
8 compilations, program devices, formulas, designs, prototypes, methods, techniques,  
9 processes, procedures, programs, or codes, whether tangible or intangible, and  
10 whether or how stored, compiled, or memorialized physically, electronically,  
graphically, photographically, or in writing if --

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

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

- 16 3. **This Action.** “This Action” means *Linda Cooley v. C. R. Bard, Inc. and Bard*  
17 *Peripheral Vascular, Inc.*, Case No. 3:22-cv-01754-MMA-KSC and IN RE: BARD  
18 IVC FILTERS PRODUCTS LIABILITY LITIGATION, MDL No. 2641, that was  
19 pending in the United States District Court District of Arizona.

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

- 21 4. This Protective Order shall govern all hard copy and electronic materials, the  
22 information contained therein, and all other information produced or disclosed  
23 during This Action, including all copies, excerpts summaries, or compilations  
24 thereof, whether revealed in a document, deposition, other testimony, discovery  
25 response or otherwise, by any party to This Action or its representatives (the  
26 “Supplying Party”) to any other party or parties to This Action or their  
27 representatives (the “Receiving Party”), whether provided voluntarily, pursuant to  
28 formal discovery procedures, or otherwise.

1 5. The scope of confidentiality protections afforded under this Protective Order does  
2 not include any trial exhibits or trial testimony entered into evidence.  
3 Notwithstanding the foregoing, this Protective Order does not address or alter  
4 whether or not Defendants may argue that non-confidential documents should still  
5 be entitled to protection under the work-product doctrine and/or the attorney-client  
6 communication privilege.

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

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

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

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

3           9. **Depositions.** The parties may designate as Confidential any deposition transcript,  
4           or portions thereof, in This Action that meets the definition of Confidential  
5           Information provided in Paragraphs 1 and 2 of this Protective Order. Counsel for  
6           the designating party shall advise the court reporter and the parties on the record  
7           during the deposition or by letter no later than thirty (30) calendar days after the  
8           court reporter provides the parties with the final deposition transcript. If any portion  
9           or all of a deposition transcript is designated as Confidential Information, the court  
10          reporter shall label the cover page of the original and one copy of the transcript to  
11          state that Confidential Information is contained therein, and shall label as  
12          “Confidential” each page of the transcript and/or exhibits to the deposition  
13          transcript that constitute “Confidential Information”. Confidential designations of  
14          transcripts or portions thereof, apply to audio, video, or other recordings of the  
15          testimony. The court reporter shall clearly mark any transcript or portion thereof  
16          prior to the expiration of the 30-day period as “DO NOT DISCLOSE – SUBJECT  
17          TO FURTHER CONFIDENTIALITY REVIEW.” Deposition transcripts or  
18          portions thereof will be treated as Confidential Information until expiration of the  
19          30-day period. If any party does not designate the transcript as “Confidential” either  
20          at the time of the deposition or within the 30-day period defined above, no portion  
21          of the entire transcript will be deemed “Confidential” and the “DO NOT  
22          DISCLOSE- SUBJECT TO FURTHER CONFIDENTIALITY REVIEW” legend  
23          shall be removed. The 30-day period may not be extended without mutual  
24          agreement of the parties.

25          10. **Confidential Information Produced By Third Parties.** A party in This Action  
26          may designate as Confidential any document, information, or testimony produced  
27          or supplied by any person or entity not a party to This Action, that constitutes or  
28          meets the definition of Confidential Information as defined in Paragraphs 1 and 2

1 of this Protective Order. The party claiming confidentiality shall designate the  
2 information as such within thirty (30) days of its receipt of such information. Any  
3 party receiving information from a third party shall treat such information as  
4 Confidential Information during this thirty (30) day period while all parties have an  
5 opportunity to review the information and to determine whether it should be  
6 designated as confidential. Any party designating third party information as  
7 Confidential Information shall have the same rights, duties, and obligations, as a  
8 Supplying Party under this Protective Order.

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

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

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

3 13. Confidential Information pursuant to this Protective Order shall be treated by the  
4 parties, their counsel, and any other signatory to this Protective Order as being  
5 confidential and private. Any copy of Confidential Information shall have the same  
6 status as the original. The disclosure and use of Confidential Information shall be  
7 confined to the permissible disclosures and uses set forth in this Protective Order,  
8 and no one shall disclose or use Confidential Information in a manner inconsistent  
9 with the terms and the intent of this Protective Order.

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

- 13 a. Parties, their representatives, in-house counsel and regular employees who are  
14 actively engaged in, or actively overseeing This Action;
- 15 b. Counsel of record, their associated attorneys, and support staff, including  
16 paralegal and secretarial personnel who are working on This Action;
- 17 c. Experts and consultants (including their employees/contractors) who are  
18 consulted or retained by a party to assist in the litigation of This Action;
- 19 d. Third-party contractors and their employees who are consulted or retained by  
20 one or more parties to provide litigation-support or copy services in  
21 connection with the litigation of This Action;
- 22 e. Witnesses or prospective witnesses in This Action;
- 23 f. Court reporters, videographers, and other persons involved in recording  
24 deposition testimony in This Action;
- 25 g. The Court and its personnel, including any mediators and/or special masters  
26 appointed by the Court, or if an appeal, the court with appellate jurisdiction;  
27 and
- 28 h. Jurors in This Action

1 15. Prior to the disclosure of any Confidential Information to any person identified in  
2 Paragraph 14 above (except the Court and its personnel and jurors in This Action),  
3 the disclosing party will provide each potential recipient of Confidential  
4 Information with a copy of this Protective Order, which said recipient shall read.  
5 Upon reading this Protective Order, such person shall sign an Acknowledgment,  
6 annexed to this Protective Order as **Exhibit A**, acknowledging that he or she has  
7 read this Protective Order and shall abide by its terms. Notwithstanding the  
8 foregoing provision, Confidential Information may be disclosed to a witness who  
9 will not sign an Acknowledgment in a deposition at which the party who has  
10 designated the Confidential Information is represented or has been given notice that  
11 Confidential Information produced by the party may be used. These  
12 Acknowledgments are strictly confidential and shall be maintained by counsel for  
13 each party and only with good cause shown and separate court order will the  
14 Acknowledgments be disclosed to the opposing side. Persons who come into  
15 contact with Confidential Information for clerical or administrative purposes, and  
16 who do not retain copies or extracts thereof, are not required to execute  
17 Acknowledgments but must comply with the terms of this Protective Order.

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

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

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

8 19. In the event that either of the parties is served by a non-party with a subpoena for  
9 Confidential Information that was originally provided and claimed as Confidential  
10 by another party, the Receiving Party will give notice to the Supplying Party, where  
11 reasonably possible, no less than ten (10) business days prior to disclosure by  
12 providing a copy of the subpoena, to allow a reasonable opportunity for the  
13 Supplying Party to object to such production before any production takes place.

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

22 **V. Changes In and Objections to Designation of Information**

23 21. **Inadvertent Disclosure of Confidential Information.** If a Supplying Party  
24 through inadvertence produces any documents containing Confidential Information  
25 without designating the documents as such in accordance with Paragraph 6 of this  
26 Protective Order, such inadvertence does not waive any claim for confidentiality  
27 that the Supplying Party may possess so long as the Supplying Party notifies the  
28 Receiving Party of the Confidential Information designation in writing within



1 twenty (20) days of the date that the Supplying Party became aware or reasonably  
2 should have become aware of the failure to designate the information as  
3 Confidential Information. If a Supplying Party fails to designate information as  
4 Confidential Information within this twenty (20) day period, the Supplying Party  
5 waives its right to designate the documents as Confidential Information. The  
6 Supplying Party shall also supply the Receiving Party with a new copy of the  
7 documents designated in accordance with Paragraph 6 of this Protective Order,  
8 which shall be substituted for the undesignated documents. Upon receipt of the  
9 substitute documents, the Supplying Party shall promptly return or destroy the  
10 improperly-designated document(s). Upon receipt of the Supplying Party's notice  
11 of the inadvertent disclosure, the Receiving Party shall, within a reasonable time,  
12 not exceed twenty (20) days, (a) treat such material in accordance with this Order;  
13 (b) take reasonable steps to notify any person to whom the Receiving Party  
14 disclosed such information of the new confidential designation; (c) take reasonable  
15 steps to procure the return of all copies of such material from any such persons who  
16 are not entitled to receipt of Confidential Information under the terms of this  
17 Protective Order ; (d) request in writing that such person procure the return of such  
18 information from any person to whom such person may have disclosed the  
19 information.

20 Notwithstanding the foregoing provisions of this section, the Supplying Party shall  
21 be deemed to have waived any claim of confidentiality with respect to the  
22 information inadvertently not claimed as confidential to which the Supplying Party  
23 fails to claim as Confidential Information, prior to sixty (60) days from the close of  
24 discovery.

25 **22. Challenges to Designation of Confidential Information.** A Receiving Party may  
26 challenge a Supplying Party's designation or redesignation by notifying the  
27 Supplying Party in writing that the confidentiality designation does not meet the  
28 definition of "Confidential Information". The designation by any party of

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

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

3 **VI. No-Eyes On Review**

4 24. The parties acknowledge that in accordance with MDL Amended Case  
5 Management Order No. 17, *In Re: Bard IVC Filters Products Liability Litigation*,  
6 MDL No. 2641 (Doc. 4015) certain documents and ESI productions by Defendants  
7 were done under a “no-eyes-on review” (the “Process”) and the parties agree to the  
8 following same procedure here regarding those documents and ESI:

9 a. Prior to using any document or ESI, at a deposition, or at a trial or hearing in  
10 this matter, Plaintiff shall make a good faith effort to identify whether the document  
11 or ESI contains any information that is subject to redaction under MDL Case  
12 Management Order No 7 and corresponding Exhibit A (Doc. 401, attached as  
13 Exhibit 1) and to redact any such information in accordance with that Order and  
14 redaction protocol.

15 b. Defendants shall independently have the right to identify any documents or  
16 ESI from the Process ESI, including documents identified by Plaintiff pursuant to  
17 Paragraph 3, as subject to the requirements of Case Management Order No. 7 (Doc.  
18 401) and to require the redaction of the information set forth in that Order; in that  
19 event, Defendants shall provide Plaintiff with a redacted version of the subject  
20 documents or ESI with the same production Bates number(s) and Plaintiff shall  
21 destroy any unredacted copies or versions of the document that he possess.

22 c. Defendants shall have the right to identify any document, file, or other form  
23 of ESI produced pursuant to the Process as both being irrelevant to the matters in  
24 dispute and containing trade secret or other confidential information and to “claw  
25 back” such ESI or documents from the production. After Plaintiff uses a document  
26 or ESI from the Process ESI as part of a filing, at a deposition, or at a trial or hearing  
27 in this matter, Defendants shall have 30 days to seek claw back of the particular  
28 document pursuant to this Paragraph; this latter requirement does not apply to

1 Process ESI that has not been used by Plaintiff as part of a filing, at a deposition, or  
2 at a trial or hearing in this matter, which may be clawed back at any time.

3 d. Plaintiff shall have the right to challenge any designation or claw back by  
4 Defendants by submission of the ESI or document to the Court under seal, and any  
5 filings that refer to the protected substance of the ESI or document must, likewise,  
6 be made under seal.

7 e. Federal Rule of Evidence 502(d) protection for privileged information  
8 produced pursuant under MDL Amended CMO No. 17 (Doc. 4015) shall apply:

9 1. Pursuant to Federal Rule of Evidence 502(d), production or disclosure  
10 pursuant to the Process of the substance or content of documents, materials, or other  
11 information that is protected by the attorney-client privilege, work-product  
12 protection, or any other privilege or protection shall not amount to waiver of the  
13 privilege and/or protection in the MDL, or in any other federal or state proceeding.

14 2. If Plaintiff identifies a document, material, or other information in the  
15 documents and ESI produced pursuant to the Process that reasonably appears to be  
16 protected by any privilege or other protection, he shall promptly notify Defendants  
17 in writing or email. If the Defendants determine that the document, material, or other  
18 information is privileged or otherwise protected, it shall make such an assertion in  
19 writing within 30 days of receipt of notification. Once the privilege or protection is  
20 asserted, the parties shall follow the process discussed in Federal Rule of Civil  
21 Procedure 26(b)(5)(B). Failure to assert the privilege or protection within 30 days of  
22 receipt of notification shall amount to waiver of any privilege or protection only of  
23 the document, material, or other information identified in the notification, subject to  
24 Federal Rule of Evidence 502(a).

25 3. For any document, material, or other information produced or disclosed  
26 during discovery, and not identified pursuant to section (b) of this Paragraph,  
27 Defendants shall assert any claim of privilege or protection in writing (including by  
28 email) within 30 days after Plaintiff uses the document or ESI as part of a filing, at

1 a deposition, or at a trial or hearing in this matter. Once the privilege or protection  
2 is asserted, the parties shall follow the process discussed in Federal Rule of Civil  
3 Procedure 26(b)(5)(B). Failure to assert the privilege or protection shall amount to  
4 waiver of the privilege or protection only of the document, material, or other  
5 information used, subject to Federal Rule of Evidence 502(a).

6 4. Unless waived under sections (b) or (c) of this paragraph, at any time,  
7 a party that produces any document, material, or other information that it believes to  
8 be protected by the attorney-client privilege, work-product protection, or any other  
9 privilege or protection may assert the privilege or protection in writing. Once the  
10 privilege or protection is asserted in writing, the parties shall follow the process  
11 discussed in Federal Rule of Civil Procedure 26(b)(5)(B).

12 5. Notwithstanding the statements herein, the Rule 502 clawback  
13 provisions discussed herein are not intended to allow and do not allow Defendants  
14 to clawback or assert no waiver of privilege over documents that were produced and  
15 used in prior litigation (i.e., used as part of a filing, at a deposition, or at a trial or  
16 hearing) without prior successful efforts to clawback the documents as being  
17 inadvertently produced. The parties acknowledge that Defendants continue to assert  
18 privilege/work product over the “Lehman Report,” and nothing in this paragraph  
19 shall impact the parties’ arguments regarding privilege/work product.

20 25. To the extent that the documents or ESI produced pursuant contain any adverse  
21 event reporter names or information of a patient who is not a party to this Action,  
22 Plaintiff and his counsel and agents shall not contact the patient or reporter of an  
23 adverse event unless and until the parties go through the processes outlined above  
24 with respect to redaction of information and this Court determines the information  
25 is not subject to  
26 redaction.

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1                   **VII. Filing Under Seal**

2                   26. Pursuant to Judge Karen S. Crawford’s Civil Chambers’ Rule (“Chambers’ Rule”)  
3                   XI, nothing shall be filed under seal, and the Court shall not be required to take any  
4                   action, without separate prior order by the Judge before whom the hearing or  
5                   proceeding will take place, after application by the affected party with appropriate  
6                   notice to opposing counsel. The parties shall follow and abide by applicable law,  
7                   including Civ. L.R. 79.2, ECF Administrative Policies and Procedures, Section II.j,  
8                   and the chambers’ rules, with respect to filing documents under seal.

9                   **27. Where a Party Files Documents and Contends the Documents Should be Kept**  
10                   **Sealed.** Where a party intends to file pleadings, documents, and other materials  
11                   that contain Confidential Information with the Court, said party shall comply with  
12                   the provisions of Chambers’ Rule XII. A copy of the sealed motion or sealed  
13                   document must be served on all parties that have appeared in the case and shall  
14                   include a certificate of service reflecting the means by which service was made.

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

- 19                   a. Make arrangements consistent with Chambers’ Rule XII to lodge the  
20                   documents under seal in accordance with local rules.
- 21                   b. File redacted copies of the documents (if appropriate) so that they do not  
22                   disclose the contents of the records that are subject to the confidentiality  
23                   agreement or protective order;
- 24                   c. Serve a copy of the motion on all parties that have appeared in the case and  
25                   serve unredacted copies of the documents on the Supplying Party;
- 26                   d. Give written notice to the party that produced the documents that the  
27                   documents will be placed in the public court file unless the party files a motion  
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1 to seal records within 14 days of receipt of the notice and unredacted copies  
2 of the documents.

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

7 **VIII. Miscellaneous Provisions**

8 **29. Amending or Modifying Protective Order.** Pursuant to Chambers' Rule XI, the  
9 Court may modify the protective order in the interests of justice or for public policy  
10 reasons. By written agreement of the parties, or upon motion and order of the Court,  
11 the terms of this Protective Order may be amended or modified. This Protective  
12 Order shall continue in force until amended or modified by consent or agreement  
13 of the parties or by order of the Court, and shall survive any final judgment or  
14 settlement in This Action, including but not limited to any final adjudication of any  
15 appeals petitions for extraordinary writs, unless otherwise vacated or modified by  
16 the Court. The Court shall have continuing jurisdiction over the terms and  
17 provisions of this Protective Order.

18 **30. After Final Adjudication.** Upon written demand by the Supplying Party made  
19 within thirty (30) days after final adjudication of This Action, including but not  
20 limited to, any final adjudication of any appeals and petitions for extraordinary  
21 writs, the Receiving Party shall assemble and return all Confidential Information to  
22 the Supplying Party or, alternatively, shall destroy all such material at the Supplying  
23 Party's expense. The Receiving Party shall verify the complete destruction or return  
24 to the Supplying Party all such Confidential Information by executing and mailing  
25 to counsel for the Supplying Party an Acknowledgment in the form attached hereto  
26 as **Exhibit B**. A copy of each such executed Acknowledgment shall be maintained  
27 by counsel for the Receiving Party and counsel for the Supplying Party.  
28 Notwithstanding the foregoing provisions of this paragraph, the Receiving Party



1 may maintain its privileged communications, work product, Acknowledgments  
2 pursuant to the Protective Order, materials required to be retained pursuant to  
3 applicable law, and all court-filed documents even though they contain Confidential  
4 Information, but such materials shall remain subject to the terms of this Protective  
5 Order. This provision may not be invoked while the plaintiff's attorneys of record  
6 have active pending cases relating to IVC Filters manufactured by C.R. Bard, Inc.  
7 and/or Bard Peripheral Vascular, Inc.

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

12 32. Nothing in this Order shall be deemed a waiver of any parties' right to oppose any  
13 motion by any other party for a protective order or to oppose any objection to the  
14 disclosure of any information or documents on any legal grounds, including, but  
15 not limited to, the grounds that the party seeking the protective order has neither  
16 timely nor adequately objected to disclosure of such documents and information or  
17 moved for a protective order.

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

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

1 35.Nothing in this Protective Order shall be construed to prevent this Court from  
2 disclosing any facts the Court relies upon in making any findings or issuing any  
3 ruling, order, judgment, or decree.

4 36.Within thirty (30) days of any information that has been claimed as Confidential  
5 Information being de-designated or made publicly available, the Supplying Party  
6 shall provide notice of the Confidential Information that has been de-designated  
7 and/or made publicly available. Such notice shall be made by identifying bates  
8 numbers or by other means such as identifying categories of information where the  
9 identification of bates numbers are not possible or not feasible. Publicly available  
10 includes documents that have been filed with any court or entered as an exhibit  
11 during trial not under seal, provided, however that the Supplying Party is not  
12 required to provide notice of de-designation with regard to such documents until  
13 any motion or request to seal those documents is denied. This paragraph only  
14 applies to the extent that the Supplying Party knew or should have known that the  
15 information claimed as Confidential Information was de-designated or made  
16 publicly available.

17  
18 **IT IS SO ORDERED.**

19 Dated: May 1, 2023



Hon. Karen S. Crawford  
United States Magistrate Judge

**EXHIBIT A**

**AGREEMENT TO MAINTAIN CONFIDENTIALITY**

I, \_\_\_\_\_ (Name), have been given and have read a copy of the Protective Order, dated \_\_\_\_\_, 202\_\_ in the above-entitled actions. I understand and will strictly adhere to the contents of said Order. I understand that produced material disclosed to me is subject to the Order of this Court and that I am prohibited from copying, disclosing or otherwise using such material except as provided by said court Order. I understand that my unauthorized disclosure of any “Confidential Information” may constitute contempt of court and I agree to be personally subject to the jurisdiction of this Court for the purpose of enforcing my obligations under this Agreement, the Order, and any contempt proceeding that may be instituted for my violation of the terms of this Acknowledgment and the Protective Order. I also understand that my signature on this “Agreement to Maintain Confidentiality”, indicating my agreement to be bound by the terms of this Protective Order, is required before I may be allowed to receive and review any produced document and materials that are designated as “Confidential Information” .

Date: \_\_\_\_\_ Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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**EXHIBIT B**

**ACKNOWLEDGEMENT OF DESTRUCTION OR RETURN OF  
DEFENDANTS’ CONFIDENTIAL INFORMATION**

I, \_\_\_\_\_ (Name), am over the age of 18 years and am a resident of \_\_\_\_\_ County, \_\_\_\_\_. I make this Declaration based upon my personal knowledge, and I am competent to testify to the matters stated herein.

I have requested and received from \_\_\_\_\_ all of the “Confidential Information” contained in materials, transcripts, and other things within the scope of this Protective Order and produced in the above-entitled action or in MDL No. 2641, pending in the United States District Court District of Arizona.

I have either destroyed or have attached hereto all of the “Confidential Information” contained in the materials, transcripts, and other things within the scope of this Protective Order including those materials which were returned to me by the experts and consultants mentioned above in accordance with the preceding paragraph, and as described in the Protective Order related to this matter. Notwithstanding the foregoing provisions of this paragraph, the Receiving Party may maintain its privileged communications, work product, Acknowledgments pursuant to the Protective Order, materials required to be retained pursuant to the applicable law, and all court-filed documents even though they contain “Confidential Information,” but such materials shall remain subject to the terms of this Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: \_\_\_\_\_ Print \_\_\_\_\_  
Signature: \_\_\_\_\_