

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MARY BAYES and PHILIP BAYES,)
)
 Plaintiff(s),)
)
 vs.)
)
 BIOMET, INC., et al.,)
)
 Defendant(s).)

Case No. 4:13-cv-00800-SRC

MEMORANDUM AND ORDER

This matter comes before the Court on [78] Defendants’ Motion for Protective Order and [79] Plaintiffs’ Motion to Compel. These cross-motions pertain to the same discovery disputes. As set forth in greater detail below, the Court grants in part, and denies in part, both motions.

Common Issue Discovery – Plaintiffs seek to compel depositions of numerous individuals who were previously deposed during the “common issue” phase of discovery in the MDL. Defendants argue that general or common issue discovery is closed per the MDL judge’s remand order. On March 12, 2020, the MDL judge ordered Defendant Biomet, Inc. to “produce to the Plaintiffs’ Steering Committee the common issue written discovery and common issue depositions provided and taken in state-court Biomet M2a hip implant cases and produced to the state-court plaintiffs before the date of this order.” Doc. 79-1 at 17. Per the parties’ submissions, the Court understands that Biomet has not yet produced to the Steering Committee, or to the Plaintiffs in this case, all materials referenced in the MDL judge’s order. The Court hereby orders Defendants to produce to Plaintiffs, on or before June 1, 2020, the common issue written discovery and common issue depositions provided and taken in state-court Biomet M2a hip implant cases and produced to state court plaintiffs on or before March 12, 2020.

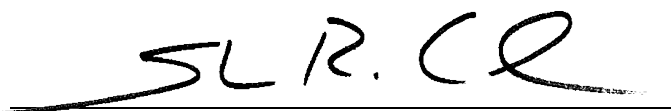
Sales Representative Depositions – Plaintiffs seek to compel the depositions of five sales representatives whose identities Defendants did not disclose until February 2020: Jake Weible, Mike Davis, Brian Scott, Matt Kliethermes, and Jason Kem. Doc. 81-2 at 4. In the parties’ Joint Motion for Entry of Third Amended Case Management Order, Plaintiffs represented to this Court, as justification for their request to extend the discovery period: “Biomet supplemented their Defendant Fact Sheet in February 2020. Plaintiffs would like the opportunity to depose Mr. Weibel [sic].” Doc. 74 at 4. Accordingly, the Court grants Plaintiffs’ Motion to Compel the deposition of Jake Weible *only*. The Court grants Defendants’ Motion for Protective Order as to the depositions of Davis, Scott, Kliethermes, and Kem.

Punitive Damages Discovery – Plaintiffs seek to compel a 30(b)(6) corporate representative deposition on the subject of punitive damages. Defendants argue that punitive damages discovery is common issue discovery, which is closed. The Court orders Defendants to produce, on or before June 1, 2020, current financial statements showing their net worth. Evidence of Defendants’ net worth “will become a part of the evidentiary record only if, at the close of all the other evidence, plaintiff has made a prima facie case of entitlement to punitive damages.” *Bessier v. Precise Tool & Eng'g Co.*, 778 F. Supp. 1509, 1513 (W.D. Mo. 1991). The Court grants Defendants’ motion for a protective order as to the 30(b)(6) deposition.

Accordingly,

IT IS HEREBY ORDERED that [78] Defendants’ Motion for Protective Order and [79] Plaintiffs’ Motion to Compel are GRANTED in part, and DENIED in part, as set forth in detail herein.

So Ordered this 14th day of May, 2020.


STEPHEN R. CLARK
UNITED STATES DISTRICT JUDGE