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A limited liability partnership formed in the State of Delaware

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

GARY SAPETA,

Plaintiff,

vs.

DAVOL INC., BARD DEVICES, INC.,
and C.R. BARD INC.,

Defendants.

Case No: 2:09-cv-02531 (MCE)
(KJM)

**STIPULATION AND
ORDER TO STAY
PROCEEDINGS PENDING
TRANSFER TO THE
MULTIDISTRICT
LITIGATION**

1 Plaintiff and Defendants Davol Inc., Bard Devices, Inc. and C.R.Bard, Inc. by
2 and through their counsel of record propose the following stay pursuant to a
3 stipulation based on the following facts:

4 Plaintiff alleges, among other things, that the “Bard® Composix® Oval Kugel®
5 Patch,” a medical device manufactured and sold by Defendant Davol Inc. and used by
6 Plaintiff’s surgeon in conjunction with Plaintiff’s hernia repair surgery, was defective
7 and unreasonably dangerous when put to its intended use.

8 This product liability action is but one of a number of related actions filed in
9 federal courts across the country. In 2006, in fact, two plaintiffs who also allege that
10 they sustained injuries resulting from their receipt and use of the Composix® Kugel®
11 Patch filed a motion before the Judicial Panel on Multidistrict Litigation (“JPML”)
12 seeking transfer and centralization of all cases involving this medical device pursuant
13 to 28 U.S.C. § 1407. On May 31, 2007, the JPML heard that motion, and on June 22,
14 2007, the JPML granted the motion for transfer and consolidation. As a result, all
15 federal court cases concerning the Composix® Kugel® Patch have been or imminently
16 will be transferred to the District of Rhode Island for consolidated pretrial
17 proceedings. *See In re Kugel Mesh Hernia Patch Prods. Liab. Litig.*, 493 F.Supp. 2d
18 1371 (J.P.M.L. 2007).

19 Based on the JPML’s June 22, 2007 Transfer Order, and pursuant to Rules 7.4
20 and 7.5 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199
21 F.R.D. 435-36 (2001), a “tag-along” letter concerning this case, among others, was
22 filed with the Clerk of the JPML on December 4, 2009 (*see* December 4, 2009 Letter
23 to Jeffrey Lüthi, Clerk of the JPML, without exhibits (Ex. 1)). As has been the normal
24 procedure, we anticipate that the JPML will issue a conditional transfer order in the
25 coming weeks/months, which will effect transfer of this action to the United States
26 District Court for the District of Rhode Island. Given that the transfer of this action in
27 due course will moot any pretrial requirements and schedules imposed by this Court,
28

1 Defendants request that all requirements, deadlines (including responsive pleading
2 deadlines), and any other proceedings in this case be stayed 60 days pending transfer
3 to the United States District Court for the District of Rhode Island. Upon transfer, the
4 parties agree and acknowledge that they will comply with any requirements and
5 deadlines imposed by the District of Rhode Island with respect to this action.
6

7 IT IS SO STIPULATED

8
9 Dated: December __, 2009

LOPEZ McHUGH LLP

10 By: /s/ _____

11 Ramon Rossi Lopez
12 Troy Brenes
13 Attorneys for Plaintiff

14 Dated: December __, 2009


REED SMITH LLP

15 By: /s/ _____

16 Michael K. Brown
17 Mildred Segura
18 Attorneys for Defendants Davol Inc,
19 Bard Devices, Inc. and C.R. Bard, Inc.

20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 DATED: December 23, 2009

22 
23 _____
24 MORRISON C. ENGLAND, JR
25 UNITED STATES DISTRICT JUDGE
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