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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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10 IN RE: Bard IVC Filters Products
11 Liability Litigation,

No. MDL 15-02641-PHX-DGC

12 **ORDER**
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14 In Case Management Order (“CMO”) 47, the Court directed the parties (1) to file,
15 by October 23, 2020, a joint report identifying all cases that were dismissed without
16 prejudice under a settlement agreement but where the plaintiffs have opted out of the
17 settlement, and (2) to file, by November 13, 2020, a joint report on all Track 2 cases for
18 which no appropriate stipulated dismissal has been filed by the November 2, 2020 deadline.
19 Doc. 21540 at 5-6.¹

20 On October 23, the parties filed a report indicating that 101 plaintiffs, who were
21 originally part of a settlement and dismissed their cases, have now opted out of the
22 settlement. Doc. 21663 at 2; *see* Docs. 21663-1 (listing 2 cases to be remanded by the
23 JPML), 21663-2 (listing 99 cases to be transferred to appropriate courts).² The parties also
24 identified, in the October 23 report, 327 plaintiffs who have not opted out of the settlement

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26 ¹ CMO 42 provides that all Track 2 cases for which no stipulated dismissal has been
27 filed by May 1, 2020, will be recommended to the JPML for remand or will be transferred
under § 1404(a). Doc. 16343 at 7. The May 1 deadline was extended to November 2,
2020. Doc. 21518.

28 ² *See also* Doc. 21664 (identifying materials to be provided to courts receiving the
cases via remand or transfer).

1 but who have yet to sign a release of claims. Doc. 21663 at 2. The parties state that 99
2 plaintiffs are still considering the settlement amount allocated to them, 43 plaintiffs are
3 deceased with no known heirs, 78 plaintiffs have been unresponsive to inquiries from
4 counsel, and counsel have been unable to locate 107 plaintiffs. *Id.* The parties “seek
5 direction from the Court as to how it would like to treat plaintiffs in these categories[,]”
6 noting that the plaintiffs “have not opted out of the settlement, but the possibility exists that
7 they may in the future.” *Id.* at 3.

8 On November 6, the parties identified 901 cases remaining in the MDL that were
9 not dismissed by the November 2 deadline. Doc. 21717 at 2. The parties state that these
10 cases are subject to settlement agreements and each plaintiff has signed a release. *Id.* The
11 parties further state that the plaintiffs have been unable to dismiss their cases “because –
12 for a variety of reasons – the settlement funds have not been disbursed as of yet.” *Id.* The
13 parties move for an extension until March 15, 2021 to finalize the settlements and file
14 dismissals in these cases. *Id.*

15 A telephonic hearing is set for **December 8, 2020 at 2:00 p.m.** on the motion for
16 extension of time (Doc. 21717) and the 327 plaintiffs who have not opted out of the
17 settlement but who have yet to sign a release (Doc. 21663). Three days before the hearing,
18 the parties jointly shall file a memorandum addressing the following issues:

- 19 1. Whether plaintiffs’ counsel gave each plaintiff a deadline to either accept the
20 allocated settlement amount or opt out of the settlement;
- 21 2. Whether any of the 99 plaintiffs who were considering the settlement amount
22 have since decided to accept the amount or opt out of the settlement;
- 23 3. The specific efforts plaintiffs’ counsel have made (a) to identify known heirs
24 of the 43 deceased plaintiffs, (b) to contact – via phone, email, or mail – the 78
25 unresponsive plaintiffs, and (c) to locate the 107 missing plaintiffs identified in the
26 October 23 report (Doc. 21663 at 2);
- 27 4. Whether some or all of the 327 cases in which the plaintiffs have not signed
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1 a release or opted out of the settlement should remain dismissed, or whether the dismissals
2 should be vacated and the cases remanded or transferred to appropriate courts;

3 5. The reasons why the settlement funds have not been disbursed to the 901
4 plaintiffs identified in the motion for extension of time (Doc. 21717);

5 6. The specific steps that need to be taken for the settlement funds to be
6 disbursed, and the time it will take to complete each such step; and

7 7. The reasons, if any, why dismissals would not be filed by the requested
8 March 15, 2021 deadline given that each of the 901 plaintiffs have signed a release,
9 “thereby committing to the settlements and waiving the ability to opt out of the settlements”
10 (*id* at 2).³

11 Counsel for plaintiffs shall initiate a dial-in telephone conference for purposes of
12 the hearing. Counsel for plaintiffs shall provide the dial-in number to counsel for all parties
13 and the Court no later than 12:00 noon on December 7, 2020.

14 Dated this 9th day of November, 2020.

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18 David G. Campbell
19 Senior United States District Judge
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28 ³ The parties state that after March 15, 2021, they “would submit the report required by [CMO 47] for the remaining plaintiffs who have not filed a dismissal.” *Id.*