

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9
10 IN RE: Bard IVC Filters Products
11 Liability Litigation,
12
13

No. MDL 15-02641-PHX-DGC
ORDER

14
15 The parties have filed updated reports on Track 3 cases with plaintiff profile form
16 and service of process issues and Track 3 cases for which no federal jurisdiction exists.
17 Docs. 20066, 20209, 20210, 20618. The Court will dismiss some of these cases without
18 prejudice and transfer other cases to appropriate districts.

19 **A. Cases without Federal Jurisdiction.**

20 Federal subject matter jurisdiction may be based on either federal question
21 jurisdiction or diversity jurisdiction. 28 U.S.C. §§ 1331, 1332. Courts “analyze federal
22 question jurisdiction with reference to the well-pleaded complaint rule.” *Yokeno v. Mafnas*,
23 973 F.2d 803, 807 (9th Cir. 1992). Under that rule, “federal jurisdiction exists only when
24 a federal question is presented on the face of a properly pleaded complaint.” *Scholastic*
25 *Entm’t, Inc. v. Fox Entm’t Grp., Inc.*, 336 F.3d 982, 986 (9th Cir. 2003). The complaint
26 must establish either that “federal law creates the cause of action or that . . . the plaintiff’s
27 right to relief necessarily depends on resolution of a substantial question of federal law.”
28 *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold &*

1 *Easement*, 524 F.3d 1090, 1102 (9th Cir. 2008) (quoting *Franchise Tax Bd. v. Constr.*
2 *Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)).

3 The master complaint in this MDL asserts seventeen state law claims. *See* Doc. 364
4 ¶¶ 166-349. Because the complaint asserts no federal claim and Plaintiffs’ right to relief
5 on the state law claims does not depend on resolution of a federal law question, the Court
6 lacks subject matter jurisdiction under the federal question statute. *See* 28 U.S.C. § 1331;
7 *Yokeno*, 973 F.2d at 809.

8 Subject matter jurisdiction must therefore be based on diversity of citizenship. *See*
9 *Yokeno*, 973 F.2d at 809. District courts have diversity jurisdiction over cases between
10 citizens of different states involving claims greater than \$75,000. 28 U.S.C. § 1332(a).
11 Section 1332 requires complete diversity between the parties – that is, the citizenship of
12 the plaintiff must be diverse from the citizenship of each defendant. *See Caterpillar, Inc.*
13 *v. Lewis*, 519 U.S. 61, 68 (1996).

14 For purposes of diversity jurisdiction, Defendant C. R. Bard, Inc. is a citizen of New
15 Jersey and Defendant Bard Peripheral Vascular, Inc. is a citizen of Arizona. Doc. 364
16 ¶¶ 11-12; *see Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990)
17 (noting that “a corporation is a citizen of any state where it is incorporated and of the state
18 where it has its principal place of business”) (citing 28 U.S.C. § 1332(c)). Complete
19 diversity does not exist, therefore, where the Plaintiff is a resident of either Arizona or New
20 Jersey. *See Williams v. United Airlines, Inc.*, 500 F.3d 1019, 1025 (9th Cir. 2007)
21 (“Although diversity jurisdiction provides an independent basis for federal jurisdiction
22 over state law claims, complete diversity is lacking in this case because both [plaintiff] and
23 [defendant] are citizens of California.”).

24 The parties’ updated report identifies pending Track 3 cases in which diversity
25 jurisdiction does not exist because the Plaintiff is either a resident of Arizona or New
26 Jersey. Doc. 20210-1. In most of these cases, Plaintiffs agree to a dismissal without
27 prejudice. *Id.* Plaintiffs in some cases oppose dismissal, but provide no reason why the
28 cases should not be dismissed given the lack of subject matter jurisdiction. *See id.*

A district court may dismiss a case for lack of subject matter jurisdiction at any time during the pendency of the action. *See* Fed. R. Civ. P. 12(h)(3); *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002) (noting Rule 12(h)(3) permits a district court to “raise the question of subject matter jurisdiction[] sua sponte”); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230-31 (9th Cir. 2006) (an MDL “transferee judge exercises all the powers of a district judge in the transferee district under the Federal Rules of Civil Procedure”). The following cases lack subject matter jurisdiction and are **dismissed without prejudice**:

Case Caption	Case Number	Plaintiff's Residence
Stephen Albert v. C. R. Bard, Inc.	2:18-cv-01010	Arizona
Patricia Borg v. C. R. Bard, Inc.	2:19-cv-04221	Arizona
Annette Casey v. C. R. Bard, Inc.	2:16-cv-02558	Arizona
Frederick Hollister v. C. R. Bard, Inc.	2:19-cv-03237	Arizona
Chris Vandell v. C. R. Bard, Inc.	2:17-cv-01549	Arizona
James Chambers v. C. R. Bard, Inc.	2:18-cv-04521	Arizona
Elena Ruiz v. C. R. Bard, Inc.	2:19-cv-01645	Arizona
Sonja Lee Brumfield v. C. R. Bard, Inc.	2:19-cv-03124	Arizona
Catherine A. Bean v. C. R. Bard, Inc.	2:19-cv-03468	Arizona
James Dale Meredith v. C. R. Bard, Inc.	2:19-cv-03605	Arizona
Jan Louise Norquest v. C. R. Bard, Inc.	2:19-cv-3609	Arizona
Faith Crawford v. C. R. Bard, Inc.	2:19-cv-04259	Arizona
James Noa v. C. R. Bard, Inc.	2:17-cv-02389	Arizona
William Barben v. C. R. Bard, Inc.	2:19-cv-2460	New Jersey
Giles Bartosch v. C. R. Bard, Inc.	2:18-cv-00058	New Jersey
Edith Cruz v. C. R. Bard, Inc.	2:18-cv-02432	New Jersey
Melissa Czarnecki v. C. R. Bard, Inc.	2:16-cv-01086	New Jersey
William Engh v. C. R. Bard, Inc.	2:19-cv-03080	New Jersey
Renee Harris v. C. R. Bard, Inc.	2:16-cv-01993	New Jersey

1	Robert James Maiore v. C. R. Bard, Inc.	2:18-cv-02772	New Jersey
2	Carlos Mason v. C. R. Bard, Inc.	2:19-cv-03762	New Jersey
3	Erwin Melendez v. C. R. Bard, Inc.	2:19-cv-01400	New Jersey
4	Charles Miller v. C. R. Bard, Inc.	2:19-cv-02544	New Jersey
5	Marilyn Ann Ratz v. C. R. Bard, Inc.	2:19-cv-00574	New Jersey
6	Robert Russo v. C. R. Bard, Inc.	2:18-cv-01287	New Jersey
7	Saad Sabir v. C. R. Bard, Inc.	2:18-cv-00328	New Jersey
8	Katherine Varian v. C. R. Bard, Inc.	2:19-cv-01611	New Jersey
9	Dianna L. Kubik v. C. R. Bard, Inc.	2:18-cv-04293	New Jersey
10	Barbara S. Rossell v. C. R. Bard, Inc.	2:18-cv-04307	New Jersey
11	Sandra J. Farley v. C. R. Bard, Inc.	2:19-cv-00844	New Jersey
12	William H. Jackson, IV v. C. R. Bard, Inc.	2:19-cv-01559	New Jersey
13	Philip Merten v. C. R. Bard, Inc.	2:19-cv-01637	New Jersey
14	Eileen O'Brien v. C. R. Bard, Inc.	2:19-cv-01639	New Jersey
15	Kimberly Watkins v. C. R. Bard, Inc.	2:19-cv-02312	New Jersey
16	Richard D. Mozgai v. C. R. Bard, Inc.	2:19-cv-02444	New Jersey
17	Lisa M. Anderson v. C. R. Bard, Inc.	2:19-cv-03122	New Jersey
18	Carolyn G. Murray v. C. R. Bard, Inc.	2:19-cv-03607	New Jersey

19 Plaintiff in *Pickraum*, CV-18-04338, is a New Jersey resident who recently filed an
20 amended short form complaint that removes C. R. Bard as a Defendant. Doc. 20625.
21 Because the sole remaining Defendant, Bard Peripheral Vascular, is a citizen of Arizona,
22 diversity jurisdiction now exists in the case. *See Galt G/S v. JSS Scandinavia*, 142 F.3d
23 1150, 1154 (9th Cir. 1998) (noting that “Rule 21 specifically allows for the dismissal of
24 parties at any stage of the action” and there “is no requirement that diversity exist at the
25 time of the filing of the complaint”). The case will be transferred to the District of New
26 Jersey in a separate order. *See* Docs. 19899 at 3-6, 20625 at 2.

27 Plaintiff in *Butterfield*, CV-19-00395, a New Jersey resident, states that she will
28 stipulate to the dismissal of C. R. Bard. Doc. 20210-1 at 8. Plaintiff shall file a stipulation

1 to dismiss C. R. Bard or an amended short form complaint against only Bard Peripheral
2 Vascular by **October 31, 2019**.

3 **B. Cases with Plaintiff Profile Form Issues.**

4 As noted, the parties filed updated reports on Track 3 cases with plaintiff profile
5 form (“PPF”) issues. Docs. 20066, 20618.

6 **1. Cases with Complete PPFs.**

7 In most of the cases, Plaintiffs have provided PPFs to which Defendants have no
8 objection. *See* Docs. 20066-1, 20618-1. These cases will be transferred to the districts
9 identified as the proper venue in the short-form complaints in an order to follow. *See*
10 Doc. 19899 at 3-6.

11 **2. Cases with No Proper PPF.**

12 Plaintiffs have provided no PPF or a deficient PPF in 25 cases. Docs. 20066-1,
13 20618-1. In three cases – *Fiset*, CV-19-00198, *Williams*, CV-18-04320, and *Barr*, CV-19-
14 04315 – Plaintiffs seek additional time to provide a PPF. Doc. 20618 at 3-4. Defendants
15 do not oppose the requests. *Id.* The motions for extensions of time (Docs. 20456, 20622)
16 are **granted**. Plaintiffs *Fiset*, *Williams*, and *Barr* shall have until **October 31, 2019** to
17 provide complete PPFs to Defendants. The parties shall provide an updated report on these
18 cases by **November 8, 2019**. The Court may dismiss the cases if no complete PPF is
19 provided by the October 31 deadline. *See* Doc. 19873 at 3.

20 The Plaintiff in *Sattizahn*, CV-19-04322, has died. Doc. 20618 at 2. The parties
21 stipulate to the dismissal of the case. *Id.*; Doc. 20618-1 at 2. The stipulation is **granted**
22 and the case is **dismissed without prejudice**.

23 The other 21 cases in which no complete PPF has been provided will be dismissed
24 without prejudice. Case Management Order No. 5 requires each Plaintiff who directly files
25 a short form complaint in this MDL to provide a complete PPF to Defendants within
26 60 days of filing the complaint. Doc. 365 at 1. Defendants may seek dismissal of the case
27 if no such PPF is received within 20 days after providing notice of the deficiency to
28 Plaintiff. *Id.*

On July 10, 2019, Defendants identified the Track 3 cases with no complete PPF. Doc. 19445-11 (Exhibit K). The Court ordered Plaintiffs to provide complete PPFs by August 22. Doc. 19874 at 3. This deadline was extended to August 30 for some Plaintiffs based on prior stipulations between the parties. Doc. 19936.

Defendants now seek dismissal of each case in which no complete PPF has been provided. Doc. 20066 at 2. Plaintiffs' Co-Lead Counsel request that counsel of record for each individual case be given an opportunity to respond to a separate motion to dismiss, but no reason is given for this request. *Id.* In each case, a PPF was required no later than August 30, 2019. *See* Docs. 19798-11, 19936-1. Plaintiffs were notified of the PPF deficiencies more than two months ago. Doc. 19798-11. On August 7, 2019, the Court explicitly warned Plaintiffs that their cases may be dismissed if no complete PPF was provided. Doc. 19873 at 3. No Plaintiff has demonstrated good cause for the failure to provide a complete PPF. Defendants' request is **granted** and the following cases are **dismissed without prejudice**:

Case Caption	Case Number
Andrea Dancy v. C. R. Bard, Inc.	2:19-cv-02016
Rachel Lyons v. C. R. Bard, Inc.	2:19-cv-04182
David Stowe v. C. R. Bard, Inc.	2:19-cv-04270
Charles Hill v. C. R. Bard, Inc.	2:19-cv-01620
Michelle Camp v. C. R. Bard, Inc.	2:19-cv-04275
Gayle Bays v. C. R. Bard, Inc.	2:19-cv-04264
Rosemary Wightman v. C. R. Bard, Inc.	2:19-cv-03930
Cassie Wade-Cook v. C. R. Bard, Inc.	2:18-cv-01999
Jackie Sharon Berryman v. C. R. Bard, Inc.	2:19-cv-04048
Joseph Maloney v. C. R. Bard, Inc.	2:19-cv-03936
Linda Henry v. C. R. Bard, Inc.	2:19-cv-04218
Angela Cummings v. C. R. Bard, Inc.	2:18-cv-01561
Sean Crosby v. C. R. Bard, Inc.	2:19-cv-03987

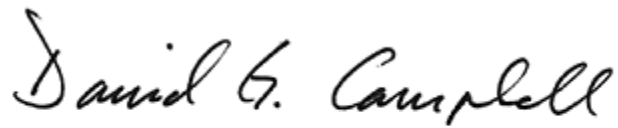
LaWanda Smith v. C. R. Bard, Inc.	2:19-cv-03992
Verlon Freeman v. C. R. Bard, Inc.	2:19-cv-03758
Joe R. Garza v. C. R. Bard, Inc.	2:19-cv-03449
Juanita M. Chaires v. C. R. Bard, Inc.	2:19-cv-03463
Belinda Hankins v. C. R. Bard, Inc.	2:19-cv-03940
Barry L. Nowlin v. C. R. Bard, Inc.	2:19-cv-01179
Andrew Tetrault v. C. R. Bard, Inc.	2:18-cv-01602
Christina Shepherd v. C. R. Bard, Inc.	2:19-cv-02906

C. Cases with Service of Process Issues.

The parties previously identified 100 Track 3 cases that were not served on Defendants. Doc. 19798-7. The Court gave each Plaintiff until August 29, 2019 to send the short form complaint and a request for waiver of service to Defendants' counsel. Doc. 19874 at 4. According to the parties' updated report, all Plaintiffs have served their complaints with the exception of the Plaintiff in *Cornelius*, CV-19-02716, who has indicated that the case will be dismissed. Docs. 20209 at 2, 20209-2 at 4. Plaintiff Cornelius shall file a stipulation of dismissal by **October 31, 2019**. The remaining cases will be transferred to appropriate districts.

IT IS SO ORDERED.

Dated this 16th day of October, 2019.



David G. Campbell
Senior United States District Judge