

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IN RE: ALLERGAN BIOCELL TEXTURED  
BREAST IMPLANT PRODUCTS LIABILITY  
LITIGATION**

**Case No. 2:19-md-02921 (BRM)(JAD)  
MDL NO. 2921**

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**THIS DOCUMENT RELATES TO: ALL CASES**

**SECOND AMENDED CASE MANAGEMENT ORDER NO. 12  
(PROTECTIVE ORDER)**

The undersigned counsel for Defendants and Plaintiffs (collectively, the “Parties” and each, a “Party”) in the above captioned multi-district litigation (“MDL”) anticipate that the Parties and non-parties may be required to produce or disclose in this proceeding certain information and documents that are subject to confidentiality limitations on disclosure under the Federal Rules of Civil Procedure or other applicable federal, state, or foreign laws and regulations. Disclosure of such information without reasonable restriction on the use of the information may cause harm, damage, loss, embarrassment, or disadvantage to the Producing Party or nonparty.

Accordingly, the Parties desire entry of an order, pursuant to the Federal Rules of Civil Procedure 26(c), Local Civil Rule 5.3, and other applicable laws and rules, that will facilitate the prompt resolution of concerns or disputes over confidentiality, that will adequately protect material believed in good faith to be confidential and ensure that protection is afforded only to material so entitled and that will address production of documents or information protected from disclosure by the attorney-client privilege or work-product immunity.

The parties met and conferred and reached agreement on certain provisions in the Protective Order. Upon letter briefing submitted by Plaintiffs, (ECF No. 124), and Defendants, (ECF No. 125), the Court resolved the remaining disputed provisions by written order, (ECF No. 133). Therefore, the Court, for good cause shown and after having an opportunity to discuss this Protective Order with the Parties, hereby ORDERS that the following procedures shall be followed in this proceeding to facilitate the orderly and efficient discovery of relevant information while minimizing the potential for unauthorized disclosure or use of confidential or proprietary information and documents.

**1. Purpose.** The Parties recognize that preparation for any trial of this action may require the discovery of certain information that a Producing Party or Designating Party, as defined below, reasonably and in good faith believes should be subject to confidential treatment under a protective order. The designation of a document, material, or information (whether written, graphic or electronic) as being subject to the terms and conditions of this Protective Order, is intended solely to facilitate prompt discovery and the preparation for trial of this action.

**2. Scope.**

- a. This Protective Order shall govern all hard copy and electronic materials, the information contained therein, and all other information including all copies, excerpts, summaries, or compilations thereof, whether revealed in a document, deposition, other testimony, discovery response, or otherwise, that any party to this proceeding (the “Producing Party” or “Designating Party”) produces to any other party (the “Receiving Party”) and that the Producing Party designates as confidential under this Protective Order.
- b. This Protective Order is binding upon all Parties and their counsel in this proceeding, upon all signatories to Exhibit A, and upon (as applicable) their respective corporate parents, subsidiaries, and affiliates, including their successors, and their respective attorneys, principals, experts, consultants, representatives, directors, officers, employees, and others as set forth in this Protective Order.
- c. If additional parties are added other than parents, subsidiaries or affiliates of current parties to this litigation, their ability to receive a document protected by this Protective Order will be subject to their being bound, by agreement or Court Order, to this Protective Order.
- d. Third Parties who are obligated to produce Confidential Material in this Action and who so elect may avail themselves of, and agree to be bound by, the terms and conditions of this Protective Order and thereby become a Producing Party for purposes of this Protective Order.
- e. The entry of this Protective Order does not preclude any Party from seeking further order of this Court, including modification of this order, or from objecting to discovery that the Party believes to be improper.
- f. Nothing herein shall be construed as an admission or concession by any Party that designated Confidential Material, or any Document or Information derived from Confidential Material, constitutes material, relevant, or admissible evidence in this matter.
- g. This Protective Order shall not be construed to protect from production or to permit the designation of any documents or information as “Confidential” that: (a) the Producing Party has failed to make reasonable efforts to keep confidential other than by inadvertent production or disclosure of confidential material, (b) the

Receiving Party has lawfully obtained by or from another source on a non-confidential basis, without breach of law, regulation, court order, or privilege, or (c) is at the time of production or disclosure, or subsequently becomes, through no wrongful or negligent act of the Receiving Party, publicly available, or otherwise readily accessible to others on a non-confidential basis. In the event the Receiving Party identifies any document that it reasonably believes falls under this paragraph, it shall continue to treat the document as “Confidential” as it commences the procedures set forth in Paragraph 9 of this Order.

- 3. Definitions.** In this Order, the terms set forth below shall have the following meanings:
- a. “Proceeding” or “Action” means the above-entitled proceeding.
  - b. “Court” means the Honorable Judge currently assigned to this proceeding or any other judge to which this proceeding may be assigned, including Court staff participating in such proceedings.
  - c. “Document” or “Documents” shall have the meaning set out in Federal Rule of Civil Procedure 34(a) and, for purposes of this order, shall include electronically stored information.
  - d. “Testimony” means all depositions, declarations or other pre-trial testimony taken or used in this Proceeding.
  - e. “Information” means the content of Documents or Testimony, as well as any matter derived therefrom or based thereon.
  - f. “Confidential Material” or “Confidential Discovery Material” means any Document (electronic or hard copy), Testimony, or Information that a Designating Party reasonably and in good faith believes to be entitled to confidential treatment and that the Party designates as such in accordance with the provisions of this Order. “Confidential Material” may include, but is not limited to:
    - i. A plaintiff’s personal identifying information, financial information, medical/insurance information, and, with respect to any Party, any other information believed in good faith by the Designating Party to be subject to protection from disclosure by a natural person’s right of privacy under applicable federal, state, or foreign laws or regulations;
    - ii. A defendant’s or non-party’s trade secrets (as defined in the Uniform Trade Secrets Act) and other proprietary or confidential business information of commercial value and believed in good faith to be subject

to protection from disclosure under Federal Rule of Civil Procedure 26 and/or applicable statutes, laws, or regulations.

- iii. Specifically excluded from the definition of “Confidential Material” are:
  - 1. Any Documents, Testimony, or Information obtained, in the past or in the future, by any person or entity through procedures established under the Freedom of Information Act or other public records request.
  - 2. Documents or articles published in trade magazines or other general circulation or publicly available publications; or
  - 3. Documents that are publicly available, previously provided to any individual or entity, or readily accessible to third-parties, on a non-confidential basis and without limitation on scope of use.
- iv. Nothing herein shall impose any restrictions on the use or disclosure by a Party or witness of documents, material or information obtained by such Party or witness independently of the discovery proceedings in these actions, whether or not such documents, material or information are also obtained through discovery proceedings in these actions.
- g. “Designating Party” means the Party or non-party that designates Documents, Testimony, or Information as Confidential Material.
- h. “Disclose,” “Disclosed” or “Disclosure” means to reveal, divulge, give, or make available Documents, Testimony, or any part thereof, or any Information contained therein.

#### **4. Designations of Confidential Material.**

- a. Designation of Documents.
  - i. Documents Produced in TIFF-Image Format. With respect to any Document produced in TIFF-image format, a Designating Party may designate the Document as Confidential Material by placing a stamp or marking on each page of the Document the following designation: **CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER**. To the extent possible, such markings shall not obscure, alter, or interfere with the legibility or visibility of any text or other information in the original document.

1. All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as “copies”) of Confidential Material produced in TIFF-image format shall be marked with the same confidential stamp or marking as contained on the original, unless the original confidential stamp or marking already appears on the copies.
- ii. To the extent that Confidential Material consists of physical items or materials other than documents or writings, said Confidential Information shall, to the fullest extent practicable, conspicuously bear the Confidentiality Designation such that said language is readily observable and linked to the item.
- iii. Documents Produced in Native Format. With respect to any Document produced in native format (“Native-Format Document”), a Designating Party may designate the Document as Confidential Material by providing a TIFF placeholder that includes the Bates number, a notation that the document is produced in Native Format, and the following stamp or marking: **CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER**. To the extent feasible by technological means, a Designating Party shall also rename the Document as Confidential Material by including, at the end of the file name and prior to the file extension, the following (or similar) language: **CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER**.
  1. Native-Format Documents may have to be copied or duplicated. Any such copy or duplicate shall retain its Confidentiality designation by maintaining the TIFF placeholder described above (and by maintaining the full file name if it includes the **CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER** designation described above).
  2. All other copies or duplicates of Native-Format Documents (*e.g.*, TIFF-image, PDF, hardcopy) and all extracts, summaries, or descriptions of Native-Format Documents shall contain a stamp or marking on each page of the Document stating the following: **CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER**. To the extent possible, such markings shall not obscure, alter, or interfere with the legibility or visibility of any text or other information in the original document.

- b. Designation of Deposition Transcripts.
- i. During depositions, Confidential Material may be used or marked as exhibits, but shall remain subject to this Order.
  - ii. If deposition Testimony or exhibits contain or refer to Confidential Material, or if they contain or refer to Documents, Testimony, or Information to be designated as Confidential Material, the Designating Party, by and through counsel, shall either:
    1. On the record at the deposition, designate the Testimony or exhibit(s) as Confidential Material or, as applicable, identify already-designated Confidential Material; or
    2. No later than forty-five (45) days after receiving a copy of the deposition transcript, inform the deposing counsel and counsel for other Parties that the Testimony or exhibit(s) constitute Confidential Material; during the forty-five-day period, the entire deposition testimony, transcript, and exhibits shall be treated as Confidential Material under this Order.
  - iii. When a Party designates testimony as Confidential Material during the deposition, counsel for that Party may exclude from the deposition all persons who are not Qualified Persons under this Order.
  - iv. When portions of a deposition transcript or its exhibits are designated for protection, the court reporter shall label the cover page of the original and one copy of the transcript to state that Confidential Material is contained therein and shall label as **CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER** each page of the transcript and/or exhibits to the deposition transcript that constitute Confidential Material.
  - v. The Parties may modify this procedure for any particular deposition or other pre-trial testimony, through agreement on the record at such deposition or testimony, without further order of the Court. After the expiration of the forty-five (45) day period, only the specific page(s) and line number(s) and exhibits designated as Confidential, if any, shall be treated as confidential. The forty-five-day time period may be modified, accelerated, or extended by agreement, or by informal application to the Court, which shall reasonably be granted.
- c. Written Pleadings, Motion Papers, and Discovery Materials. A party may designate as Confidential Material portions of interrogatories and interrogatory

answers, responses to requests for admissions and the requests themselves, requests for production of documents and things and responses to such requests, pleadings, motions, affidavits, briefs, and other pre-trial materials, to the extent such material quotes, summarizes, or contains Confidential Material. To the extent feasible, such Confidential Material shall be prepared in such a manner that it is redacted, or bound separately from material not entitled to protection.

- d. Designation of Other Confidential Material. With respect to Confidential Material produced in some form other than as described above, including, without limitation, compact discs or DVDs or other tangible items, the Designating Party must affix in a prominent place on the exterior of the container or containers in which the Information or item is stored the following legend: **CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER**. If only portions of the Information or item warrant protection, the Designating Party, to the extent practicable, shall identify the portions that constitute Confidential Materials.
- e. With respect to Documents or Information produced or disclosed by a non-party, the non-party or a Party may designate the Documents or Information as Confidential Material pursuant to this Order. A Party so designating material produced by a non-Party shall notify all other Parties within 30 days of receipt of such Document or Information that the same or portions thereof constitute or contain Confidential Material. Until the expiration of 30 days, such Document or Information produced or disclosed by any such non-party shall be treated as Confidential Material under this Order. The 30-day time period may be modified, accelerated, or extended by agreement, or by informal application to the Court, which shall reasonably be granted.

## **5. Required Treatment of Confidential Material.**

- a. Except as specifically provided in this Order, counsel shall keep all Confidential Material disclosed or produced to them within their exclusive possession and control, shall take all necessary and prudent measures to maintain the confidentiality of such materials and information, and shall not permit unauthorized dissemination of such materials to anyone.
- b. Confidential Material shall not be disclosed in any way to anyone for any purpose other than as required for use in the above-captioned Multi-District Litigation, including the preparation of trial, as defined in Paragraph 9, below.
  - i. Nothing in this Order shall preclude a Party from introducing into evidence, with reasonable notice, at trial or evidentiary hearing any Confidential Material that is admissible under applicable law. A party who seeks to maintain confidentiality of Confidential Material at trial or

an evidentiary hearing may file an appropriate application with the Court. At trial or evidentiary hearings, the Court may take such other measures or enter separate orders, as the Court deems appropriate or upon request by any Party, to protect the claimed Confidential Material sought to be introduced or admitted.

- c. Access to and disclosure of Confidential Material shall be limited to those persons designated as Qualified Persons, below. Any Qualified Person who examines any Confidential Material shall not disseminate orally, or by any other means, any protected information other than as permitted by this Order or by law as set forth in Section 12 of this Order.
- d. Confidential Material shall not be used for any business, competitive or other non-litigation purpose without the express written consent of counsel for the Designating Party or by order of the Court.
  - i. Nothing in this Protective Order shall limit any Designating Party's use of its own documents or shall prevent any Designating Party from disclosing its own Confidential Material to any person for any purpose.
  - ii. Nothing herein shall prevent Plaintiffs from viewing or receiving and retaining copies of their own medical records and from disclosing such medical records to, and sharing them with, their physicians.
  - iii. Nothing herein shall prevent Defendants from viewing or retaining copies of medical records of Plaintiffs that are in their possession or control or from disclosing such records to other Qualified Persons, regardless of whether or not the documents have been designated as Confidential Material.
  - iv. Disclosures described in the above sub-paragraphs (ii) and (iii) shall not affect any confidential designation made pursuant to the terms of this Protective Order so long as the disclosure is made in a manner that is reasonably calculated to maintain the confidentiality of the designated Information, Testimony, and/or Document.
- e. To avoid security risks inherent in certain current technologies and to facilitate compliance with the terms of this Order, and unless otherwise ordered or agreed upon in writing by the Designating Party whose Confidential Material is at issue, all Qualified Persons with access to Confidential Material must take reasonable precautions to protect Confidential Material from loss, misuse, and unauthorized access, disclosure, alteration and destruction, including but not limited to the following:



- i. Confidential Material in electronic form shall be maintained in a secure litigation support site that applies standard industry practices regarding data security, including but not limited to application of access control rights to Qualified Persons;
  - ii. A list of current and former authorized users of the Receiving Party's litigation support site shall be maintained while this litigation, including any appeal, is pending;
  - iii. Confidential Material downloaded from the litigation support site in electronic format shall be stored or shipped only on devices or media (e.g., laptop, tablet, smartphone, USB drive) with access limited to Qualified Persons;
  - iv. Confidential Material in paper format shall be maintained in the Receiving Party's counsel's law offices or comparably secure location, with access limited to Qualified Persons;
  - v. Electronic delivery of Confidential Material shall be by secure means only to Qualified Persons;
  - vi. Physical shipments of Confidential Material shall be securely sealed and addressed only to Qualified Persons; and
  - vii. If a data breach that includes Confidential Material occurs or a Receiving Party reasonably believes such a breach may have occurred, the Receiving Party shall immediately report such incident to the designating party, describe the Confidential Material accessed without authorization, and use best efforts to obtain the return of such Confidential Material copied or removed. After notification, the Receiving Party shall keep the Designating Party informed of remediation efforts.
- f. If Confidential Material is disclosed other than in a manner authorized by this Order, the person(s) responsible for the disclosure (and any other person who is bound by this Order and learns of the disclosure) will immediately bring the disclosure to the attention of the Designating Party. Without prejudice to other rights and remedies of the Designating Party, the person(s) responsible for the disclosure must make reasonable efforts to remediate and prevent further disclosure.

6. **Qualified Persons With Respect to Confidential Material.** Confidential Material may be disclosed only to the following persons (referred to as “Qualified Persons” throughout this Order):
- a. Counsel for the parties and employees of counsel;
  - b. The parties to this litigation, including employees, agents, and representatives of the parties;
  - c. Experts and consultants (“Consultants”) whose assistance is necessary to assist counsel in the preparation of this Proceeding, whether or not the Consultant is designated as an expert and retained to testify, with the following qualifications:
    - i. Disclosure shall not be made to any consultant who, as described in Paragraph 8, is employed by or a consultant to a competitor of the Designating Party;
    - ii. If counsel for the party retaining a consultant has actual knowledge that the consultant has been found by a court to have violated the terms of a protective order in any litigation or legal proceeding, they shall meet and confer with opposing parties prior to disclosure; and
    - iii. Any expert or consultant to whom disclosure of Confidential Material is authorized must be informed of this Protective Order and must sign a copy of the Non-Disclosure Agreement attached hereto as Exhibit A.
  - d. A deponent or a witness or prospective deponent or witness, including treating physicians:
    - i. If a Party wishes to disclose Confidential Material to a deponent or witness during a deposition or pre-trial hearing, the deponent or witness must be informed of this Protective Order and the fact that the material is confidential. No Confidential Material may be left with such a deponent or witness unless he or she has signed a copy of the Non-Disclosure Agreement attached hereto as Exhibit A.
    - ii. If a Party wishes to disclose Confidential Material to a deponent or witness before a deposition and for which the Party reasonably believes that the witness will give relevant testimony, the deponent or witness must be informed of this Protective Order and the fact that the material is confidential. No Confidential Material may be left with a prospective witness or deponent unless he or she has signed a copy of the Non-

Disclosure Agreement attached hereto as Exhibit A.

- e. A person identified in the Confidential Material as an author, source, addressee, or recipient of the communication, or who already has a copy of the Confidential Material;
- f. Organizers and participants of jury research exercises not employed or engaged by a competitor of the Designating Party, but only after they have signed the Non-Disclosure Agreement contained in Exhibit A;
- g. Any mediators or arbitrators appointed by the Court or jointly selected by the parties and their personnel who are actively engaged in assisting them, but only after they have signed the Non-Disclosure Agreement contained in Exhibit A;
- h. The Court and Court personnel, including any Special Master appointed by the Court;
- i. Court reporters, recorders, and videographers engaged for depositions;
- j. Independent providers of document reproduction, electronic discovery, or other litigation services retained or employed specifically in connection with this litigation, but only after they have signed the Non-Disclosure Agreement contained in Exhibit A; and
- k. Any person mutually agreed upon among the Parties, provided that such person has been informed of this Protective Order and has signed a copy of the Non-Disclosure Agreement attached hereto as Exhibit A.

**7. Further Requirements With Respect to Qualified Persons.**

- a. Any Confidential Material distributed or disclosed to a Qualified Person who is a signatory of Exhibit A shall be returned to the Party's counsel who provided it to the Qualified Person or shall be destroyed at the completion of this case. The Court may, on application for good cause shown, require that each such Qualified Person execute an affidavit stating that all such Confidential Material and copies thereof have been returned or destroyed as required.
- b. The Court shall retain jurisdiction over any person or organization authorized, as set forth above, to receive Confidential Material as necessary to enforce the provisions of this Order.

**8. Non-Disclosure to Competitors.** Notwithstanding the foregoing, without express written consent or court order, in no event shall any disclosure of a defendant's Confidential

Material be made to any known Competitor of that defendant or to any person determined to be (i) a current employee thereof and whose job responsibilities include work on breast implant devices; or (ii) consultant currently doing research for a competitor of a designating defendant that relates to breast implant devices irrespective of whether such consultant or person is retained as an expert in this action. A “Competitor,” in the context of this Proceeding, shall mean any manufacturer of, or manufacturer currently involved in the sale of, breast implant devices or any current employee of such entity.

- a. In the case of an expert or consultant, the expert or consultant is best suited to know whether he or she is a Competitor of a defendant, or if he or she is a current employee of or consultant doing research for a Competitor of the designating defendant. Thus, Plaintiffs will be required by the Protective Order to make a full inquiry of the expert or consultant on these topics before any information is shared with the expert or consultant.

**9. Challenges to Confidentiality Designations and Privilege Claims.**

- a. Nothing in this Order shall constitute a waiver of any Party’s right to object to the designation or non-designation of Documents, Testimony, or Information as Confidential Material or to object to privilege claims or redactions.
- b. If a Party contends that any Document, Testimony, or Information has been erroneously or improperly designated as Confidential Material or claimed as privileged, or has been improperly redacted for confidentiality or privilege, the material at issue shall be treated as confidential or privileged under the terms of this Order until
  - i. The Designating Party withdraws that designation in writing; or
  - ii. This Court issues an order determining that the material is not confidential or privileged and shall not be given confidential or privileged treatment
- c. In the event that counsel for a Party receiving Confidential Material in discovery objects to a confidentiality designation, said counsel shall advise counsel for the Designating Party, in writing, of such objections, and the specific Confidential Material (identified by Bates number, if possible) to which each objection pertains (the “Designation Objections”). In the event that counsel for a Party objects to privilege claims or redactions, said counsel shall advise counsel for the Designating Party, in writing, of either (i) such objections, the specific material

(identified by Bates number, if possible) to which each objection pertains, and the specific reasons and support for such objections; or (ii) the insufficiency of and concomitant need for further information in the Producing Party's privilege log entry under Fed. R. Civ. P. 26(b)(5)(A)(ii) (the "Privilege Objections"). There shall be no time limit for which Party is to make such objections.

- d. If the Designating Party does not agree to de-designate the challenged Confidential Material or agree to withdraw privilege claims or redactions, the parties shall meet and confer within 20 days of notice of the challenge, in good faith, by phone or in-person, to discuss the Designation Objections or Privilege Objections and attempt to resolve the dispute.
- e. If, after meeting and conferring in good faith, the Parties are unable to resolve the dispute regarding the Designation Objections or Privilege Objections within 30 days of notice of the challenge, the Party challenging the privilege claim or confidentiality designation may file a motion with the Court seeking an order to de-designate (*i.e.*, to rule to be not confidential) the Confidential Material subject to the Designation Objections or an order to overrule the privilege claims or redactions subject to the Privilege Objections.
  - i. Pending a resolution of the motion, the Designating Party is presumed to have designated the Confidential Material or asserted privilege claims in good faith, and any and all existing designations or claims challenged shall remain in place pending resolution of the motion.
- f. The Designating or Producing Party shall have the burden of establishing the propriety of its "confidential" designations or the propriety of its privilege claims or redactions.

**10. Use of Confidential Material in Court Prior to Trial.** All Parties shall make reasonable efforts to avoid requesting the filing of Confidential Information under seal by, for example, redacting or otherwise excluding from a submission to the Court any such Information not directly pertinent to the submission. The Parties will use the following procedure, absent further Court Order, for disclosing Confidential Material to the Court prior to trial.

- a. Confidential Material is not to be filed with the Court except when required in connection with motions or other matters pending before the Court.
- b. The Party seeking to file Confidential Material or a document reflecting or including Confidential Material in support of a motion or other proceeding pending before the Court may first notify the Designating Party of its intent and seek agreement to de-designate such material or otherwise consent to its filing.

- c. Absent any such agreement, if Confidential Material or a document reflecting or including Confidential Material is submitted to or otherwise disclosed to the Court in connection with a motion or other proceeding pending before the Court, such Confidential Material shall be filed in accordance with Local Civil Rule 5.3(c).
- d. Once Confidential Material has been filed under seal, all Parties will comply with the Court's rules regarding sealing.
- e. When this litigation has concluded, the Clerk of Court may return to counsel for the Designating Party, or may destroy, any Confidential Material filed under seal pursuant to the provisions of this Order.

## **11. Redactions.**

- a. To protect against unauthorized disclosure of Confidential Discovery Material, and to comply with all applicable state, federal, and foreign laws and regulations, the Producing Party may redact from produced documents, materials and other things, the following items, or any other item(s) protected from disclosure by statute or decisional authority or agreed upon by the parties or ordered by the Court:
  - i. The names, street addresses, Social Security numbers, tax identification numbers, and other personal identifying information of patients, health care providers, and individuals in clinical studies or adverse event reports. Other general identifying information, however, such as patient or health provider numbers, shall not be redacted unless required by state, federal, or foreign law.
  - ii. The Social Security numbers, tax identification numbers, street addresses, and other personal identifying information of employees in any records.
  - iii. Information that may be subject to applicable state, federal, or foreign laws.
  - iv. Information protected from disclosure by the attorney-client privilege or attorney work-product protection.
- b. Defendants reserve the right to redact information that is nonresponsive (including but not limited to proprietary financial material), unless such redaction(s) render the document incomprehensible or without context. Such responsiveness redactions may only be applied to materials not discoverable pursuant to Federal Rule of Civil Procedure 26(b)(1);

- c. Pursuant to 21 C.F.R. §§ 314.430(e) & (f) and 20.63(f), the names of any person or persons associated with adverse experiences of patients and the names of any patients that are not redacted shall be treated as Confidential, regardless of whether the document containing such names is otherwise designated as Confidential Material.
- d. Notwithstanding any of the foregoing provisions, nothing contained herein shall be construed as a waiver of a party's ability to challenge any redactions pursuant to the procedures set forth herein. In the event of such a challenge, the Designating Party shall bear the burden as to the propriety of any redactions, and to the extent the Designating Party elects not to unredact the challenged material, the Designating Party shall make a motion to establish the propriety of such redactions in accordance with the procedures established in Section 9 herein.

## **12. Subpoena by Other Courts or by Agencies.**

- a. If another court or an administrative agency requests, subpoenas, or orders the disclosure of Confidential Material from a Party that has obtained such material under the terms of this Order, the Party so requested, subpoenaed, or ordered shall notify the Designating Party by electronic mail transmission, express mail, or overnight delivery to counsel of record for the Designating Party not later than ten (10) days prior to producing or disclosing any Confidential Material, and shall furnish such counsel with a copy of the requests, subpoena, or order. The recipient of the Subpoena shall not disclose any Confidential Material pursuant to the Subpoena prior to the date specified for production on the Subpoena.
- b. Upon receipt of this notice, the Designating Party may, in its sole discretion and at its own cost, move to quash or limit the request, subpoena, or order, otherwise oppose the disclosure of the Confidential Material, or seek to obtain confidential treatment of such Confidential Material, to the fullest extent available under law, by the person or entity issuing the request, subpoena, or order. The Party who received the request, subpoena, or order shall not oppose or otherwise interfere with the Designating Party's effort to quash or limit the request, subpoena, or order.

## **13. Disposition of Confidential Material.**

- a. Upon the request of any Party after the final conclusion of this action (including without limitation any appeals and after the time for filing all appellate proceedings has passed), each Party so requested shall either return all Confidential Material to counsel for the Party that produced it, or shall destroy it, or otherwise shall comply with an applicable order of the Court, subject to the exception described herein. Counsel for the Receiving Party shall make a

reasonable effort to ensure return or destruction of Confidential Party Material from any party or non-party to whom a copy of such information has been given.

- b. The return or destruction of Confidential Material under this paragraph shall include, without limitation, all copies, and duplicates thereof, including copies on any litigation-support review application, which shall not be considered work product for purposes of this paragraph.
- c. The Parties shall certify, within 60 days of receipt of a written request for certification, that all Confidential Material required to be returned or destroyed have been so returned or destroyed.
- d. As an exception to the above requirements, and unless otherwise ordered by the Court, counsel may retain: (a) copies of pleadings or other papers that have been filed with the Court and that are Confidential Material or that reflect, reference, or contain Confidential Material; (b) their work product; and (c) official transcripts and exhibits thereto. The terms and provisions of this Order shall continue to apply to any such materials retained by counsel.

**14. Order Survives Termination of Action.** After the termination of this action by entry of a final judgment or order of dismissal, the provisions of this Order shall continue to be binding, unless otherwise agreed or ordered. This Order is, and shall be deemed to be, an enforceable agreement between the Parties, their agents, and their attorneys. The Parties agree that the terms of this Order shall be interpreted and enforced by this Court.

**15. No Waiver of Any Privilege Upon Production of Protected Information.**

- a. The Parties have agreed that, in discovery in this lawsuit, they do not intend to disclose information subject to a claim of attorney-client privilege or attorney work product protection.
  - i. This Order does not affect or constitute a waiver of any Party's right to withhold or redact information protected from disclosure by the attorney-client privilege, physician-patient privilege, work product doctrine, or any other applicable privilege, protection, law, or regulation.
  - ii. Pursuant to Federal Rule of Evidence 502(d) and Federal Rule of Civil Procedure 26(b)(5)(B), the production or disclosure of any discovery material that a Party (the "Disclosing Party") thereafter claims should not have been produced or disclosed based on privilege or work product protections ("Disclosed Protected Information"), shall not constitute or be deemed a waiver or forfeiture in whole or in part—in this or any other action—of any claim of attorney-client privilege or work product



immunity that the Disclosing Party would otherwise be entitled to assert with respect to the Disclosed Protected Information and its subject matter regardless of the circumstances of the production or disclosure. As set forth below, such Disclosed Protected Information shall be returned to the Producing Party or destroyed upon request.

- iii. The provisions of Federal Rule of Evidence 502(b) are inapplicable to the production of Disclosed Protected Information under this Order and this Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).
- b. Attorney's Ethical Responsibilities. Nothing in this order overrides any attorney's ethical responsibilities to refrain from examining or disclosing materials that the attorney knows or reasonably should know to be privileged and to inform the Producing Party that such materials have been produced. Any party receiving materials that, on their face, appear to be covered by a privilege, shall not copy, distribute, or otherwise use in any manner such materials and shall provide prompt notice of the disclosure to the Producing Party to afford the Producing Party the opportunity to request return of the materials, in accordance with the terms of this paragraph.
- c. If a Disclosing Party notifies the Receiving Party of Disclosed Protected Information, the Receiving Party shall, within seven days, unless it contests the claim of privilege or the propriety of the request: (i) return or destroy (or in the case of electronically stored information, delete) all copies of such information (including all notes or other work product of the Receiving Party reflecting the contents of the Disclosed Protected Information) within their possession, custody, or control—including all copies in the possession of experts, consultants, or others to whom the Disclosed Protected Information was provided—and (ii) provide a certification of counsel that all such Disclosed Protected Information has been returned or destroyed. From the moment a Disclosing Party provides notice of inadvertent production, a Receiving Party shall not copy, distribute, or otherwise use in any manner the disputed documents or information, and shall instruct all persons to whom the Receiving Party has disseminated a copy of the documents or information that the documents or information are subject to this Order and may not be copied, distributed, or otherwise used pending a motion and further notice from the Court. For purposes of this Order, Protected Information that has been stored by the Receiving Party on a source of electronically stored information that is not reasonably accessible, such as backup storage media, is sequestered. If such data is retrieved, the Receiving Party must promptly take steps to delete the restored protected information.

- d. Should any motion be filed challenging a claim of attorney-client privilege, work product protection, legal prohibition against disclosure, or other applicable privilege or immunity, the moving party shall not assert in support of such motion the fact or circumstances of the disclosure, whether inadvertent or otherwise.
- e. Where the document at issue is contained in the custodial file of a scheduled deponent, any claim of privilege over produced documents must be asserted at least thirty (30) days prior to the date of the deposition, or the claim shall be deemed waived.
- f. If the Receiving Party contests the claim of attorney-client privilege or work product protection, the Receiving Party must—within 14 business days of receipt of the claim of privilege or protection—move the Court for an Order compelling disclosure of the Disclosed Protected Information (a “Disclosure Motion”). Pending resolution of the Disclosure Motion, the Receiving Party must not use the challenged information in any way or disclose it to any person other than those required by law to be served with a copy of the sealed Disclosure Motion. On any such Disclosure Motion, the Disclosing Party shall retain the burden of establishing its privilege or work product claims.
- g. Nothing in this paragraph shall limit the right of any Party to petition the Court for an in camera review of the Disclosed Protected Information.

**16. Inadvertent Production or Disclosure of Confidential Material.**

- a. Inadvertent or unintentional disclosure, without the required confidentiality designation, of any Document, Testimony, or Information that the Disclosing Party intended to designate as Confidential Material (“inadvertent production”) shall not be deemed a waiver in whole or in part of the Producing Party’s claim of confidentiality, either as to specific documents and information disclosed or as to the same or related subject matter.
- b. In the event that a Designating Party makes such an inadvertent production, that Party shall contact the receiving Party within 30 days of the discovery of the inadvertent production, or as promptly as reasonably possible thereafter, and inform the receiving Party or Parties in writing of the inadvertent production and the specific material at issue.
- c. Within 30 days of receipt of such notice, the Receiving Party or Parties may challenge the propriety of the asserted designation, but shall treat the material identified in the notice as confidential, until (i) the Parties agree to non-confidential treatment of the subject material, or (ii) the Court, on motion by the

Receiving Party, issues an order addressing the appropriate treatment of the subject material.

- d. Within ten (10) court days of receiving notice of the inadvertently disclosed Confidential Material, if no challenge is asserted, the receiving Party shall return or destroy all copies of such Confidential Material and provide a certification of counsel that all such Confidential Material has been returned or destroyed. Each receiving Party shall notify every person or organization that received copies of or access to the material identified in the notice that such material contains Confidential Material.
- e. As promptly as reasonably possible thereafter, the Disclosing Party shall reproduce the Confidential Material with the required legend.

**17. Non-Parties.** The parties shall attach a copy of this Order to any subpoena or other discovery request directed to any non-party. Non-parties from whom discovery is requested are entitled to the protections of this Order in responding to such requests. Third parties subpoenaed in this matter may designate materials as Confidential pursuant to this Order but may not be given access to Confidential Material designated by others unless they execute and file with the Court their written agreement to be bound by this Order.

**18.** Nothing contained herein is intended to or shall limit a party's right to conduct a review of material or information (including metadata) for relevance, responsiveness, and/or designation of privileged or protected material or information before production.

**19.** This Order shall be subject to modification by the Court on its own motion or on motion of a party or any other person with standing concerning the subject matter.

**Date: September 23, 2020**

**s/ Joseph A. Dickson**  
**HON. JOSEPH A. DICKSON**  
**UNITED STATES MAGISTRATE JUDGE**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**IN RE: ALLERGAN BIOCELL TEXTURED  
BREAST IMPLANT PRODUCTS LIABILITY  
LITIGATION**

**Case No. 2:19-md-02921 (BRM)(JAD)  
MDL NO. 2921**

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**THIS DOCUMENT RELATES TO: ALL CASES**

**EXHIBIT A**

**ENDORSEMENT OF PROTECTIVE ORDER**

I hereby attest to my understanding that information or documents designated as Confidential Material are provided to me subject to the Protective Order dated \_\_\_\_\_, 2020 (the “Order”), in the above-captioned litigation (“Litigation”); that I have been given a copy of and have read the Order; and, that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as Confidential Material pursuant to the Order.

I further agree that I shall not disclose to others, except in accord with the Order, any Confidential Material, in any form whatsoever, and that such Confidential Material may be used only for the purposes authorized by the Order.

I further agree to return all copies of any Confidential Material or any document or thing containing Confidential Material I have received to counsel who provided them to me, or to destroy such materials, upon completion of the purpose for which they were provided and no later than the conclusion of this Litigation.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such Confidential Material will continue even after this Litigation concludes.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the District of New Jersey, for the purposes of any proceedings relating to enforcement of the Order. I further agree to be bound by and to comply with the terms of the Order as soon as I sign this Agreement, regardless of whether the Order has been entered by the Court.

Date: \_\_\_\_\_

By: \_\_\_\_\_