

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**IN RE: COVIDIEN HERNIA MESH
PRODUCTS LIABILITY LITIGATION
NO. II,**

This Document Relates To:

All Cases

MDL No. 1:22-md-03029-PBS

CASE MANAGEMENT ORDER NO. 7
(Governing Initial Pleadings)

I. SCOPE OF ORDER

This Order shall govern all actions in the above-captioned MDL proceeding (“this MDL”) to the extent set forth herein that are directly filed in or transferred to this MDL after the date of this Order or otherwise expressly identified herein.

This Order relates to Plaintiffs’ filing and service of a Master Complaint, future filings of Short Form Adoption By Reference Complaints, Defendants’ responsive pleading obligations, including Short Form Adoption By Reference Answers, and Rule 26 Initial Disclosures.

II. MASTER PLEADINGS

A. Master Complaint: On or before February 13, 2023, Plaintiffs’ Co-Lead Counsel shall file and serve a Master Complaint. The Master Complaint shall identify all products that are at issue in this MDL. Prior to filing the Master Complaint, Plaintiffs’ Co-Lead Counsel shall send to Defendants a draft of the Master Complaint, Defendants may identify any pleading deficiencies and/or issues so that Plaintiffs can decide whether to cure any defect and/or issues identified by Defendants. The parties will work in good faith to cure facial defects to the Master Complaint prior to filing.

B. Short Form Adoption By Reference Complaint: Attached as Exhibit A is a sample Short Form Adoption By Reference Complaint (“Short Form Complaint”) for use in this MDL. Following the entry of this Order, each Plaintiff shall file and serve a Short Form Complaint in the form attached hereto in every action that is directly filed in or transferred to this MDL within 14 days of service of the Master Answer. If an action is transferred to this MDL after service of the Master Answer, Plaintiff shall file and serve a Short Form Complaint within 90 days of being transferred to this MDL.¹ For each action in this MDL, the Master Complaint together with the Short Form Complaint shall be deemed the operative complaint.

C. Master Answer: Subject to Section IV below (regarding motions to dismiss and for judgment on the pleadings), within 30 days after being served with the Master Complaint via the ECF system, Defendants shall file via the ECF system a Master Answer which shall include all affirmative defenses to the Master Complaint. If Defendants file a motion pursuant to Section IV below, Defendants shall file via the ECF system a Master Answer no later than 30 days after a ruling on the motion, if necessary.

D. Short Form Adoption By Reference Answer: Each Defendant named in a Short Form Complaint will respond with a Short Form Adoption By Reference Answer (“Short Form Answer”). A sample Short Form Answer is attached as Exhibit B. The Short Form Answer may either adopt and incorporate the responses and defenses set forth in Defendants’ Master Answer or assert new ones. The Short Form Answer shall serve as a general denial of all claims asserted in the Short Form Complaint or admit some and shall incorporate by reference defenses asserted in the Master Answer (or otherwise assert the defenses to that action). For each action subject to

¹ If a Plaintiff fails to file a Short Form Complaint within 21 days of being transferred, Defendants shall notify the Plaintiff’s counsel, copying Co-Lead Counsel, that Plaintiff has failed to file a Short Form Complaint as required by this Order.

this Order, the Master Answer, together with the Short Form Answer, shall be deemed the operative answer. For any Plaintiff who identifies “Other Count(s)” as set forth in Section 11 of the Short Form Complaint, by filing a Short Form Answer, Defendants will be deemed to have denied any and all asserted “Other Count(s)” and reserve all rights to assert any and all defenses to any and all “Other Count(s)”. For any long form complaints that are filed in other jurisdictions and conditionally transferred to this Court via Conditional Transfer Order (“CTO”), the deadline for Defendants to answer or otherwise respond to the long form complaint shall be stayed until the Plaintiff files and serves a Short Form Complaint.

E. Service Under Rule 4: Defendants agree that they will waive formal service of process for cases directly filed in or to be transferred to this MDL. By waiving service of process and accepting complaints by email, Defendants are not waiving any affirmative defenses, but Defendants shall not challenge the adequacy of service if made pursuant to this Section below.

To effectuate service, Plaintiffs shall send an ECF-conformed or stamped copy of the filed Short Form Complaint to CovidienMeshMDL@us.dlapiper.com. By sending an e-mail to this address containing the ECF-conformed or stamped copy of the Short Form Complaint, this will constitute good, valid and official service for these actions under FED. R. CIV. P. 4. Actions shall be considered served on the date and time of the transmittal of the e-mail containing the aforementioned items.

F. Electronic Filing: All Short Form Complaints must be filed electronically, absent extraordinary circumstances. Prior to any Plaintiff’s attorney filing a Short Form Complaint directly in this MDL, that attorney must register for, and obtain, a District of Massachusetts login name and password. All attorneys must familiarize themselves with the District of Massachusetts’ Filing Policies and Procedures.

G. Filing Fees: Internet credit card payments shall be required for all complaints and made online through Pay.gov. Plaintiffs' counsel will be prompted to pay the required filing fee.

I. Duties of Individual Plaintiffs' Counsel: It is the duty of the counsel representing the individual plaintiffs proceeding hereunder to ensure that the Short Form Complaint(s) for his or her plaintiffs are completed properly, including any additional counts pled thereto.

III. NO LEXECON WAIVER

Consistent with the Direct Filing Order, nothing in this Order constitutes a waiver under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), by any party. However, nothing in this Order shall preclude the parties from agreeing to such waivers in the future. The issue of such waivers will be the subject of a future Case Management Order to address Bellwether Cases.

IV. MOTIONS TO DISMISS/JUDGMENT ON THE PLEADINGS

Notwithstanding the foregoing, Defendants reserve all rights to move to dismiss or for judgment on the Master Complaint under Federal Rules of Civil Procedure 9 and 12. A motion to dismiss the Master Complaint shall be filed by Defendants on or before March 31, 2023. Plaintiffs will have 45 days to file a response, until May 15, 2023, and Defendants will have 14 days from the response to file a reply, until May 29, 2023.

V. RULE 26 INITIAL DISCLOSURES

The requirements of FED. R. CIV. P. 26(a)(1)(A) shall hereby be waived for all parties going forward. However, in an effort to advance the litigation, Defendants agree to provide a Master Initial Disclosure on or before February 6, 2023. Service of these disclosures shall be made on Plaintiffs' Co-Lead Counsel.

IT IS SO ORDERED, this 2nd day of February 2023.

/s/ M. Page Kelley

M. Page Kelley
Chief U.S. Magistrate Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**IN RE: COVIDIEN HERNIA MESH
PRODUCTS LIABILITY LITIGATION
NO. II,**

This Document Relates To:

MDL No. 1:22-md-03029-PBS

SHORT FORM COMPLAINT

Plaintiff(s) file(s) this Short Form Complaint pursuant to Case Management Order No. 7 and is to be bound by the rights, protections, and privileges and obligations of that Order. Plaintiff(s) hereby incorporate(s) the Master Complaint in MDL No. 3029 by reference. Plaintiff(s) further show(s) the Court as follows:

1. The name of Plaintiff/the person implanted with Defendants' Hernia Mesh Device(s):

2. The name of any Consortium Plaintiff (if applicable):

3. Other Plaintiff(s) and Capacity (i.e., administrator, executor, guardian, conservator):

4. Current State of Residence:

5. District Court and Division in which action would have been filed absent direct filing:

6. Defendants (Check Defendants against whom Complaint is made):

A. Covidien LP

B. Sofradim Production SAS

C. Other (please list: _____)

7. Identify which of Defendants' Hernia Mesh Device(s) was/were implanted (Check all device(s) implanted):

- Dextile Anatomical Mesh
- Parietene DS Mesh
- Parietene Polypropylene Mesh
- Parietene ProGrip Mesh
- Parietex Composite Mesh
- Parietex Composite Mono PM Mesh
- Parietex Composite PCO-OS or PCO-OB Mesh
- Parietex Composite Ventral Patch
- Parietex Hydrophilic 2D Mesh
- Parietex Hydrophilic 3D Mesh
- Parietex Hydrophilic Anatomical Mesh
- Parietex Monofilament Polyester Mesh
- Parietex Optimized Composite Mesh
- Parietex Plug & Patch
- Parietex ProGrip
- ProGrip Laparoscopic
- SurgiPro
- SurgiPro Plug & Patch
- Symbotex Composite Mesh
- Other (please list in space provided below):

8. Defendants' Hernia Mesh Device(s) about which Plaintiff is making a claim (Check all applicable device(s)):

- Dextile Anatomical Mesh
- Parietene DS Mesh
- Parietene Polypropylene Mesh
- Parietene ProGrip Mesh
- Parietex Composite Mesh
- Parietex Composite Mono PM Mesh
- Parietex Composite PCO-OS or PCO-OB Mesh
- Parietex Composite Ventral Patch
- Parietex Hydrophilic 2D Mesh
- Parietex Hydrophilic 3D Mesh
- Parietex Hydrophilic Anatomical Mesh
- Parietex Monofilament Polyester Mesh
- Parietex Optimized Composite Mesh
- Parietex Plug & Patch
- Parietex ProGrip
- ProGrip Laparoscopic
- SurgiPro
- SurgiPro Plug & Patch
- Symbotex Composite Mesh
- Other (please list in space provided below):

9. Date of Implantation and State of Implantation (if multiple devices, list date of implantation for each device and list the device implanted on such date):

10. As of the date of filing this Short Form Complaint, has the person implanted with Defendants' Hernia Mesh Device(s) had subsequent surgical intervention due to the Hernia Mesh Device(s)?: Yes____ No____

11. Basis of Jurisdiction:

Diversity of Citizenship

Other: _____

12. Counts in the Master Complaint adopted by Plaintiff(s):

Count I – Strict Product Liability- Defective Design

Count II – Strict Product Liability- Failure to Warn

Count III – Strict Product Liability- Manufacturing Defect

Count IV– Negligence

Count V– Negligence Per Se

Count VI– Gross Negligence

Count VII – State Consumer Protection Laws (Please identify applicable State Consumer Protection law(s)):

Count VIII – Breach of Implied Warranty

Count IX – Breach of Express Warranty

Count X – Negligent Infliction of Emotional Distress

Count XI – Intentional Infliction of Emotional Distress

Count XII – Negligent Misrepresentation

Count XIII – Fraud and Fraudulent Misrepresentation

- Count XIV – Fraudulent Concealment
 - Count XV – Wrongful Death
 - Count XVI – Loss of Consortium
 - Count XVII – Punitive Damages
 - Other Count(s) (please identify and state factual and legal bases for other claims not included in the Master Complaint below):
-

- Jury Trial is Demanded as to All Counts
 - Jury Trial is NOT Demanded as to All Counts; if Jury Trial is Demanded as to Any Count(s), identify which ones (list below):
-

Respectfully submitted this ____ day of _____, 202__.

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: COVIDIEN HERNIA MESH
PRODUCTS LIABILITY LITIGATION
NO. II,

This Document Relates To:

MDL No. 1:22-md-03029-PBS

**DEFENDANTS COVIDIEN LP'S AND SOFRADIM PRODUCTION SAS'S SHORT
FORM ADOPTION BY REFERENCE ANSWER TO PLAINTIFF'S SHORT FORM
ADOPTION BY REFERENCE COMPLAINT**

Pursuant to Case Management Order No. 7, Defendants Covidien LP and Sofradim Production SAS ("Defendants"), by and through their undersigned counsel, hereby submit their Short Form Adoption by Reference Answer.

Defendants hereby incorporate by reference and adopt, as though restated in full, the Master Answer dated _____, including each and every Affirmative Defense, and deny all causes of action in the Master Complaint and Short-Form Adoption by Reference Complaint unless expressly admitted.

Defendants demand a Jury Trial on all Counts.

Dated: _____

Respectfully submitted,

/s/ _____