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February 24, 2023

VIA ECF FILING

Honorable Nicholas G. Garaufis, District Judge
Honorable Marcia M. Henry, Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: MDL No. 3044 - In re: Exactech Polyethylene Orthopedic Products Liability Litigation
1:22-md-03044-NGG-MMH

Dear Judge Garaufis and Magistrate Judge Henry:

Pursuant to the January 25, 2023 Minute Entry and Order (Doc. No. 85), the parties submit this joint status report regarding a protocol for Plaintiffs' electronically stored information (ESI). The parties have separately negotiated a Plaintiff Fact Sheet (PFS) and Supplemental PFS for bellwether pool plaintiffs that include certain document requests from Plaintiffs. The Parties have also negotiated a separate Plaintiff Preliminary Disclosure Form ("PPD"). The parties agree that, as with any discovery requests, documents responsive to the PFS document requests that are within the possession, custody, or control of a plaintiff and are not privileged, protected, or otherwise not discoverable, are discoverable regardless of the manner of storage. The parties further agree that such responsive documents may be produced in native or PDF format without corresponding metadata.

Separate and apart from any document production as required by the PFS, Supplemental PFS, and PPD, the parties agree production of additional case-specific documents from certain ESI sources, and potential metadata to be negotiated, will be limited to any plaintiff included in a discovery pool or other selection process designed to inform bellwether selection. The parties continue to discuss which ESI sources will be subject to investigation for bellwether pool plaintiffs and will raise any disagreements with the Court should they arise.

If a bellwether pool plaintiff has used or maintained an agreed upon ESI source, each bellwether pool plaintiff will conduct a reasonable investigation of the source for potentially responsive ESI subject to search terms to be agreed upon by the parties. The parties will also continue to meet and confer on the protocol for plaintiffs' ESI collection and production.

The parties agree all Plaintiffs have an obligation to preserve all discoverable or responsive documents and ESI reasonably expected to exist. If it is determined that any such documents and ESI are likely contained on a source that a bellwether pool plaintiff identifies as not accessible, the parties will meet and confer with respect to the preservation requirements, if any, that the bellwether pool plaintiff should undertake with respect to any sources that are not accessible.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'ER', is positioned above the typed name.

Ellen Relkin
Co-Lead Counsel for Plaintiffs

cc: All counsel via ECF