

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: ETHICON PHYSIOMESH	:	MDL DOCKET NO. 2782
FLEXIBLE COMPOSITE	:	ALL CASES
HERNIA MESH PRODUCTS	:	
LIABILITY LITIGATION	:	CIVIL ACTION NO.
	:	1:17-MD-02782-RWS

PRACTICE AND PROCEDURE ORDER NO. 8

RECORDS COLLECTION

Practice and Procedure Order No. 6 provided, in part, for the Plaintiffs' submission to the Defendants of Plaintiff Profile Forms and certain blank, signed authorizations allowing the Defendants' counsel to obtain from third parties certain Plaintiffs' records. This Order establishes the procedures for the Plaintiffs to access the records the Defendants collect. This Order is not intended to and does not create any obligation for any Plaintiff to access any of the records collected by Defendants.

A. PLAINTIFFS' ACCESS TO RECORDS THE DEFENDANTS COLLECT

1. Plaintiffs' counsel shall have the opportunity to receive notice, and to review and obtain copies of records collected by the Defendants by the means specified in Section B below, through the use of a record copy service

vendor. *The Marker Group, Inc.* has been retained by Defendants Johnson & Johnson and Ethicon, Inc. as the record copy service vendor to perform the service.

2. Upon establishment of a *User Account* by counsel representing a particular Plaintiff(s), as set forth in Section B below, the authorized user will receive E-mail alerts on each date that new records for the Plaintiff(s) associated with that account are posted to the on-line repository for access by the counsel representing such Plaintiff(s). Only one (1) *User Account* will be established per law firm representing Plaintiffs.

3. The E-mail alert will identify Plaintiff(s)' name(s), and the name(s) of the records provider(s), the type of record, and the bates label range for the records.

4. Plaintiffs shall have the ability, but not the obligation, to obtain copies of the records that are retrieved by Defendants through *The Marker Group, Inc.* The Fees to obtain copies of the records that are retrieved are set forth on Exhibit "A" attached hereto, and shall not increase during the course of this litigation.

B. ESTABLISHMENT OF USER ACCOUNTS

1. Plaintiff(s)' counsel may establish *User Accounts* by contacting *The Marker Group, Inc.* at GoMarkers@marker-group.com. Plaintiff(s)' counsel will be required to provide:

a. A list of the name(s) and E-mail address(es) of each individual in the law firms representing Plaintiff(s) who are authorized to access the Record Repository, so that one *User Account* can be established for the law firm, and one, shared username and password can be generated and communicated to those for whom authorized access is requested. The one-time user fee to establish access shall cover all individuals in the law firm representing a plaintiff of the law firm;

b. A listing of the Plaintiff(s) for whom those counsel are attorneys of record, including for each individual person the following information: last name, first name, middle name and maiden name if applicable, docket number, case caption, and jurisdiction where the case is currently pending. If a Plaintiff is representing an estate, the decedent as well as the estate administrator/representative must be identified. If the Plaintiff has a common name, an additional identifier may be requested to ensure access is granted only to

that specific person. This list must be updated by Plaintiffs' counsel with *The Marker Group, Inc.* during the first week of each month with respect to any cases newly filed during the prior month and/or any corrections that may need to be made;

c. The name, title, and E-mail address of the primary contact person for Plaintiff(s)' counsel for interactions with *The Marker Group, Inc.*; and,

d. The name and E-mail address of the person to whom receipts for credit card charges should be directed.

e. Establishing a user account with The Marker Group, Inc. does not obligate Plaintiffs' counsel to obtain any records through The Marker Group, Inc.

C. MENTAL-HEALTH RELATED RECORDS

1. The following provisions pertain only to receipt of mental-health related care records, whether by a psychiatrist or psychologist or other readily identifiable mental health specialist. Upon receipt of mental-health related care records, *The Marker Group, Inc.*, shall:

a. Notify both Parties (Defendants and the counsel for that individual Plaintiff by E-mail (not attaching the records)) that mental-health related care records have been received;

b. Quarantine the records for a period of time to afford Plaintiff(s)' counsel an opportunity to obtain and review the records (using the process and Fees to retrieve copies of the records as set forth on Exhibit "A" attached hereto). During the Quarantine, *The Marker Group, Inc.* shall not release or give access to the Defendants of any of the mental-health related care records;

c. Plaintiff(s)' counsel shall have ten (10) days to assert a recognized privilege or other legal protection prohibiting the disclosure of the records and notify both *The Marker Group, Inc.* and the requesting Defendants, with an appropriate privilege log;

d. Absent notification within ten (10) days of the assertion of such a privilege, *The Marker Group, Inc.* shall then provide the records to the requesting Defendants.

2. If the Plaintiff provides a notification within ten (10) days of the assertion of such a privilege or other legal protection prohibiting the disclosure of the records, with an appropriate privilege log, *The Marker Group, Inc.* shall maintain the Quarantine until further Order of this Court or agreement of the

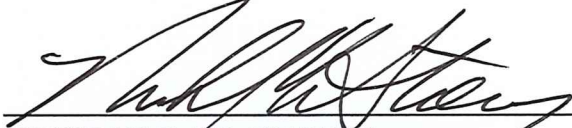
parties via written agreement signed by counsel for Plaintiff and Defendants, and/or withdrawal by Plaintiff's counsel of the assertion of a privilege or other legal protection prohibiting the disclosure of the records.

D. INADVERTENT OR MISTAKEN DISCLOSURE OF PRIVILEGED DOCUMENTS. "CLAWBACK" PROCEDURE.

Notwithstanding any other provision or paragraph of this Order, the procedure regarding notification and "clawback" of inadvertent or mistaken disclosure of privileged or otherwise protected documents or information set forth in Paragraph 14 of the "First Amended Confidentiality and Protective Order" (Doc. 293) shall apply equally to the inadvertent or mistaken disclosure of Plaintiffs' records produced to or otherwise obtained by Defendants which are privileged or otherwise legally prohibited from disclosure.

The Court **DIRECTS** the Clerk to file a copy of this Order in 1:17-MD-02782-RWS and it shall apply to each member related care previously transferred to, removed to, or filed in this Court. In cases subsequently filed in this Court, it shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the Court. The orders may be assessed through the CM/ECF system and the Court's website at <http://www.gand.uscourts.gov/17md2782>.

SO ORDERED, this 12th day of March, 2018.



RICHARD W. STORY
United States District Judge

MARKER GROUP

PROFESSIONAL LITIGATION SUPPORT

MARKER GROUP PRICING

OPPOSING COUNSEL REPOSITORY

Plaintiffs' counsel may establish one (1) User Account without payment of a set-up fee. Each additional User Account established by Plaintiffs' counsel will require payment of a one-time set-up fee per user account. A fee per record for each record downloaded by each User Account will be assessed. If an account holder has not purchased any records during the year the account has been established, the account will be deactivated. A reinstatement fee will be assessed for each user that requires reactivation. Email notification of records received is included and will be issued nightly.

Primary User Set-Up Fee	No Cost
Records Received Notification Email Fee	No Cost
Subsequent User Set-Up Fee <i>Fee is assessed per user and is a one-time fee.</i>	\$25.00
Record Review/Download Fee - Large <i>Fee is assessed per record set over 100 pages</i>	\$10.00
Record Review/Download Fee - Small <i>Fee is assessed per record set under 100 pages</i>	\$5.00
Account Reinstatement Fee <i>Fee is assessed upon request to reopen account that has been suspended for lack of activity.</i>	\$25.00