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FILED
JUL 1 2011
C.W.J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

COORDINATION PROCEEDING
SPECIAL TITLE [Rule 1550(b)]

) Case No.: JCCP 4887

ESSURE PRODUCT CASES

) ASSIGNED FOR ALL PURPOSES TO:
) Judge Winifred Y. Smith
) Dept. 21

THIS DOCUMENT RELATES TO:
ALL CASES

) CASE MANAGEMENT ORDER NO. 1:
) CASE MANAGEMENT AND
) COORDINATION PROCEDURES

Pursuant to California Rule of Court ("CRC") 3.541, having considered the written submission of the parties, and the comments and proposals presented to the court, and good cause appearing,

IT IS HEREBY ORDERED:

I. GENERAL MATTERS

A. **Scope of Order.** This Case Management Order No. 1 ("CMO 1"), and all case management and other orders entered by this court, shall be binding on all parties and their counsel

1 in the Judicial Council Coordinated Proceeding No. 4887, *Essure Product Cases*, including in all
2 add-on or included actions, unless such order explicitly states that it relates only to specific cases.

3 **B. Pretrial Coordination.** The procedures and protocols contained in this CMO 1 shall
4 govern each case brought by or on behalf of any person alleging injuries and damages from, or cases
5 seeking injunctive relief or restitution relating to, Essure® ("Plaintiffs") that are coordinated in these
6 proceedings pursuant to Code of Civil Procedure sections ("CCP") 404 *et seq.* and CRC 3.501, *et*
7 *seq.* This CMO 1 does not constitute a determination that these cases should be consolidated for trial,
8 and does not have the effect of making any person or entity a party to an action in which he, she or it
9 has not been named and served.

10 **C. Register of Actions and Case File.** The Clerk of the Alameda County Superior
11 Court will maintain a Register of Actions and Case File under the caption "ESSURE PRODUCT
12 CASES, Judicial Council Coordinated Proceeding No. 4887" (hereafter, "JCCP 4887"). All orders,
13 pleadings, motions, and other documents will, when filed and docketed in JCCP 4887, be deemed
14 filed and docketed in each included action to the extent applicable. Pleadings, motions and other
15 documents shall bear a caption similar to that of this CMO 1. If generally applicable to all of the
16 coordinated actions, the document shall indicate in the caption that it relates to "ALL CASES."
17 Documents intended to apply only to particular cases will indicate in the caption the name and case
18 number of each case to which it applies.

19 **D. Stay of Proceedings.** The parties anticipate that a proposed plan for coordinated
20 motion practice and discovery will be presented to the court. The parties disagree as to whether a
21 stay of all proceedings is warranted in order to promote discussions relating to that proposal.
22 Nonetheless, and for the orderly administration of these coordinated proceedings, the parties have
23 agreed, and the court orders, that any Essure® case identified as an add-on case to these coordinated
24 proceedings is ordered stayed except as to the specific proceedings outlined in this CMO 1 or in any
25 subsequent orders entered by the court. Except as otherwise outlined in this CMO 1, or in any
26 subsequent order, all discovery previously served on any party in any case included in these
27 coordinated proceedings, or in any case identified as an add-on case, and any responsive pleading
28 due to any such case, are hereby stayed until further order of this court. This stay does not preclude

1 the parties from meeting and conferring on discovery or other issues to facilitate the efficient
2 progress of these coordinated proceedings, nor does it preclude Plaintiffs from initiating discovery
3 when the court deems appropriate. Any California state court Essure® case not yet identified as an
4 add-on case shall be subject to this stay once identified as an add-on case by any party.

5 For cases not yet coordinated in this proceeding or identified as an add-on case, the party
6 who identifies the case as an add-on case shall have the responsibility of serving the other parties in
7 that case, at the same time as the case is identified to this court as an add-on case, with a copy of
8 each Case Management Order entered in JCCP 4887 (unless the party's counsel of record has
9 already appeared in these coordinated proceedings for another party) and for filing a Notice of Stay
10 of Proceedings (Judicial Council Form CM-180) in the originating court.

11 **E. Admission of Attorneys.** *Pro hac vice* admittance in an included action prior to
12 coordination is sufficient to allow an appearance in these coordinated proceedings and in any other
13 included action in which the attorney represents a party. Counsel having been admitted *pro hac vice*
14 in an included action prior to coordination are directed to file a copy of the order of admission in this
15 JCCP 4887 case.

16 An attorney who is admitted *pro hac vice* in these coordinated proceedings need not file a
17 *pro hac vice* application in any other included action in which he or she represents a party unless and
18 until a remand (CRC 3.542) or transfer (CRC 3.543) results in an action no longer being included in
19 these coordinated proceedings.

20 *Pro hac vice* renewal fees pursuant to California Government Code § 70617 (e)(2) shall be
21 deposited with the Clerk of this Court.

22 **F. Communications Among Plaintiffs' Counsel and Among Defendants' Counsel.**

23 In recognition that cooperation among counsel and the parties is essential for the orderly and
24 expeditious resolution of the litigation, any cooperative effort shall not in any way be used against
25 any party, be cited as purported evidence of conspiracy or wrongful conduct, and shall not be
26 communicated to any jury. The communication, transmission or dissemination of information of
27 common interest among Plaintiffs' counsel, between Plaintiffs' counsel and Plaintiffs, among
28 defendants' counsel, or between defendants' counsel and defendants (including their employees and

1 agents), in this proceeding shall be protected by the attorney-client privilege, the attorney work-
2 product doctrine, the protections afforded to material prepared for litigation, or by any other
3 privilege to which a party is otherwise entitled.

4 **G. Compliance With Rules Regarding Ex Parte Communications With Court.** All
5 parties and their counsel shall comply with Rule 5-300 of the Rules of Professional Conduct and
6 with the published procedural guidelines of this court with respect to communications with the court
7 and court staff. Any pleading filed in JCCP 4887 must be served simultaneously on all Lead and
8 Liaison Counsel in the same manner and at the same time as it is filed. All Liaison Counsel shall be
9 copied on all emails with the court's clerk.

10 **H. Electronic Service.** The parties anticipate using a third-party vendor to provide
11 electronic service of documents in this coordinated proceeding. Notwithstanding any provisions to
12 the contrary in this CMO 1, the responsibility of any party (including Lead or Liaison Counsel) to
13 serve any other party (except for service of process or service required under a statute or court rule to
14 be personal service) or to provide notice to any other party, shall be deemed complete with the
15 completion of electronic service, once such service has been authorized by this court in a subsequent
16 case management order.

17 **I. Service by Court to Liaison Counsel.** The Court may, at its discretion, serve only
18 Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel with any order, notice, or other paper,
19 and direct Liaison Counsel to serve all remaining parties by whatever means such Liaison Counsel
20 deem(s) appropriate.

21 **J. Department 21 Procedures.** All parties should become thoroughly familiar with
22 the extensive information available on the court's website, DomainWeb
23 (<https://publicrecords.alameda.courts.ca.gov/PRS/>), including case specific information, calendar
24 information, tentative rulings for law and motion matters, and documents covering assorted topics
25 related to complex litigation (List of Documents button). Among the available documents is a Model
26 Protective Order. While the use of the Model Protective Order is not mandatory, all protective orders
27 must include a provision similar in substance to the following:
28

1 "If any Party seeks to file Confidential material or disclose the contents of Confidential
2 material designated as such by another Party as a basis for adjudication other than discovery
3 motions or proceedings (e.g., motions within the scope of CRC 3.1350 and 3.764), the filing
4 Party must meet and confer with the designating Party at least 10 calendar days prior to the
5 intended filing date to offer the designating Party the opportunity to evaluate whether the
6 designated materials fall within the parameters of CRC 2.550(d), and to either (a) remove the
7 Confidential designation, or (b) prepare a motion or application pursuant to CRC 2.551(b)."

8 **II. ORGANIZATION OF PLAINTIFFS' COUNSEL**

9 **A. Plaintiffs' Co-Liaison Counsel.** The court designates the following to serve as
10 Plaintiffs' Co-Liaison Counsel:

11 **William A. Kershaw (CA State Bar 57486)**
12 Kershaw, Cook & Talley
13 401 Watt Avenue
14 Sacramento, CA 95846
15 Phone: (888) 997-5170
16 Fax: (916) 669-4499
17 E-mail: bill@kctlegal.com

18 **M. Elizabeth Graham (CA State Bar 143085)**
19 Grant & Eisenhofer P.A.
20 101 California Street
21 Suite 2710
22 San Francisco, CA 94111
23 Phone: 415-365-9585
24 E-mail: egramham@gelaw.com

25 **B. Responsibilities of Plaintiffs' Co-Liaison Counsel.** Plaintiffs' Co-Liaison Counsel
26 shall have the following duties and responsibilities:

- 27 1. Maintain and distribute to the court, to all other Plaintiffs' counsel, and to
28 Defendants' counsel an up-to-date comprehensive service list of all counsel, marked with the last
date of revision;
2. On behalf of all counsel for all Plaintiffs, receive from Defendants, the court,
and third parties, and as appropriate, distribute to all other Plaintiffs' counsel the following: written

1 and electronic communications from the court, Defendants, and third parties; pleadings; orders from
2 the court; and discovery and documents from Defendants and third parties;

3 3. Maintain and make available to all other Plaintiffs' counsel at reasonable
4 hours a complete file of all documents filed and/or served in these coordinated proceedings and
5 establish and maintain an electronically accessible document depository, with appropriate safeguards
6 to ensure the confidentiality of the materials included;

7 4. Coordinate the filing of notices and papers by Plaintiffs' Counsel, to sign
8 documents submitted to the court, to communicate with Defendants' Liaison counsel (including
9 regarding status conference statements and agendas in advance of each status conference), to
10 negotiate proposed case management orders or delegate such to members of the Executive
11 Committee, and to engage in meet and confer sessions;

12 5. Perform such other functions as may be expressly authorized by further orders
13 of this court or requested by the court-appointed Executive Committee.

14 C. **Plaintiffs' Executive Committee.** The court designates the following to serve as
15 members of the Plaintiffs' Executive Committee; the appointments to the Executive Committee are
16 individual appointments to the named members:

17 **Fidelda Fitzpatrick (Lead Counsel of the Executive Committee)**
18 Motley Rice LLC
19 55 Cedar Street, Ste 100
20 Providence, RI 02903
21 Phone: (401) 457-7700
22 Fax: (401) 457-7708
23 E-mail: ffitzpatrick@motleyrice.com

24 **Erin Copeland**
25 Fibich Leebron Copeland Briggs & Josephson
26 1150 Bissonnet Street
27 Houston, TX 77005
28 Phone: (713) 751-0025
29 Fax: (713) 751-0030
30 E-mail: ecopeland@fibichlaw.com

31 **Kim Dougherty**
32 Janet, Jenner & Suggs, LLC
33 31 St. James Ave., Suite 365
34 Boston, MA 02116

1 Phone: (617)933-1265
2 E-mail: kdougherty@myadvocates.com

3 **M. Elizabeth Graham (CA State Bar 143085)**
4 Grant & Eisenhofer P.A.
5 101 California Street
6 Suite 2710
7 San Francisco, CA 94111
8 Phone: 415-365-9585
9 E-mail: egraham@gelaw.com

10 **Edward A. Wallace**
11 Wexler Wallace LLP
12 55 W. Monroe St., Suite 3300
13 Chicago, IL 60603
14 Phone: (312) 346-2222
15 Fax: (312) 346-0022
16 E-mail: eaw@wexlerwallace.com

17 **D. Plaintiffs' Lead Counsel.** The court designates the following to serve as Lead
18 Counsel of the Executive Committee: Fidelma Fitzpatrick. Lead Counsel shall facilitate and direct
19 the activities of the Executive Committee, which shall include managing the day-to-day affairs of the
20 Executive Committee.

21 **E. Responsibilities of Plaintiffs' Executive Committee.** Plaintiffs' Executive
22 Committee shall be responsible for coordinating the activities of Plaintiffs during all pretrial
23 proceedings. The specific duties of the Executive Committee shall also include:

24 1. Determine and present, by briefs, oral argument, or such other fashion as may
25 be appropriate, personally or by a designee, to the court and opposing parties, the coordinated
26 position of the Plaintiffs on all matters arising during pretrial proceedings;

27 2. Coordinate the initiation and conduct of discovery on behalf of Plaintiffs
28 consistent with the requirements of the California Code of Civil Procedure and Rules of Court
relating to discovery or any subsequent order of this court;

3. Conduct settlement negotiations on behalf of Plaintiffs, but not enter binding
agreements except to the extent expressly authorized;

1 4. Assign work for the common benefit of all Plaintiffs and delegate specific
2 tasks to other counsel in a manner to ensure that pretrial preparation for Plaintiffs is conducted
3 effectively, efficiently and economically;

4 5. Enter into stipulations with opposing counsel as necessary for the conduct of
5 the litigation;

6 6. Prepare and distribute to other Plaintiffs' counsel periodic status reports;

7 7. Maintain adequate time, expense and disbursement records covering services
8 of designated counsel and establish guidelines for the keeping of time records and expenses, as well
9 as the reimbursement thereof, if any;

10 8. Monitor the activities of co-counsel to ensure that schedules are met and
11 unnecessary expenditures of time and funds are avoided;

12 9. Perform such other duties as may be incidental to proper coordination of
13 Plaintiffs' activities or authorized by further Order of the court;

14 10. Communicate with Defendants' Liaison counsel (including regarding status
15 conference statements and agendas in advance of each status conference), to negotiate case
16 management orders, and to engage in meet and confer sessions with Defendants' Liaison counsel;

17 11. Appoint members and determine duties of the Plaintiffs' Steering Committee,
18 as approved by this Court. The Executive Committee shall work closely with the members of the
19 Plaintiffs' Steering Committee by authorizing and directing its work; and

20 12. Submit, if appropriate, an order to the court appointing additional committees
21 and member counsel for approval of the court.

22 **III. ORGANIZATION OF DEFENSE COUNSEL**

23 **A. Defendants' Lead and Liaison Counsel.** The Court designates the following to
24 serve as Defendants' Lead and Liaison Counsel:

25 Alycia A. Degen, SBN 211350
26 SIDLEY AUSTIN LLP
27 555 West Fifth Street, Suite 4000
28 Los Angeles, CA 90013
 Telephone: (213) 896-6000
 Facsimile: (213) 896-6600

1 **B. Duties of Defendants' Co-Lead and Liaison Counsel.** Defendants' Lead and
2 Liaison Counsel shall have the responsibility to receive and distribute to other defendants' counsel,
3 as appropriate, orders, notices and correspondence from the court; to coordinate the filing of notices
4 and papers by defendants; to prepare status conference statements in advance of each status
5 conference; to sign documents submitted to the court; to communicate with Plaintiffs' Lead and Co-
6 Liaison Counsel; to negotiate case management orders; and to engage in meet and confer sessions.

7 **IV. ADD-ON PROCEDURES**

8 **A. CRC 3.544 APPLIES.** Because the original Petition For Coordination is no longer
9 "pending," CRC 3.531 is no longer applicable, and CRC 3.532 only applies when a new petition is
10 submitted to the Judicial Council after a coordination proceeding is already under way. Where, as
11 here, a petition for coordination has been granted and a coordination trial judge has been appointed,
12 the add-on procedures set forth in CRC 3.544 apply. Pursuant to that rule, when a potential add-on
13 case is identified, a request by way of a Petition To Coordinate Add-On Case[s] ("Add-On Petition")
14 must be promptly filed directly with the Coordination Trial Judge in JCCP 4887. Permission to do so
15 (CRC 3.520) is deemed granted.

16 All Add-On Petitions must clearly identify the petitioner, so that the resulting order can
17 clearly identify the party upon whom the filing and service requirements of CRC 3.529(a) fall. The
18 notices required under CRC 3.522 and 3.523 ("Notice") need only be filed in the subject add-on
19 case[s] and must be filed together with a Judicial Council Form CM-180 Notice Of Stay Of
20 Proceedings with section 3(e) indicating "Petition To Coordinate Add-On Case pending." The
21 Notice must be served on the Chair of the Judicial Council at the following address:

22 Chair, Judicial Council of California
23 Administrative Offices of the Courts
24 Attn: Appellate Court Services
25 (Civil Case Coordination)
26 455 Golden Gate Avenue, 5th Floor
27 San Francisco, CA 94102-3688

28 The Notice must also be served, together with copies of all Case Management Orders entered in
JCCP 4887 and the Notice of Stay Of Proceedings, on the parties appearing in the subject add-on
case[s], and on Liaison Counsel. As clearly set forth in CRC 3.544(a), the filing of an Add-On
Petition must be accompanied by a proof of service reflecting the above.

1 Counsel who already represent a plaintiff in an action coordinated in these coordinated
2 proceedings and who file a new action on behalf of another plaintiff shall file and serve an Add-On
3 Petition for the new action at the time they serve the complaint in that new action. Failure to include
4 a proof of service will result in the denial of the Add-On Petition without prejudice.

5 **B. Opposition to Coordination.** Within ten (10) calendar days from the date of filing
6 and service of an Add-On Petition, any party may file and serve a Notice of Opposition to
7 Coordination, including points and authorities and other relevant materials. (CRC 3.544(b).) The
8 court may, but need not, set a hearing for determining whether the case[s] should be coordinated. If a
9 hearing is set an order will be issued with hearing date and time, briefing schedule, and directions for
10 service of the order. If no notice of opposition is filed, the court will issue its order granting or
11 denying the Add-On Petition without setting a hearing.

12 **C. No Waiver.** Nothing in this section shall affect any defendant's right to remove any
13 action to federal court. The defendant's right of removal, as well as the defendant's obligation to
14 respond to any complaint, shall (unless stayed) run from the date of proper service of process,
15 regardless whether such action was previously identified as a potential add-on action and/or
16 coordinated into these proceedings.

17 **V. CASE MANAGEMENT CONFERENCES**

18 **A. Case Management Conferences.** Case Management Conferences ("CMCs") will be
19 set from time to time by the court, or by joint application of Plaintiffs' Lead or Co- Liaison counsel
20 and Defendants' Lead and Liaison Counsel to the court. The parties are under a continuing
21 obligation to meet and confer on the timing of CMCs, and may apply separately to the court for a
22 CMC date only if the parties are unable to agree on a date that is convenient to the court, the
23 Defendants' Liaison Counsel, and at least one of Plaintiffs' Co-Liaison Counsel.

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B. **CMC Statement and Agenda.** The parties shall meet and confer through Liaison Counsel at least ten (10) calendar days before each CMC on an agenda, which shall be filed with the court and served on all parties by Defendants' Liaison Counsel at least five (5) calendar days before the CMC.

IT IS SO ORDERED.

Dated: December 21, 2016


HONORABLE WINIFRED Y. SMITH

Superior Court of California, County of Alameda
Department 21, Administration Building

Case Number: JCCP- 004887

Case Name: ESSURE PRODUCT CASES AND COORDINATED ACTIONS.

RE: CASE MANAGEMENT ORDER NO.1 AND
COORDINATIONPROCEDURES

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

Executed on December 22, 2016

Executive Officer/Clerk of the Superior Court

By Christopher Wright
Deputy Clerk

William A. Kershaw
Kershaw, Cook & Talley
401 Watt Ave.
Sacramento, CA, 95846

M. Elizabeth Graham
Grant & Eisenhofer P.A.
101 California St., Suite 2710
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