IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.

PELVIC REPAIR SYSTEMS PRODUCTS LIABILITY

LITIGATION

---------- MDL No. 2325

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 73

(Stipulation Regarding Depositions of Defense Witnesses)

Counsel for Plaintiffs and Counsel for Defendant American Medical Systems (AMS) have met and conferred regarding the issues raised by Plaintiffs' Motion to Compel Defendants to Produce Documents and Deposition Dates for Clinical, Regulatory and Research and Development Witnesses and for Compliance with PTO 54 (ECF 701) and by Defendant AMS' Cross-Motion for a Protective Order (ECF 713). Following that meet and confer, the parties have stipulated to and petitioned the Court to enter the following Stipulation in this matter, attached as Exhibit A. Upon entry of this Order, the Court approves the protocols and same will apply to all actions that are or become a part of MDL 2325, until further order of the Court.

IT IS SO **ORDERED**.

The Court **DIRECTS** the Clerk to file a copy of this order in 2-12-md-2325 and it shall apply to each member AMS-related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2-12-cv-3-17920. In cases subsequently filed in this district, a copy of the most recent pretrial order

will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this Court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. 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 accessed through the CM/ECF system or the Court's website at www.wvsd.uscourts.gov.

ENTERED: July 16, 2013

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

STIPULATION REGARDING DEPOSITIONS OF AMS WITNESSES

II. GENERAL PROVISIONS

The undersigned parties agree that the depositions of American Medical Systems, Inc. ("AMS") witnesses shall take place as described below.

III. DEFINITIONS

1. "Deposition(s)" shall include all depositions taken of AMS witnesses in MDL 2325 other than those depositions that are expressly exempted herein. "Deposition(s)" shall include depositions taken prior to and after the entry of this stipulation unless those depositions are expressly exempted herein.

2. "AMS witness" shall include, but is not limited to, current AMS employees, former AMS employees, 30(b)(6) witnesses, AMS employees or former employees produced by AMS who are located outside the United States ("OUS"), and current or former employees of AMS parents and/or affiliates, including, but not limited to, American Medical Systems Holdings, Inc., Endo Health Solutions Inc., and Endo Pharmaceuticals Inc. Only those witnesses expressly exempted in this stipulation shall be disregarded when calculating the number of depositions taken in MDL 2325.

IV. DEPOSITION PROTOCOL

A. Limit on the Number of Depositions

1. The Parties agree that Plaintiff shall be limited to 68 (sixty-eight) total depositions of AMS witnesses in MDL 2325. The Parties agree that depositions that were completed prior to the entry of this stipulation shall count toward the 68-deposition limit. The Parties agree that depositions scheduled but not completed prior to the entry of this stipulation shall count toward the 68-deposition limit. The Parties agree that POP-only witnesses, previously identified by defendant AMS (Khamis, Sahr, Knox, Cox, Clarin, Montpetit, Inman, Reiling) shall count toward the 68-deposition limit assuming those depositions are taken. If those depositions are not taken, they will not be counted toward the total.

2. The parties agree that 7 hours of 30(b)(6) deposition testimony, whether given in a single deposition or in multiple depositions, shall count as 1 deposition. When all 30(b)(6) depositions are concluded, the total number of depositions will be calculated using hours, with each seven hour increment counting as one deposition and with any remainder beyond a multiple of seven hours counting as an additional deposition.

3. The Parties understand that AMS is reserving its rights to argue that AMS should be able to designate testimony to fulfill 30(b)(6) categories.

4. The Parties agree that depositions taken of third party witnesses shall not count against the 68-deposition limit.

5. The Parties agree that depositions taken pursuant to Pretrial Order No. 54 #6 *(i.e.*, the 30(b)(6) depositions regarding departmental organization and record-keeping) shall not count against the 68-deposition limit.

6. The Parties agree that the depositions of Eccles and Lorenz shall count against the 68-deposition limit.

7. The Parties agree that the following, two-day depositions currently scheduled shall be permitted and shall each count as only one deposition for the purposes of the 68-deposition limit: Nealon, Glaser, Hess, and Taut.

8. Without altering any parties' rights or obligations pursuant to PTO 42, the Parties agree that depositions of witnesses who are present or former employees of entities other than AMS – including, but not limited to, American Medical Systems Holdings, Inc., Endo Health Solutions Inc., or Endo Pharmaceuticals Inc. shall count against the 68-deposition limit. Nothing in this stipulation shall be construed to suggest that AMS agrees to produce for deposition present or former employees of any entity other than American Medical Systems, Inc. AMS is expressly reserving its right to object to any such deposition requests and/or notices.

9. Plaintiffs may request additional AMS company witness depositions beyond the sixty-eight depositions and/or seek a second day of deposition of a witness only for good cause. In the event that the parties cannot agree, Plaintiffs may move the court for an order permitting

the taking of additional depositions or additional time for depositions.

IT IS SO ORDERED.

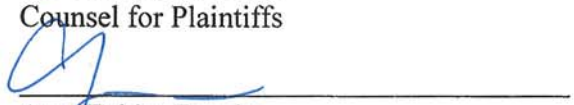
Dated: _____

_____
Hon. Joseph R. Goodwin, Chief Judge

CONSENTED TO BY:

CONSENTED TO BY:

Fidelma Fitzpatrick, Esquire
MOTLEY RICE LLC
321 South Main Street, Suite 200
Providence, RI 02903
Counsel for Plaintiffs



Amy Eskin, Esquire
Levin Simes LLP
353 Sacramento Street, 20th Floor
San Francisco, California 94111
Counsel for Plaintiffs

Stephen J. McConnell, Esquire
REED SMITH LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
Counsel for Defendant
American Medical Systems, Inc.