IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: C. R. BARD, INC.
PELVIC REPAIR SYSTEMS
PRODUCT LIABILITY LITIGATION MDL No. 2187

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #159
(Plaintiffs' Motion for an Order that Deems Plaintiffs' First Requests For Admission Admitted)

Pending before the court is Plaintiffs' Motion for an Order that Plaintiffs' First Requests for Admission Be Deemed Admitted. (ECF No. 1305). Defendant C. R. Bard, Inc. ("Bard") has responded in opposition to the motion, (ECF No. 1358), and Plaintiffs have filed a reply memorandum. (ECF No. 1365). Therefore, the issues are fully briefed and ready for resolution. For the reasons that follow, the court **GRANTS**, in part, and **DENIES**, in part, Plaintiffs' motion. Specifically, the court grants Plaintiffs' motion to enter an order overruling paragraphs 1 through 10 of Bard's General Objections,[1] as none of these general objections is properly asserted. Accordingly, the responses to the requests for admission shall be read without the limiting phrase, "Subject to and without waiving the forgoing General Objections," as that phrase shall be stricken from each of the answers. However, the court denies

[1] Paragraph 11 of the General Objections is not an objection; rather, it is a reservation of the right to challenge in the future the relevancy, materiality, and admissibility of the information and documents attached to the Requests for Admission, or object to their use in other proceedings. This Order does not affect that right, which is preserved.

Plaintiffs' motion to deem the requests for admission admitted; rather, the requests shall be deemed answered as stated by Bard, with the exception of the stricken phrase.

I. Relevant Background

During the course of discovery in this transvaginal mesh multidistrict litigation, Plaintiffs learned that Bard used polypropylene material manufactured by Chevron Phillips in some of Bard's transvaginal mesh products. Plaintiffs also learned that Chevron Phillips issued a warning for its polypropylene material instructing that it not be used "in medical applications involving permanent implantation in the human body or permanent contact with body fluids or tissues." According to Plaintiffs, despite this warning Bard not only continued to use Chevron Phillips's polypropylene material in its transvaginal mesh products, but Bard went to great lengths to ensure that its supply of the material would not be interrupted by the concerns of other entities in the supply chain. (ECF No. 1305 at 1-2).

In order to facilitate proof relating to Chevron Phillips's polypropylene material and Bard's actions in obtaining the material, Plaintiffs served on Bard First Requests for Admissions, which included sixteen requests regarding the authenticity, authorship, custody, identity as a business record, and date of production of records produced by Bard during discovery. Bard served objections and responses to the requests, and after some discussion between the parties, Bard amended the responses. Nonetheless, Bard did not remove all of its objections. In particular, in its amended responses, Bard included a list of General Objections. The General Objections appeared at the outset of the responses and each individual answer was made "[s]ubject to and without waiving the forgoing General Objections." After

asserting the General Objections, Bard proceeded to provide a substantive answer to each request for admission. Plaintiffs now move the court to order that the General Objections be disregarded and that the subject matter of Plaintiffs' requests be admitted. (ECF No. 1305 at 3).

II. Discussion

As Plaintiffs point out in their motion, general objections, as a rule, are exceedingly disfavored by federal courts, including those in this circuit. The reasons are well-established. First, general objections to discovery requests violate the Rules of Civil Procedure, which require objections to be stated with specificity. *See, e.g., Mills v. East Gulf Coal Prep. Co.,* 259 F.R.D. 118, 132 (S.D.W.Va. 2009). Second, "general objections to discovery, without more, do not satisfy the burden of the responding party ... because they cannot be applied with sufficient specificity to enable courts to evaluate their merits." *Hager v. Graham,* 267 F.R.D. 486, 492 (N.D.W.Va. 2010). Objections must be supported; that obligation cannot be fulfilled properly when the nature of an objection is unclear. Third, general objections indicate a lack of due diligence by the party responding to the requests, which induces the party to "just copy and [paste] the language from Rule 26 as [its] objections." *Mancia v. Mayflower Textile Servs. Co.,* 253 F.R.D. 354, 364 (D.Md. 2008). Finally, general objections are viewed as a delaying tactic, a way to evade or obfuscate legitimate discovery. *Barb v. Brown's Buick, Inc.,* No. 1:09-cv-785, 2010 WL 446638 at *1 (E.D.Va. Feb. 10, 2010). As courts have repeatedly explained, the days of "strategic" discovery are over. Now, boilerplate and blanket objections are seen as no objections at all, and are insufficient to preserve privileges or raise legitimate issues. *See, e.g., Kristensen v. Credit Payment Services, Inc.,* No. 2:12–cv–0528–APG–PAL,

2014 WL 6675748 (D.Nev. Nov. 25, 2014) ("The court fully appreciates that the vast majority of litigators are trained to make these types of objections. Asserting frivolous objections is often confused with zealous advocacy of a client's interests ... [T]he party's general and boilerplate objections look like a form provided to the firm's most junior attorney thirty years ago to teach new lawyers how to obstruct discovery ... [however,] boilerplate objections are insufficient to preserve privilege and tantamount to no objection at all.")

Including a list of general objections at the beginning of a set of responses and making each answer "subject to" the general objections, or in the alternative, having them apply to each of the answers "to the extent" that they might be applicable, is just as unacceptable as supplying a general objection to an individual request. In fact, this practice is perhaps more unacceptable given that the use of blanket general objections requires the inquiring party to guess which objections apply to which questions.[2] Not only is this practice misleading and confusing, but it often leaves the other parties guessing as to whether the request has been fully answered. *See e.g. Sherwin-Williams Co. v. JB Collision Services, Inc.*, Nos. 13–CV–1946–LAB (WVG), 13–CV–1947–LAB (WVG), 2014 WL 3388871, at *2 (S.D.Cal. July 9, 2014) ("The Court recognizes that it is common practice among attorneys to respond to discovery requests by asserting objections and then responding to the discovery requests "subject to" and/or "without waiving" their objections. This practice is confusing and misleading. Moreover, it has no basis in the Federal Rules of Civil Procedure.")

[2] That is not to say that a blanket objection is never appropriate. On occasion, a **specific** blanket objection may be proper. For example, if the parties dispute the relevant time frame in a particular case, and the discovery requests seek information regarding one of the two time frames, the responding party may assert a blanket objection to the time frame used or presumed in the set of requests.

(citing *Sprint Communications Co. v. Comcast Cable Communications, LLC,* 2014 WL 545544 at *2 (D.KS 2014)).

Indeed, some jurisdictions have implemented local rules that forbid the use of general objections and blanket general objections. *Consumer Electronics Ass'n v. Compras and Buys Magazine, Inc.*, No. 08-21085-C, 2008 WL 4327253, at *3 (S.D.Fla. Sept. 18, 2008) ("The Parties shall not recite a formulaic objection followed by an answer to the request. It has become common practice for a Party to object ... and then state that "notwithstanding the above," the Party will respond to the discovery request, subject to or without waiving such objection. Such an objection and answer preserves nothing and serves only to waste the time and resources of both the Parties and the Court. Further, such practice leaves the requesting Party uncertain as to whether the question has actually been fully answered or whether only a portion of the question has been answered. *See* Civil Discovery Standards, 2004 A.B.A. Sec. Lit. 18; *see also* Local Rule 26.1 G.3.(a)."); *see also Dickard v. Oklahoma Management Services for Physicians, LLC,* No. 5:06-cv-05176-RTD, 2007 WL 2460618,at *2 (W.D.Ark., Aug. 24, 2007) (Initially the Defendant filed numerous "General Objection." Blanket objections, however, are specifically prohibited in this district. LOCAL RULE 33.1(b) states: A blanket objection to a set of interrogatories, requests for admission, or requests for production will not be recognized ... To the extent that OMS has made blanket objections those objections will be stricken and not considered by the court.") Although most of the cases addressing the impropriety of general objections involve interrogatories and requests for the production of documents, the prohibition against general objections applies to requests for admissions. *Fisher v. Baltimore Life Ins. Co.*, 235 F.R.D. 617,

629 (N.D.W.Va. 2006). Considering that the purpose of requests for admission is to eliminate "the necessity of proving essentially undisputed and peripheral issues of fact," *Syracuse Broadcasting Corp. v. Newhouse,* 271 F.2d 910, 917 (2d Cir. 1959), there is no place for nonspecific, misleading, and confusing objections in responses to requests for admission.

Because the undersigned finds that Bard's blanket General Objections are inappropriate and violate the federal discovery rules and the law of this circuit, the objections are **OVERRULED**. As the objections are overruled, the phrase in the individual answers asserting the General Objections shall be **STRICKEN** so that if any of the requests and answers are read or otherwise presented in a motion, at a hearing, or at trial, the phrase "Subject to and without waiving the foregoing General Objections" shall be omitted. The undersigned further notes that in addition to the General Objections being contrary to the rules and practice as a whole, some of the discrete general objections asserted by Bard are invalid when considered separately. In light of the aforestated ruling, however, a discussion of the specific problems with individual objections is unnecessary.

It is so **ORDERED.**

The court **DIRECTS** the Clerk to file a copy of this order in 2:10-md-2187 and it shall apply to each member 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 2:15-cv-00482. 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 **http://www.wvsd.uscourts.gov**.

ENTERED: January 12, 2015

Cheryl A. Eifert
United States Magistrate Judge