

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

CHARLESTON DIVISION

IN RE: ETHICON, INC.
PELVIC REPAIR SYSTEMS
PRODUCTS LIABILITY LITIGATION

MDL 2327

THIS DOCUMENT RELATES TO CASES
IDENTIFIED ON EXHIBIT A

**PRETRIAL ORDER # 316
(First Order Amending PTO # 315 - Docket Control Order – Ethicon, Inc. Wave 9 Cases)**

The court **ORDERS** that Pretrial Order # 315, set forth in its entirety below, is amended for the sole purpose of adjusting the cases on Exhibit A attached hereto.

Pretrial Order # 293 (Order Regarding Disposition of Non-Revision Gynecare TVT Products) and # 298 (First Amended Order Regarding Disposition of Non-Revision Gynecare TVT Products) (collectively referred to as the “Non-Revision PTOs”) identified several thousand cases subject to the Non-Revision PTOs because they had not undergone a revision surgery. The court has subsequently learned that the 185 cases on Exhibit A attached hereto that were originally identified on the Non-Revision PTOs may have undergone a revision surgery after all and therefore, should not have been subject to the Non-Revisions PTOs. Accordingly, the court finds that the 185 cases on Exhibit A should be placed in their own wave (Wave 9) and on their own scheduling order set forth below. The deadlines in the Non-Revision PTOs at paragraphs 8(C)-(J) no longer apply to the plaintiffs on Exhibit A; new deadlines for the plaintiffs on Exhibit A are set forth below.

To the extent other defendants, in addition to Ethicon, Inc. and Johnson & Johnson (collectively “Ethicon”) are named in the cases on Exhibit A, the deadlines below also apply to them.

The court **ORDERS** that the following deadlines immediately apply in all Wave 9 cases:

A. SCHEDULING DEADLINES. The following deadlines shall apply in all Ethicon Wave 9 cases:

Plaintiff Profile Form, Plaintiff Fact Sheet and Information identified in ¶A1-2 below ¹	10/29/2018
Defendant Fact Sheets. ²	11/28/2018
Deadline for written discovery requests.	12/28/2018
Expert disclosures served by plaintiffs pursuant to Fed. R. Civ. P. 26 as limited by ¶ 5.a. of this order.	02/26/2019
Expert disclosure served by defendants pursuant to Fed R. Civ P. 26 as limited by ¶ 5.a. of this order. ³	03/28/2019
Expert disclosure served for rebuttal pursuant to Fed R. Civ. P. 26 as limited by ¶ 5.a. of this order.	04/04/2019
Deposition deadline and close of discovery.	05/20/2019
Filing of dispositive motions.	06/03/2019
Response to dispositive motions.	06/17/2019
Reply to response to dispositive motions.	06/24/2019
Filing of <i>Daubert</i> motions.	06/03/2019
Responses to <i>Daubert</i> motions.	06/17/2019
Reply to response to <i>Daubert</i> motions.	06/24/2019

¹ The court reminds plaintiffs who have named additional MDL defendants other than the Ethicon-related defendants to serve a defendant-specific Plaintiff Fact Sheet as required in that particular defendant’s MDL.

² Where plaintiffs have named multiple defendants (i.e., C. R. Bard, Inc., and Ethicon, Inc., Boston Scientific Corp., etc.), each defendant must serve a Defendant Fact sheet using the form agreed to in that defendant’s MDL.

³ Paragraph 5.a. of this order states the “the plaintiffs and each defendant are limited to no more than five (5) experts per case (exclusive of treating physicians).”

1. **Plaintiff Profile Form and other documents.** Each plaintiff on Exhibit A must establish that she has experienced a potentially compensable injury. To establish such injury, each plaintiff on Exhibit A shall serve upon Ethicon by **October 29, 2018**, if not done previously, the following: (1) a fully completed Plaintiff Profile Form ("PPF") with all required records and authorizations; (2) complete implant records, including the operative report and any records establishing product identification; (3) the earliest medical record in which the alleged injury and/or symptom complaint is recorded, and all medical records relating to the plaintiff's claim. At the time of filing, plaintiff's counsel shall certify that the production is complete. The burden of proof, by a preponderance of the evidence, shall at all times rest on plaintiff.

2. **Plaintiff Fact Sheet and other documents.** Each plaintiff on Exhibit A shall also serve upon Ethicon the following documents by **October 29, 2018**: (1) a fully completed Plaintiff Fact Sheet ("PFS") in the form and with the content specified by PTO 17; (2) documentation of any lost wages claimed in the PPF or PFS; (3) documentation of any medical expenses claimed and by whom; (4) any and all medical records of any type whatsoever (including photographs or videos) relating to any aspect of her gynecological history for the five (5) year period before the date of implantation of an Ethicon Gynecare TVT Product(s), including but not limited to, any pregnancies, hysterectomies, treatment for stress urinary incontinence or pelvic organ prolapse, and treatment for subsequent complaints (this time limitation shall not preclude a reasonable request for earlier or additional relevant medical records); (5) any and all medical records of any type whatsoever relating to any alleged injury or complication for which she seeks compensation from Ethicon; (6) any and all medical records of any type whatsoever

related in any way to the implantation, surgical revision, explantation or medical treatment of a medical device for treatment of pelvic floor prolapse or stress urinary incontinence; (7) a list of the known information (obtained after due diligence) pertaining to any potential medical or insurance liens, bankruptcy liens or claims by a bankruptcy trustee or debtor-in-possession, and any supporting documentation regarding each lien or claim; (8) a statement as to the fact of resolution, if any, of any claim against any other manufacturer or individual arising out of the implantation or use of a device to treat either stress urinary incontinence or pelvic organ prolapse; and (9) the documents produced must include product identification, the implant surgery records, any records of injuries claimed, and in-office revisit records, and all records of gynecological or Revision Surgeries involving other products and any other related procedures.

3. **Completion Date.** The last date to complete depositions shall be the “discovery completion date” by which all discovery shall be completed.

4. **Limitations on Interrogatories, Requests for Admissions and Depositions.** The following limitations apply:

- a. Each defendant⁴ is limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission per case.
- b. Plaintiffs are limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission to each defendant.

⁴ In referring to the “defendant” or “defendants” throughout this order, it is my intention that a defendant(s) includes the defendant and its related entities, i.e., Ethicon, Inc. and Johnson & Johnson are related entities and treated as one defendant for purposes of these discovery limitations. Likewise, if more than one plaintiff is named, plaintiffs are treated as one entity for purposes of these discovery limitations.

- c. In each individual member case, no more than 4 treating physicians may be deposed.⁵
- d. Depositions of plaintiff's friends and family members may be taken at any time prior to trial provided the deposition is requested before the discovery completion date.
- e. The Deposition of any witness is limited to 3 hours absent agreement of the parties.
- f. The court will consider modifications to the above limitations only upon good cause shown.

5. Limitations on Experts. The following limitations related to experts apply:

- a. The parties may conduct general and specific expert discovery on all products at issue in Ethicon Wave 9 cases. In light of the products involved in Ethicon Wave 9 cases, the likelihood of overlap in expert opinion from one case to another (except as to specific causation) and the need to streamline discovery in these cases, **the plaintiffs and each defendant are limited to no more than five experts per case (exclusive of treating physicians).**
- b. The parties shall coordinate the depositions of general causation experts. Insofar as multiple plaintiffs or multiple defendants use the same general causation expert or experts or general causation rebuttal experts, those experts shall be deposed only once on the issue of general causation. As to defendants' experts, plaintiffs are instructed to choose a lead questioner.

⁵ To the extent disputes arise regarding the division of time between the parties for the deposition of treating physicians (three hours total absent agreement), I will address those disputes, rather than the assigned Magistrate Judge, Judge Eifert.

- c. The court encourages the coordination of depositions of specific causation experts to the extent there is overlap in the parties' use of specific causation experts by multiple parties.
- d. The court will consider modifications to the above limitations only upon good cause shown.

6. Transferring to another MDL, requesting removal from the Wave and extensions of deadlines.

- a. Transfer of any Wave 9 case to any other MDL, whether by ruling upon a motion from plaintiff or defendants or *sua sponte* by the court, does not relieve the plaintiff or any remaining defendant(s) from the deadlines of a Docket Control Order.
- b. If an Amended Short Form Complaint properly filed pursuant to Federal Rules of Civil Procedure 15(a), names a new party, then any party may move for an extension to the Docket Control Order.
- c. Cases will only be removed from the Wave in the most exceptional circumstances.

B. MOTION PRACTICE.

- 1. ***Daubert* Motions.** For the filing of *Daubert* motions on general causation issues only, the parties are instructed to file one *Daubert* motion per expert in the main MDL (MDL 2327) instead of the individual member case.⁶ Each side may file one response and one reply in the main MDL to each *Daubert* motion. This limitation does

⁶ If parties wish to adopt previous *Daubert* motions on general causation experts from other MDLs, they may file a notice of adoption with a copy of the previous filing they wish to adopt in the main MDL 2327.

not apply to specific causation *Daubert* motions, responses and replies. Specific causation *Daubert* motions, responses and replies must be filed in the individual member cases. To the extent a challenged expert is both a general and specific causation expert, the parties must file a general causation motion in the main MDL 2327 and an individual specific causation motion in an individual member case.

2. **Hearings.** Hearings, if any, for dispositive and *Daubert* motions will be set at a future status conference.

3. **Page Limitations.** The page limitations provided in Local Rule of Civil Procedure 7.1(a)(2) apply to memoranda in support of all dispositive and *Daubert* motions, oppositions, and replies. The court will not be inclined to grant motions to exceed the page limit.

4. **Confidential Documents.** In the past, the court has permitted parties to file placeholder exhibits in support of *Daubert*, dispositive and other motions, responses and replies in the place of confidential documents that may be sealed and then, within five days, redact/dedesignate the documents or file a motion to seal. *The court will no longer permit this practice. Parties may no longer file placeholder exhibits.* The court expects leadership counsel for plaintiffs and defendants to resolve issues related to confidential designations well before the filing of motions. In the event there are issues related to sealing of confidential documents that the parties are unable to resolve, they must be brought to the court's attention in a consolidated manner as follows: Any consolidated motion to seal is due on or before **March 30, 2019**, and any response is due by **April 13, 2019**. Any reply is due by **April 20, 2019**.

5. **Locations of Filings.** With the exception of the general causation *Daubert* motions as outlined above, the parties are reminded that they must file dispositive and *Daubert* motions on specific causation, responses and replies in the applicable member cases only, not in the Ethicon MDL.

C. CASES READY FOR TRANSFER, REMAND OR TRIAL

1. **Venue Recommendations.** By no later than **April 11, 2019**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties are **ORDERED** to submit joint venue recommendations to the court by **April 18, 2019**. The parties' joint recommendation(s) shall identify cases where venue is in dispute. The court may then request briefing.

2. **Transfer and Remand.** The court, pursuant to PTO # 15 and 28 U.S.C. § 1404(a), will transfer each directly-filed case to a federal district court of proper venue as defined in 28 U.S.C. § 1391. In the alternative, pursuant to PTO # 15 and 28 U.S.C. § 1407, cases that were transferred to this court by the MDL panel shall be remanded for further proceedings to the federal district court from which each such case was initially transferred.⁷

3. **Trial Settings.** If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed and the court rules on the parties' summary judgment motions. The trial date for cases transferred or remanded to other

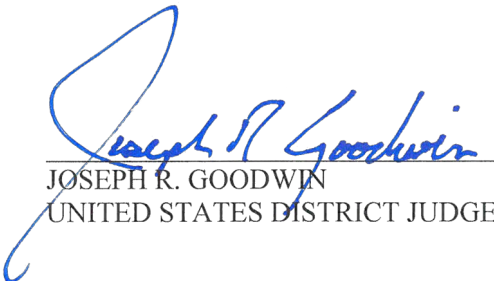
⁷ As expressly contemplated by PTO # 15, Ethicon does not waive its right to seek transfer—pursuant to 28 U.S.C. § 1406(a) or any other available ground—of any case to a court of proper venue, regardless of whether that case was transferred to or directly-filed in the Southern District of West Virginia. I entered identical PTOs in the remaining MDLs assigned to me.

federal district courts shall be set by the judge to whom the transferred or remanded case is assigned (including the undersigned through intercircuit assignment).

D. COMMON BENEFIT TIME. I have entered a number of Pretrial Orders related to the eventual recovery of the cost of special services performed and expenses incurred by participating counsel in this and the other MDLs assigned to me. I direct the parties' attention to PTO # 18⁸, and its warning that "[n]o time spent on developing or processing purely individual issues in any case for an individual client (claimant) will be considered or should be submitted, nor will time spent on any unauthorized work." Pretrial Order No. 18, ECF No.282, ¶ C. The court is of the opinion it is highly unlikely that any work performed by counsel on individual wave cases will be considered common benefit work.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2327 **and in the Ethicon Wave 9 cases identified on Exhibit A**. 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.

ENTER: August 28, 2018



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

⁸ I entered identical PTOs in the remaining MDLs assigned to me.

Exhibit A

<u>_Case</u>	<u>_Mdl#</u>
Housman, Wilma	2:12cv01247
Klinker, Michelle & David	2:12cv01926
Correa, Lydia & Jose	2:12cv02973
Williams, Donna & Rex	2:12cv03225
Headings, Cheryl & Gary	2:12cv05768
Horst, Deborah & Enos	2:12cv08805
Lloyd-Duncan, Meredith	2:12cv09153
Pickens, Betty	2:12cv09844
Blank, Aleli M. & Leonard	2:13cv00500
Edinger, Jana	2:13cv02529
Henderson, Angela	2:13cv03906
Walker, Dorothy & Kenneth	2:13cv04513
Bard, Bobbie Jo	2:13cv04705
Moore, Sherry	2:13cv05573
Buntgen, Gwen L. & Wayne	2:13cv05886
Adams, Tammy & Edgar	2:13cv06172
Hale, Glenna	2:13cv06704
Libbey, Leigh Ann	2:13cv07090
Cabell, Marla M.	2:13cv07532
Rogers, Bettina Carol	2:13cv07942
Person, Shana D.	2:13cv09305
Bryant, Lisa Crawley & Johnny P.	2:13cv09923
Sandcock, Dena M. & William G.	2:13cv10084
Nicely, Victoria & Billy	2:13cv11721
Martin, Allison	2:13cv12080
Theisen, Carla R.	2:13cv12635
Childs, Wanda B. & Timothy P.	2:13cv12778
Smith, Linda L. & George W.	2:13cv13129
Rivera, Solia Moreno & Elias	2:13cv14085
Alvarez-Zermeno, Gloria & Normando	2:13cv14814
Barron, Sandra	2:13cv14834
Harrington, Marie-Celine & Roland, Jr.	2:13cv15826
Harshbarger, Amanda Marie	2:13cv15950
Ransom, Lori & David	2:13cv18285
Clark, Rhonda Valinda	2:13cv19019
Pitchford, Ann M.	2:13cv20165
Fridlund, Robynn & David	2:13cv21699
Peake, Debra Lynn & Billy W.	2:13cv21924
Cole, Crista	2:13cv22847
Kaehler, Laurie	2:13cv22864

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Fernandez, Daisy	2:13cv22944
Hawks, Clara E. & Phillip A.	2:13cv23133
Hudson, Mary & Todd	2:13cv23268
Lucas, Darylyn Lee Bragg	2:13cv23910
Robinson, Elaine B. & Jim C.	2:13cv24124
Watson, Melanie & Wesley	2:13cv24197
Alamillo, Rachel	2:13cv24583
Williams, Deloris & Wilbur	2:13cv24926
Gore, Karen & J. Daniel	2:13cv25015
Spurgeon, Julie & Clayton Barnett	2:13cv25095
Cortez, Victoria & Rodolfo Medina	2:13cv26101
Brown, Bonnie & James B.	2:13cv26801
McCrystal, Pamela Eves	2:13cv28616
Wagner, Stella & Louis	2:13cv28818
Vazquez, Kim & Joe	2:13cv29249
Perez, Marinet & Edward	2:13cv30047
Heard, Dana L. & Leon	2:13cv30236
Hansen, LaDonna Joanne	2:13cv30310
Omiotek, Deretha Mae	2:13cv30669
Warden, Pamela O.	2:13cv31518
Carrasco, Sonja & Jesse	2:13cv32847
Anderson, Rose M.	2:13cv33436
Damron-Hunter, Melissa & Dale	2:13cv33438
Exum, Charlotte	2:13cv33439
Helton, Barbara & Miller	2:14cv00764
Arnold, Shana	2:14cv00828
Geist, Michelle Person & Gregory	2:14cv01008
Holmes, Anna Marie	2:14cv02162
Benson, Kathie & Douglas Keith	2:14cv02446
Lujan, Dorthy & Jose	2:14cv03415
Paul, Sandra	2:14cv03463
Patel, Savitaben & Vinod	2:14cv03646
Coronado, Henrietta & Arturo Lagos	2:14cv04850
Slack, Mona	2:14cv05497
Guptill, Heidi & Jerry	2:14cv06261
Matthews, Tally & Timothy	2:14cv08044
Walsh, Jodi L.	2:14cv09375
Conn, Christy D.	2:14cv09938
Wilson, Jean	2:14cv09964
Ryder, Karen	2:14cv10317
McHale, Mary	2:14cv10404

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Couture, Lisa	2:14cv11915
Artman, Juanita L. & Dennis	2:14cv12321
Sharpe, Veronica J.	2:14cv12850
Hawk, Moira	2:14cv14179
Quillen, Lela J.	2:14cv14403
Taylor, Terry L.	2:14cv15473
Borbely, Kimberly & Brian	2:14cv15557
Sticker-Recotta, Brenda	2:14cv16295
Adkins, Martina	2:14cv17227
Nelson, Joan & Willie	2:14cv17337
Enos, Darlene	2:14cv17582
Cavallo, Massiel	2:14cv17625
Pochie, Connie L.	2:14cv17770
Register, Freda L.	2:14cv18173
Bigelow, Tracey	2:14cv18414
Page, Heather Nicole & Jamie Hardy	2:14cv19726
Skinner, Sharon	2:14cv19947
Cook, Cassandra Y. & Homer	2:14cv20380
Martinez, Elizabeth & Cristobal	2:14cv20461
Bryant-Robinson, Donna	2:14cv21861
Bell, Gina	2:14cv22501
Hurley-Mick, Sharron & Michael	2:14cv23938
Gilman, Sherry & Elmer	2:14cv24818
Wilson, Amy Jo	2:14cv25364
Alvarado, Theresa	2:14cv25412
Zariski, Kay & Robert	2:14cv26753
Meza, Amanda	2:14CV26981
Angelo, Mary & David	2:14cv27048
Van Hise, Barbara	2:14cv27697
Sanders, Judith G.	2:14cv28739
Hall, Donna Mae & Tommy L.	2:14cv28863
Seavey, Joanne	2:14cv30948
Tily, Joan	2:15cv00385
Small, Nadine	2:15cv01722
Minter, Elizabeth Castleberry	2:15cv01890
Sprowls, Ruby	2:15cv02783
Apken, Madelyn A.	2:15cv03349
Gallardo, Dora	2:15cv03484
Sica, Jean Marie & Philip John, Jr.	2:15cv03520
Pawlisa, Jayne & Richard	2:15cv03832
Ashley, Tanjia	2:15cv04649

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Loock, Brenda	2:15cv04768
Clark, Donna	2:15cv04805
Coates, Louise	2:15cv04808
Graves, Bonita & John W., III	2:15cv05324
Moore, Greer	2:15cv05405
Palmer, Theresa & Ken	2:15cv05565
Crawford, Lisa & Todd	2:15cv06125
Preston, Beatrice W.	2:15cv06266
Johnson, Patsy	2:15cv06292
Hartweck, Sharon & Tom	2:15cv06803
DeLong, Margaret	2:15cv08957
Hamlyn, Doreen & John A. Seeber	2:15cv11699
Miller, Brenda J.	2:15cv11924
Mullins, Mary Ellen	2:15cv12325
Johnson, Karen & Richard A.	2:15cv12633
Morrison, Leeann	2:15cv13103
Bridges, Dawn	2:15cv13609
Clarke, Joyce	2:15cv13857
Johnson, Wendy	2:15cv14545
Williams, Paulette	2:15cv14810
Pickens, Marsha	2:15cv14934
Taylor, Beverly	2:15cv14936
Elliott, Belinda	2:15cv15487
Simpson-Daelen, Diana	2:15cv15916
Young, Donica & Shawn	2:16cv00622
Duvall, Pauline & Julio	2:16cv01308
Ellis-Kreher, Lisa	2:16cv01671
Lorenzana, Nelly & Alfredo	2:16cv01702
Fitzgerald, Leslie & Bryan	2:16cv01730
Carothers, Keisha	2:16cv02532
Kernodle, Elizabeth J. & Bruce W.	2:16cv02800
Conley, Mary Ann	2:16cv03102
Quimby, Lillian & David	2:16cv03297
Likins, Cassey	2:16cv03388
Novelli, Melinda	2:16cv03576
Morris, Mary	2:16cv03928
Shannon, Carissa & Jamie	2:16cv04315
Albrecht, Dawn M.	2:16cv05599
LeSuer, Christina McGary	2:16cv06023
Morgan, Angela & Timothy	2:16cv07497
Lindon, Kathleen & Bill Johns	2:16cv07814

Exhibit A

Myers, Frances-Faye	2:16cv08743
Epperson, Sharon	2:16cv08885
Coffey, Cynthia & David	2:16cv09101
Simants, Ioka	2:16cv09175
Wipperman, Peggy & Carl	2:16cv09243
Burnett, Cynthia D.	2:16cv10077
Crittenden, Kendall	2:16cv10993
Aderholt, Kimberly	2:16cv12218
Baker, Jetty	2:17cv01102
Kappel, Rena & Robert	2:17cv01372
Brooks, Glenda R.	2:17cv01609
Sykes, Cheryl	2:17cv01623
Blessing-Prosser, Janice & Rickey	2:17cv01988
Schulz, Amy	2:17cv02677
Dicaire, Kim & Rick	2:17cv02965
Campbell, Hilda & John	2:17cv03866
Costa, Bianca & John	2:17cv04208
Turman, Philistia	2:17cv04264
Vandiver, Sandra	2:17cv04603
Olide, Lydia & Rodolfo, Jr.	2:18cv00245
Maier, Lelanda Dee	2:13cv05636
Lawson, Elaine	2:13cv23274
Burlingame, Emily	2:13cv07252
Boyd, Vera	2:17cv03586
Viramontes, Cheri & Ramiro	2:16cv06140
Hadaway, Elizabeth & Rance, Jr.	2:16cv04961
Goldston, Teresa Godoy	2:16cv05417
Myers, Jonnie K.	2:16cv02437
Kirby, Barbara & Richard	2:15cv16353
Helms, Sharon	2:15cv15133
Scott, Rebecca L. & Gerald T.	2:15cv11703
Gwaltney, Joyce	2:15cv08130
Vasquez, Mary	2:15cv06395
Williams, Bonnie Jean	2:15cv02806
Whalen, Pamela	2:15cv02884
Patton, Mary I. & Lonnie Lee	2:14cv29999
Dunn, Teresa Ann	2:14cv28343
Carter, Shuntel	2:14cv28451
Chavez, Melissa	2:14cv28453
Vandenhaak, Sandra L. & Jobert	2:14cv15247
Godoy, Christine	2:14cv12510

Exhibit A

Simas, Suzanne D. & Daniel J.	2:14cv12071
Davis, Frances R. & Phillip	2:14cv10884
Gobert, Darlene	2:14cv04481
Jackson, Rose & Marc	2:13cv4268
Wendt, Christine	2:13cv31563
Sheehe, Sharron	2:13cv31020
Nancarvis, Jody L.	2:13cv25339
Garcia, Carolyn	2:13cv14355
Simpson, Cynthia M.	2:13cv13890
Taylor, Victoria A.	2:13cv09572
Styles, Dixie C. & Tim F.	2:12cv06565
Holmes, Sheila & Robert	2:12cv05767
Kappel, Rena & Robert	2:17cv01372