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James J. DeLuca, J.S.C.

This Order is prepared and filed by the Court:

MARY MCGINNIS and THOMAS WALSH MCGINNIS, Plaintiffs,	SUPERIOR COURT OF NEW JERSEY BERGEN COUNTY-LAW DIVISION Docket No. BER-L-017543-14 Case No. 292
vs.	CIVIL ACTION
C. R. BARD, INC., AND JOHN DOES 1-20, Defendants.	ORDER

This matter, having been opened to the court by way of motion filed on behalf of the defendant, C. R. Bard, Inc. ("Defendant"), on notice to counsel for plaintiffs, Mary McGinnis and Thomas Walsh McGinnis ("Plaintiffs"), pursuant to which Defendant seeks an order as to the designation/counter designation of deposition readings/playbacks in connection with the upcoming trial of this action and for related relief, and the court having reviewed the papers submitted in support of and in opposition to the motion, and the court having heard oral argument in connection with the motion and for the reasons set forth on the record on January 31, 2018 and good cause having been shown,

IT IS on this 5th **DAY** of **FEBRUARY, 2018,** ordered as follows:

1. As to present employees of Defendant, whether they reside in the state of New Jersey or elsewhere, such individuals are not "unavailable" as contemplated by R. 4:16-1(c) of the Rules Governing The Courts of the State of New Jersey. Thus, to the extent Defendant seeks to present testimony from such

individuals, those individuals are to testify in person before the jury in this action. During the course of oral argument, Defendant identified four (4) individuals, namely, Adam Silver, Lawrence Leonard, Brad Smith and Gary Teague, who live outside of New Jersey but are employees of Defendant. Such witnesses must testify in person on behalf of Defendant unless Defendant can show that all reasonable means have been exhausted to procure the witnesses' attendance at trial. Avis Rent-A-Car, Inc. v. Cooper, 273 N.J. Super. 198, 200 (App. Div. 1994).

2. As to the doctrine of testimonial completeness pursuant to R. 4:16-1 (d) and case law interpreting same, the rule does not provide for the entirety of Defendant's designations to be played during Plaintiffs' case in chief. Nevertheless, testimonial completeness requires this court to consider the cross-designations of other portions of the deposition "which ought in fairness be considered with the part introduced." R. 4:16-1(d).

3. Although Defendant identified certain counter designations, those counter designations did not provide specific reference to the deposition designations identified by Plaintiffs. Such counter designations by Defendant were insufficient. However, rather than denying such counter designations, Defendant, no later than February 6, 2018 at 4 p.m., shall specifically identify in writing to Plaintiffs' counsel the counter designations which Defendant seeks to read/play for purposes of completeness and shall specifically identify Plaintiffs' designations to which the counter designations relate. The

designations and counter designations of each party will be considered at hearings to be conducted in this action commencing on February 12, 2018 at 9:15 a.m. in courtroom 401. To the extent Plaintiffs' counsel requires additional time to review Defendant's counter designations, they shall advise the court no later than Friday February 9, 2018 at 10:00 a.m. In such event, the hearing regarding the designations will commence on Tuesday, February 13, 2018 at 9:15 a.m. in courtroom 401.

4. A copy of this order is being forwarded to counsel for Plaintiffs and Defendant by the court via email.

Hon. James J. DeLuca, J.S.C.