POLSINELLI LLP
THOMAS J. YOO (SBN 175118)
tyoo@polsinelli.com
AEVERIE POLINTAN (SBN 358614)
apolintan@polsinelli.com
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
Telephone: 310.556.1801
Facsimile: 310.556.1802

POLSINELLI PC
AMY MCVEIGH (*pro hac vice*)
amcveigh@polsinelli.com
WHITNEY MAYER (*pro hac vice*)
wmayer@polsinelli.com
1717 Arch Street, Suite 2800
Philadelphia, PA 19103
Telephone: 215.267.3001
Facsimile: 215.267.3002

Attorneys for Defendants AngioDynamics, Inc. and Navilyst Medical, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE: ANGIODYNAMICS, INC., AND NAVILYST MEDICAL, INC., PORT CATHETER PRODUCTS LIABILITY LITIGATION,	Case No. 3:24-md-03125-JO-VET Assigned for All Purposes to Hon. Jinsook Ohta **JOINT STATUS CONFERENCE STATEMENT** DATE: April 17, 2025 TIME: 9:30 AM CTRM.: 4C

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

JOINT STATUS CONFERENCE STATEMENT

The parties hereby submit this Joint Status Conference Statement for the April 17, 2025 Status Conference in MDL 3125.

I. BACKGROUND

This Multidistrict Litigation was created by the Judicial Panel on Multidistrict Litigation on October 3, 2024. Transfer Order, *In re: AngioDynamics, Inc. & Navilyst Med., Inc., Port Catheter Prods. Liab. Litig.*, MDL No. 3125 (J.P.M.L. Oct. 3, 2024), Dkt. 51. This Court held an initial status conference on November 14, 2024. *In re: AngioDynamics, Inc. & Navilyst Med., Inc., Port Catheter Prods. Liab. Litig.*, No. 3:24-cv-md-03125-JO-VET (S.D. Cal. Nov. 14, 2024), Dkt. 75 ("*In re: AngioDynamics, Inc.*"). A further status conference was held on December 19, 2024, in which the Court ordered the following:

- Any objections to Plaintiffs' proposed leadership structure shall be filed by January 3, 2025.
- Plaintiffs shall submit their proposed plan for a common benefit fund by February 13, 2025.
- Counsel should file any pro hac vice applications by January 3, 2025. Attorneys for Plaintiffs that join the MDL at a later date shall file their pro hac vice applications within 30 days of the case transfer.
- The parties shall jointly submit a proposed Case Management Order regarding direct filing by January 21, 2025.
- Defendants shall file their omnibus Rule 12(b)(6) motion to dismiss on common issues as discussed at the December 19, 2024 status conference by February 20, 2025. Plaintiffs' opposition shall be filed by March 21, 2025, and Defendants' reply shall be due on April 4, 2025. Dkt. 126-130.

On January 27, 2025, upon the parties' joint proposal, the Court issued Case Management Order No. 1 allowing for the direct filing of actions into this MDL and outlining service of direct-filed actions. Dkt. 152.

On February 13, 2025, the parties jointly filed a status report and moved for a status conference to provide updates to and request guidance from the Court. Dkt. 182. The Court granted the parties' joint request and set a status conference for April 17, 2025. Dkt. 193.

II. CASES PENDING BEFORE THIS COURT

As of April 14, 2025, there are 141 directly filed or transferred cases in this MDL. Defendants' omnibus motion to dismiss on statute of limitations grounds is fully briefed and set for hearing on April 17, 2025, at 9:30 a.m.

III. PROPOSED AGENDA

A. ESI Protocol and Confidentiality Order

The parties have exchanged a proposed ESI Protocol and a proposed Confidentiality Order for submission to the Court and are meeting and conferring regarding the provisions of same. The Parties will endeavor to submit any agreed-upon documents prior to the Status Conference and will be prepared to discuss any areas of disagreement, if necessary.

B. Plaintiffs' Leadership Order

Plaintiffs filed a motion for appointment of leadership on December 13, 2024 (Doc. 104). Plaintiffs thereafter submitted a proposed order for the appointment of the leadership slate on March 14, 2025. Plaintiffs respectfully request that the court enter the proposed order.

C. Common Benefit Order

Plaintiffs have shared with Defendants their draft of the proposed Common Benefit Order. However, the parties have reached an impasse regarding obligations imposed on Defendants in the proposed Common Benefit Order. Plaintiffs submitted a Proposed Common Benefit Order on February 15, 2025. The Proposed Order highlighted the language in dispute.

Defendants' Position:

It is Defendants' position that it is not appropriate for a Common Benefit Order governing financial relationships among plaintiffs' counsel to foist obligations on defendants. Specifically, Defendants oppose having any obligation to report new cases or settlements to Plaintiffs' counsel. Additionally, Defendants object to reporting confidential settlements to Plaintiffs and performing any withholding function for the benefit of Plaintiffs' counsel. Such obligations would not only

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

impose costs on Defendants that they should not have to bear, but also violate Defendants' confidentiality and privilege rights. The Common Benefit Order should only govern and impose obligations on Plaintiffs and Plaintiffs' counsel.

Plaintiffs' Position:

It is Plaintiffs' position that the only way to effectively and fairly utilize the Common Benefit Fund and ensure compliance with the Common Benefit Order is for Defendants to provide information to Plaintiff Co-Leads. The time and effort associated with providing the requested information is minimal. For example, a simple email will suffice to inform Plaintiffs' Co-Leads of a newly filed state court case. Defendants will receive notice of the filing whereas Plaintiffs' Co-Leads will not. It is Plaintiffs' Co-Leads' obligation to then coordinate with individual plaintiff's counsel regarding the Participation Agreement. Likewise, if a case is resolved, a simple email will suffice to inform the Co-Leads of the plaintiff's name and his/her counsel Payment of any assessment into the Common Benefit Fund will take minimal time and effort, yet it will ensure that the Common Benefit Order is fairly enforced. It is the Plaintiffs' leadership who is tasked with ensuring and enforcing the Participation Agreement. Lastly, there is no requirement that the amount of any individual settlement be revealed and therefore there is no concern of a violation of Defendants' "confidentiality and privilege rights".

D. General Causation

Defendants' Position:

As discussed at the December 19, 2024 status conference, Defendants request that the Court consider a motion on general causation, which is potentially dispositive of the MDL, at the earliest opportunity. Before setting out on a long, drawn out, and expensive path of broad discovery and trials, Defendants believe that the Court should exercise its case management powers to first test the threshold issue of general causation, as many MDL courts in similar products liability litigation have done.

This MDL was ordered based on the JPML's finding that: "All actions can be expected to share factual questions arising from allegations that defendants manufacture the catheter component of their port devices with ***an excessive concentration of barium sulfate, causing the***

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

material to degrade and the surface of the catheter to pit or crack. As a result, plaintiffs contend, the catheters are prone to fracture and to collect fibrinous blood products, ***which causes perforation, infections, and blood clots***, among other injuries." "Centralization offers an opportunity to substantially streamline pretrial proceedings, reduce duplicative discovery and conflicting pretrial obligations, and prevent inconsistent rulings on common evidentiary challenges." Transfer Order, *In re: AngioDynamics, Inc. & Navilyst Med., Inc., Port Catheter Prods. Liab. Litig.*, No. 3:24-cv-md-03125-JO-VET (S.D. Cal. Oct. 11, 2024) (emphasis added), Dkt. 1 at 1.

Defendants believe that a key threshold evidentiary challenge common to all cases in this MDL is that Plaintiffs lack reliable scientific evidence to prove that an excessive concentration of barium sulfate in the catheter components of Defendants' port devices causes Plaintiffs' alleged injuries: perforation, infections, and blood clots. In furtherance of the MDL interests in consistent legal rulings and streamlining key issues, Defendants request that the Court allow a Rule 702/Daubert motion challenging Plaintiffs' general causation expert evidence at the earliest opportunity following discovery focused on general causation (Defendants' documents related to barium sulfate in catheters of the subject products and general causation expert reports and depositions). All other discovery, with the exception of Plaintiff Fact Sheets, should be deferred until the Court's ruling on general causation.[1] Manual of Complex Litigation 4th at § 10.1 (court must customize management of an MDL to fit the facts of that particular MDL).

Numerous MDL courts presiding over products liability litigation have prioritized general causation and structured case management around early Rule 702/Daubert motions on general causation. *See In re: Incretin Mimetics Prods. Liab. Litig.*, MDL 2452, No. 3:13-md-02452-AJB-MDD (S.D. Cal. Feb. 18, 2014), Dkt. 325 at 1 (ordering plaintiffs to "narrow all discovery related requests to issues involving general causation."); *Id.*, No. 3:13-md-02452-AJB-MDD (S.D. Cal. Mar. 25, 2014), Dkt. 377 at 1 (ordering plaintiffs to comply with previous court order to limit discovery because the "burden was put on plaintiffs to 'narrow all discovery related requests to

[1] Defendants' request for Plaintiff Fact Sheets is discussed in Section III E. below.

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

issues involving general causation.'"); *In re: Zantac (Ranitidine) Prods. Liab. Litig.*, 644 F. Supp. 3d 1075, 1098 (S.D. Fla. 2022) (ordering that parties begin discovery on general causation first, granting Daubert motion on general causation grounds, and dismissing cases across MDL); *In re: Acetaminophen – ASD- ADHD Prods. Liab. Litig.*, MDL 3043, No. 1:22-md-03043-DLC (S.D.N.Y. Dec. 7, 2022), Dkt. 246 at 1 (ordering that parties "prioritize discovery related to the issue of general causation."); *In re: Baby Foods Prods. Liab. Litig.*, MDL 3101, No. 3:24-md-03101-JSC (N.D. Cal. Nov. 8, 2024), Dkt. 261 at 1 (setting general causation motion and staying all other discovery); *In re: Onglyza (Saxagliptin) and Kombiglyze Xr (Saxagliptin and Metformin) Prods. Liab. Litig.*, MDL 2809, No. 5:18-md-2809-KKC (E.D. Ky. Oct. 24, 2018), Dkt. 179 at 1 (addressing general causation "before considering plaintiff-specific issues [would] best ensure the most efficient resolution of these actions and use of the parties' and the Court's resources" because it "is a critical issue in this case, common to all actions" and if the plaintiffs are unable to establish general causation, "then the parties will not be required to undergo the time and expense of further discovery and litigation."); *In re: Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs., and Prods. Liab. Litig.*, MDL 2738, No. 3:16-md-02738-FLW-LHG, (D.N.J. Feb. 6, 2018), Dkt. 4173 at 1-2 (acknowledging that the court had called for staging of discovery, with the initial focus on general causation and expert motion practice); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, MDL 1407, No. 2:01-md-1407-BJR (W.D. Wash. June 18, 2003) (prioritizing general causation). Defendants accordingly respectfully request that this Court address general causation issues first and consider a motion on general causation at the earliest opportunity.

Plaintiffs' Position:

Plaintiffs do not believe this Court should entertain Defendants' proposed motion for a separate general causation phase involving limited discovery and an early Rule 702/Daubert motion. Defendants argue that prioritizing general causation—which according to them is whether an excessive concentration of barium sulfate in the catheter components of their port devices causes injuries like perforation, infections, and blood clots—would streamline this litigation and resolve a potentially dispositive issue. Defendants' proposal would prejudice Plaintiffs and is inappropriate for several reasons: it improperly defines general causation by narrowing it to a

specific defect rather than the device's overall capacity to cause harm; it undermines judicial efficiency by segmenting intertwined issues; and it relies on inapposite drug MDL precedents with limited applicability to a medical device case. The Court should deny the request and adopt a unified case management approach, using consolidated discovery and bellwether trials to address all issues holistically, as is standard in medical device MDLs.

Defendants frame general causation as whether "an excessive concentration of barium sulfate in the catheter components" causes the alleged injuries, suggesting this is the sole "threshold issue." This definition is overly narrow. In product liability litigation, general causation asks whether the product—here, Defendants' port catheter devices—is capable of causing the alleged injuries in humans under certain conditions, not whether one specific defect (e.g., barium sulfate concentration) is the sole cause. *See e.g. In re Incretin-Based Therapies Prods. Liab. Litig.*, 524 F. Supp. 3d 1007, 1033 (S.D. Cal. 2021), *aff'd*, No. 21-55342, 2022 WL 898595 (9th Cir. Mar. 28, 2022) (stating that general causation is "whether the substance at issue had the capacity to cause the harm alleged") (internal citations omitted).

General causation in this MDL encompasses whether the port catheters, as designed, manufactured, or implanted, can cause fractures, migration, infections, or blood clots. This includes multiple potential failure modes—including other design flaws, material or flexural fatigue, and other forms of surface degradation—not just the limited defect Defendants highlight. By focusing solely on barium sulfate, Defendants seek to constrain the inquiry prematurely, ignoring other device-related factors (e.g., catheter surface properties, flexural fatigue) that plaintiffs believe may be at issue. A separate phase based on this narrow framing risks misaligning the litigation with plaintiffs' claims, complicating rather than resolving key issues.

Separating general causation from specific causation would be inefficient and increase costs due to extensive evidence overlap. Defendants propose discovery limited to "documents related to barium sulfate" and general causation expert reports, deferring all else except Plaintiff Fact Sheets. However, the evidence needed to prove whether the catheters can cause harm (general causation) overlaps significantly with evidence showing whether they did cause harm in specific cases (specific causation), including most notably the clinical context and the evaluation of things

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

like surgical records and records on post-implant complications, informing both general risks and individual outcomes. Explanted devices, if available, from bellwether Plaintiffs would heavily inform both aspects of causation as well.

For example, proving that catheter cracking can cause blood clots (general causation) involves the same materials science studies and imaging needed to show a crack caused a plaintiff's clot (specific causation). A separate phase would require duplicative discovery and expert evaluation, as plaintiffs would later revisit these documents and experts for specific causation and liability. Contrary to Defendants' argument, this undermines the MDL's goal to "substantially streamline pretrial proceedings" and "reduce duplicative discovery." Transfer Order, *In re: AngioDynamics, Inc. & Navilyst Med., Inc., Port Catheter Prods. Liab. Litig.*, No. 3:24-cv-md-03125-JO-VET (S.D. Cal. Oct. 11, 2024), Dkt. 1 at 1.

Defendants cite drug and consumer product MDLs, but these types of cases present very different issues from a medical device case. For example, *In re: Zantac (Ranitidine) Prods. Liab. Litig.*, 644 F. Supp. 3d 1075, 1098 (S.D. Fla. 2022), involved a single chemical's cancer risk, which is an easily isolated threshold issue. Port catheter injuries, like all medical devices, involve both mechanical and biological variables. It's also undisputed here that Defendants' port catheter products fracture and cause infections and thrombosis in humans which makes separating general causation from other issues highly inefficient at best, and impossible at worst.

In addition, there are plenty of examples of drug and consumer product MDL courts that reached the opposite conclusion from those cases cited by Defendants. Recently, in *In re Suboxone (Buprenorphine/Naloxone) Film Prods. Liab. Litig.*, No. 1:24-MD-3092, 2024 WL 3157608, at *3 (N.D. Ohio June 24, 2024), the court denied defendants' request to bifurcate discovery into general causation and other issues, finding that "reliable opinions on general causation will likely be sufficiently bound up with matters that make discretely sequencing discovery in this MDL exceedingly difficult." Notably, Defendants have not cited a single example of a medical device MDLs in support of their argument. That's because other courts recognize the unique nature of these cases and that they are not susceptible to effective bifurcation.

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Los Angeles, CA 90067
310.556.1801

Defendants' request for a separate general causation phase is inappropriate. It misdefines general causation by focusing solely on barium sulfate, ignoring the catheters' broader risks; it creates inefficiencies and increases costs; and it relies on irrelevant drug MDLs. A unified approach with bellwether and liability work-up proceeding alongside general causation best serves the MDL's goals. Plaintiffs urge the Court to deny the request and proceed with comprehensive case management.

E. Plaintiff Fact Sheet v. Plaintiff Profile Form, and Defendant Fact Sheet/Profile Form

Defendants' Position:

Plaintiff Fact Sheets are necessary for essential facts regarding each Plaintiff's claimed injury, use of the product, medical treatment and history, and identification of third parties, including healthcare providers, who possess relevant documents and should be notified of their duty to preserve records. Additionally, the collection of medical records can be time intensive and the Plaintiff Fact Sheet would provide Defendants with more robust information to start the collection of relevant medical records, so if it is necessary, case specific discovery is not delayed. This information is already in the possession of each Plaintiff and will not be burdensome to set out in a Plaintiff Fact Sheet.

Plaintiffs have not shared with Defendants how a Plaintiff Profile Form would differ from a Plaintiff Fact Sheet. While Defendants object to any proposal that would allow Plaintiffs to withhold material information about each Plaintiff's product use, relevant medical history, claimed injury, and evidence sources, except in selected bellwether cases, Defendants are agreeable to meeting and conferring with Plaintiffs on the scope of the Plaintiff Fact Sheet or Plaintiff Profile Form. Likewise, Plaintiffs have not shared with Defendants a proposal for a Defendant Fact Sheet or Defendant Profile Form; Defendants remain open to a meet and confer on that issue.

Plaintiffs' Position:

It is Plaintiffs' position that Plaintiff Profile Forms are the appropriate and efficient way for initial information to be provided in all filed cases. Plaintiff Profile Forms will contain information that can be used for early case vetting and to determine bellwether picks. Information

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2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

typically included in a Plaintiff Profile Form is identification of the implanted product, as well as the date, location, and implanting surgeon. The Plaintiff Profile Form will also include information regarding the alleged injury, date of treatment and location of treatment. Medical records documenting information would be included with the submission of the Plaintiff Profile Form. It is Plaintiffs' position that a Plaintiff Fact Sheet which will be a more in-depth mode of discovery should be reserved for bellwether selections and/or cases at the remand stage. Often medical records showing plaintiff's medical history, and especially related to issues not associated with the alleged injury, are difficult to obtain depending on the amount of time that has lapsed since treatment. Additionally, requiring extensive medical history and records for all cases will be time consuming and undermine the goal of efficiency in Multi District Litigations. Plaintiffs will gladly meet and confer on the scope of any Plaintiff Profile Form or Plaintiff Fact Sheet.

A Defendant Profile Form would be required by Defendants in order to provide initial information relating to a Plaintiff's claim in each filed case, assuming a Plaintiff Profile Form is ordered. Alternatively, if a more detailed Plaintiff Fact Sheet is required, Defendants should be required to provide more detailed information by way of a Defendant Fact Sheet.

F. Master Complaint and Short Form Complaint

Plaintiffs' Position:

It is Plaintiffs' position that a Master Long Form Complaint is appropriate and will increase the efficiency of this litigation. A Master Complaint will set forth allegations common to all Plaintiffs' and set forth the theories of liability. These allegations will be incorporated by reference in each individual case, allowing individual Plaintiffs to set forth the specific allegations of their claim in a Short Form Complaint. Having a Master Long Form Complaint to which Defendants will file a Master Answer is the most efficient way to proceed as it will save the parties time by not requiring lengthy complaints and lengthy answers. Having a Master Complaint will also ensure consistency in the factual allegations and theories of liability as more cases are filed and more firms are involved. The allegations and theories of liability set forth in a Master Complaint will provide a roadmap for the scope and topics of discovery. Additionally, the use of a Short Form

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

Complaint will allow the parties to quickly analyze the number of claimed injuries of infection, thrombosis, and fracture, making the bellwether selection process more efficient.

Defendants' Position:

Defendants' do not believe that a Master Long Form Complaint is necessary or efficient in this MDL because all Plaintiffs have already filed individual Complaints using a nearly identical template. The background recitations, boilerplate allegations about Defendants and their products, and types of legal claims are virtually the same in all Complaints. This pattern of uniformity has continued before and throughout this MDL. Nor is this a litigation that is likely to see hundreds more cases or dozens of new Plaintiffs' counsel. A Master Long Form Complaint would only invite more administrative work and potential confusion at this point by trying to lump together a massive set of allegations that theoretically could apply to all Plaintiffs from all jurisdictions around the country, only to then require individualized selection and specification in another set of Short Form Complaints filed by each Plaintiff. And Defendants would then have to file responses and any pleading challenges to both the Master Long Form Complaint and each individual Short Form Complaint. While a Master Complaint/Short Form Complaint process often makes sense in an MDL, that is not the case here where there are not massive numbers of plaintiffs or wide variation in claims, and each Plaintiff has already filed a nearly identical individual Complaint.

Dated: April 15, 2025

/s/ *Anne Schiavone*
Anne Schiavone (Admitted *Pro Hac Vice*)
HOLMAN SCHIAVONE LLC
4600 Madison Ave, Ste 810
Kansas City, MO 64112
Phone: (816) 283-8738
Facsimile: (816) 283-8739
Email: aschiavone@hslawllc.com

/s/ R. Andrew Jones
R. Andrew Jones (Admitted *Pro Hac Vice*)
CORY WATSON, P.C.
2131 Magnolia Avenue
Birmingham, AL 35205
Telephone : (205) 328-2200
Facsimile: (205) 324-7896

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801

Email: ajones@corywatson.com

AVA LAW GROUP

/s/ *Andrew Van Arsdale*
Andrew Van Arsdale
CA State Bar No. 323370
3667 Voltaire Street
San Diego, CA 92106
Telephone: (800) 777-4141
Facsimile: (619) 222-3667
andrew@avalaw.com

Attorneys for Plaintiffs

/s/ *Thomas J. Yoo*
Thomas J. Yoo
Aeverie Polintan
POLSINELLI LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
Tel : 310.229.1337
tyoo@polsinelli.com

/s/ *Amy McVeigh*
Amy McVeigh (Admitted *Pro Hac Vice*)
Daniel Winters (Admitted *Pro Hac Vice*)
Whitney Mayer (Admitted *Pro Hac Vice*)
POLSINELLI PC
Three Logan Square
1717 Arch Street, Suite 2800
Philadelphia, PA 19103
T: 215-267-3025
F: 215-754-5208
amcveigh@polsinelli.com

Attorney for Defendants AngioDynamics, Inc., and Navilyst Medical, Inc.

/s/ *Daniel J. Herling*

Daniel J. Herling
Arameh Zargham O'Boyle
MINTZ
Century Plaza Towers
2049 Century Park East
Suite 300
Los Angeles, CA 90067
Tel: 310.586.3200
djherling@mintz.com
azoboyle@mintz.com

Attorneys for Defendant PFM Medical, Inc.

CERTIFICATE OF SERVICE

I certify that I served a copy of this document on the Court and all parties by filing this document with the Clerk of Court through the CM/ECF filing system, which will provide electronic notice and an electronic link to the document to all counsel of record.

/s/ Thomas J. Yoo
Thomas J. Yoo

Counsel for Defendants
AngioDynamics, Inc. and Navilyst Medical, Inc.

Polsinelli LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
310.556.1801