

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP	)	
IMPLANT PRODUCTS LIABILITY	)	
LITIGATION (MDL 2391)	)	CAUSE NO. 3:12-md-2391
	)	
	)	
_____	)	
This Document Relates to All Cases	)	
_____	)	

CASE MANAGEMENT ORDER

**I. Transfer and Coordination**

A. The terms of this order shall apply automatically to the actions that are currently part of this MDL proceeding and to all other cases that become a part of this proceeding by virtue of being instituted in, removed to, or transferred to this court.

B. Except as otherwise provided herein or by other orders of this court, the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of Indiana shall govern all procedural matters in this MDL.

**II. Service of Complaints**

**Defendants' Acceptance of Service by Mail.** Without conceding that they are proper parties to this litigation and without waiving any available defenses as to lack of jurisdiction and improper venue, the following defendants have agreed that requests for waiver of service of complaints pursuant to Federal Rule of Civil Procedure 4(d)(1) can be sent by mail or overnight courier to them at the address listed below:

Biomet, Inc.  
Biomet Orthopedics, LLC  
Biomet Manufacturing Corp.  
Biomet US Reconstruction, LLC  
  
56 East Bell Drive  
PO Box 587  
Warsaw, Indiana 46581-0587

ATTENTION: Legal Dept.

**III. Cases Directly Filed in the Northern District of Indiana**

A. To eliminate delays associated with the transfer of cases from other federal district courts to this court and to promote judicial efficiency, any plaintiff whose case would be subject to transfer to MDL No. 2391 by the Judicial Panel on Multidistrict Litigation pursuant to its October 2, 2012 In re Biomet M2a Magnum Hip Implant Prods. Liab. Litig. Transfer Order may file his or her case directly in the Northern District of Indiana.

B. In order to be considered a tag-along action and transferred to MDL No. 2391, in addition to the complaint, the plaintiff shall also file a separate Notice of Related action, pursuant to Northern District of Indiana Local Rule 40-1(d).

C. When an action is properly consolidated in MDL No. 2391, whether the action was transferred to, or originally filed in, this proceeding, the Clerk of Court shall make an appropriate entry in the master docket case file.

D. The defendants do not waive the right to object to improper consolidation of an action in MDL No. 2391. The court hereby requires that a Venue Statement be made in any complaint filed directly in the Northern District of Indiana from this point forward. An example of a Venue Statement would be: "The venue for this action lies in the Eastern District of Tennessee." The court further requires that each defendant shall admit or deny a plaintiff's Venue Statement in its answer. If the Venue Statement is denied, an alternate Venue Statement shall be set forth in the answer.

E. Consolidation of an action in MDL No. 2391, whether the action was transferred to, or originally filed in, this proceeding, will not be deemed a determination that jurisdiction or venue is proper in the Northern District of Indiana.

F. Consolidation of an action in MDL No. 2391, whether the action was transferred to, or originally filed in, this proceeding, will have no impact on the choice of law to be applied.

G. The parties' stipulation and agreement as to direct filing is contingent on the understanding that upon the completion of all pretrial proceedings applicable to a case filed directly in the Northern District of Indiana, this court will, pursuant to 28 U.S.C. § 1404(a), transfer the case to a federal district court of proper venue, as defined in 28 U.S.C. § 1391, unless the parties expressly agree to an alternate venue. If the parties expressly agree on a venue, the court intends to proceed consistent with that understanding.

#### **IV. ECF Filings**

A. The court will issue a Notice to all Attorneys regarding electronic filing in MDL 2391. All filings should comply with the Northern District of Indiana's ECF Administrative Procedures Manual, and service through Electronic Case Filing shall be deemed sufficient with no additional service required, with the exception of new complaints and subpoenas issued, which shall be served in accordance with section II above and with the Federal Rules of Civil Procedure.

B. The court expects all lawyers who have filed appearances in this case, or in any of the tag-along cases, to comply with this court's Local Rules and to abide by the terms of the case management orders and protective orders. Counsel are so bound, whether or not they have filed (or will file) appearances in this court. The court also expects conformance to the Seventh Circuit Civility Standards. Any lawyer who will be active in this litigation and expects to be served with copies of court filings in the MDL docket must register as an e-filer with the Northern District of Indiana's CM/ECF system.

#### **V. Seventh Circuit's Electronic Discovery Project (Exhibit A)**

The parties will rely on the principles of the Seventh Circuit's Electronic Discovery Project where relevant and where it is not counter to the specific written agreements between the parties. The Seventh Circuit's Standing Order Relating to the Discovery of Electronically Stored Information is attached as Exhibit A and approved by the court.

**VI. Document Production (Exhibit B)**

The Order Regarding Production Format of the Parties' Electronically Stored Information is attached as Exhibit B and approved by the court.

**VII. Discovery**

A. **Scope.** This order applies to discovery that is generally applicable to the cases in this MDL proceeding and all such discovery shall be governed by this order. All discovery is stayed, including all case-specific discovery, except that permitted by this order.

B. **Dispute Resolution (Exhibit C).** To avoid unnecessary motions concerning discovery disputes, counsel are directed to meet and confer on discovery matters before contacting the court. In the event the parties are unable to resolve their differences, a party may file a motion. Any filing, whether concerning a discovery dispute or other matter, that includes documents or information to be filed under seal pursuant to the Stipulated Protective Order of Confidentiality, attached as Exhibit C and approved by the court, may be filed under seal without requesting permission of the presiding judge as referenced in Local Rule 5-3.

C. **Service and Filing of Discovery Documents.** Pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, discovery requests and responses will not be filed with the court, except when specifically ordered by the court or to the extent they are presented in connection with a motion. Discovery requests and responses shall be served by electronic mail on plaintiffs' lead counsel and on defendants' lead counsel.

**D. Plaintiff Fact Sheets (Exhibits D and E)**

1. **Plaintiffs' obligation to complete and serve Plaintiff Fact Sheet.** Each plaintiff whose case is, or may hereafter be, included in MDL No. 2391 shall complete a

Plaintiff Fact Sheet (“PFS”), the form of which the court will soon determine and which shall become Exhibit D to this case management order, and a medical record release authorization for health care providers (“Limited Authorization”), attached as Exhibit E and approved by the court. Pursuant to the schedule ordered in paragraph (3) below, each plaintiff shall serve a completed and signed PFS and responsive documents by email or on a CD or other electronic storage device by mail on:

Ryan C. Edwards  
Taft Stettinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202-3957  
E-mail: BiometPFS@taftlaw.com

A courtesy copy of the PFS should also be emailed to plaintiffs’ lead counsel at BiometPFS@hovdelaw.com.

2. **PFS answers are binding.** The PFS will serve as case specific interrogatories, until further order of this court, and binding in the same manner as responses to interrogatories under Federal Rule of Civil Procedure 33 for all aspects of the litigation including trial. Each PFS shall be signed and dated by the plaintiff or the proper plaintiff representative under penalty of perjury; however, a PFS need not be notarized. The plaintiffs reserve the right to supplement and/or amend responses to a PFS. Any amended PFS is to be served in the same manner set forth paragraph D.1 above.

3. **Schedule for serving Plaintiff Fact Sheets, Responsive Documents, and Limited Authorizations.**

a. Plaintiffs in actions that were transferred to this MDL before the entry of this Order shall serve a complete and signed PFS, all responsive documents (or a written notice that none are in the possession of the plaintiff or plaintiff’s

counsel), and properly executed Limited Authorizations upon defendants' counsel designated above within the time specified by the court at the time of adoption of the form of the PFS.

- b. Each plaintiff in an action that is filed in or transferred to this MDL after the entry of this Order shall serve said documents within the time specified in the PFS, to be calculated from the date the case is docketed in this court or, when applicable, the motion to remand has been denied.
- c. Counsel for a plaintiff who, for good cause, requires additional time or for whom it is not possible to complete the PFS should contact defendants' lead counsel and request additional time.

4. **Notice of overdue or deficient discovery.** When any plaintiff has failed to materially comply with his or her obligations under this order within the timelines established herein, defendants shall, once the PFS is 30 days past due, send notice of the material deficiency to the plaintiff's counsel for the individual whose responses are alleged to be defective ("the deficiency letter"). The deficiency letter shall identify the alleged material deficiency and state that the plaintiff has 30 days to cure the alleged material deficiency and that the defendants intend to file a motion to dismiss if the deficiency is not cured. Deficiency letters shall not be used to annoy or harass a party or delay the discovery process.

- 5. "Materially complete" includes:
  - a. answers to all questions in the PFS (Plaintiff may answer questions in good faith by indicating "not applicable" or "I do not know" or "unknown");
  - b. the signed Verification (found on the last page of the PFS);

- c. duly executed Limited Authorizations; and
- d. the documents requested in the PFS, to the extent such documents are in the possession of plaintiff or plaintiff's counsel.

6. **Motion to Dismiss.** If the alleged material deficiency is not cured within 30 days from the date of the deficiency letter, or within any extension of that time as agreed to by the parties or by the court, the defendants may move for dismissal of plaintiff's claims without prejudice. A copy of said motion must be served on the plaintiff's counsel in the individual case and on the MDL lead counsel. The plaintiff shall have 30 days to respond to a motion to dismiss for failure to provide the PFS or failure to provide a materially complete PFS. If the plaintiff does not respond, the case will be dismissed without prejudice. If the plaintiff does respond, the motion to dismiss will be decided on the merits.

7. **Reinstatement of a Dismissal.** The decision to reopen a case following dismissal without prejudice is within the discretion of the court. Where a case is dismissed without prejudice for failure to furnish a materially complete PFS, the court presumptively will allow the plaintiff 90 days in which to seek reinstatement. Upon request of the defendants, the court will direct in its order of dismissal a date by which the dismissal without prejudice shall be converted to a dismissal with prejudice, absent an intervening motion to reinstate the matter. Any motion for reinstatement must be accompanied by a materially complete PFS.

8. **Updated PFS and Limited Authorizations relating to revision surgery.** A plaintiff who undergoes revision surgery after completing and serving a PFS shall complete and serve an updated PFS, Limited Authorizations, and responsive documents requested in the PFS within 120 days after the date of the revision surgery.

9. **PFS does not limit discovery.** The PFS will not be interpreted to limit the scope of inquiry at depositions nor will it affect whether evidence is admissible at trial. The scope of inquiry at depositions and the admissibility of information in the PFS shall be governed by the Federal Rules, and no objections are waived by virtue of any PFS response.

E. **Defendants' Fact Sheets (Exhibit F)**

1. **Defendants' obligation to complete and serve Defendants' Fact Sheet.** For each action pending in MDL No. 2391 in which a plaintiff provides defendants with a complete PFS, Biomet shall complete and serve a Defendants' Fact Sheet ("DFS"), attached as Exhibit F and approved by the court, within 120 days from the date on which a completed PFS is received by defendants' lead counsel. The completed DFS shall be served on the counsel identified in Section I.3.c of the PFS by regular or electronic mail and also on plaintiffs' lead counsel at BiometDFS@hovdelaw.com.

2. **DFS does not limit discovery.** Nothing in the DFS shall be deemed to limit the scope of inquiry at depositions or affect the admissibility of evidence at trial. The scope of inquiry at depositions and the admissibility of information in the DFS shall be governed by the Federal Rules of Evidence and the Federal Rules of Civil Procedure, and no objections are waived by virtue of any DFS response.

3. **Time to serve DFS may be extended.** The parties may agree to an extension of the above time limits for service of the DFS. Consideration should be given to requests for extensions to stagger DFS deadlines when Biomet has a large number due on or near the same dates. If the parties cannot agree on reasonable extensions of time, the party seeking an extension may apply to the court for such relief upon a showing of good cause.

F. **Master Written Discovery.** The Plaintiffs' Steering Committee (the "PSC") may serve Master Sets of Requests for Production, Master Sets of Interrogatories, and Master Sets of



Requests for Admission on any defendant. Defendants' Lead Counsel may serve Master Sets of Requests for Production, Master Sets of Interrogatories and Master Sets of Requests for Admission on the PSC that shall be related to issues applicable to all plaintiffs. In accordance with further orders to be issued by the court, case-specific discovery in individual cases shall be served by defendants upon individual plaintiffs when those cases are selected for further work-up or are remanded. The parties may also serve discovery requests on third parties. Absent court approval, no requests for production, interrogatories, or requests for admission may be propounded to plaintiffs' lead counsel or defendants' lead counsel other than the Master Written Discovery described in this paragraph.

**G. Responses to Master Discovery.** The party served shall respond to discovery in the manner described in the Federal Rules of Civil Procedure in accordance with a schedule that should be negotiated by the parties following service of such discovery requests.

#### **VIII. Privilege Log Protocol**

**A. General Principles.** Privilege logs shall comply with Federal Rule of Civil Procedure 26(b)(5), which requires a party to:

1. Expressly identify the privilege asserted; and
2. Describe the nature of the documents, communications, or tangible things not produced or disclosed . . . in a manner that, without revealing information itself privileged or protected, will enable other parties to assess this claim.  
FED. R. CIV. P. 26(b)(5).

**B. Specific Principles.**

1. Privilege logs provided in lieu of producing requested documents shall be produced no more than 60 days after the date upon which the documents were required to be produced or were partially produced. If documents are produced on a rolling basis, a corresponding privilege log for all redactions or withheld documents shall be produced within 60 days of the production of documents from each wave.
2. Any party asserting privilege shall provide a separate entry for each document as to which the party asserts a privilege. The entry should list:
  - a. the Bates number of the document;
  - b. the nature of the privilege asserted (e.g., “attorney-client privilege” or “attorney work product”);
  - c. the name(s) of the author(s) of the document, (if known) (to the extent a document is comprised of an email chain, the name of the author on the most recent email in the chain will be identified);
  - d. the name(s) of the recipient(s) of the document, including anyone who was sent the document as a “CC” or a “BCC,” (if known) (to the extent a document is comprised of an email chain, the name(s) of the recipient(s) on the most recent email in the chain will be identified);
  - e. the custodian of the document;

- f. the document type, including, for example, whether the document is an email, paper file, a meeting presentation, a spreadsheet, or other descriptive identifier of the document type;
  - g. the date the document was created (if known), sent (if applicable); and last modified (if applicable); and
  - h. the general nature of the legal advice requested or provided therein (e.g. “request for legal advice regarding draft regulatory submission;” “request for legal advice regarding proposed marketing;” “legal advice regarding draft advertising”) or an explanation of the work-product claim (e.g. “attorney memo regarding potential product-liability litigation”). In re Grand Jury Investigation, 974 F.2d 1068, 1071 (9th Cir. 1992) (corporation’s privilege log was sufficient where it identified: (a) the attorney and client involved; (b) the nature of the document; (c) all persons or entities shown on the document to have received or sent the document; (d) the date the document was generated or prepared; and (e) the subject matter of the document).
  - i. A description that states only “request for legal advice,” “legal advice,” or “attorney communication” without providing more information regarding the general nature of the legal advice is inadequate.
3. **Documents presumptively not to be logged on Privilege Log.** The following documents presumptively need not be included on a privilege log:
- a. Written or electronic communications regarding this action exclusively between a party and its trial counsel at the firms of

LaDue, Curran & Kuehn and Patterson Belknap Webb & Tyler LLP  
after commencement of this action; and

- b. work product solely related to this action created by trial counsel after commencement of the action.
4. **Privilege Log descriptions of email threads.** A party need include only one entry on the log to identify withheld emails that constitute an email thread; provided, however, that disclosure must be made that the e-mails are part of an email thread.
5. **Privilege Log descriptions of exact duplicates.** A party need include only one entry on the log to identify withheld documents that are exact duplicates.
6. The privilege log should indicate which individuals listed on the log are attorneys.
7. To the extent that any individual identified on the privilege log as a sender or recipient of a privileged document is a non-Biomet employee, Biomet agrees to indicate which individuals listed on the log are non-Biomet employees.

#### **IX. Redaction of Private and Privileged Information**

A. To protect against inappropriate disclosure of information subject to the attorney-client privilege or other privileged or private information as defined below, and to comply with all applicable state and federal law regulations, the parties shall redact from produced documents, materials or other things, or portions thereof, the following items or any other item(s) agreed upon by the parties or ordered by the court:

1. The names, addresses, Social Security numbers, tax identification numbers, email addresses, telephone numbers, and other potential identifying information of plaintiffs, health care providers, and individuals enrolled as subjects in clinical studies or adverse event reports. Documents pertaining to a particular plaintiff will be identified and/or produced to that plaintiff's attorney in the manner described in the DFS without such redactions. Other general identifying information, such as patient number, health care provider number, or study participant identification number, shall not be redacted unless required by state or federal law;
2. Materials that contain information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other recognized privilege;
3. The street addresses, Social Security numbers, tax identification numbers, dates of birth, home telephone numbers, cellular telephone numbers, and salary or compensation data of employees.

B. The parties shall redact only those portions of a document that are within the scope of the permitted subject matter set forth above, and not the entire document or page unless the entire document or page is within such scope.

C. Confidential documents that are produced in this MDL shall be produced in their entirety, pursuant to the Protective Order, with no internal redaction to eliminate "irrelevant" information with the exception of information described in paragraph A above.

D. The parties shall list on their privilege logs all documents that have been redacted to excise privileged information or attorney work product.

E. If a redaction is subsequently lifted by order of the court or by agreement of the parties, the producing party shall produce a non-redacted version of the document and identify the Bates number of the previously produced redacted version.

F. Privilege logs shall promptly be supplemented under Federal Rule of Civil Procedure 26 (e)(1) as to any document that becomes producible thereafter.

G. Any failure to redact information described above does not waive any rights to claims of privilege or privacy, or any objection, including relevancy, as to the specific document or any other document that is or will be produced.

**X. Privilege Dispute Procedure**

A. Any party seeking to challenge a claim of privilege shall meet and confer with the party asserting the privilege to attempt to resolve the issue(s) prior to submitting a challenge to the court.

B. If a meet-and-confer does not resolve all issues, any party seeking to challenge a claim of privilege shall submit a motion identifying the specific entries on the adverse party's privilege log that it believes to be inadequate or improper and providing the basis for the challenge. The court shall review all privilege challenges.

C. If the court finds that the content of a party's privilege log is inadequate, the court shall identify the privilege log entries it believes are insufficient and provide the party asserting the privilege with a reasonable time to supplement the information in the privilege log in light of the number of inadequate entries at issue.

D. If a party challenges the assertion of privilege with regard to certain documents as a substantive matter, the court shall conduct an *in camera* review, subject to its discretion, of either:

1. the contested documents; or
2. a reasonable number of representative documents selected by the responding party, as well as a reasonable number of additional documents selected by the requesting party.

E. The party asserting the privilege shall have the opportunity, at the court's discretion, to provide affidavits, argument, and/or *in camera* explanations of the privileged nature of the documents at issue to ensure that the court has complete information upon which to base its privilege determinations.

#### **XI. Inadvertent Production of Documents**

A. **Private and Privileged Information.** Pursuant to Federal Rule of Evidence 502(d) and Federal Rule of Civil Procedure 26(b)(5)(B), the production or disclosure of any discovery material made in connection with this action that a party claims was inadvertent and should not have been produced or disclosed based on privacy, attorney-client and/or work-product privilege, or HIPAA ("Inadvertently Produced Material") will not be deemed to be a waiver in whole or in part of privacy, privilege, HIPAA, or any other protections to which the party would have been entitled had the affected material not inadvertently been disclosed, either as to the specific information and/or documents disclosed or as to any other information and/or documents in this MDL and in any other federal or state proceeding. In the event of a claimed inadvertent disclosure, the following procedures shall be followed:

1. The party producing the document shall notify lead counsel for the opposing party in writing within a reasonable period of time from the discovery of the inadvertent production by specifically identifying the affected material;
2. If the producing party requests the return of any Inadvertently Produced Material, those to whom the request is made shall return to the producing

party immediately all copies of the affected material within their possession, custody, or control—including all copies in the possession of experts, consultants, or others to whom the affected material was provided;

3. All notes or other work product of the receiving party reflecting the contents of the Inadvertently Produced Material shall be destroyed, and the returned or destroyed material shall be deleted from any litigation-support or other database;
4. If, after being notified of the inadvertent disclosure, the receiving party promptly disputes in writing the claim of privilege, that party must promptly return, sequester, or destroy any copies of the Inadvertently Produced Material in accordance with Federal Rule of Civil Procedure 26(b)(5)(B), as well as any notes or other work product of the receiving party reflecting the contents of such materials, and may promptly present the information, including the Inadvertently Produced Material, to the court under seal for a determination of the claim of privilege;
5. Pending resolution of the matter by the court, no use or disclosure shall be made of the Inadvertently Produced Material for any purpose, including, but not limited to, during depositions or at trial;
6. If the court determines that the Inadvertently Produced Material is privileged, the receiving party shall promptly comply with the immediately preceding provisions of this paragraph or such other directives as may be issued by the court. If the court determines that the Inadvertently Produced Material is not privileged, the material is to be immediately returned to the receiving party; and



7. Where the privilege or privacy at issue may be protected by redacting that information, the producing party shall provide redacted discovery material to replace the inadvertently disclosed documents within 5 business days after requesting the return of any such discovery.

**B. Confidential Information.** The production or disclosure of any Confidential Information, as defined in the Protective Order, made in connection with this action that a party claims was inadvertent and should not have been produced or disclosed without a confidentiality designation shall not be deemed a waiver in whole or in part of a subsequent claim of protected treatment under the Protective Order, either as to the specific information and/or documents disclosed or as to any other information and/or documents in this MDL and in any other federal or state proceeding. In the event of a claimed inadvertent disclosure, the following procedures shall be followed:

1. The party producing the document shall notify lead counsel for the opposing party in writing within a reasonable period of time from the discovery of the inadvertent production by specifically identifying the affected material;
2. Upon written notice, the receiving party shall immediately mark and treat as confidential, in the manner set forth in the Protective Order, all copies of the affected material within their possession, custody, or control—including all copies stored in or downloaded from any litigation-support or other database, as well as all copies in the possession of experts, consultants, or others to whom the affected material was provided;
3. If, after being notified of the inadvertent disclosure, the receiving party promptly disputes in writing the claim of confidentiality, that party may promptly present the information to the court under seal for a determination of the claim of confidentiality in the manner set forth in the Protective Order; and

4. Pending resolution of the matter by the court, the receiving party shall treat the affected material as Confidential Information subject to the full protections of the Protective Order.

## **XII. Severance of Parties**

**Joinder of Unrelated Individuals.** A number of actions transferred to MDL No. 2391 involve unrelated individuals whose joinder is not authorized by the Federal Rules of Civil Procedure. To comport with both the Federal Rules of Civil Procedure and the Local Rules of this court, all of the plaintiffs in such cases must be severed from one another. Accordingly, each individual plaintiff in a multi-plaintiff case shall be severed from the complaint, pursuant to Federal Rule of Civil Procedure 21, and in accordance with the following process:

A. Multi-plaintiff actions shall be severed unless (1) a remand motion pertaining to the action is currently pending; or (2) plaintiffs have provided defendants' lead counsel with notice of intent to file a remand motion.

B. Within 25 days from the filing of this order, liaison counsel shall jointly submit to the court a report listing those pending actions that will be required to be severed pursuant to this Order, listing those pending multi-party actions that will not be required to be severed immediately due to a pending motion to remand. Liaison counsel shall also at that time submit a form of order severing the actions. Upon receipt and due consideration of the report of liaison counsel, the court will enter an order to sever the affected plaintiffs from the appropriate actions.

C. Any plaintiff severed pursuant to the process set forth above may thereafter file a complaint directly in this district in compliance with Section III above, or in another district with proper venue, within 30 days from the date of the severance. For each new case created in this manner, the plaintiff shall pay the standard civil filing fee within 70 days of the filing, or earlier if required by the district in which the new case is filed.

The parties agree that for the multi-plaintiff actions that were transferred to this MDL prior to the entry of this Order, if the severed plaintiff's complaint is filed in this district within 30 days of severance, the parties agree the date of the amended filing will relate back to the date of the filing of the original multi-plaintiff complaint in which the plaintiff was named. The agreed relation-back provision does not apply to any multi-plaintiff actions that have not yet been filed or that have been filed but not yet transferred to this MDL.

D. The first plaintiff named in the multi-plaintiff complaint shall remain in the original lawsuit and under the docket number assigned thereto. The severed plaintiffs who file complaints will be assigned new docket numbers.

E. This section does not require severing a plaintiff from his or her spouse, children, and/or other associated derivative claimants.

Furthermore, the court ORDERS that: (1) all attorneys filing related cases in the future should avoid filing complaints joining unrelated individuals as plaintiffs; and (2) all attorneys shall comply with the procedures discussed above. This court may, in the future, inform transferor courts if an attorney files multi-plaintiff cases and thereby avoids payment of filing fees to those transferor courts.

If any plaintiff believes the severance to be improper or unwarranted, he or she shall meet and confer with defendants to attempt to resolve the issue(s) prior to submitting a challenge to the court. If the issue is not resolved among the parties, the plaintiff may file, within 42 days of the severance order, an appropriate motion with the court seeking joinder of the severed cases.

### **XIII. Motions to Remand to State Court**

**Remand Motions.** The court hereby extends the deadline for filing motions to remand in all cases pending further order of this court and further orders that all pending or future motions to remand are hereby stayed pending further order from this court. The parties have agreed not to assert

untimeliness under 28 U.S.C. § 1447(c) as a defense to any pending motion to remand or to any future motion to remand filed in compliance with orders from this court.

**XIV. Communication with the Court and Among the Parties**

Ex parte communications with the court shall not be permitted with the exception of routine scheduling matters.

SO ORDERED.

ENTERED: February 15, 2013

/s/ Robert L. Miller, Jr.  
Robert L. Miller, Jr.  
Judge, United States District Court

**INDEX OF EXHIBITS**

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**EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP	)	
IMPLANT PRODUCTS LIABILITY	)	
LITIGATION (MDL 2391)	)	CAUSE NO. 3:12-md-2391
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**STIPULATED ORDER RELATING TO THE  
DISCOVERY OF ELECTRONICALLY STORED INFORMATION**

**I. GENERAL PRINCIPLES**

**A. Principle 1.01 (Purpose)**

The purpose of these Principles is to assist courts in the administration of Federal Rule of Civil Procedure 1, to secure the just, speedy, and inexpensive determination of every civil case, and to promote, whenever possible, the early resolution of disputes regarding the discovery of electronically stored information ("ESI") without court intervention. Understanding of the feasibility, reasonableness, costs, and benefits of various aspects of electronic discovery will inevitably evolve as judges, attorneys, and parties to litigation gain more experience with ESI and as technology advances.

**B. Principle 1.02 (Cooperation)**

An attorney's zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

**C. Principle 1.03 (Discovery Proportionality)**

The proportionality standard set forth in Federal Rule of Civil Procedure 26(b)(2)(C) should be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as practicable.

**II. EARLY CASE ASSESSMENT PRINCIPLES**

**A. Principle 2.01 (Duty to Meet and Confer on Discovery and to Identify Disputes for Early Resolution)**

1. Prior to the initial status conference with the court, counsel shall meet and discuss the application of the discovery process set forth in the Federal Rules of Civil Procedure and these Principles to their specific case. Among the issues to be discussed are:
  - a. the identification of relevant and discoverable ESI and documents, including methods for identifying an initial subset of sources of ESI and documents that are most likely to contain the relevant and discoverable information, as well as methodologies for culling the relevant and discoverable ESI and documents from that initial subset (see Principle 2.05);
  - b. the scope of discoverable ESI and documents to be preserved by the parties;
  - c. the formats for preservation and production of ESI and documents;
  - d. the potential for conducting discovery in phases or stages as a method for reducing costs and burden; and

- e. the potential need for a protective order and any procedures to which the parties might agree for handling inadvertent production of privileged information and other privilege waiver issues pursuant to Rule 502(d) or (e) of the Federal Rules of Evidence.
2. Disputes regarding ESI that counsel for the parties are unable to resolve shall be presented to the court at the initial status conference, the Rule 16(b) Scheduling Conference, or as soon as possible thereafter.
3. The attorneys for each party shall review and understand how their client's data is stored and retrieved before the meet and confer discussions in order to determine what issues must be addressed during the meet and confer discussions.
4. If the court determines that any counsel or party in a case has failed to cooperate and participate in good faith in the meet and confer process or is impeding the purpose of these Principles, the court may require additional discussions prior to the commencement of discovery and may impose sanctions, if appropriate.

**B. Principle 2.02 (E-Discovery Liaison(s))**

In most cases, the meet and confer process will be aided by participation of an e-discovery liaison(s) as defined in this Principle. In the event of a dispute concerning the preservation or production of ESI, each party shall designate an individual(s) to act as e-discovery liaison(s) for purposes of meeting, conferring, and attending court hearings on the subject. Regardless of whether the e-discovery liaison(s) is an attorney (in-house or outside counsel), a third party consultant, or an employee of the party, the e-discovery liaison(s) must:

1. be prepared to participate in e-discovery dispute resolution;



2. be knowledgeable about the party's e-discovery efforts;
3. be, or have reasonable access to those who are, familiar with the party's electronic systems and capabilities in order to explain those systems and answer relevant questions; and
4. be, or have reasonable access to those who are, knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues, and relevant information retrieval technology, including search methodology.

**C. Principle 2.03 (Preservation Requests and Orders)**

1. Appropriate preservation requests and preservation orders further the goals of these Principles. Vague and overly broad preservation requests do not further the goals of these Principles and are therefore disfavored. Vague and overly broad preservation orders should not be sought or entered. The information sought to be preserved through the use of a preservation letter request or order should be reasonable in scope and mindful of the factors set forth in Rule 26(b)(2)(C).
2. To the extent counsel or a party requests preservation of ESI through the use of a preservation letter, such requests should attempt to ensure the preservation of relevant and discoverable information and to facilitate cooperation between requesting and receiving counsel and parties by transmitting specific and useful information. Examples of such specific and useful information include, but are not limited to:
  - a. names of the parties;

- b. factual background of the potential legal claim(s) and identification of potential cause(s) of action;
  - c. names of potential witnesses and other people reasonably anticipated to have relevant evidence;
  - d. relevant time period; and
  - e. other information that may assist the responding party in assessing what information to preserve.
3. If the recipient of a preservation request chooses to respond, that response should provide the requesting counsel or party with useful information regarding the preservation efforts undertaken by the responding party. Examples of such useful and specific information include, but are not limited to, information that:
  - a. identifies what information the responding party is willing to preserve and the steps being taken in response to the preservation letter;
  - b. identifies any disagreement(s) with the request to preserve; and
  - c. identifies any further preservation issues that were not raised.
4. Nothing in these Principles shall be construed as requiring the sending of a preservation request or requiring the sending of a response to such a request.

**D. Principle 2.04 (Scope of Preservation)**

1. All parties and their counsel are responsible for taking reasonable and proportionate steps to preserve relevant and discoverable ESI within their possession, custody, or control. Determining which steps are reasonable and proportionate in particular litigation is a fact specific inquiry that will vary from case to case. The parties and counsel should address preservation issues at the outset of a case and should continue to address them as the case progresses and their understanding of the issues and the facts improves.
2. Discovery concerning the preservation and collection efforts of another party may be appropriate, but, if used unadvisedly, can also contribute to unnecessary expense and delay and may inappropriately implicate work product and attorney-client privileged matter. Accordingly, prior to initiating such discovery, a party shall confer with the party from whom the information is sought concerning: (i) the specific need for such discovery, including its relevance to issues likely to arise in the litigation; and (ii) the suitability of alternative means for obtaining the information. Nothing herein exempts deponents on merits issues from answering questions concerning the preservation and collection of their documents, ESI, and tangible things.
3. The parties and counsel should come to the meet and confer conference prepared to discuss the claims and defenses in the case including specific issues, time frame, potential damages, and targeted discovery that each anticipates requesting. In addition, the parties and counsel should be prepared to discuss reasonably foreseeable preservation issues that relate directly to the information that the other party is seeking. The parties and counsel need not raise every conceivable issue that might arise concerning their preservation efforts; however, the identification of any such preservation issues should be specific.

4. The following categories of ESI generally are not discoverable in most cases, and if any party intends to request the preservation or production of these categories, that intention should be discussed at the meet and confer or as soon thereafter as practicable:
  - a. "deleted," "slack," "fragmented," or "unallocated" data on hard drives;
  - b. random access memory (RAM) or other ephemeral data;
  - c. on-line access data, such as temporary internet files, history, cache, cookies, etc.;
  - d. data in metadata fields that are frequently updated automatically, such as last-opened dates;
  - e. backup data that is substantially duplicative of data that is more accessible elsewhere; and
  - f. other forms of ESI whose preservation requires extraordinary affirmative measures not utilized in the ordinary course of business.
  
5. If there is a dispute concerning the scope of a party's preservation efforts, the parties or their counsel must meet and confer and fully explain their reasons for believing that additional efforts are, or are not, reasonable and proportionate, pursuant to Rule 26(b)(2)(C). If the parties are unable to resolve a preservation issue, the issue should be raised promptly with the court.

**E. Principle 2.05 (Identification of Electronically Stored Information)**

1. At the Rule 26(f) conference or as soon thereafter as possible, counsel or the parties shall discuss potential methodologies for identifying ESI for production.
2. Topics for discussion may include, but are not limited to, any plans to:
  - a. eliminate duplicative ESI and whether such elimination will occur only within each particular custodian's data set or across all custodians;
  - b. filter data based on file type, date ranges, sender, receiver, custodian, search terms, or other similar parameters; and
  - c. use keyword searching, mathematical or thesaurus-based topic or concept clustering, or other advanced culling technologies.

**F. Principle 2.06 (Production Format)**

1. At the Rule 26(f) conference, counsel and the parties should make a good faith effort to agree on the format(s) for production of ESI (whether native or some other reasonably usable form). If counsel or the parties are unable to resolve a production format issue, the issue should be raised promptly with the court.
2. The parties should confer on whether ESI stored in a database or a database management system can be produced by querying the database for discoverable information, resulting in a report or a reasonably usable and exportable electronic file for review by the requesting counsel or party.

3. ESI and other tangible or hard copy documents that are not text-searchable need not be made text-searchable.
4. Generally, the requesting party is responsible for the incremental cost of creating its copy of requested information. Counsel or the parties are encouraged to discuss cost sharing for optical character recognition (OCR) or other upgrades of paper documents or non-text searchable electronic images that may be contemplated by each party.

### **III. EDUCATION PROVISIONS**

#### **A. Principle 3.01 (Judicial Expectations of Counsel)**

Because discovery of ESI is being sought more frequently in civil litigation and the production and review of ESI can involve greater expense than discovery of paper documents, it is in the interest of justice that all judges, counsel, and parties to this litigation become familiar with the fundamentals of discovery of ESI. It is expected by the judges adopting these Principles that all counsel will have done the following in connection with each litigation matter in which they file an appearance:

1. Familiarize themselves with the electronic discovery provisions of Federal Rules of Civil Procedure, including Rules 26, 33, 34, 37, and 45, as well as any applicable state Rules of Procedure;
2. Familiarize themselves with the Advisory Committee Report on the 2006 Amendments to the Federal Rules of Civil Procedure, available at [http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/EDiscovery\\_w\\_Notes.pdf](http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/EDiscovery_w_Notes.pdf); and
3. Familiarize themselves with these Principles.

**B. Principle 3.02 (Duty of Continuing Education)**

Judges, attorneys, and parties to this litigation should continue to educate themselves on electronic discovery by consulting applicable case law, pertinent statutes, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, The Sedona Conference® publications relating to electronic discovery<sup>1</sup>, additional materials available on web sites of the courts<sup>2</sup>, and of other organizations<sup>3</sup> providing educational information regarding the discovery of ESI<sup>4</sup>.

APPROVED: February 15, 2013

/s/ Robert L. Miller, Jr.  
Robert L. Miller, Jr.  
Judge, United States District Court

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<sup>1</sup> <http://www.thesedonaconference.org/content/miscFiles/publications.html?grp=wgs110>

<sup>2</sup> E.g. <http://www.ilnd.uscourts.gov/home/>

<sup>3</sup> E.g. <http://www.discoverypilot.com>, [www.fjc.gov](http://www.fjc.gov) (under Educational Programs and Materials)

<sup>4</sup> E.g. <http://www.du.edu/legalinstitute>

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP	)	
IMPLANT PRODUCTS LIABILITY	)	
LITIGATION (MDL 2391)	)	CAUSE NO. 3:12-md-2391
	)	
	)	
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This Document Relates to All Cases	)	
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**STIPULATED ORDER REGARDING PRODUCTION FORMAT OF PARTIES’  
ELECTRONICALLY STORED INFORMATION**

**I. SCOPE OF THE ORDER**

Pursuant to agreement of counsel, this order governs the parties’ production of all electronic information and paper documents in this MDL.

**II. DEFINITIONS**

A. “Document” means paper documents or electronically stored information (ESI) existing in any medium from which information can be obtained or translated into reasonably usable form.

B. “Native File(s)” means ESI in the file type for (or of) the application in which such ESI is normally created, viewed and/or modified.

C. “Metadata” means: (i) information embedded in a Native File that is not ordinarily viewable or printable from the application that generated, edited, or modified such Native File; and (ii) information generated automatically by the operation of a computer or other information technology system when a Native File is created, modified, transmitted, deleted or otherwise manipulated by a user of such system.



D. “Static Image(s)” means a representation of ESI produced by converting a Native File into a standard image format capable of being viewed and printed on standard computer systems. A Tagged Image File Format (TIFF) image is an example of a Static Image.

E. “Load/Unitization file” means an electronic file containing information identifying a set of paper-scanned images or electronically processed files and indicating where individual pages or files belong together as documents, including attachments, and where each document begins and ends. A Load/Unitization file will also contain data relevant to the individual documents, such as Metadata, coded data, and OCR or Extracted Text.

F. “OCR” means the optical character recognition file that is created by software used in conjunction with a scanner capable of reading text-based documents and making such documents searchable using appropriate software.

G. “Extracted Text” means the text extracted from a Native File and includes all header, footer, and document body information, as well as any other text, such as comments and tracked changes in Microsoft Word documents and notes in Microsoft PowerPoint documents.

H. Parties will use reasonable, best efforts to comply with the terms of this production format. In the event a party determines it cannot materially comply with any requirement herein, the party will disclose his or her inability to comply, and the parties will meet and confer regarding resolution of the identified issue.

### **III. FORMAT OF THE PRODUCTION OF DOCUMENTS**

A. Paper Documents - Paper documents, including spreadsheets maintained in paper form, will be produced either in hard copy form or as TIFF images (consistent with the specifications in Section III.B.1). If provided as TIFF images, the production will include the appropriate Load/Unitization files that will, at a minimum, contain the following fields (described in detail in Section III.B.5, below):

1. Beginning Production Number (ProdBeg);
2. Ending Production Number (ProdEnd);
3. Beginning Attachment Production Number (BegAttach);
4. End Attachment Production Number, (EndAttach);
5. Custodian/Source;
6. Confidentiality;
7. Document Type;
8. Page Counts; and
9. OCR.TXT file.
10. In scanning paper documents, distinct documents shall not be merged into a single record, and single documents shall not be split into multiple records (i.e., paper documents should be logically unitized). In the case of an organized compilation of separate documents – for example, a binder containing several separate documents behind numbered tabs – each tab and the documents behind that tab should be scanned as one document, and the relationship among the documents in the binder should be reflected in proper coding of the beginning and ending document and attachment fields. This provision will apply to all physical documents that will be collected going forward. Nothing in this provision requires any party who has previously scanned paper documents without adherence to this provision to perform and provide post-scanning logical unitization. The parties will meet and confer

to resolve any related issues.

**B. ESI**

1. All TIFF-formatted documents will be single page, Group 4 TIFF at 300 x 300 dpi resolution and 8.5 x 11 inch page size, except for documents that in the producing party's reasonable judgment require a different resolution or page size. For Microsoft Word documents, the TIFF will show hidden text, headers, and footers, if any. For Microsoft PowerPoint documents, the TIFF will include hidden slides, comments, and notes, if any. For Microsoft Excel documents that are redacted and produced in TIFF format, the TIFF will show hidden columns, rows, worksheets, and charts, if any. Nothing in this provision requires any party who has previously prepared for production TIFFs of redacted Microsoft Excel documents without hidden text to re-produce them with hidden text, except that upon request, the producing party will make a reasonable attempt to comply with reasonable requests to re-produce such particularly identified Microsoft Excel documents with TIFFs showing hidden columns, rows, worksheets, and charts, if any.
2. If a color image is produced in black and white, the receiving party may request the producing party to produce the original, color image. After receiving such a request for color production, the parties will meet and confer on the reasonableness of the request as well as a reasonable and cost-effective means of providing the requested documents.
3. In the absence of agreement of the parties or order of the court, a Static Image will be provided in TIFF format (.TIF files). The image file name shall match the Bates number assigned to the image. All documents are to be provided with multi-page searchable OCR or Extracted Text files, as described in paragraph III.B.3, below.

4. Text Files: For each document, a single text file shall be provided along with the image files and metadata. The text file name shall be the same as the Bates number of the first page of the document. File names shall not have any special characters or embedded spaces. Electronic text must be extracted directly from the native electronic file unless the document was redacted, an image file, or a hard copy document. In these instances, a text file shall be created using OCR and produced in lieu of extracted text.
  
5. Load/Unitization files: There will be two Load/Unitization files accompanying all productions. One will be the Image load file and the other the Metadata load file. The specifics of these files are detailed in (a) and (b) below:
  - a. Image Load File
    - i. Every document referenced in a production image load file shall have all corresponding images, text, and data logically grouped together in a directory structure with a common key to properly load the data.
    - ii. Documents shall be produced in only one image load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.
    - iii. The name of the image load file shall mirror the name of the delivery volume, and should have an .lfp, .opt or .dii\* extension (e.g., ABC001.lfp). The volume names shall be consecutive (i.e., ABC001, ABC002, et. seq.)

- iv. If .dii file is produced, the accompanying metadata load file shall be separate from the .dii file and not contained within the .dii file.
- v. The load file shall contain one row per Tiff image.
- vi. Every image in the delivery volume shall be contained in the image load file.
- vii. The image key shall be named the same as the Bates number of the page. Load files shall not span across media (e.g., CDs, DVDs, Hard Drives, etc.), i.e., a separate volume shall be created for each piece of media delivered.

b. Metadata Load File

- i. The metadata load file shall use the following delimiters:
  - Column Delimiter: Pipe – | (ASCII 124);
  - Text Qualifier: Caret – ^ (ASCII 94);
  - New line: Carriage Return (ASCII 13).
- ii. Data for documents shall be produced in only one data load file throughout the productions, unless that document is noted as being a replacement document in the Replacement field of the data load file.
- iii. The first record shall contain the field names in the order of the data set forth in Section III.B.5 below.

- iv. All date fields shall be produced in “mm/dd/yyyy hh:mm:ss AM” format.
  - v. A carriage-return line-feed shall be used to indicate the start of the next record.
  - vi. Load files shall not span across media (e.g., CDs, DVDs, Hard Drives, etc.); a separate volume shall be created for each piece of media delivered.
  - vii. The name of the metadata load file shall mirror the name of the delivery volume and shall have a .dat, .csv or .txt extension (i.e., ABC001.dat).
  - viii. The volume names shall be consecutive for each produced source (i.e., ABC001, ABC002, et seq.).
6. Metadata fields: ESI will be produced to the requesting party as Static Images together with a Load/Unitization file that will contain the Metadata fields described below on the document level, except as set forth in Section III.A above. The following fields associated with each electronic document, including the body of the document, will be produced in the appropriate Load/Unitization file:

	<b>FIELD</b>	<b>DEFINITION</b>	<b>DOC TYPE<sup>5</sup></b>
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<sup>5</sup> “eEdocs,” as used in the DOC TYPE column, refers to all non-email ESI files.

1	SOURCE	Name of the party producing the document. All non-distributor Biomet entities shall be referred to as Biomet and not distinguished by company.	All
2	CUSTODIAN	Name of person or data source (non-human) from where documents/files are produced.**Where redundant names occur, individuals should be distinguished by an initial that is kept constant throughout productions (e.g., Smith, John A. and Smith, John B.)	All
3	BEGBATES	Beginning Bates Number (production number)	All
4	ENDBATES	End Bates Number (production number)	All
5	BATESRANGE	Full Bates Number range (production number)	All
6	PGCOUNT	Number of pages in the document (if available)	All
7	FILESIZE	File size	All
8	NATIVEFILELINK	For documents provided in native format only	All
9	TEXTPATH	File path for OCR or Extracted Text files per paragraph III.B.3 above	All
10	FROM	Sender to be provided in SMTP (e.g., jroe@someco.com) format if available	Email
11	TO	Recipient to be provided in SMTP (e.g., jroe@someco.com) format if available	Email
12	CC	Additional recipients to be provided in SMTP (e.g., jroe@someco.com) format if available	Email
13	BCC	Blind additional recipients to be provided in SMTP (e.g., jroe@someco.com) format if available	Email
14	SUBJECT	Subject line of email	Email
15	PARENTBATES	Begin Bates number for the parent email of a family (will not be populated for documents that are not part of a family)	Email

16	BEGATTACH	First Bates number of family range (i.e. Bates number of the first page of the parent email)	Email
17	ENDATTACH	Last Bates number of family range (i.e. Bates number of the last page of the last attachment)	Email
18	ATTACHCOUNT	Number of attachments to an email	Email
19	DATESENT (mm/dd/yyyy hh:mm:ss AM)	Date Sent	Email
20	DATERCVD (mm/dd/yyyy hh:mm:ss AM)	Date Received	Email
21	HASHVALUE	MD5 Hash Value	All
22	TITLE	Title provided by user within the document	Edocs
23	AUTHOR	Creator of a document	Edocs
24	DATECRTD (mm/dd/yyyy hh:mm:ss AM)	Creation Date	Edocs
25	DocumentType	Descriptor for the type of document, including for example, "Standard file" for electronic documents not attached to emails; "Email" for all emails (noting whether the email is with our without an attachment); "Attachments" for files that are attachments; "Contact", "Calendar Entry", or "Note" for Outlook contacts, calendar entries, and notes	All
26	FILENAME	Saved name of document	Edocs
27	DOCEXT	File Extension	Edocs
28	DateLastModified	Date Last Modified	Edocs



29	ProdVol	Name of media that data was produced on. (ex. Wave 001 – Hard Drive)	All
30	Confidentiality	Indicates if the document has been designated as “Confidential” pursuant to any applicable Protective order. “Yes” for Confidential documents; “No” for documents that are not so designated.	All
31	MIME type	Commonly associated application for the specified file type.	All
32	FILEPATH	File source path for all electronically collected documents, which includes location, folder name, file name, and file source extension.	Edocs
33	FOLDER NAME	Folder path for emails.	Email
34	READ/UNREAD	Whether the Outlook item was marked as read or unread at the time of the collection. Values provided will be “Yes” for marked as read, “No” for marked as unread, and a null value where the read/unread flag value is unavailable.	Email
35	Importance	High Importance – indicates priority in email message	Email
36	Redacted	Descriptor for documents that have been redacted. “Yes” for redacted document; “No” for unredacted documents.	All
37	LAST SAVED BY	Person who last saved the document	Edoc

This list of fields does not create any obligation to create or manually code fields that are not automatically generated by the processing of the ESI; that do not exist as part of the original Metadata of the document; or that would be burdensome or costly to obtain. The parties retain the right to move the court for the production of

additional electronic metadata fields should ongoing discovery reveal the need for such Metadata. The designation of a document as a “Protected Document” pursuant to the Protective Order of Confidentiality shall include the metadata produced for that document.

7. **Bates Numbering:** All images must be assigned a Bates/control number that shall always: (1) be unique across the entire document production, (2) maintain a constant length (zero/0-padded) across the entire production, (3) contain no special characters or embedded spaces, and (4) be sequential within a given document. If a Bates number or set of Bates numbers is skipped in a production, and not otherwise identified on a privilege log, the producing party will disclose the Bates numbers or ranges in a cover letter accompanying the production.
8. When processing ESI, GMT should be selected as the time zone. To the extent that a party has already processed ESI using a different time zone, the producing party will note the time zone used in its processing.
9. When processing ESI for review and for production in TIFF format, the producing party will make reasonable attempts to force off AutoDate.
10. When the Static Image is produced, the producing party shall make reasonable attempts to maintain and not modify the original Native File and its metadata.
11. Prior to the further production of databases or other structured data,

the parties will meet and confer on a reasonable and cost-effective scope and format of providing the requested data. Notwithstanding the foregoing, a party may elect to produce database records as csv files or as Native Files of portable database application files (e.g. MS-Access) without the need to meet and confer regarding the form of production.

12. Electronic file collection will be “De-NISTed”, removing commercially available operating system and application files contained on the current NIST file list. Identification of NIST list matches will be through MD5 Hash values.
13. User-generated files that have been identified as relevant by the producing party but that cannot be produced and/or imaged because of technical issues should be identified as exception files and included on an exception log that includes, if available, a reason for exception: for example, corruption, unavailable password protection, proprietary software, or other technical issues. The producing party shall provide a copy of this log with its production or shortly thereafter. If the receiving party requests production of any files listed on the exception log, the parties will meet and confer on a reasonable and cost effective means of providing the requested data.
14. The parties will globally de-duplicate identical ESI as follows:
  - a. **Electronic Files:** Electronic files will be de-duplicated based upon calculated MD5 Hash values for binary file content. File contents only will be used for MD5 Hash value calculation.
  - b. **Messaging Files:** Messaging files will be de-duplicated based

upon MD5 Hash values for the message family, including parent object and attachments. This value is calculated on the basis of the following email fields: From, To, CC, Subject, and Sent Date, as well as the body of the email and the number of attachments. For families, the MD5 Hash is created on the combined hash values of the family members.

- c. **Metadata:** The custodian and file path metadata fields of unproduced documents that are duplicates of produced documents will be provided as multi-value fields in the Load/Unitization file.
15. **Embedded Objects:** Objects embedded in Microsoft Office and .RTF will be extracted as separate documents and produced as attachments to the document.
  16. **Compressed files:** Compression file types (i.e., .CAB, .GZ, .TAR, .Z, .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files.
  17. **Native Files:** The parties agree to produce non-redacted Microsoft Excel and Microsoft PowerPoint documents and multimedia audio/video files (e.g., .wav, .mpeg, .avi) in native format. Documents that are redacted shall be produced as Static Images.
    - a. Nothing in this provision requires any party who has previously prepared non-redacted Microsoft Excel and Microsoft PowerPoint documents for production to re-produce them in native format, except that upon request,

the producing party will make a reasonable attempt to comply with reasonable requests to produce particularly identified non-redacted ESI in its native format.

- b. Any native files that are produced shall be produced with the file path provided, as well as all extracted text and applicable metadata fields set forth in III.B.5 above
- c. If a dispute arises with respect to the provision, the parties agree to meet and confer in an effort to resolve their differences.

- 18. **Native Files:** The parties acknowledge that production in TIFF and load file format may be inadequate for certain types of ESI. Upon request, the producing party will comply with reasonable requests to produce particularly identified non-redacted ESI in its native format. If a dispute arises with respect to the provision, the parties agree to meet and confer in an effort to resolve their differences.
- 19. **Replacement files:** Any documents that are replaced in later productions shall be clearly designated as such, by appending a “- R” to the Bates/production number prefix and by a letter accompanying the production clearly designating such documents as replacements.
- 20. **Production samples:** The parties shall exchange standard production samples from each source (physical, email, electronic document, native, etc.).
- 21. **Privilege Log:** Privilege logs shall be produced in PDF format and shall be accompanied by an Excel copy of the log. The PDF copy will

be the official privilege log of record.

22. **Suppressed Metadata:** The following metadata fields will be suppressed for documents produced with redactions: FILENAME, TITLE, and SUBJECT. If additional fields are redacted for privilege, these fields shall be identified on the privilege log.

#### **IV. OBJECTIONS TO PRODUCTION OF ESI**

A. A party may object to a request for production of ESI that is not reasonably accessible because of undue burden or cost.

B. If asserting an objection based on Section IV.A above, the responding party will inform the requesting party of the electronic information it is willing to produce, the nature and location of the information claimed to not be reasonably accessible, and the reason(s) why the requested production would impose an undue burden or is unreasonably costly, and afford the requesting party an opportunity to propose an alternative means of compliance with the request, including payment of all or part of the costs of retrieving the information.

#### **V. CONTINUING OBLIGATIONS**

A. To expedite discovery of relevant electronic evidence and reduce costs, the parties' computer experts will informally cooperate and discuss procedures or protocols to facilitate identification, retrieval, and production of computerized information. This responsibility shall be continuing, unless otherwise ordered by the court.

B. The inadvertent production of any materials constituting or containing attorney-client privileged information, attorney work product, or confidential information shall be treated in the manner specified in Case Management Order No. 1, Protective Order, Privilege Order, and the Federal Rules of Civil Procedure.

C. The parties will work with one another in good faith to resolve any issues, disputes, or objections that arise in connection with electronic discovery issues before raising such matters with the court. Issues shall be raised promptly, in writing, and the parties shall have good faith discussions to attempt to resolve the matter. The parties will use their best efforts to raise any objections or other requests related to a production within 90 days of receipt of that production. In any event, the parties must raise any objections or other issues sufficiently in advance of the close of discovery to permit good faith negotiations to resolve the matter and briefing of any related motion such that the court has a reasonable time to rule thereon prior to the close of discovery.

APPROVED: February 15, 2013

/s/ Robert L. Miller, Jr.  
Robert L. Miller, Jr.  
Judge, United States District Court

**EXHIBIT C**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP	)	
IMPLANT PRODUCTS LIABILITY	)	
LITIGATION (MDL 2391)	)	CAUSE NO. 3:12-md-2391
	)	
	)	
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This Document Relates to All Cases	)	
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**STIPULATED PROTECTIVE ORDER OF CONFIDENTIALITY**

It appearing that certain information, documents, and things of the parties subject to discovery in the above-captioned action is likely to involve the disclosure of confidential information, including by way of example and not limitation, financial, marketing, technical, licensing, research and development and other commercial information (hereinafter referred to as “Confidential Information”), that the parties reasonably believe to comprise sensitive and valuable information whose disclosure could cause a party competitive harm:

IT IS HEREBY STIPULATED by the attorneys for the parties, and approved by the court, that pursuant to Federal Rule of Civil Procedure 26(c)(1) and Federal Rule of Evidence 502(d):

1. This Stipulation and Protective Order shall apply to all information, documents, and things subject to discovery in this action, including, without limitation, testimony adduced at depositions upon oral examination or upon written questions pursuant to Rules 30 and 31, information and documents produced in response to Fact Sheets, answers to Interrogatories pursuant to Rule 33, documents produced pursuant to Rule 34, information obtained from inspection of premises or things pursuant to Rule 34, and answers to requests for admission pursuant to Rule 36. This Protective Order supersedes all prior orders entered in actions in MDL No. 2391 prior to their



transfer to the MDL and governs discovery that has already been produced and discovery to be produced in the future.

2. Any party to this litigation and any third-party shall have the right to designate as Confidential Information subject to this Order any information, document, or thing, or portion of any document or thing that contains: (a) trade secrets, competitively sensitive technical, marketing, licensing, research and development, financial, sales or other proprietary or confidential business information; (b) private or confidential personal information; (c) information received in confidence from third parties; or (d) information that the producing party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure. Any party to this litigation or any third-party covered by this Order, who produces or discloses any Confidential Information, including, without limitation, any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER” (hereinafter “Confidential”).

3. The parties agree to produce Confidential Information only upon the condition that the information remain confidential.

4. The parties agree that a party's designation of material as confidential shall be made only after a bona fide determination that the material is in fact Confidential Information. The designation shall be made prior to, or contemporaneously with, production or disclosure of that material, except as set forth in Paragraph 17 below. All parties and non-parties shall have the right to object to the designation of Confidential Information by appropriate motion before the court pursuant to the procedure set forth in Paragraph 11 below.

5. All Confidential Information shall be used by the receiving party solely for purposes of the prosecution or defense of this action, shall not be used by the receiving party for any business, commercial, competitive, personal, or any other purpose whatsoever other than pursuing this litigation, including trials and any appeals herein, and shall not be disclosed by the receiving party

to anyone other than those set forth in Paragraph 6, unless and until the restrictions herein are removed either by written agreement of counsel for the parties or by order of the court. It is, however, understood that counsel for a party may give advice and opinions to his or her client solely relating to the above-captioned action based on his or her evaluation of Confidential Information, provided that such advice and opinions shall not reveal the content of such Confidential Information except by prior written agreement of counsel for the parties or by order of the court.

6. Confidential Information and the contents of Confidential Information may be disclosed only to the following individuals under the following conditions:

- a. Outside counsel (herein defined as any attorney at the parties' outside law firms) and relevant in-house counsel for the parties;
- b. Outside experts or consultants retained by outside counsel for purposes of this action, except that in no event shall any disclosure be made to employees, officers, or directors of any competitors of a party, irrespective of whether they are retained as an expert or consultant for a party. For this paragraph, "employees" of a competitor shall mean individuals employed by a competitor who "can control what will be done and how it will be done," as defined in the Internal Revenue Service's definition of a common-law employee.
- c. Secretarial, paralegal, clerical, duplicating, and data processing personnel of the foregoing;
- d. The court and court personnel;
- e. Mediators, secretaries, paraprofessional assistants, and other employees of such mediators who are actively engaged in assisting the mediators in connection with this litigation;

- f. Any deponent may be shown or examined on any information, document, or thing designated Confidential if it appears that the deponent authored or received a copy of it, was involved in the subject matter described therein, or is employed by the party who produced the information, document, or thing, or if the producing party consents to such disclosure;
- g. Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial, and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and
- h. To the extent such disclosure is made, the party shall be advised of, become subject to, and agree in advance of disclosure to the provisions of this Protective Order requiring that the material and information be held as confidential. In the case of parties that are corporations or other business entities, “party” shall mean an employee of the company who has responsibilities that are related to the issues in this litigation.
- i. Other persons that are designated by written agreement of court-appointed lead counsel for the plaintiffs and defendants to this MDL or by order of the court to be permitted access to Confidential Information.

7. The parties and their attorneys shall ensure that all persons falling within the description of Paragraph 6 that receive Confidential Information are advised of the terms of this Protective Order and the confidential nature of the Confidential Information and that they are precluded from disclosing the information to any person and in any manner that is not required in the pursuit of this litigation, including any subsequent appeals. The parties receiving the

Confidential Information must agree to comply with the terms of this Protective Order as a condition of receiving access to the Confidential Information. In addition, all persons falling within the description of Paragraph 6, subparts (b), (h), and (i), shall, before obtaining access to the Confidential Information, be advised of this Protective Order and personally sign and date the Endorsement of the Protective Order, attached hereto as Exhibit A. It shall be the responsibility of the counsel who shares Confidential Information with any such person to apprise them of this Order, require the person to sign Exhibit A, and thereafter maintain custody of signed Exhibit A.

8. Confidential material shall be used only by individuals permitted access to it under Paragraph 6. Confidential Information, copies thereof, and the information contained therein shall not be disclosed in any manner to any other individual until and unless (a) outside counsel for the party asserting confidentiality expressly waives the claim of confidentiality, or (b) the court orders such disclosure.

9. Any person in possession of Confidential Information shall exercise reasonably appropriate care with regard to the storage, custody, or use of such Confidential Information in order to ensure that its confidentiality is maintained.

10. With respect to any depositions that involve disclosure of Confidential Information of a party to this action, such party shall have 30 days after receipt of the deposition transcript to inform all other parties that portions of the transcript are to be designated Confidential, which period may be extended by agreement of the parties. No such deposition transcript shall be disclosed to any individual, other than the individuals described in Paragraph 6 above, and the deponent during these 30 days, and no individual attending such a deposition shall disclose the contents of the deposition to any individual, other than those described in Paragraph 6 above, during the 30 day period. Upon being informed that certain portions of a deposition are to be designated as Confidential Information, all parties shall immediately cause each copy of the transcript in their custody or control to be appropriately marked as confidential and limit disclosure of that transcript in accordance with Paragraphs 6 and 7 above.

11. The acceptance by a party of any information, document, or thing identified as Confidential Information shall not constitute a concession that the information, document, or thing is confidential. Subsequent to the acceptance of information, documents, or things identified as Confidential, a party may challenge the other party's claim of confidentiality. If counsel for a party receiving documents or information designated as Confidential objects to such designation of any or all of such items, the following procedure shall apply:

- a. Material or information claimed to be Confidential that is subject to a dispute as to whether it is in fact confidential shall, until further agreement of the parties or order of the court, be treated as confidential in accordance with the provisions of this Protective Order.
  
- b. Counsel for the objecting party shall serve on the designating party or third party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating party or third party shall respond in writing to such objection within 30 days and shall state with particularity the grounds for asserting that the document or information is Confidential Information. If the designating party or non-party makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith, in accordance with Local Rule 37-1, in an effort to resolve the dispute. If no timely written response is made to the objection, the challenged designation will be deemed to be void. The decision to permit a party to subsequently reinstate a confidentiality designation that has been deemed void by the provisions of this Paragraph is within the discretion of the court. If the court permits the party to reinstate a confidentiality designation, the document shall be treated as an inadvertently disclosed document as set forth in Paragraph 17 below.

- c. If a dispute as to a Confidential designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the court initially by joint telephone call with the adverse party or by letter before filing a formal motion for an order regarding the challenged designation.

12. Any interested member of the public may challenge a party's designation of information, document, or thing as Confidential Information by filing a motion before the court showing grounds why disclosure is warranted.

13. In the event a party shall desire to provide access to information, documents, or things identified as Confidential Information to any person or category of persons, who are persons not included in Paragraphs 6 hereof, the party shall so notify the other party 30 days in advance of such access in writing and if the other party objects thereto, the party desiring to make disclosure shall move this court for an order that such person or category of persons may be given access to the Confidential Information. In the event the motion is granted, such person or category of persons may have access to the Confidential Information provided that such person personally signs and dates the Endorsement of the Protective Order attached hereto and otherwise complies with Paragraph 7 above and such other terms as the court may impose.

14. All transcripts, depositions, exhibits, answers to interrogatories, and other documents filed with the court that previously have been designated by a party as comprising or containing Confidential Information, or any pleading or memorandum purporting to reproduce or paraphrase such information, shall comply with Local Rule 5-3 and shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of this litigation, an indication of the nature of the contents, the words "CONFIDENTIAL" and "RESTRICTED ACCESS ACCORDING TO COURT ORDER", and a statement in substantially the following form:

“This envelope, containing documents that are filed in this case by (name of party), is not to be opened nor are the contents thereof to be displayed or revealed except by order of the court or consent of the parties.”

15. The special restrictions and obligations relating to Confidential Information shall not apply to any information that is not so marked and shall not apply to any information that the parties concerned agree, or the court rules, is public knowledge, or becomes public knowledge other than as a result of disclosure by an individual receiving the same pursuant to Paragraph 6 above, or that has come or shall come into possession of the party receiving the same other than as a result of disclosure as Confidential Information in this litigation. The special restrictions and obligations shall not be deemed to prohibit the party receiving the same or its outside counsel from discussing with any person any Confidential Information if said person already has possession of the information to be discussed other than as a result of disclosure as Confidential Information in this litigation.

16. The use of Confidential Information as evidence at trial and the issue of whether the information shall be subject to any protections shall be determined by the court at the appropriate time.

17. The procedure relating to inadvertent or unintended disclosure pursuant to discovery in this lawsuit of Confidential Information as defined in this Order, is set forth in section XII.B of Case Management Order No. 2, which was entered by the court on this date.

18. This Protective Order shall survive the termination of this action and shall remain in full force and effect unless modified by an order of this court or by the written stipulation of the parties approved by the court.

19. Within 30 calendar days of the conclusion of this MDL, including any appeals related thereto, at the written request and opinion of the producing party, such attorney and any persons to whom he or she disclosed Confidential Information under this Order shall return and surrender or destroy any such material or copies thereof to the producing party at the producing party's expense.

Such persons shall return or surrender any discovery materials produced by the producing party and any and all copies (electronic or otherwise); provided, however, that counsel may retain Endorsements of Protective Order, materials required to be retained by applicable law, and all court-filed documents even though they contain discovery materials produced by the producing party, but such retained Confidential Information shall remain subject to the terms of this Order. At the written request of the producing party, any person or entity having custody or control of discovery materials produced by the producing party shall deliver to the producing party an affidavit certifying that reasonable efforts have been made to assure that all such discovery materials produced by the producing party have been delivered to the producing party in accordance with the terms of this Order or destroyed. In lieu of returning the materials, the producing party may direct that the materials be destroyed in a manner that will protect the Confidential Information and the destroying party shall certify that it has done so.

APPROVED: February 15, 2013

/s/ Robert L. Miller, Jr.  
Robert L. Miller, Jr.  
Judge, United States District Court



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP	)	
IMPLANT PRODUCTS LIABILITY	)	
LITIGATION (MDL 2391)	)	CAUSE NO. 3:12-md-2391
	)	
	)	
-----	)	
This Document Relates to All Cases	)	
-----	)	

**ENDORSEMENT OF PROTECTIVE ORDER**

I hereby attest to my understanding that information or documents designated Confidential are provided to me subject to the Protective Order regarding Confidential Information produced in discovery, entered February 15, 2013, (the "Protective Order"), in the above-captioned litigation; I have been given a copy of and have read the Protective Order, and I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Protective Order, is a prerequisite to my review of any information or documents designated as confidential pursuant to the Protective Order.

I further agree that I shall not disclose to others, except in accord with the Protective Order, any confidential discovery material, in any form whatsoever, and that such confidential discovery material and the information contained therein may be used only for the purposes authorized by the Protective Order.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such discovery material and further information will continue even after this litigation concludes.

I further agree and attest to my understanding that if I fail to abide by the terms of the Protective Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court for the Northern District of Indiana for the purpose of any proceedings relating to enforcement of the Protective Order.

I further agree to be bound by and comply with the terms of the Protective Order as soon as I sign this Agreement, whether or not the Protective Order has yet been entered as an order of court.

Date: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT E**

**LIMITED AUTHORIZATION TO DISCLOSE HEALTH INFORMATION**

**(Pursuant to the Health Insurance Portability and Accountability Act "HIPAA" of 4/14/03)**

TO: \_\_\_\_\_

Patient Name: \_\_\_\_\_

DOB: \_\_\_\_\_

SSN: \_\_\_\_\_

I, \_\_\_\_\_, hereby authorize you to release and furnish to Patterson Belknap Webb & Tyler, LaDue Curran & Kuehn, LLC, Taft Stettinius & Hollister, LLP, and/or their duly assigned agents, including Record Trak, copies of the following information:

- All medical records, including inpatient, outpatient, and emergency room treatment, all clinical charts, reports, documents, correspondence, test results, statements, questionnaires/histories, office and doctor's handwritten notes, and records received by other physicians. AIDS and HIV status shall be included.
- All autopsy, laboratory, histology, cytology, pathology, radiology, CT Scan, MRI, echocardiogram, and cardiac catheterization reports.
- All radiology films, mammograms, myelograms, CT scans, photographs, bone scans, pathology/cytology/histology/autopsy/immunohistochemistry specimens, cardiac catheterization videos/CDS/films/reels, and echocardiogram videos.
- All pharmacy/prescription records, including NDC numbers and drug information handouts/monographs.
- All billing records, including all statements, itemized bills, and insurance records.
- All disability records, including Social Security Disability and Workers' Compensation records.

1. To my medical provider: **this authorization is being forwarded by, or on behalf of, attorneys for the defendants for the purpose of litigation. You are not authorized to discuss any aspect of the above named person's medical history, care, treatment, diagnosis, prognosis, information revealed by or in the medical records, or any other matter bearing on his or her medical or physical condition, unless you receive an additional authorization permitting such discussion. Subject to all applicable legal objections, this restriction does not apply to discussing my medical history, care, treatment, diagnosis, prognosis, information revealed by or in the medical records, or any other matter bearing on my medical or physical condition at a deposition or trial.**

2. I understand that the information in my health record(s) may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human

immunodeficiency virus (HIV). Those records may also include information about behavioral or mental health services and treatment for alcohol and drug abuse.

3. I understand that I have the right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing and present my written revocation to the health information management department. I understand the revocation will not apply to information that has already been released in response to this authorization. I understand the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy. Unless otherwise revoked, this authorization will expire in one year.

4. I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand I may inspect or copy the information to be used or disclosed as provided in C.F.R. § 164.524. I understand that any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules. If I have questions about disclosure of my health information, I can contact the releaser indicated above.

5. A notarized signature is not required. C.F.R. § 164.508. A copy of this authorization may be used in place of an original.

Print Name: \_\_\_\_\_ (plaintiff/representative)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT F**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP	)	
IMPLANT PRODUCTS LIABILITY	)	
LITIGATION (MDL 2391)	)	CAUSE NO. 3:12-md-2391
	)	
	)	
-----)	)	
This Document Relates to All Cases	)	DEFENDANTS' FACT SHEET
-----)	)	

Defendants BIOMET, INC.; BIOMET ORTHOPEDICS, LLC; BIOMET U.S. RECONSTRUCTION, LLC (collectively "Defendants," "You," or "Your") hereby submit the following Defendants' Fact Sheet responses and related documents for the above referenced case.

**INSTRUCTIONS**

Please provide the following information for plaintiff (or plaintiff's decedent) (hereinafter "Plaintiff") who was implanted with an Biomet M<sup>2</sup>a Device or any components thereof (hereinafter "Device") that is the subject of Plaintiff's complaint in the above referenced action, and who subsequently had a revision of said implantation. In filling out any section or sub-section of this form, please submit additional sheets as necessary to provide complete information.

In filling out this form, please respond on the basis of information and/or documents that are reasonably available to each of the Defendants, the Distributor Representative Company that supplied the implant, and the Distributor Representative, if any, who was present at the implantation and explanation. Also, please use the following definition for "Healthcare Providers:" All Persons identified in Section II of the Plaintiff Fact Sheet Case: 3:12-md-2391 submitted by Plaintiff who performed implantation or revision surgery to implant or explant Plaintiff's M<sup>2</sup>a Device.

"Produce" shall be defined as to identify where in the general document production the documents requested may be located, either by Bates Number or by some other identifier (e.g.,

complaint file number or keywords that may yield the documents). In completing the Defendants' Fact Sheet, You are under oath and must provide information that is true and correct to the best of Your knowledge, information, and belief. If the response to any question is that You do not know the information requested, that response should be entered in the appropriate location(s).

**A. CASE AND RESPONSE INFORMATION**

1. This Defendant Fact Sheet pertains to the following case:

Case Caption: \_\_\_\_\_

Case Action No.: \_\_\_\_\_

Court in which action originally filed: \_\_\_\_\_

**B. DEVICE MANUFACTURE INFORMATION**

1. For each M<sup>2</sup>a Device identified by Plaintiff in response to Section II of the Plaintiff Fact Sheet (hereinafter “PFS”) submitted by Plaintiff, please provide the following:

a. The date(s) on which Plaintiff’s M<sup>2</sup>a Device and any components thereto were manufactured (indicating date for each M<sup>2</sup>a Device or component identified).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. The facilities at which Plaintiff’s M<sup>2</sup>a Device and any components thereto were manufactured (indicating location/address for each Device or component identified).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. The date of shipment of Plaintiff’s M<sup>2</sup>a Device from Biomet.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d. The Identity of the entity that delivered Plaintiff’s M<sup>2</sup>a Device to the purchaser.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- e. Other than Biomet related entities, and those entities listed in Sections B and C herein, the chain of custody of the M<sup>2</sup>a Device from Biomet to the healthcare provider.

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- f. The identity by name and address of the person or entity to whom the M<sup>2</sup>a Device was sold.

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- g. Produce the Device History Record for the M<sup>2</sup>a Device.

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- 2. For each M<sup>2</sup>a Device identified by Plaintiff in response to Section II of the PFS submitted by Plaintiff, please provide the following:

- a. Produce a copy of the complaint file(s), including medical records, if any, for the Plaintiff; or

- b. Please provide the complaint file number(s) that would permit Plaintiff to identify his/her complaint file, if any, in the general document production.

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**C. PRODUCT/MARKETING/DISTRIBUTOR REPRESENTATIVE AND MANAGER INFORMATION**

1. Provide the name and business address of the distributor representative company that received the M<sup>2</sup>a Device that was implanted in Plaintiff.

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2. Provide the name and business address of the distributor representative(s), if any, present at Plaintiff's surgery at the time Plaintiff's M<sup>2</sup>a Device (or any component) was implanted and/or at the time Plaintiff's M<sup>2</sup>a Device (or any component) was explanted.

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3. Produce documents that relate in a reasonably direct manner to Plaintiff's M<sup>2</sup>a Device from the distributor representative company identified in question C.1 above.

**D. COMMUNICATIONS AND RELATIONSHIPS WITH PLAINTIFFS' HEALTHCARE PROVIDERS AND PLAINTIFF**

1. Produce Communications between the Defendants, the distributor representative company and/or distributor representative(s) identified in section C above and Plaintiff's Healthcare Provider(s) about any Biomet M<sup>2</sup>a Device, including, but not limited to, Dear Healthcare Provider letters, recall letters, telephone or email contacts, or meetings.
2. Produce Communications between the Defendants, the distributor representative company, and/or distributor representative(s) identified in section C above and Plaintiff or Plaintiff's Healthcare Providers, to the extent not contained in the complaint file, if any, and identify the Bates numbers of such communications.



3. Produce documents that relate in a reasonably direct manner to consulting agreements, if any, between Defendants and any of Plaintiff's Healthcare Providers, including, but not limited to, all consulting relationships to provide advice on the design, study, testing, or use of any Biomet M<sup>2</sup>a Hip Systems, or to consult as a thought leader, opinion leader, member of a speaker's bureau, or similar arrangement.
4. Produce documents that relate in a reasonably direct manner to relationships, if any, between Defendants and any of Plaintiff's Healthcare Providers to conduct any pre-clinical, clinical, post-marketing surveillance, or other study or trial concerning any Biomet M<sup>2</sup>a Device.
5. Produce documents that reflect financial compensation, things of value and promotional items provided by Defendants to Plaintiff's Healthcare Providers. Please include all fees, expenses, honoraria, royalties, grants, gifts, travel (i.e., airfare, hotel etc.), and any other payments or things of value given.

**E. ADVERSE EVENT REPORTS**

1. Provide the identification number for any Medical Device Adverse Event Report pertaining to the Plaintiff.

**VERIFICATION**

I am employed by Biomet, one of the Defendants in this action. I am authorized by Defendants to make this verification on each corporation's behalf. The foregoing answers were prepared with the assistance of a number of individuals, including counsel for Defendants, upon whose advice and information I relied. I declare under penalty of perjury that all of the information as to the foregoing Defendants provided in this Defendants Fact Sheet is true and correct to the best of my knowledge upon information and belief.

Date: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
EMPLOYER

\_\_\_\_\_  
TITLE