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Attorneys for Plaintiffs,
Timothy Sprecker and Barbara Sprecker

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TIMOTHY SPRECKER and BARBARA SPRECKER, Plaintiffs, v. BIOMET, INC., BIOMET ORTHOPEDICS, LLC BIOMET MANUFACTURING, LLC, BIOMET US RECONSTRUCTION, LLC, and ZIMMER BIOMET HOLDINGS, INC. Defendants.	**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs Timothy Sprecker and Barbara Sprecker, by their attorneys, Schlesinger Law Offices, P.A., complain against Defendants Biomet, Inc., Biomet Orthopedics, LLC, Biomet Manufacturing LLC., Biomet US Reconstruction, LLC, and Zimmer Biomet Holdings, Inc. (collectively "Biomet" or "Defendants") as follows:

NATURE OF THE CASE

1. Mr. Timothy Sprecker brings this product liability action against Defendants to redress the injuries sustained due to Defendants' defective hip system – the M2a Metal-on-Metal hip. As a result of Mr. Sprecker's injuries, Mrs. Sprecker has sustained a loss of consortium. Plaintiffs seek compensatory and punitive damages.

PARTIES

2. Plaintiffs, Timothy and Barbara Sprecker, are citizens of the state of Arizona and reside in Maricopa County. They are married and have been married at all material times relevant.

3. Upon information and belief, Defendant Biomet, Inc. is an Indiana corporation, with its principal place of business in Warsaw, Indiana. Defendant Biomet, Inc. designed, manufactured, marketed, promoted, and sold the M2a Metal-on-Metal Hip (herein after MoM) System that is the subject of this lawsuit.

4. Upon information and belief, Defendant Biomet Orthopedics, LLC is an Indiana limited liability corporation, with its principal place of business in Warsaw, Indiana. None of this defendant's members are citizens of the State of Arizona. Defendant Biomet Orthopedics, LLC designed, manufactured, marketed, promoted, and sold the M2a MoM Hip System that is the subject of this lawsuit.

5. Upon information and belief, Defendant Biomet Manufacturing LLC is an Indiana limited liability corporation with its principal place of business in Warsaw, Indiana. None of this defendant's members are citizens of the State of Arizona. Defendant Biomet Manufacturing LLC designed, manufactured, marketed, promoted, and sold the M2a MoM

Hip System that is the subject of this lawsuit.

6. Upon information and belief, Defendant Biomet US Reconstruction, LLC is an Indiana limited liability corporation, with its principal place of business in Warsaw, Indiana. None of this defendant's members are citizens of the State of Arizona. Biomet US Reconstruction, LLC designed, manufactured, marketed, promoted, and sold the M2a MoM Hip System that is the subject of this lawsuit.

7. Upon information and belief, Defendant Zimmer Biomet Holdings, Inc.is an Indiana corporation with its principal place of business in Warsaw, Indiana. Zimmer Biomet Holdings, Inc. purchased Biomet, Inc. and its subsidiaries in June of 2015. Zimmer Biomet Holdings, Inc. acquired all liabilities of Biomet, Inc. and its subsidiaries.

8. Upon information and belief, at all relevant times, Defendants did, and continue to do, business throughout the United States, including within the State of Arizona. Defendants, either directly or through their agents, designed, manufactured, labeled, distributed, and sold the product at issue in this matter and instructed physicians regarding the advantages of and the proper method of implanting this product. Hereafter, these defendants are referred to collectively as Biomet or Defendants.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction under 28 U.S.C. § 1332 because this lawsuit is between citizens of different states and the amount in controversy exceeds $75,000.00, exclusive of costs and interest. Plaintiffs are Arizona citizens; Defendants are all incorporated and/or have their principal place of business in Indiana. And as for the

Defendants that are limited liability corporations, none of the members of those LLCs are citizens of the State of Arizona.

10. The Court has personal jurisdiction over each party. The Plaintiffs reside in Maricopa County, Arizona. All Defendants marketed, promoted, distributed or sold the sold the M2a MoM Hip System throughout the United States, including the State of Arizona. Defendants have sufficient minimum contacts with this State or sufficiently avail themselves of the markets in this State through their promotion, sales, distribution and marketing within this State to render the exercise of jurisdiction by this Court permissible.

11. Venue is proper in the District of Arizona because Defendants committed tortuous act(s) within the State of Arizona out of which act(s) these causes of action arise. Plaintiffs experienced injury and continue to suffer injuries in Maricopa County, Arizona. For example, the removal surgery of Mr. Sprecker's M2a MoM Hip System occurred in Maricopa, County Arizona.

FACTUAL ALLEGATIONS

A. The M2a Metal-on-Metal Hip System is Defective And was Not Adequately Tested.

12. The hip joint is where the femur connects to the pelvis. The joint is made up of the femoral head (a ball-like structure at the very top of the femur) rotating within the acetabulum (a cup-like structure at the bottom of the pelvis). In a healthy hip, both the femur and the acetabulum are strong, and the rotation of the bones against each other is cushioned and lubricated by cartilage and fluids.

13. A total hip replacement replaces the body's natural joint with an artificial one,

usually made out of metal and plastic. A typical hip replacement system consists of four separate components: (1) a femoral stem; (2) a femoral head; (3) a plastic (polyethylene) linear; and (4) an acetabular shell. After the surgeon hollows out a patient's femur bone, the femoral stem is implanted. The femoral head is a metal ball that is fixed on top of the femoral stem. The femoral head forms the hip joint when it is placed inside the polyethylene linear and acetabular shell.

14. While most hip replacements use a polyethylene plastic acetabular liner, Biomet's M2a Metal-on-Metal (MoM) Hip System has a critical difference: its system does not have an acetabular liner, like polyethylene. Instead, the M2a MoM Hip System forces metal to rub against metal with the full weight and pressure of the human body. Because of Biomet's defective design for the M2a MoM Hip System, hundreds of patients – including Plaintiff – have been forced to undergo surgeries to replace the failed hip implants.

15. The M2a MoM Hip System suffers from a design or manufacturing defect that causes excessive amounts of cobalt and chromium to wear and corrode from the surface of the acetabular cup, from the femoral head, and from the MoM adapter. These cobalt and chromium fragments prompt the body to react by rejecting the hip implant. This rejection often manifests with symptoms of pain, looseness, dislocation, and squeaking and popping sounds. Inside the hip joint, the metal reaction often causes fluids to accumulate and soft tissues and bone to die. Additionally, reports were received that Biomet's meta-on-metal hip systems, including the M2a MoM Hip System generated metal debris from wear, which can spread throughout the bone and tissue and cause severe inflammation and damage.

Biomet failed to sufficiently test the design of the M2a MoM Hip System, was never approved by the FDA as being safe or effective for the products' intended purpose. Further, the M2a MoM Hip System was not subject to the rigorous pre-market approval (PMA) testing and approval pursuant to 21 U.S.C. § 360(e). Instead, Defendants received FDA clearance to market the M2a MoMHip System in the United States through the 510(k) pre-market notification process pursuant to 21 U.S.C. § 360(k), asserting that it was substantially equivalent to other metal-on-metal hip replacement systems already on the market. This approval process is generally reserved for Class II devices. Accordingly, the M2a MoMHip System is not subject to federal preemption.

16. At the time the M2a MoM Hip System was designed, tested, manufactured, marketed and introduced into the stream of commerce, safer more effective alternative designs of hip replacements existed and were available to patients.

17. On numerous occasions, Biomet met with orthopedic surgeons throughout the United States, and other cities, including, upon information and belief, with Plaintiff's orthopedic surgeon, to promote the M2a MoM Hip System. At some or all of these meetings, a representative or representatives of Biomet were present. During these meetings, Biomet assured the orthopedic surgeons that the M2a MoM Hip System was safe, was the best product on the market, had an excellent track record, and a low acceptable failure rate. Biomet continued to "defend" its metal- on-metal hip systems, including its M2a MoM Hip System even after they became aware of numerous and serious complications with the M2a MoM Hip System. Biomet did not reveal (and instead

concealed) their knowledge of numerous complications and other "bad data" during their meetings with orthopedic surgeons.

B. Biomet Sold The M2a MoM Hip Implant To Plaintiff After Biomet Knew It Was Defective, That It Had Injured Others, And That It Would Injure Plaintiff

18. Shortly after launching the M2a MoM Hip System, reports of failures began flooding into Biomet. For example, in or about August 2004, Biomet received a complaint that a patient required and underwent surgery to remove and replace their Biomet M2a metal-on-metal hip system because it had become loose after only 3 years. Biomet closed its investigation of this complaint.

19. Biomet received hundreds of similar complaints reporting that M2a MoM Hip System failed, that that failure forced patients to undergo painful and risky surgeries to remove and replace the failed hip component.

20. By the time Biomet sold the M2a MoM Hip System to Plaintiff, numerous reports had been filed with the FDA reporting an adverse event associate with Biomet's metal-on-metal hip systems, including the M2a MoM Hip System. Thus, Biomet was fully aware that the M2a MoM Hip System was defective and that patients had been injured by that defect. Based on this information, Biomet should have recalled the M2a MoM Hip System before it was sold to Plaintiff. Indeed, Biomet should have stopped selling the defective implant when Biomet became aware that the M2a MoM Hip System had failed in several patients.

21. Despite knowing that the M2a MoM Hip System had a defect, and that it failed hundreds of times, causing hundreds of patients to undergo complicated, expensive, and

painful revision surgeries with a prolonged recovery time, Biomet continued to sell the defective M2a MoM Hip System. Biomet actively concealed the known defects from doctors and patients – including Plaintiff and Plaintiff's doctor.

22. Ignoring the numerous reported M2a MoM Hip System failures, Biomet continued to promote, market, and defend the defective M2a MoM Hip System. For example, Biomet published marketing brochures touting the safety and durability of metal-on-metal implants and specifically, the M2a MoM Hip System. Biomet gave these brochures to doctors around the world to encourage them to use the M2a MoM Hip System.

23. Despite its knowledge that the M2a MoM Hip System was defective, Biomet also made several false representations about specific design elements of the M2a MoM Hip System that it claimed made the M2a MoM Hip System superior to other more safe hip implants on the market. Biomet claimed:

(a) "[T]he M2a-MoM system™ eliminates the issue of polyethylene wear" and

(b) "Many studies conducted over the last several decades have shown no definitive correlation of negative health issues to ion levels exhibited from metal-on-metal implants;"

(c) "[S]et the standard for performance and design in hip systems;"

(d) "[A]n ultra-high performance metal-on-metal articulation;"

(e) "[D]esigned specifically to address the issue of wear debris;"

(f) "[T]he right choice for use in young, active patients."

24. Biomet's reason for concealing the defect in the M2a MoM Hip System is clear. Hip implant sales are critically important to Biomet, and the M2a MoM Hip System is one of Biomet's most profitable products. During the time period relevant to this Complaint, Biomet's management was trying to make Biomet appealing to investors, and in 2007, Biomet was purchased by a private equity firm for $10 billion.

25. Biomet chose corporate profits over patient safety. Rather than admit its M2a MoM Hip System is defective, Biomet continued to promote, market, and sell the M2a MoM Hip System. At present, Biomet continues to sell the defective M2a MoM Hip System to unsuspecting patients without any warning about the risks or the failures reported to Biomet.

C. Plaintiff's MoM Hip System Was Defective And Failed, Forcing Plaintiff To Undergo An Additional Painful and Risky Surgery.

26. On December 18, 2001, Plaintiff underwent a surgical procedure to implant the M2a MoM Hip System in his right hip. The surgery took place in Tucson, Arizona.

27. By this time, numerous reports of adverse events associated with Biomet's M2a Hip Systems had been filed with the FDA, and Biomet knew the M2a MoM Hip System was defective, and or, Biomet knew or should have known that the M2a MoM Hip System was unreasonably dangerous, defective in design, and lacked adequate warnings. Nevertheless, Biomet refused to disclose that information to Plaintiff, his physicians, or the public. Instead, Biomet misrepresented to Plaintiff and his orthopedic surgeon that the M2a MoM Hip System was safe and effective. Relying on Biomet's representations,

Plaintiff's orthopedic surgeon decided to use the M2a MoM Hip System. But for Biomet's misrepresentations, plaintiff's orthopedic doctor would not have used the M2a MoM Hip System for Plaintiff's hip replacement surgery.

28. As a result of the defective design, manufacture and composition of the M2a MoM Hip System, and its accompanying warnings and instructions (or lack thereof), Plaintiff's hip implant failed, causing him pain and suffering.

29. Plaintiff also suffered from metal ion disease and other effects as a result of the metal toxicity in his body. Plaintiff had marked elevation of his chromium and cobalt levels, chronic inflammation, and adverse local tissue reaction, and systemic problems due to metal toxicity.

30. Plaintiff underwent revision surgery on or about December 14, 2022, to remove the failed M2a MoM Hip System from Plaintiff's body. Revision surgeries are generally more complex than the original hip replacement surgery, often because there is a reduced amount of bone in which to place the new hip implants. Revision surgeries also usually take longer than the hip replacement surgery and the revision surgery has a higher rate of complications.

31. Plaintiff's revision surgery was performed by Dr. Michael Durand in Maricopa County, Arizona.

32. Having to go through a revision surgery, has subjected Plaintiff to greater risks of future complications than she had before the revision surgery. Studies found that a revision surgery causes a much higher risk of dislocation compared with an original hip

replacement surgery. A study by Charlotte Philips and her colleagues at Brigham and Women's Hospital in Boston showed that 14.4 percent of patients who had revision surgery suffered from a dislocation compared with 3.9 percent of patients who had an original hip replacement surgery. In other words, hip replacement patients who had a revision surgery are almost four times more likely to suffer from a hip dislocation than those who have not. (Phillips CB, et al. Incidence rates of dislocation, pulmonary embolism, and deep infection during the first six months after elective total hip replacement. American Journal of Bone and Joint Surgery 2003; 85:20-26).

33. As a direct and proximate result of the failure of his M2a MoM Hip System and Biomet's wrongful conduct, Plaintiff sustained and continues to suffer economic damages (including medical and hospital expenses), severe and possibly permanent injuries, pain, suffering and emotional distress. As a result, Plaintiff has sustained and will continue to sustain damages in an amount to be proven at trial, but which will far exceed the jurisdictional minimum of this Court.

FIRST CAUSE OF ACTION
STRICT PRODUCTS LIABILITY – MANUFACTURING DEFECT AGAINST ALL DEFENDANTS

34. Plaintiffs incorporate paragraphs 1-33 of this Complaint as if fully set forth here and further allege as follows:

35. Defendants are the manufacturers, designers, distributors, sellers, and/or suppliers of the M2a MoM Hip System that was surgically implanted in Plaintiff.

36. The M2a MoM Hip System manufactured, designed, sold, distributed, supplied

and/or placed in the stream of commerce by Defendants was defective in its manufacture and construction when it left Defendants' hands because it deviated from product specifications and/or applicable federal requirements for these medical devices, posing a serious risk of injury and death.

37. As a direct and proximate result of Plaintiff's use of Defendants' M2a MoM Hip System as manufactured, designed, sold, supplied and introduced into the stream of commerce by Defendants, Plaintiff, Mr. Sprecker, has suffered damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life in the past and to be sustained in the future; as well as damages for lost earnings in the past, loss of earning capacity in the future, medical expenses incurred in the past and medical expenses to be incurred in the future. The injuries and losses of Plaintiff are permanent in nature and Plaintiffs will continue to suffer such losses.

38. Defendants' conduct as described above, was extreme and outrageous. Defendants risked the lives of recipients of their products, including Plaintiff's, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants knew or should have known of the serious health risks it created. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting recipients of Defendants' M2a MoM Hip System. Defendants' outrageous conduct warrants an award of punitive damages.

39. Plaintiffs seek actual and punitive damages from Defendants as alleged herein.

40. WHEREFORE, Plaintiffs demands judgment against Defendants for compensatory and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems just and proper.

SECOND CAUSE OF ACTION
STRICT PRODUCTS LIABILITY – DESIGN DEFECT
AGAINST ALL DEFENDANTS

41. Plaintiffs incorporate paragraphs 1-33 of this Complaint as if fully set forth here and further allege as follows:

42. Defendants are the manufacturers, designers, distributors, sellers, and/or suppliers of the M2a MoM Hip System that was surgically implanted in Plaintiff.

43. The M2a MoM Hip System was in an unsafe, defective and inherently dangerous condition for users such as Plaintiff.

44. The M2a MoM Hip System was in an unsafe, defective and inherently dangerous condition at the time it left Defendants' possession.

45. At all times relevant, the M2a MoM Hip System was expected to and did reach the usual consumers, handlers, and persons coming into contact with the M2a MoM Hip System without substantial change in the condition in which it was designed, produced, manufactured, sold, distributed and marketed by Defendants.

46. The M2a MoM Hip System's unsafe, defective, and inherently dangerous condition injured Plaintiff.

47. The M2a MoM Hip System failed to perform as safely as an ordinary consumer

would expect when used in an intended or reasonably foreseeable manner.

48. Plaintiff's injuries resulted from use of the M2a MoM Hip System that was both intended and reasonably foreseeable by Defendants.

49. At all times relevant, the M2a MoM Hip System posed a foreseeable risk of danger inherent in the design, which greatly outweighed the benefits of that design.

50. At all time relevant, the M2a MoM Hip System was defective and unsafe, and Defendants knew or had reason to know that said product was defective and unsafe, especially when used in the form and manner as provided by Defendants.

51. At all times relevant, Defendants knew, or should have known, that the M2a MoM Hip System was in a defective condition and was and is inherently dangerous and unsafe.

52. When implanted into Plaintiff, the M2a MoM Hip System was used for the purpose and in a manner normally intended, namely for use as a hip replacement device.

53. Defendants, with this knowledge, voluntarily designed their M2a MoM Hip System in a dangerous condition for use by the public and, in particular, Plaintiff.

54. At all times relevant, the M2a MoM Hip System lacked utility for any group of users, including Plaintiff.

55. The M2a MoM Hip System provided no net benefit to any class of patients, including Plaintiff.

56. Defendants had a duty to create a product that was not unreasonably dangerous for its normal, intended use.

57. Defendants failed to complete adequate pre-market testing and post-market

surveillance on the M2a MoM Hip System.

58. Defendants designed, researched, manufactured, tested, advertised, promoted, marketed, sold and distributed a defective product which, when used in its intended or reasonably foreseeable manner, created an unreasonable risk to the health of consumers and to Plaintiff in particular, and Defendants are therefore strictly liable for the injuries sustained by Plaintiff.

59. Defendants are strictly liable for Plaintiff's injuries in the following ways:

(a) the M2a MoM Hip System as designed, manufactured, sold and supplied by Defendants, was defectively designed and placed into the stream of commerce by Defendants in a defective and unreasonably dangerous condition;

(b) Defendants failed to properly market, design, manufacture, distribute, supply and sell the M2a MoM Hip System;

(c) Defendants failed to adequately test the M2a MoM Hip System; and

(d) A feasible alternative design existed that was capable of preventing Plaintiff's injuries. To wit, ceramic on polyethylene or metal on polyethylene total hip replacement systems were feasible, safer alternatives that existed at the time Plaintiff had his index surgery. Either of these alternatives were better tested, and had better safety profiles, than the M2a MoM Hip System implanted in Plaintiff. Either of these alternatives do not cause the types and severity of adverse local tissue reactions and adverse reaction to metallic debris caused by the M2a MoM Hip System.

60. As a direct and proximate result of Defendants' placement of the defective M2a MoM Hip System into the stream of commerce, Plaintiff, Mr. Sprecker, has suffered damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life in the past and to be sustained in the future; as well as damages for lost earnings in the past, loss of earning capacity in the future, medical expenses incurred in the past and medical expenses to be incurred in the future. The injuries and losses of Plaintiff are permanent in nature and Plaintiffs will continue to suffer such losses.

61. Defendants' conduct as described above, was extreme and outrageous. Defendants risked the lives of recipients of their products, including Plaintiff's, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants knew or should have known of the serious health risks it created. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting recipients of Defendants' M2a MoM Hip System. Defendants' outrageous conduct warrants an award of punitive damages.

62. Plaintiffs seek actual and punitive damages from Defendants as alleged herein.

63. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems just and proper.

THIRD CAUSE OF ACTION
STRICT PRODUCTS LIABILITY – FAILURE TO WARN
AGAINST ALL DEFENDANTS

64. Plaintiffs incorporate paragraphs 1-33 of this Complaint as if fully set forth here and further allege as follows:

65. The M2a MoM Hip System was defective and unreasonably dangerous when it left the possession of Defendants in that it contained warnings insufficient to alert Plaintiff's implanting physician of the dangerous risks and reactions associated with the M2a MoM Hip System including but not limited to the risks of developing serious and dangerous side effects, including but not limited to component loosening, component mal-alignment, infections, fracture of the bone, dislocation, metal sensitivity and toxicity, pain, irritation and discomfort, as well as the need for additional procedures to remove and replace the M2a MoM Hip System, as well as other severe and permanent health consequences, notwithstanding Defendants' knowledge of an increased risk of these injuries and side effects over other hip arthroplasty devices.

66. At the time Plaintiff's physician received and/or used the M2a MoM Hip System, the M2a MoM Hip System was being used for the purposes and in a manner normally intended, namely for hip arthroplasty.

67. Plaintiff's implanting physician could not, by the exercising reasonable care, have discovered the defects herein mentioned and perceived their danger.

68. Defendants, as manufacturers and/or distributors of the M2a MoM Hip System, are held to the level of knowledge of an expert in the field.

69. Defendants' warnings were not accurate or clear, and/or were ambiguous.

70. Plaintiff's implanting physician reasonably relied upon Defendants' skill, superior

knowledge and judgment. Moreover, Plaintiff's implanting physician was not aware of true risks of implanting the M2a MoM Hip System.

71. Defendants had a continuing duty to warn Plaintiff's implanting physician of the dangers associated with the M2a MoM Hip System.

72. Had Plaintiff's implanting physician received adequate warnings regarding the risks of the M2a MoM Hip System, he would not have used it.

73. As a direct and proximate result of Plaintiff's use of the M2a MoM Hip System, Plaintiff, Mr. Sprecker, has suffered damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life in the past and to be sustained in the future; as well as damages for lost earnings in the past, loss of earning capacity in the future, medical expenses incurred in the past and medical expenses to be incurred in the future. The injuries and losses of Plaintiff are permanent in nature and Plaintiffs will continue to suffer such losses.

74. Defendants' conduct as described above, was extreme and outrageous. Defendants risked the lives of recipients of their products, including Plaintiff's, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants knew or should have known of the serious health risks it created. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting recipients of Defendants' M2a MoM Hip System. Defendants' outrageous conduct warrants an award of punitive damages.

75. Plaintiffs seek actual and punitive damages from Defendants as alleged herein.

76. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems just and proper.

FOURTH CAUSE OF ACTION
NEGLIGENCE
AGAINST ALL DEFENDANTS

77. Plaintiffs incorporates paragraphs 1-33 of this Complaint as if fully set forth here and further allege as follows:

78. Defendants had a duty to exercise reasonable care in designing, researching, manufacturing, marketing, supplying, promoting, sale, testing, quality assurance, quality control, and/or distribution of the M2a MoM Hip System into the stream of commerce, including a duty to assure that the device would not cause those who had it surgically implanted to suffer adverse harmful effects from it.

79. Defendants failed to exercise reasonable care in designing, researching, manufacturing, marketing, supplying promoting, sale, testing, quality assurance, quality control, and/or distribution of the M2a MoM Hip System into interstate commerce in that Defendants knew or should have known that the M2a MoM Hip System caused significant bodily harm, including but not limited to, partial or complete loss of mobility, loss of range of motion, as well as other severe and personal injuries which are permanent and lasting in nature, physical pain and mental anguish, including diminished enjoyment of life, as well as the need for a revision surgery to replace the device with the increased

risks of complications and death from such further surgery. Defendants knew or should have known the M2a MoM Hip System was unsafe and/or failed to comply with federal requirements.

80. Despite the fact that Defendants knew or should have known that the M2a MoM Hip System posed a serious risk of bodily harm to consumers, Defendants continued to manufacture and market the M2a MoM Hip System for use by consumers like Plaintiff.

81. Defendants knew or should have known that consumers such as Plaintiff would suffer foreseeable injury, and/or be at increased risk of suffering injury as a result of Defendants' failure to exercise ordinary care as described above. Defendants knew or should have known safer, feasible alternatives existed. Defendants breached their duty of care owed to Plaintiffs.

82. As a direct and proximate result of Defendants' negligence, Plaintiff, Mr. Sprecker, has suffered damages for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life in the past and to be sustained in the future; as well as damages for lost earnings in the past, loss of earning capacity in the future, medical expenses incurred in the past and medical expenses to be incurred in the future. The injuries and losses of Plaintiff are permanent in nature and Plaintiffs will continue to suffer such losses.

83. Defendants' conduct as described above, was extreme and outrageous. Defendants risked the lives of recipients of their products, including Plaintiff's, with knowledge of

the safety and efficacy problems and suppressed this knowledge from the general public. Defendants knew or should have known of the serious health risks it created. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting recipients of Defendants' M2a MoM Hip System. Defendants' outrageous conduct warrants an award of punitive damages.

84. Plaintiffs seek actual and punitive damages from Defendants as alleged herein.

85. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems just and proper.

FIFTH CAUSE OF ACTION
LOSS OF CONSORTIUM
AGAINST ALL DEFENDANTS

86. Plaintiffs incorporate paragraphs 1-33 of this Complaint as if fully set forth here and further allege as follows:

87. At all times relevant, Plaintiff Barbara Sprecker was and is the wife of Plaintiff Timothy Sprecker. As such, she was and is entitled to the services, support, companionship, affection, and consortium of her husband.

88. As a result of the injuries sustained by her husband as alleged in this Complaint, Plaintiff Barbara Sprecker has lost the services, support, companionship, affection, and consortium of her husband, and will continue to lose said services, support, companionship, affection, and consortium of her husband in the future.

89. Plaintiffs seek actual and punitive damages from Defendants as alleged herein.

90. WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems just and proper.

91. Plaintiffs demand a trial by jury on all counts as to all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants on each of the above- referenced Claims and Causes of Action as follows:

1. Awarding compensatory damages to Plaintiff, Mr. Sprecker in an amount to be determined at trial;

2. Awarding compensatory damages to Plaintiff, Ms. Sprecker in an amount to be determined at trial;

3. Awarding punitive and/or exemplary damages, in an amount to be determined at trial;

4. Awarding Plaintiffs' attorneys' fees;

5. Awarding Plaintiffs the costs of the proceedings; and

6. Awarding such other and further relief this Court deems just and proper.

DATED: December 12, 2024

Respectfully submitted,

/s/ Jeffrey L. Haberman
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JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Timothy Sprecker and Barbara Sprecker

(b) County of Residence of First Listed Plaintiff Maricopa
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Schlesinger Law Offices, P.A., 1212 S.E. 3rd. Av.
Fort Lauderdale, FL 33316 Ph.: 954.467.8800

DEFENDANTS

Biomet, Inc.; Biomet Orthopedics, LLC; Biomet Manufacturing, LLC, Biomet US Reconstruction, LLC, and

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☒ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding | ☐ 2 Removed from State Court | ☐ 3 Remanded from Appellate Court | ☐ 4 Reinstated or Reopened | ☐ 5 Transferred from Another District *(specify)* | ☐ 6 Multidistrict Litigation - Transfer | ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 USC S. 1332 (a) (1) Product Liability: Negligence

Brief description of cause:
Product liability; Negligence

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ +75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/12/2024

SIGNATURE OF ATTORNEY OF RECORD /s/Jeffrey L. Haberman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.