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CONNIE MORTON and ROY MORTON, Her husband, Plaintiff, *v.* BIOMET, INC.; BIOMET ORTHOPEDICS, LLC; BIOMET U.S. RECONSTRUCTION, LLC; BIOMET MANUFACTURING, LLC; ZIMMER BIOMET HOLDINGS, INC; BIOMET FAIR LAWN, LLC; STEPHEN R. DAVIS; and LEGACY ORTHOPEDICS, INC.; Defendants.	**SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION: BERGEN COUNTY** **DOCKET NO. BER-L-** **CIVIL ACTION** **COMPLAINT, JURY DEMAND, AND DESIGNATION OF TRIAL COUNSEL**

Plaintiffs, CONNIE MORTON ("Plaintiff") and ROY MORTON, her husband, residing in the City of Bethlehem, County of Lehigh, and State of Pennsylvania, by way of Complaint

against Defendants; BIOMET, INC.; BIOMET ORTHOPEDICS, LLC; BIOMET U.S. RECONSTRUCTION, LLC; BIOMET MANUFACTURING, LLC; and ZIMMER BIOMET HOLDINGS, INC (hereafter collectively referred to as "Biomet"); BIOMET FAIR LAWN, LLC (hereinafter referred to as "Fairlawn"); and STEPHEN R. DAVIS and LEGACY ORTHOPEDICS, INC. (hereafter collectively referred to as "Distributors"), herein says:

ALLEGATIONS APPLICABLE TO ALL COUNTS

1. This is a lawsuit regarding a defective metal on metal hip replacement system implanted in Plaintiff CONNIE MORTON, which was designed, developed, manufactured, labeled, promoted, marketed, sold, supplied, and/or serviced by Defendants.

2. The particular hip replacement system at issue in this case is the "Biomet Magnum Metal on Metal Hip Replacement System" (hereafter referred to as the "Magnum").

3. Plaintiff Connie Morton was implanted with the Biomet Magnum hip replacement system in the State of New Jersey.

4. At all times relevant to this Complaint, Defendant BIOMET, INC, was and is an Indiana-based multinational corporation, with its corporate headquarters in Warsaw, Indiana and facilities world-wide. Further, at all times relevant to this Complaint, Defendants BIOMET ORTHOPEDICS, LLC; BIOMET U.S. RECONSTRUCTION, LLC; and BIOMET MANUFACTURING, LLC each are and have been wholly owned subsidiaries of Defendant BIOMET, INC. In June of 2015, BIOMET, INC, was purchased by ZIMMER BIOMET HOLDINGS, INC, also having its world-wide corporate headquarters in Warsaw, Indiana but having a significant number of employees and research conducted in Parsippany, New Jersey. From June of 2015 to present, all activities of the subsidiary companies relating to the product at

issue in this case were directed and controlled by ZIMMER BIOMET HOLDINGS, INC. Hereafter, these defendants are referred to collectively as "Biomet Defendants" or simply "Biomet."

5. At all times relevant to this Complaint, BIOMET FAIR LAWN, LLC was an Indiana Limited Liability Company with its principal place of business at 20-01 Pollitt Drive, Fair Lawn, New Jersey 07410. At all times relevant to this Complaint, Defendant BIOMET FAIR LAWN, LLC cast components comprising the Magnum hip replacement at issue in this matter. Upon information and belief, Defendant BIOMET FAIR LAWN, LLC failed to conform to the specifications required for the components rendering them prone to excessive wear and resulting in the failure of the Magnum hip replacement system at issue in this matter and the harm experienced by Connie Morton.

6. Hereafter, this defendant will be referred to as "Fair Lawn."

7. At all times relevant to this Complaint, STEPHEN R. DAVIS was a citizen of the State of New Jersey.

8. From July 1987 until October 2010, STEPHEN R. DAVIS had an agreement with the Biomet Defendants to serve as their exclusive distributor for hip replacement systems in New Jersey.

9. Pursuant to industry practice and contractual agreement, the exclusive distributor for the Biomet Defendants was responsible for educating orthopedic surgeons about Biomet hip replacement systems and the advantages, benefits, indications, templating, surgical implantation, follow-up care, servicing, and addressing any post-surgical questions or concerns regarding those Biomet hip replacement systems.

10. In October of 2010, LEGACY ORTHOPEDICS, INC. became the exclusive distributor of hip replacements for the Biomet Defendants in New Jersey.

11. At all times relevant to this Complaint, LEGACY ORTHOPEDICS, INC. was a New Jersey corporation and citizen of the State of New Jersey.

12. Hereafter, both defendants will be referred to collectively as "Distributors."

13. The information that Distributors provided about Biomet hip replacement systems far exceeded the information provided on Magnum packaging or labeling.

14. Distributors' sales representatives selected the components and tools to have present in the operating room when Connie Morton was surgically implanted with the Biomet Magnum.

15. At all times relevant to this Complaint, Plaintiff's surgeon relied upon information provided by Distributors' sales representatives in selecting Biomet's metal on metal hip replacement for implantation into Plaintiff's body.

16. Distributors profited from the promotion, sale, and servicing of the Magnum hip replacement at issue in the instant case at the time it was implanted in the body of Connie Morton.

17. Following the Magnum hip replacement being implanted in the body of Connie Morton, Distributors continued to profit from the servicing of and the addressing of any questions or concerns regarding Biomet hip replacement systems.

18. A hip replacement surgery replaces the natural head and socket of the hip joint with artificial components.

19. The majority of hip replacements implanted world-wide over the past several decades have utilized a replacement hip joint consisting of a metal head making contact with an ultra-heavy-duty plastic cup inside a metal shell.

20. This typical hip replacement consisting of a metal-plastic interface has been refined to the point that ultra-heavy-duty plastic hip replacements have a greater than 99.5 percent success rate per year.

21. The Biomet Magnum instead uses a metal replacement head interfacing directly with a metal shell; there is no plastic liner in the Magnum. Accordingly, this type of hip system is commonly referred to as a metal on metal hip replacement.

22. In the 1960s and early 1970s, hip replacement manufacturers first began to market metal on metal hip replacements to surgeons.

23. Unfortunately, these early metal on metal hip replacements experienced a high rate of heavy metal poisoning and failure.

24. When the metal shell and metal head of these implants rubbed together, they released toxic cobalt and chromium debris into the body.

25. The cobalt and chromium debris resulted in patients suffering heavy metal poisoning, causing tissue death and bone destruction.

26. As a result, the medical community abandoned metal on metal hip replacements in the 1970s.

27. Despite the prior failure of metal on metal hip replacements to perform as intended, Biomet designed and sold the Magnum.

28. The Magnum hip replacement implanted in Connie Morton was created by Biomet and began being sold in the United States in 2004.

29. Despite their knowledge that earlier metal on metal hip replacements were a failure and resulted in heavy metal poisoning, Biomet conducted no testing of the Magnum in real world conditions before selling it for implantation into the bodies of patients.

30. To avoid comprehensive testing of the Magnum hip replacement, Biomet claimed to United States regulators that the Magnum was "grandfathered-in" because it was substantially similar to hip replacements sold prior to May 28, 1976. [1]

31. This loophole required no testing for safety or efficacy.

32. Defendants claimed that without the plastic liner to wear out, the Biomet Magnum should last a patient's lifetime.

33. Defendants claimed that the Biomet Magnum was suitable for implantation in younger, more active patients.

34. Defendants promoted the Magnum as a "lifetime hip."

35. Despite the fact that Biomet conducted no clinical testing of the Magnum hip replacement, it has continuously claimed "[t]he M2a-Magnum™ Large Metal Articulation System offers optimal joint mechanic restoration and ultra-low-wear rates in vivo" citing to a 1996 article about previously abandoned types of metal on metal hip replacements.[2]

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[1] *See*, https://www.accessdata.fda.gov/cdrh_docs/pdf4/K042037.pdf containing Biomet Manufacturing Corp.'s(k) Summ of Safety and Effectiveness (Last accessed June 4, 2018).

[2] *See*, http://www.biomet.com/campaign/trueAlternativeBearings/BOI03400MagnumDesignRationale.pdf (Last accesse June 4, 2018).

36. In a 2004 publication titled "Metal Ions – A Scientific Review," Biomet falsely concludes that: "Extensive research and years of clinical trials have failed to prove any cause for concern associated with the ion levels exhibited from metal-on-metal implants."[3]

37. In fact, in a heading on page 7 of the publication, Biomet goes so far as to claim that: "Cobalt and Chromium may be beneficial to the body as established by research and listed by the US government."[4]

38. The 2004 publication by "Biomet Orthopedics, Inc., the Most Responsive Company in Orthopedics," is still available to physicians and the public online today at http://www.grossortho.com/images/stories/pdf/currenttopics/MetalIonWhitePaper.pdf. (Last accessed June 4, 2018).

39. In conjunction with the promotion of the Magnum hip replacement, Biomet paid surgeons to give speeches and publish articles such as "The Rationale for Metal-on-Metal Total Hip Arthroplasty" published in 2005, claiming that there were "no adverse physiologic effects" to metal on metal hip replacements.

40. At the time that the author published the above article, Biomet was paying the author a percentage of the profits from the sale of Magnum metal on metal hip replacement systems sold in the United States, something Biomet and the author failed to mention in the article promoting such hip replacements.

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[3] *See* http://www.grossortho.com/images/stories/pdf/currenttopics/MetalIonWhitePaper.pdf. (Last accessed June 4, 201

[4] *Id.*

41. Defendants' promotion of the Magnum hip replacement was extremely successful.

42. Upon information and belief, tens of thousands of Biomet Magnum metal on metal hip replacements were sold by Defendants and remain surgically implanted in the bodies of patients.

43. Defendants sold the Magnum metal on metal hip replacement for implantation into the bodies of United States patients up through 2014.

44. Defendants ceased selling Biomet Magnum metal on metal hip replacement in 2014, claiming that the decision to cease selling it was unrelated to reports of heavy metal poisoning and tissue death caused by the Magnum received by Defendant from around the world.

45. However, Defendants have continued to reassure surgeons and the public that the heavy metal poisoning seen with other metal on metal hip replacements is not an issue with the Magnum.

46. To this day, Defendants continue to claim to physicians and the public that the Magnum is a safe and successful product.

47. Approximately the same time as Defendants began selling the Magnum, Johnson & Johnson began selling the DePuy ASR.

48. The Biomet Magnum was almost identical to the ASR in its primary design features.

49. Like the Magnum, the ASR was a monoblock metal on metal hip replacement system with its cobalt chromium alloy head articulating against its cobalt chromium alloy shell.

50. In the summer of 2010, in response to "higher than expected revision rates," Johnson & Johnson conducted a world-wide recall of the ASR hip replacement.

51. Johnson & Johnson advised physicians to conduct detailed testing and follow-up of patients with ASR hip replacements.

52. As a result of the testing and follow-up, dangerously high heavy metal levels were discovered in a significant percentage of patients necessitating surgery to remove the metal on metal hip replacements.

53. Heavy metal poisoning and tissue death from the toxic heavy metals released by the ASR was widely reported in the medical literature.

54. The Defendants were aware of the reports and studies discussing the injuries suffered by metal on metal patients as a result of this very similar product.

55. In response to the 2010 voluntary world-wide recall of an almost identical hip replacement, Defendants did not:

a. Recall Defendants' almost identical Magnum hip replacement.
b. Suspend the sales of their very similar hip replacement pending a full investigation.
c. Conduct comprehensive testing of the Magnum to ensure it was not prone to causing heavy metal poisoning.
d. Warn physicians of the design similarities and the need to inform and carefully follow-up their patients.

56. Instead, Defendants increased promotion of the Magnum, attempting to capture market share lost by Johnson & Johnson due to its voluntary recall.

57. Defendants devised marketing tactics to differentiate the Magnum from the recalled ASR hip replacement and other metal on metal hip replacements.

58. Defendants promoted these marketing tactics to physicians and the public to reassure them that the Magnum did not cause heavy metal poisoning.

59. At the same time that Defendants were reassuring orthopedic surgeons and the public of the safety of the Magnum, they were receiving reports of just the opposite.

60. Isala Klinieken ("Isala") located in Zwolle, The Netherlands, has historically had a long and close relationship with Biomet.

61. From 2005 to 2007, Isala implanted patients with Biomet M2a metal on metal hip replacements.

62. Prior to and during this time period, Isala was in fact a Biomet funded study site, paid by Biomet to conduct research on Biomet products.

63. In 2010, Isala reported to Biomet that when it performed CT scans of over 100 patients' hips, more than a third had pseudotumors adjacent to their Biomet Magnum metal on metal hip replacements.

64. Isala reported to Biomet that the necessity for revision surgery was not identified until Isala conducted the CT scanning of their Biomet metal on metal hip replacement patients.

65. Isala warned that by the time that swelling, pain, and clicking indicating tissue death resulting from the heavy metal poisoning became apparent, the patient may have already suffered extensive injury.

66. In 2010, Isala informed Biomet that it had ceased implanting Biomet metal on metal hip replacements in its patients.

67. Isala encouraged Biomet to adopt a comprehensive screening protocol using CT and MRIs of all patients with Biomet metal on metal hip replacements implanted in their bodies and warned that without such an enhanced protocol, patients may be at risk.

68. The Isala Klinieken reported some of its findings regarding the Biomet metal on metal hip replacements in a British medical journal.[5]

69. Despite all of these critical warnings provided by the Isala Klinieken, Defendants failed to inform physicians or patients in the United States of the study, ignored the need for follow-up screening, and instead continued to promote the Magnum for implantation into the bodies of patients.

70. Likewise, Turku University in Turku, Finland has historically had a long and close relationship with Biomet.

71. Turku University was also a Biomet funded study site.

72. From 2005 to 2012, Biomet Magnum hip replacements were the most commonly implanted hip replacement at Turku University.

73. In 2013, Turku University reported to Biomet that when the University examined a sample of their patients implanted with Biomet Magnum hip replacements, over half of the patients were experiencing ARMD or "Adverse Reaction to Metal Debris" from the devices.

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[5] Bosker B, Ettema H, Boomsma M, et al. High incidence of pseudotumour formation after large-diameter metal-on-me total hip replacement: a prospective cohort study. *J Bone Joint Surg Br.* 2012 Jun;94(6):755-61.

74. MRIs of the sample of Turku University Magnum patients revealed that over half had a psuedotumor or fluid collection in their hip.

75. Despite its close relationship and funding from Biomet, in a 2013 publication of the Nordic Orthopedic Federation, Turku University stated that "ARMD is common after ... Magnum total hip arthroplasty, and we discourage the use of this device." [6]

76. Defendants failed to inform physicians or patients in the United States of this study, that Turku University had discouraged use of Biomet Magnum hip replacements, the need for physicians to screen their patients for Adverse Reaction to Metal Debris, and instead continued to promote the Magnum for implantation into the bodies of patients in the United States.

77. As part of the promotion of the Magnum hip replacement, Biomet hired Olympic gold-medal gymnast, Mary Lou Retton, as a spokesperson.

78. Mary Lou Retton had received a Biomet M2a metal on metal hip replacement in 2005.

79. Mary Lou Retton subsequently received a Biomet Magnum metal on metal hip replacement.

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[6] Mokka J, Junnila M, Seppänen M, et al. Adverse reaction to metal debris after ReCap-M2A-Magnum large-diamet head metal-on-metal total hip arthroplasty. *Acta Orthopaedica*. 2013;84(6):549-554.

80. Biomet heavily promoted to surgeons and the public that the Magnum metal on metal hip allowed "younger, more active patients, like Mary Lou" to "return to her normal activities, including her workout schedule."[7]

81. Mary Lou Retton was used by Defendants to promote the Mangum in brochures, in newspapers, on radio and television, and in-person to orthopedic surgeons and the public. [8]

82. A headline on the Biomet's website proclaims, "Mary Lou lives pain-free, and so should you."[9]

83. Unfortunately, Mary Lou Retton, like Connie Morton, is a Biomet metal on metal hip replacement victim.

84. While initially "pain-free," Mary Lou Retton suffered heavy metal poisoning from her Magnum hip replacement necessitating the surgical removal and replacement of the metal on metal hip replacement.

85. Mary Lou Retton was so severely injured by the Biomet metal on metal hip replacements, that despite her status as a celebrity spokesperson for the product, she too has sued the company.

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[7] *See*, http://www.biomet.com/fileLibrary/Patient_Education/PatientEdBrochures/Hip/English/Mary%20Lou%20Retton%20-%20M2a%20M2a.pdf (Last accessed June. 4, 2018).

[8] *See*, http://www.biomet.com/news/getFile.cfm?id=113&rt=inline&type=pr (Last accessed June. 4, 2018).

[9] *See*, http://www.biomet.com/fileLibrary/Patient_Education/PatientEdBrochures/Hip/English/Mary%20Lou%20Retton%20M2a%20M2a.pdf (Last accessed June. 4, 2018).

86. Biomet has failed to inform physicians and the public that Mary Lou Retton suffered heavy metal poisoning and had to have her Biomet metal on metal hip replacements surgically removed.

87. Biomet continues to cite to Mary Lou Retton as a patient success story.

88. Biomet has known of the failure of Mary Lou Retton's hip replacement for years but has continued to promote to physicians and the public a false story.

89. Australia has a world-leading implant registry which keeps track of every orthopedic hip replacement sold, implanted, and replaced in Australia.

90. Biomet ceased selling the Magnum in Australia in 2011.

91. In 2014, the Australian government communicated to Biomet that it was seeing excessive failure rates of the Magnum in Australian patients.

92. In 2015, the Australian government issued a "Hazard Alert" recalling the Biomet Magnum due to a "higher than expected revision rate."

93. Because Biomet had already ceased selling the Magnum in Australia, the Australian government's recall of the Magnum consisted of the "Hazard Alert" and mandating Biomet notify implanting surgeons in Australia of the recall and excessive revision rate.

94. Defendants have failed to disclose to orthopedic surgeons or the public in the United States that the Magnum hip replacement was recalled in Australia and that the Australian government issued a "Hazard Alert" regarding the Magnum.

95. Upon information and belief, Biomet knowingly and intentionally engaged in a corporate practice of recklessly rushing its M2a metal on metal implants to market without

adequate time to design and test the implants to make reasonable assurances regarding its safety and efficacy. Biomet did this with the sole intention to chase profits.

96. Prior to marketing any of their M2a metal on metal hip implants, including the M2a Magnum and its immediate predecessor, the M2a 38, Biomet Defendants had actual knowledge that the McKee-Farrar metal on metal hip implant, a pre-1976 device upon which the design of the M2a 38 and M2a Magnum is predicated, was abandoned by the orthopedic community because of early failures and concerns of heavy metal poisoning.

97. Upon information and belief, Biomet Defendants had explicit notice in 1995 from one of the world's foremost orthopedic surgeons that Biomet's protocols for testing its M2a metal on metal hip implants ignored known health risks related to heavy metal poisoning.

98. Despite the aforementioned knowledge, Biomet Defendants knowingly and intentionally failed to conduct any clinical or laboratory tests relating to the health risks associated with Cobalt Chrome heavy metal poisoning prior to launching the M2a Magnum.

99. Biomet Defendants had actual knowledge by 2000 that heavy metal poisoning is related to the size and total number of metal particles released by a Cobalt Chrome implant as opposed to the total weight of released metal particles. Further, Biomet Defendants had actual knowledge that these particles are toxic.

100. Upon information and belief, despite the aforementioned knowledge, Biomet knowingly and intentionally conducted its laboratory "wear testing" protocols in accordance with protocols it knew were designed only for polymeric implants. Those protocols call for measuring wear by weight, only.

101. Despite the aforementioned knowledge, Biomet knowingly and intentionally marketed the M2a Magnum by claiming that it produces less wear than non-metal on metal implants. Furthermore, Biomet knowingly and intentionally marketed the M2a Magnum by falsely associating its deceptively marketed "low wear" properties with safety.

102. Biomet Defendants knowingly and intentionally undertook an inadequate testing protocol and false marketing scheme in order to profit from the unproven promise of the theoretical advantages associated with metal on metal implants.

103. Biomet Defendants knowingly and intentionally engaged in a marketing scheme to alter the orthopedic community's understanding of the clinical history of failure with previous generations of metal on metal implants.

104. Biomet Defendants knowingly and intentionally spread false information claiming that decades of experience with metal on metal implants purportedly resulted in zero instances of heavy metal poisoning.

105. Biomet Defendants engaged in this false marketing scheme with the specific intent to deceive the orthopedic community and profit from deceitfully convincing them to use metal on metal hip implants again.

106. Following the release of Biomet's M2a Magnum system, Biomet Defendants engaged in a knowing and intentional scheme to hide clinical information relating to heavy metal poisoning from its implants.

107. This scheme included explicit training to sales representatives on how to deceptively convince surgeons that reports of heavy metal poisoning are all fake; merely a

theoretical concern; a scheme by competitors who do not sell metal on metal implants to steal business; and/or a global scheme by plaintiffs' attorneys.

108. As part of its scheme, Biomet also engaged in a deceptive corporate policy to hide clinical information about its M2a metal on metal implants from public scrutiny by abusing the legal protections afforded by the attorney-client and work-product privileges. Upon information and belief, in furtherance of this abuse, corporate employees were directed to affix all communications relating to metal on metal hips with privilege designations without regard to whether a privilege actually applied or even without regard to whether an attorney was even involved. This corporate policy did, indeed, suppress from public scrutiny information regarding the clinical risks with the device.

109. Biomet Defendants also marketed their M2a metal on metal implants based upon what it claimed was a low "reported adverse event rate" of ".056". However, Biomet Defendants were intentionally and knowingly failing to report the FDA a large number of adverse events, especially those relating to heavy metal poisoning. Biomet was fully aware that this scheme artificially suppressed the "reported adverse event rate." Regardless, Biomet consistently used the figure in its marketing. Biomet was aware that this figure would be heavily relied upon by the medical community.

110. When implanted in patients, it is prone to release toxic levels of cobalt and chromium.

111. Patients thus can suffer heavy metal poisoning, resulting in elevated levels of cobalt and chromium in the blood, pseudotumors, tissue necrosis, muscle wasting, bone loss, and other severe injuries.

112. The Defendants' failure to warn physicians and patients that the Biomet Magnum metal on metal hip replacements that were surgically implanted in patients' bodies may be releasing toxic heavy metals has left thousands of United States patients with ticking time-bombs in their hips.

113. Based on the studies discussed above and others, thousands of patients in the United States have already suffered undiagnosed pseudotumors, tissue death, bone death, etc. as a result of poisoning from the toxic heavy metals released from the Biomet Magnum.

114. As a result of Defendants' failure to warn physicians and patients of the necessity for immediate testing and screening of implanted Biomet Magnum hip replacements, the number of patients poisoned and severely injured by the Magnum will greatly increase.

115. The United States is facing a public health disaster from unmonitored Biomet Magnum metal on metal hip replacements.

116. Connie Morton was implanted with the Biomet Magnum metal on metal hip replacement on March 12, 2009.

117. Unknown to Mrs. Morton and her physicians, during the next seven years the Biomet Magnum hip replacement continuously released toxic heavy metals into her body, gradually poisoning her.

118. The metals released from the Magnum in Connie Morton's body consisted of both cobalt, a toxic heavy metal, and chromium, also a toxic heavy metal.

119. The release of the toxic heavy metals in the body of Connie Morton was the result of the design and manufacture of the Magnum by the Biomet and Fairlawn defendants.

120. The silent release of the toxic heavy metal from the Magnum hip replacement into Connie Morton's body slowly killed the tissue surrounding the hip replacement.

121. As the toxic heavy metal continued to be released, it then began to kill bone in addition to the tissue.

122. Connie Morton's physician recognized the signs and symptoms of a failed metal on metal implant and revision surgery was recommended.

123. On January 5, 2017, at Surgery Specialty Center at Coordinated Health – Bethlehem Campus, Bethlehem, PA, Connie Morton underwent a surgery to remove the source of the metal from her Biomet Magnum metal on metal hip replacement.

124. Connie Morton was then forced to undergo a long and painful recovery from the revision surgery.

FIRST COUNT

VIOLATION OF NEW JERSEY PRODUCTS LIABILITY ACT - FAILURE TO WARN

125. Plaintiff repeats and incorporates the foregoing Allegations Applicable to All Counts as if the same were set forth herein and at length.

126. At the time that Defendants designed, manufactured, promoted, marketed, sold, supplied, distributed and serviced the Magnum hip replacement implanted in Plaintiff, the Magnum contained defects that made it unreasonably dangerous beyond the expectations of the ordinary consumer, and was unfit for its intended use.

127. The Magnum reached Plaintiff without substantial change in the condition in which it was sold.

128. At the time and on the occasions in question, the Magnum was properly used for the purpose for which it was intended, and such device was in fact defective, unsafe and unreasonably dangerous.

129. The foreseeable risk of harm from the defects in the Magnum could have been reduced or avoided by providing adequate instructions or warnings.

130. In violation of N.J. Stat § 2A:58C-1 et. al., Defendants did not provide adequate instructions or warnings regarding the Magnum which were known by Defendants or should have been known by Defendants.

131. As a direct and proximate result of the lack of reasonable and adequate instructions or warnings regarding the defects in the Magnum, Plaintiff, Connie Morton, suffered injuries, including but not limited to significant pain, tissue destruction, bone destruction, metal wear, metal poisoning, loss of enjoyment of life, and limitation of daily activities. Plaintiff, Connie Morton, expects to continue suffering such injuries in the future as a result of the injuries received from the Magnum. Further, Plaintiff, Connie Morton, incurred medical expenses and expects to incur additional medical expenses in the future. Plaintiff has incurred lost earning potential and has experienced emotional trauma and distress and is likely to experience emotional trauma and distress in the future.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants, BIOMET, INC.; BIOMET ORTHOPEDICS, LLC; BIOMET U.S. RECONSTRUCTION, LLC; BIOMET

MANUFACTURING, LLC; and ZIMMER BIOMET HOLDINGS, INC.; BIOMET FAIR LAWN, LLC; STEPHEN R. DAVIS and LEGACY ORTHOPEDICS, INC., individually, jointly, severally and/or in the alternative for compensatory damages, interest thereon, costs of suit and such other and further relief as the Court deems equitable and just.

SECOND COUNT

(VIOLATION OF NEW JERSEY PRODUCTS LIABILITY ACT-

MANUFACTURING AND DESIGN DEFECT)

132. Plaintiff repeats and incorporates the foregoing Allegations Applicable to All Counts and the First Count as if the same were set forth herein and at length.

133. At the time that Defendants designed, manufactured, promoted, marketed, sold, supplied, distributed and/or serviced the Magnum implanted in Plaintiff, the Magnum contained defects that made it unreasonably dangerous beyond the expectations of the ordinary consumer, and were unfit for their intended use.

134. The Magnum reached Plaintiff without substantial change in the condition in which it was sold.

135. At the time and on the occasions in question, the Magnum was being properly used for the purpose for which it was intended, and was in fact defective, unsafe and unreasonably dangerous.

136. In violation of N.J. Stat § 2A:58C-1 et. al., the Magnum, for the reasons stated herein, were defective and unreasonably dangerous in design and manufacture.

137. As a direct and proximate result of the design and manufacturing defects in the Magnum, Plaintiff, Connie Morton, suffered injuries, including but not limited to significant pain, tissue destruction, bone destruction, metal wear, metal poisoning, loss of enjoyment of life, and limitation of daily activities. Plaintiff, Connie Morton, expects to continue suffering such injuries in the future as a result of the injuries received from the Magnum. Further, Plaintiff, Connie Morton, incurred medical expenses and expects to incur additional medical expenses in the future. Plaintiff has incurred lost earning potential and has experienced emotional trauma and distress and is likely to experience emotional trauma and distress in the future.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants, BIOMET, INC.; BIOMET ORTHOPEDICS, LLC; BIOMET U.S. RECONSTRUCTION, LLC; BIOMET MANUFACTURING, LLC; and ZIMMER BIOMET HOLDINGS, INC.; BIOMET FAIR LAWN, LLC; STEPHEN R. DAVIS and LEGACY ORTHOPEDICS, INC., individually, jointly, severally and/or in the alternative for compensatory damages, interest thereon, costs of suit and such other and further relief as the Court deems equitable and just.

THIRD COUNT

(COMMON LAW FRAUD)

138. Plaintiff repeats and incorporates the foregoing Allegations Applicable to All Counts and the First and Second Counts as if the same were set forth herein and at length.

139. Defendants represented to physicians and the public, including the Plaintiff, that their product was safe and did not cause heavy metal poisoning.

140. Defendants willfully, recklessly, or negligently made said fraudulent representations to induce physicians and the public to use their product.

141. The fraudulent misrepresentations made by the Defendants were material in that physicians and the public would not have agreed to use their product but for the trust and confidence they placed in the representations of the Defendants.

142. As a direct and proximate result of the fraudulent representations made by the defendants about the Magnum, Plaintiff, Connie Morton, suffered injuries, including but not limited to significant pain, tissue destruction, bone destruction, metal wear, metal poisoning, loss of enjoyment of life, and limitation of daily activities. Plaintiff, Connie Morton, expects to continue suffering such injuries in the future as a result of the injuries received from the Magnum. Further, Plaintiff, Connie Morton, incurred medical expenses and expects to incur additional medical expenses in the future. Plaintiff has incurred lost earning potential and has experienced emotional trauma and distress and is likely to experience emotional trauma and distress in the future.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants, BIOMET, INC.; BIOMET ORTHOPEDICS, LLC; BIOMET U.S. RECONSTRUCTION, LLC; BIOMET MANUFACTURING, LLC; and ZIMMER BIOMET HOLDINGS, INC.; BIOMET FAIR LAWN, LLC; STEPHEN R. DAVIS and LEGACY ORTHOPEDICS, INC., individually,

jointly, severally and/or in the alternative for compensatory damages, interest thereon, costs of suit and such other and further relief as the Court deems equitable and just.

FOURTH COUNT

BREACH OF THE NEW JERSEY CONSUMER FRAUD ACT

143. Plaintiff repeats and incorporates the foregoing Allegations Applicable to All Counts and the First through Third Counts as if the same were set forth herein and at length.

144. The Magnum at issue in this lawsuit was "merchandise" which were "advertised" and "sold" by "persons" within the scope of the Consumer Fraud Act, N.J.S.A. § 56:8-1.

145. The above is a non-exhaustive list of qualities advertised by Defendants as reasons the Magnum was safe, effective, and should be purchased.

146. Defendants knew that these and other advertised qualities were unproven and/or untrue.

147. Defendants affirmatively misrepresented the safety and efficacy of the Magnum.

148. Defendants knowingly omitted material facts from Plaintiff, Plaintiff's medical care providers, the medical community, and the public regarding the safety and efficacy of the Magnum.

149. As a result of the affirmative misrepresentations or knowing omissions by Defendants, Plaintiff's Magnum's risk exceeded its benefit making it valueless or holding negative value.

150. When the Product failed, Plaintiff expended a substantial sum of money she otherwise would not have expended to purchase a replacement for the product and undergo surgery to implant the replacement product, in addition to the loss of income and other economic harm Plaintiff suffered due to Defendants' violation of the Consumer Fraud Act.

151. Such expenditure is an ascertainable loss of money or other property.

152. As a direct and proximate result of the Defendants' misrepresentations, Plaintiff, Connie Morton, suffered injuries, including but not limited to significant pain, tissue destruction, bone destruction, metal wear, metal poisoning, loss of enjoyment of life, and limitation of daily activities. Plaintiff, Connie Morton, expects to continue suffering such injuries in the future as a result of the injuries received from the Magnum. Further, Plaintiff, Connie Morton, incurred medical expenses and expects to incur additional medical expenses in the future. Plaintiff has incurred lost earning potential and has experienced emotional trauma and distress and is likely to experience emotional trauma and distress in the future.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants, BIOMET, INC.; BIOMET ORTHOPEDICS, LLC; BIOMET U.S. RECONSTRUCTION, LLC; BIOMET MANUFACTURING, LLC; and ZIMMER BIOMET HOLDINGS, INC.; BIOMET FAIR LAWN, LLC; STEPHEN R. DAVIS and LEGACY ORTHOPEDICS, INC., individually, jointly, severally and/or in the alternative for compensatory damages, treble damages, interest thereon, attorneys fees, costs of suit and such other and further relief as the Court deems equitable and just.

FIFTH COUNT

(Per Quod)

153. Plaintiff repeats and incorporates the foregoing Allegations Applicable to All Counts and the First through Fourth Counts as if the same were set forth herein and at length.

154. Plaintiff, Roy Morton is the lawful husband of Plaintiff, Connie Morton.

155. As a result of the Defendants' negligence as aforesaid, Plaintiff, Roy Morton, sustained the loss of services, society and consortium of his wife, Plaintiff, Connie Morton, incurred and will in the future incur substantial sums of money for medical expenses in an effort to cure her and was otherwise injured.

WHEREFORE, Plaintiff, Roy Morton, demands Judgment against Defendants, BIOMET, INC.; BIOMET ORTHOPEDICS, LLC; BIOMET U.S. RECONSTRUCTION, LLC; BIOMET MANUFACTURING, LLC; and ZIMMER BIOMET HOLDINGS, INC.; BIOMET FAIR LAWN, LLC; STEPHEN R. DAVIS and LEGACY ORTHOPEDICS, INC., individually, jointly, severally and/or in the alternative for compensatory damages, interest thereon, attorneys fees, costs of suit and such other and further relief as the Court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff respectfully requests that a jury be impaneled to hear this cause of action and to award such damages as the jury finds to be fair and reasonable under the circumstances.

DESIGNATION OF TRIAL COUNSEL

Pursuant to *R.* 4:5-1(c) and *R.* 4:25-4, Plaintiff(s) hereby designates E. Drew Britcher as trial counsel.

BRITCHER LEONE, LLC.
Attorneys for Plaintiff

Dated: August 20, 2018

By: _____
E. DREW BRITCHER

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify that the matter in controversy in this action is not the subject of any pending action or arbitration and that no other action or arbitration is presently contemplated.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

BRITCHER LEONE, L.L.C.
Attorneys for the Plaintiffs

Dated: August 20, 2018

By: _____
E. DREW BRITCHER

Appendix XII-B1

CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division
Civil Part pleadings (not motions) under *Rule* 4:5-1
Pleading will be rejected for filing, under *Rule* 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed

FOR USE BY CLERK'S OFFICE ONLY
PAYMENT TYPE: ☐ CK ☐ CG ☐ CA
CHG/CK NO.
AMOUNT:
OVERPAYMENT:
BATCH NUMBER:

ATTORNEY / PRO SE NAME	TELEPHONE NUMBER	COUNTY OF VENUE
E. Drew Britcher, Esq.	(201) 444-1644	Bergen

FIRM NAME (if applicable)	DOCKET NUMBER (when available)
Britcher Leone, L.L.C.	BER-L-

OFFICE ADDRESS	DOCUMENT TYPE
175 Rock Road Glen Rock, NJ 07452	Complaint and Jury Demand
	JURY DEMAND ■ YES ☐ NO

NAME OF PARTY (e.g., John Doe, Plaintiff)	CAPTION
Connie Morton and Roy Morton	Morton v. Biomet, Inc.; Biomet Orthopedics, LLC; Biomet US Reconstruction, L.L.C.; Biomet Manufacturing, LLC; Zimmer Biomet Holdings, Inc., Biomet Fair Lawn, LLC; Stephen R. Davis; Legacy Ortho

CASE TYPE NUMBER (See reverse side for listing)	HURRICANE SANDY RELATED?	IS THIS A PROFESSIONAL MALPRACTICE CASE?
606	☐ YES ■ NO	☐ YES ■ NO IF YOU HAVE CHECKED "YES," SEE *N.J.S.A.* 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.

RELATED CASES PENDING?	IF YES, LIST DOCKET NUMBERS
☐ YES ■ NO	

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)?	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)
☐ YES ☐ NO	☐ NONE ■ UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP?	IF YES, IS THAT RELATIONSHIP:
☐ YES ☐ NO	☐ EMPLOYER/EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☐ BUSINESS

DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☐ YES ☐ NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION
Product liability action.

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS?	IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION
☐ YES ■ NO	
WILL AN INTERPRETER BE NEEDED?	IF YES, FOR WHAT LANGUAGE?
☐ YES ■ NO	

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b).

ATTORNEY SIGNATURE:

Side 2

CIVIL CASE INFORMATION STATEMENT
(CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

151 NAME CHANGE
175 FORFEITURE
302 TENANCY
399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
502 BOOK ACCOUNT (debt collection matters only)
505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
506 PIP COVERAGE
510 UM or UIM CLAIM (coverage issues only)
511 ACTION ON NEGOTIABLE INSTRUMENT
512 LEMON LAW
801 SUMMARY ACTION
802 OPEN PUBLIC RECORDS ACT (summary action)
999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

305 CONSTRUCTION
509 EMPLOYMENT (other than CEPA or LAD)
599 CONTRACT/COMMERCIAL TRANSACTION
603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
605 PERSONAL INJURY
610 AUTO NEGLIGENCE – PROPERTY DAMAGE
621 UM or UIM CLAIM (includes bodily injury)
699 TORT – OTHER

Track III - 450 days' discovery

005 CIVIL RIGHTS
301 CONDEMNATION
602 ASSAULT AND BATTERY
604 MEDICAL MALPRACTICE
606 PRODUCT LIABILITY
607 PROFESSIONAL MALPRACTICE
608 TOXIC TORT
609 DEFAMATION
616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
617 INVERSE CONDEMNATION
618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
303 MT. LAUREL
508 COMPLEX COMMERCIAL
513 COMPLEX CONSTRUCTION
514 INSURANCE FRAUD
620 FALSE CLAIMS ACT
701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

271 ACCUTANE/ISOTRETINOIN
274 RISPERDAL/SEROQUEL/ZYPREXA
281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL
282 FOSAMAX
285 STRYKER TRIDENT HIP IMPLANTS
286 LEVAQUIN
287 YAZ/YASMIN/OCELLA
289 REGLAN
290 POMPTON LAKES ENVIRONMENTAL LITIGATION
291 PELVIC MESH/GYNECARE
292 PELVIC MESH/BARD
293 DEPUY ASR HIP IMPLANT LITIGATION
295 ALLODERM REGENERATIVE TISSUE MATRIX
296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS
297 MIRENA CONTRACEPTIVE DEVICE
299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR
300 TALC-BASED BODY POWDERS
601 ASBESTOS
623 PROPECIA

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics.

Please check off each applicable category ☐ **Putative Class Action** ☐ **Title 59**

BRITCHER LEONE, LLC

ATTORNEYS AT LAW

E. Drew Britcher, Esq. *♦
Armand Leone, Jr. MD, JD ♦
Jessica E. Choper, Esq.

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*Certified Civil Trial Attorney
♦Admitted in New York
•Admitted US Court of Federal Claims

August 23, 2018

Via Ecourts

Clerk's Office
Bergen County Superior Court
Justice Center
10 Main Street
Hackensack, NJ 07601

Re: **Morton v. Biomet, Inc., et al.**

Dear Sir or Madam:

Enclosed please find a Complaint, Jury Demand, Designation of Trial Counsel and Case Information Statement to be filed in connection with the above-referenced matter.

Thank you for your kind cooperation.

Very truly yours,

E. DREW BRITCHER

EDB/pg
Enclosure

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-006167-18

Case Caption: MORTON CONNIE VS BIOMET, INC.
Case Initiation Date: 08/23/2018
Attorney Name: E DREW BRITCHER
Firm Name: BRITCHER LEONE, LLC
Address: 175 ROCK RD
GLEN ROCK NJ 07452
Phone:
Name of Party: PLAINTIFF : Morton, Connie
Name of Defendant's Primary Insurance Company (if known): Unknown

Case Type: PRODUCT LIABILITY
Document Type: Complaint with Jury Demand
Jury Demand: YES - 6 JURORS
Hurricane Sandy related? NO
Is this a professional malpractice case? NO
Related cases pending: NO
If yes, list docket numbers:
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO
If yes, please identify the requested accommodation:

Will an interpreter be needed? NO
If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

08/23/2018
Dated

/s/ E DREW BRITCHER
Signed