

**SETTLEMENT AGREEMENT**

**BETWEEN**

**BIOMET, INC.**

**AND**

**PLAINTIFFS EXECUTIVE COMMITTEE FOR IN RE: BIOMET M2A MAGNUM HIP  
IMPLANT PRODUCTS LIABILITY LITIGATION, MDL No. 2391**

This binding Settlement Agreement (the “Settlement Agreement”) is made and entered into on this 31<sup>st</sup> day of January, 2014, on behalf of the Plaintiffs’ Executive Committee (the “PEC”) and Plaintiffs’ Counsel in In Re Biomet M2A Magnum Hip Implant Products Liability Litigation, (MDL 2391) (hereinafter the “Biomet MDL”) and BIOMET, INC. and its related entities that are parties to the Biomet MDL (hereinafter “Biomet”).

WHEREAS, Plaintiffs have asserted claims against Biomet and other persons and entities in the Biomet MDL for alleged injuries, losses and damages allegedly sustained by Plaintiffs as a result of the use of Biomet’s M2a metal-on-metal hip replacement systems (“Biomet MoM Hips”) which Plaintiffs allege resulted in injuries, losses and damages; and

WHEREAS, Biomet disputes that Plaintiffs have sustained injuries, losses and damages as a result of the use of the Biomet MoM Hips; and

WHEREAS, Plaintiffs and Biomet are mindful of the uncertainties engendered by litigation and are desirous of settling and compromising their differences by entering into this Settlement Agreement, which is intended to resolve the lawsuits in the Biomet MDL connected with use of Biomet MoM Hips.

NOW, THEREFORE, for good and valuable consideration, the Plaintiffs and Biomet intending to be legally bound, agree as follows:

1. **Eligible Plaintiffs.** This Settlement Agreement shall extend to all cases currently pending in the Biomet MDL, and any future case filed in a federal court on or before April 15, 2014.<sup>1</sup> To be eligible to participate in the Settlement Agreement every Plaintiff must materially comply with all the requirements of section VII D of the Court's Case Management Order (No. 242) on or before June 13, 2014. All cases with materially complete fact sheets served by December 31, 2013 will be known as Group 1 cases. All cases with materially complete fact sheets served between January 1, 2014 and June 13, 2014 will be known as Group 2 cases. If a plaintiff does not serve a materially complete fact sheet by June 13, 2014, any potential settlement payment for that plaintiff may be reduced and will be delayed.<sup>2</sup>

2. **Eligibility and Compensation:** (a) Plaintiffs who have received a Biomet M2a 38 or M2a Magnum hip replacement system as part of an initial hip replacement that was revised more than 180 days after it was implanted shall receive a base award of \$200,000.00 subject to the discounts as set forth in paragraph (b) below. To the extent a claimant has received bilateral M2a 38 or M2a Magnum hip replacement systems, each hip shall be treated separately.

(b) Base award deductions/discounts:

- (1) Cases involving Biomet M2a38 or M2a Magnum hip replacement systems that were revised more than five years, but less than eight years, after initial implantation, are subject to a discount of \$10,000.
- (2) Cases involving Biomet M2a38 or M2a Magnum hip replacement systems that were revised more than eight years, but less than ten years after initial implantation, are subject to a discount of \$37,500. Cases that were revised more than ten years after initial implantation, will receive a payment of \$20,000, without regard to any qualifying or discounting criteria.

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<sup>1</sup> Any currently pending lawsuit or lawsuit filed on or before April 15, 2014 against Biomet concerning an M2a Metal-on-Metal (MoM) device which is filed in state Court may participate in this proposed settlement should they timely notify Biomet and otherwise materially comply with all the terms of this Settlement Agreement.

<sup>2</sup> A Schedule of Settlement Deadlines for Group 1 and Group 2 cases is attached hereto as Exhibit A.

- (3) Cases involving Biomet M2a38 or M2a Magnum hip replacement systems that were initially implanted after August 1, 2010, but before July 1, 2011, are subject to a discount of \$10,000. Cases involving a Biomet M2a38 or M2a Magnum hip replacement system after July 1, 2011, but before January 27, 2012 are subject to a discount of \$37,500. Cases involving a Biomet M2a38 or M2a Magnum hip replacement system that were initially implanted after January 27, 2012, will receive a payment of \$20,000, without regard to any qualifying or discounting criteria.
- (4) Cases that Biomet believes are time-barred will receive a payment of \$20,000, without regard to any qualifying or discounting criteria.<sup>3</sup>
- (5) Plaintiffs who received a Biomet metal-on-polyethylene (“MoP”) device or a Biomet MoM hip replacements other than the M2a 38 and the M2a Magnum, such as the M2a Taper, RingLoc, or a ReCap, will receive \$20,000, without regard to any qualifying or discounting criteria.
- (6) Plaintiffs who received any type of Biomet MoM Hip for the first time as part of a revision procedure or who had their Biomet MoM Hip revised within six months of initial implantation, will receive \$20,000, without regard to any qualifying or discounting criteria.
- (7) Any Plaintiff who received a Biomet MoM Hip, and who was revised, but is now dead and who died for reasons unrelated to alleged complications from a revision surgery before an agreement is reached regarding the resolution of that Plaintiff’s case, will receive \$20,000, without regard to any qualifying or discounting criteria.

(d) Categorization of Cases. By April 18, 2014 Plaintiffs’ counsel of record will produce a list of all their cases where materially complete fact sheets were served by December 31, 2013, identifying the categorization of each case, including any applicable discounts as identified in paragraph 2 above. Biomet will notify Plaintiff’s counsel of record in these cases by May 9, 2014 if they disagree with Plaintiffs’ categorization, and indicate for each case the amount of the discount Biomet claims applies. By August 8, 2014 Plaintiffs’ counsel of record will produce a list of all their cases where materially complete fact sheets were served between January 1, 2014 and June 13, 2014, identifying the categorization of each case, including any applicable discounts as identified in paragraph 2 above. Biomet will notify Plaintiffs' counsel of

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<sup>3</sup> Paragraph 4 below lays out the circumstances under which these cases may be mediated.

record in these cases by September 5, 2014 if they disagree with Plaintiffs' categorization, and indicate for each case the amount of the discount Biomet claims applies. All cases where the Parties disagree as to the value will be mediated in accordance with Paragraph 3.

(e) By March 10, 2014 Biomet will notify Plaintiffs' counsel of record in any case where a fact sheet was served on or before December 31, 2013, if Biomet asserts that the Plaintiff Fact Sheet is materially deficient as required under section VII. D. 4 of the Court's CMO No. 242. By June 6, 2014, Plaintiffs must provide Biomet with a complete list of all Plaintiffs, who have served materially complete fact sheets as of December 31, 2013, and who complied with the terms of Paragraph 2, who do not elect to seek an enhanced award.

(f) Any case that has not served a materially completed fact sheet by December 31, 2013 is required to serve a materially complete Plaintiff Fact Sheet no later than June 13, 2014. By July 14, 2014 Biomet will notify Plaintiffs' counsel of record in any case where a fact sheet was served between January 1, 2014 and June 13, 2014, if Biomet asserts that the Plaintiff Fact Sheet is materially deficient, as required under section VII. D. 4 of the Court's CMO No. 242. By September 26, 2014, Plaintiffs must provide Biomet with a complete list of all Plaintiffs from this group who complied with the terms of Paragraph 2 who do not elect to seek an enhanced award.

**3. Mediation of Cases:** The cases selected by Plaintiffs and Biomet for resolution pursuant to this paragraph will be referred to as the "mediation cases." Cases to be mediated are as follows:

- (a) Enhanced Payments. The Parties recognize that Plaintiffs believe there is good cause for some of their cases that qualify for payments pursuant to Paragraphs

2(a), 2(b)(1), 2(b)(2) and 2(b)(3)<sup>4</sup> to be entitled to “enhanced” compensation. The criteria identified in Exhibit A to the Court’s January 8, 2014 Order (No. 1177) set forth parameters to be considered, as to whether a case qualifies for enhanced compensation. By May 23, 2014, Plaintiffs shall provide a list of its possible “enhanced compensation” cases from all filed cases with materially completed fact sheets as of December 31, 2013. By September 12, 2014, Plaintiffs shall provide a list of its possible “enhanced compensation” cases from all cases where materially completed fact sheets were served between January 1, 2014 and June 13, 2014.

- (b) Contested Cases. Biomet also believes that there is good cause to reduce the amounts to be paid on cases that qualify for payments, pursuant to Paragraph 2 of this Settlement Agreement. Good cause for Biomet to seek to reduce the amount to be paid to a specific plaintiff, include, but are not limited to, evidence of trauma, infection or other objective explanations for a premature failure of the hip system with the absence of evidence of a MoM injury. By May 30, 2014, Biomet shall provide a list of its contested cases from all filed cases with materially completed fact sheets as of December 31, 2013. By September 19, 2014, Biomet shall provide a list of its contested cases from all filed cases with materially completed fact sheets served between January 1, 2014 and June 13, 2014
- (c) Mediation Process. The cases selected by Plaintiffs and Biomet for resolution pursuant to this paragraph, will be mediated with the assistance of Thomas Rutter of ADR Solutions in Philadelphia, who will act as the mediator to work with the

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<sup>4</sup> Biomet may agree to mediate other Paragraph 2(b) cases if there is evidence of implant failure as a result of metal wear and there is a viable cause of action under the applicable state law.

Parties to resolve any of the mediation cases, pursuant to this paragraph.

Beginning in October 2014, the mediator will schedule, in consultation with the PEC and Biomet, firm-by-firm mediations to take place in Philadelphia. The Parties will confer in good faith, attempting to agree on values for all mediated cases. Any mediated case not resolved by December 5, 2014, subject to the aggregate settlement percentage requirements set forth in Paragraph 5, will be remanded, pursuant to an appropriate order of the Court.

**4. Mediation of Statute of Limitation Cases:** With respect to cases that Biomet believes are time-barred and subject to the terms of Paragraph 2(b)(4), if a Plaintiff disputes how their case is so categorized, the Parties agree the provisions of Paragraph 3 will be used to resolve whether a particular case, in fact, is time-barred. Any case designated by Biomet as being subject to Paragraph 2(b)(4) that is not resolved by December 5, 2014, subject to the aggregate settlement percentage requirements set forth in Paragraph 5, will be remanded, pursuant to an appropriate order of the Court.

**5. Biomet Funding Obligation:** Biomet's obligation to fund this Settlement Agreement requires 90% of the cases qualifying for payments pursuant to Paragraph 2 and 67% of the "mediation" cases, pursuant to paragraph 3 above, to accept a settlement offered, pursuant to this Settlement Agreement. Biomet must decide whether to fund the settlement within fifteen (15) days of receiving written notice from the PEC that Plaintiffs believe at least one of the requirements of this Paragraph have been satisfied. If Biomet takes the position, in writing, that a requirement of Paragraph 5 has not been satisfied, the issue will be decided by the Court. With respect to Group 1 cases qualifying for a Paragraph 2 payment, Plaintiffs can elect to give early

notice of a funding obligation to Biomet, when 90% of the Group 1 cases that are not seeking an enhanced award have accepted a settlement offer.

6. **Escrow**: Within thirty (30) days of an agreement that, or the Court determining that any of the 90% acceptance requirements of Paragraph 5 have been met, Biomet will pay or cause to be paid an initial payment of \$50,000,000 to Esquire Bank to be held in Escrow. Any “early” notice Paragraph 2 cases, as described in Paragraph 5 above, will be paid on or before September 26, 2014. To the extent additional funds are needed to fund settlements and the PEC and Biomet’s counsel have agreed in writing that such funds are needed, within fifteen (15) business days of receipt of a written request co-signed by a representative of the PEC and Biomet’s counsel, Biomet will pay, or cause to be paid sufficient funds to pay the accepted and agreed to settlement payments.

7. **Distribution of Settlement Payments**: Plaintiffs are going to create one or more qualified settlement fund (“QSF”) accounts within the meaning of Treas. Reg. § 1.468B-1, in a form agreed to by parties, following the entry of an Order of the Court creating them. The QSFs will be established at a bank of Plaintiffs’ Counsels’ choosing, and the parties agree that Biomet’s transfer of funds to a QSF does not constitute constructive receipt of a settlement amount by Plaintiffs’ Counsel or Plaintiffs. The Parties also agree that Biomet transfer of funds to the QSF does not constitute a commitment or promise by Biomet to authorize the disbursement of such funds to Plaintiffs’ Counsel or Plaintiffs, prior to satisfying the conditions described in Paragraphs 11 and 12 of this Settlement Agreement. The parties also agree to negotiate a settlement administration agreement described in Paragraph 13 below. One of the provisions to be included in the settlement administration agreement will allow certain contested cases to be

paid, with Biomet's consent, which will not be unreasonably withheld, before the qualifying percentage for mediated cases, as set forth in Paragraph 5 of this Settlement Agreement, is met.

**8. Non-Revision Cases:** The Parties provided the Court with a list of "non-revision" cases on January 22, 2014 (the "Non-Revision" list). Unless removed from this list, pursuant to the terms of the Court's December 10, 2013 and February 3, 2014 Orders (No. 1117, 1316), all cases on the Non-Revision list will be dismissed without prejudice on or before September 12, 2014, pursuant to an Order, to be approved and entered by the Court. If a non-revisions case becomes a revision case before it is dismissed, the Plaintiff in that case will be eligible, subject to all the obligations and requirements of this Settlement Agreement, to participate in this Settlement Agreement. Plaintiffs will have the right to contest the dismissal of a non-revision case, if appropriate, under applicable state laws if a viable cause of action remains. Plaintiffs have the right to request to mediate a non-revision case where it has been determined that a revision is medically necessary, but the Plaintiff is not able to obtain medical clearance for the revision surgery or such medical clearance has been delayed. For any of these cases, Biomet reserves the right to say in mediation the case has no value. Biomet asserts that the Statute of Limitations is triggered at the time of revision. Biomet recognizes that, subject to the circumstances of a particular case, the Statute of Limitations for unfiled non-revision cases should be triggered at the time of revision, consistent with the applicable state Statute of Limitations.

**9. Stay of Proceedings:** The Parties agree to jointly request that the Court stay all the Parties' respective obligations set forth in the Court's December 10, 2013 Orders (Nos. 1117, 1118) until such time as the Parties agree that the obligations contemplated by this Settlement Agreement have been completed. The Parties agree to provide the Court with status reports



regarding the implementation of this Settlement Agreement every forty-five (45) days, beginning on April 17, 2014.

10. **Assessment and Common Benefit Fund:**

(a) **Biomet's Obligations:** In addition to Biomet's funding obligations pursuant to Paragraph 5 of this Agreement, Biomet agrees to assume the funding obligations set out in a separate "Common Benefit Settlement Agreement" (CBSA). The CBSA becomes effective only if this Agreement becomes effective. Plaintiffs participating in this Settlement Agreement and their counsel are third-party beneficiaries of, but are not parties to, that CBSA.

(b) **Obligations of Settling Plaintiffs:** This private settlement agreement includes cases both in the MDL Court and various state courts. By participating in this settlement all participating plaintiffs and their counsel agree to comply with all Court Orders in furtherance of fees and expenses for MDL common benefit work. The PEC shall seek an Order from the MDL Court requiring a provisional holdback of no more than 6% -- 5% fees and 1% costs -- from each participating plaintiff's gross monetary recovery, to be paid to designated escrow accounts for common benefit attorneys' fees and costs. That Order shall further specify that an appropriate rebate of monies provisionally withheld for Common Benefit Attorneys' Fees shall be made to counsel for participating plaintiffs once the Total Gross Settlement Amount to be paid by Biomet under the other provisions of this Agreement is known. That Order shall also specify that an appropriate rebate of monies provisionally withheld for Common Benefit Costs shall be made to counsel for participating plaintiffs once all qualifying expenses have been reimbursed or paid. The provisional holdbacks for Common Benefit Fees and Common Benefit Costs shall apply to non-mediation cases and mediation cases alike, and to any and all amounts awarded to Plaintiffs and their counsel, or to Unrepresented Plaintiffs.

11. **Releases.** Each Plaintiff who receives a payment from Biomet pursuant to this Settlement Agreement, will execute a Release and Settlement Agreement and Covenant Not To Sue (“Release”) in a form mutually agreed to by the Parties. The release will release and forever discharge Biomet, and all its related entities, partners, members, shareholders, subsidiaries, officers, directors, employees, assigns, successors and affiliates, from any and all claims for damages, of every kind and nature in law or equity, which each Plaintiff ever had or now have against Biomet, relating to a MoM product. The parties to this Settlement Agreement recognize that all sums paid, pursuant to this Settlement Agreement, constitute damages on account of personal injuries or physical injuries or physical sickness, within the meaning of Section 104 of the Internal Revenue Code of 1986, as amended, and no portion of the proceeds paid under this Settlement Agreement represent punitive damages; prejudgment or post judgment interest; or damages for non-physical injuries.

12. **Payment of Liens.** Each Plaintiff who receives a payment from Biomet pursuant to this Settlement Agreement, agrees to pay or have paid any liens held by or amounts owed to third parties, whether persons or entities, including any state or federal government entities, as well as any known subrogated interest asserted by a bona fide healthcare provider or insurer arising out of, or related to each Plaintiff’s claimed Biomet related injury. This Agreement does not alter or expand any notice obligations any Plaintiff has by law or contract. To the extent Plaintiffs decide to use a QSF, or multiple QSFs, the parties will cooperate in good faith regarding their formation. Plaintiffs and Plaintiffs’ Counsel understand that as a condition precedent to the disbursement by a QSF of allocated settlement funds for each individual Plaintiff, they shall provide Biomet with appropriate documentation, that any and all known, valid liens have been resolved.

13. **Settlement Administration Agreement**: The Parties agree to negotiate in good faith, enter into, and intend to be bound by the terms of a settlement administration agreement that shall contain the following terms: (a) the amounts and terms for the escrow of funds, pursuant to this Settlement Agreement; and (b) instructions for distribution of funds to individual plaintiffs, pursuant to this Settlement Agreement. The parties understand and agree that executing the settlement administration agreement is only to facilitate the administration and performance of the essential terms of the Settlement Agreement, and is not a condition precedent to settlement. The parties agree that the Settlement Agreement contains all necessary terms of a contract under applicable law, and is binding and enforceable, regardless of whether the parties execute a separate settlement administration agreement.

14. **Confidentiality**. Plaintiffs and Biomet understand, acknowledge, and agree that this settlement and the terms and conditions of this Agreement, including the amount to be paid hereunder, are to be kept strictly confidential, and are not to be disclosed by Plaintiffs or Plaintiffs' Counsel or Biomet, except as required by law, or as hereinafter set forth, to any person, firm, association, corporation or entity at any time, including but not limited to legal trade journals, reporting services, the press or media, and/or on any posting on the Internet. Notwithstanding the foregoing, Plaintiffs and Plaintiffs' Counsel may make disclosure of settlement amounts to accountants or tax advisors, or if necessary to resolve any outstanding liens, or as otherwise required by law, or any Court Order. Any other disclosure of the amount or terms and conditions of this Agreement may be made, only upon receipt of written consent from counsel for Biomet or upon receipt of a Court Order. If Plaintiffs or their counsel receive notice of a legal proceeding in which the Court requests and/or orders Plaintiffs or Plaintiffs' Counsel to disclose any matter covered by this Agreement, Plaintiffs and their counsel agree to give

immediate notice to Biomet. If disclosure of this Agreement is required to be made to a Court, Plaintiffs and Plaintiffs' Counsel agree not to oppose any motion for a Protective Order by Biomet seeking to protect the confidentiality of this Agreement. The parties agree that this paragraph of the Settlement Agreement shall cease to be effective upon the Court's entry of an order approving or incorporating the terms of this Agreement.

**15. Warranties, Representations, and Stipulations:** (a) Nothing in this Agreement constitutes any admission of liability or fault of any kind on the part of Biomet, or anyone else. Neither this Agreement nor any of its attachments shall be admissible in evidence in any proceeding, except in an action to enforce the terms of this Settlement Agreement or the Releases; (b) this Settlement Agreement is the product of arm's length negotiations between counsel and/or parties represented by counsel. No party shall be deemed to be the drafter of this Settlement Agreement or any provisions hereof. No presumption shall be deemed to exist in favor of or against any party as a result of the preparation or negotiation of this Settlement Agreement; (c) the undersigned counsel for Biomet is the duly appointed Lead counsel for the Biomet, and has authority to negotiate and enter into this Settlement Agreement on behalf of the Biomet; (d) the undersigned counsel for the Plaintiffs are duly appointed Coordinating Co-lead Counsel of the PEC, pursuant to the Court's December 5, 2012 and December 30, 2013 Orders (Nos. 127, 1154 ), and have authority to negotiate and enter into this Settlement Agreement, on behalf of the Plaintiffs; (e) this Settlement Agreement shall be binding on the parties regardless of any change in the law that might occur after the date that this Settlement Agreement is signed; (f) in case any provision, or any part of any provision, contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the

affected provision) of this Settlement Agreement, but this Settlement Agreement shall be construed as if such invalid, illegal or unenforceable provision (or any part thereof) had never been contained herein, but only to the extent it is invalid, illegal or unenforceable; (g) the Parties agree that this Settlement Agreement shall be interpreted in accordance with the laws of the State of Indiana; (h) the Parties acknowledge that this Settlement Agreement, including all Exhibits attached hereto, constitutes the entire agreement, and replaces and supersedes any prior agreements, whether in writing or otherwise. Plaintiffs and Plaintiffs' Counsel agree that they have neither received nor relied on any other agreements or promises, other than as contained in this Settlement Agreement; (i) to the extent that there are any conflicts or discrepancies with any prior agreements, this Settlement Agreement, including all Exhibits attached hereto, shall govern; and (j) the Parties, through the undersigned counsel, shall submit this Settlement Agreement to the Court for review and approval, and hereby stipulate that this Settlement Agreement is a true, accurate, and complete statement of the Parties' agreement to compromise, settle, and release all claims alleged in the cases pending in the Biomet MDL, as described in Paragraph 1 of this Agreement.

	<p><b>On behalf of the Plaintiffs Executive Committee</b></p> <p><b><u>//S:Thomas R. Anapol//</u></b> Thomas R. Anapol <b>ANAPOL SCHWARTZ</b> 1710 Spruce Street Philadelphia, PA 19103 (215) 735-1130 <a href="mailto:tanapol@anapolschwartz.com">tanapol@anapolschwartz.com</a></p> <p>W. Mark Lanier <b>LANIER LAW FIRM, PC</b> 6810 FM 1960 West Houston, Texas 77069 Phone: (713) 659-5200 Fax: (713) 659-2204 <a href="mailto:wml@lanierlawfirm.com">wml@lanierlawfirm.com</a></p>
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