

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE                                 )         WED     DAY, THE 31<sup>ST</sup>  
  )     
  )     
JUSTICE GLUSTEIN                               )   DAY OF JULY, 2024  
  )

**B E T W E E N :**

**STEVEN DALTON DINE**

Plaintiff

- and -

**BIOMET, INC., BIOMET ORTHOPEDICS, LLC, BIOMET  
MANUFACTURING CORP., BIOMET US RECONSTRUCTION, LLC  
and BIOMET CANADA INC.**

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**ORDER**

**THIS MOTION** by the Plaintiff for an order approving the form of notice that will advise class members of the hearing to approve the proposed settlement, as well as the manner of publicizing such notice, was heard this day in Toronto.

**UPON BEING ADVISED** that the Plaintiff and the Defendants have entered into the Settlement Agreement attached hereto as Schedule "1" and that the Defendants have consented to the terms of this Order, **THIS COURT ORDERS AND DECLARES that:**

1. For the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. The form and content of the short-form and long-form hearing notices, substantially in the form attached hereto as Schedule "2" and Schedule "3" is approved (the "**Notices of Approval Hearing**"). The Notices of Approval Hearing shall be available in both English and French.

3. The proposed manner of publicizing the Notices of Approval Hearing as described in Schedule “4”, is approved (the “**Notice Plan**”) and shall be done by no later than the date which is 60 days prior to date referred to in paragraph 6(b) of this Order.

4. Verita Global LLC is hereby appointed as the “**Notice Administrator**”, and shall disseminate the Notices of Approval Hearing in accordance with the Notice Plan.

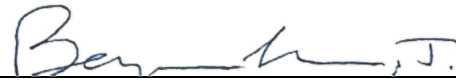
5. The Notices of Approval Hearing and the Notice Plan constitute fair and reasonable notice to the class of the Approval Hearing.

6. Any Class Member may submit an objection or contention to the Settlement Agreement in accordance with the following procedure:

- (a) A Class Member may object to the approval of the Settlement Agreement or submit a contention by sending a written objection by email to counsel for the Plaintiff and the class (“**Class Counsel**”). Class Counsel is required to forward all objections and contentions to Defendants’ counsel within 48 hours after receipt by email.
- (b) Objections and contentions should be received by Class Counsel before 5:00 p.m. Pacific Time on a date that is 14 days before the date of the Approval Hearing which will be reported to the Court in a timely manner.
- (c) A Class Member who wishes to object to the approval of the Settlement Agreement or to submit contentions should state:
  - (i) the full name, current mailing address, telephone number and email address of the person who is objecting or submitting a contention;
  - (ii) a brief statement of the nature and reasons for the objection or contention;
  - (iii) a declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the part, reference, catalogue and lot numbers of their Biomet Device(s);

- (iv) whether the person intends to appear at the relevant Approval Hearing or intends to appear by counsel and, if by counsel, the name, address, telephone number and email address of counsel; and
- (v) a declaration that the foregoing information is true and correct.

7. For all objections or contentions received five days before the Approval Hearing, Class Counsel shall, no later than three days before the date of the relevant Approval Hearing, report to the Court, by affidavit, with a copy to counsel for the Defendants, the names of persons who objected and copies of any objections. All other objections or contentions will be reported on a timely manner.



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JUSTICE GLUSTEIN

Schedule “1”: Settlement Agreement

CANADIAN M2a 38, M2a MAGNUM and ReCAP FEMORAL RESURFACING  
SYSTEM CLASS ACTION

NATIONAL SETTLEMENT AGREEMENT

between:

STEVEN DALTON DINE

(the “**Ontario Plaintiff**”)

and

CONSEIL POUR LA PROTECTION DES MALADES

(the “**Quebec Plaintiff**”)

and

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET  
MANUFACTURING CORP., BIOMET U.S. RECONSTRUCTION LLC  
and BIOMET CANADA INC.

(the “**Defendants**”)

**WHEREAS:**

- (a) the **Ontario Plaintiff** commenced an action by Notice of Action dated October 4, 2013 and Statement of Claim dated November 4, 2013 in the Ontario Superior Court of Justice bearing Court File No. CV-13-490112-CP (the “**Ontario Proceeding**”);
- (b) the **Ontario Proceeding** was certified as a national class action by Order dated December 18, 2015, bearing citation *Dine v. Biomet*, 2015 ONSC 7050, and the Ontario Court appointed the **Ontario Plaintiff** as the representative plaintiff in the **Ontario Proceeding**;

- (c) the **Quebec Plaintiff** commenced Action No. 500-06-000745-154 in the Superior Court of Quebec ("**Quebec Proceeding**", and with the **Ontario Proceeding**, the "**Proceedings**"), which was stayed by Judgment dated September 23, 2016, bearing citation *Conseil pour la protection des malades c. Biomet Canada inc.*, 2016 QCCS 4574, pending the outcome of the **Ontario Proceeding**;
- (d) the **Quebec Proceeding** has not been authorised (certified) as a class action;
- (e) the **Defendants** deny liability in respect of the claims alleged in the **Proceedings**, and believe that they have good and reasonable defences in respect of the merits in the **Proceedings**;
- (f) the **Defendants** assert that they would actively pursue these defences in respect of the merits at trials if the **Ontario Plaintiff** or **Quebec Plaintiff** continued the **Proceedings** against them;
- (g) the **Defendants, Ontario Plaintiff** and **Quebec Plaintiff** (as defined below) (collectively the "**Parties**") have negotiated and agreed to enter into this **Settlement Agreement** to avoid the further expense, inconvenience and burden of this litigation, and to achieve final resolution of all claims asserted or that could have been asserted against the **Defendants** by the **Ontario Plaintiff** and **Quebec Plaintiff**, on their own behalf or on behalf of the **Class** (as defined below) (collectively the "**Plaintiffs**") or the respective **Provincial Health Insurers** (as defined below), and to avoid the risks inherent in

uncertain, complex and protracted litigation, and thereby to put this controversy to rest;

- (h) counsel for the **Parties** have engaged in extensive arms-length settlement discussions, negotiations and mediations in respect of this **Settlement Agreement**;
- (i) as a result of these settlement discussions, negotiations and mediations, the **Parties** have entered into this **Settlement Agreement** which embodies all of the terms and conditions of the settlement between the **Parties**, subject to the approval of the **Ontario Court** (defined below);
- (j) the **Defendants** do not admit through execution of this **Settlement Agreement** any of the conduct alleged in the **Proceedings** or that the **Defendants** are liable for the injuries alleged, and neither this **Settlement Agreement** nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the **Defendants** or evidence of the truth of any of the allegations against the **Defendants** in the **Proceedings**;
- (k) the **Plaintiffs**, the **Provincial Health Insurers**, and their respective counsel have reviewed and fully understand the terms of this **Settlement Agreement** and, based on their analyses of the applicable facts and law, and having regard to the burdens and expense in prosecuting the **Proceedings**, including the risks and uncertainties associated with trials and appeals, the **Plaintiffs**, the **Provincial Health Insurers**, and their

counsel have concluded that this **Settlement Agreement** is fair, reasonable and in the best interests of the **Plaintiffs**, the **Class Members** (defined below), and the **Provincial Health Insurers**;

- (l) the **Defendants** are entering into this **Settlement Agreement** in order to achieve a final and nationwide resolution of all claims pertaining to a **Biomet Device** (as defined below) that have been asserted or that could have been asserted against them by the **Plaintiffs** or the **Provincial Health Insurers** in the **Proceedings** or otherwise, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation;
- (m) the **Parties** therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the **Proceedings** against the **Defendants**; and
- (n) for the purposes of settlement only and contingent on orders by the **Courts** as provided for in this **Settlement Agreement**, the **Plaintiffs** have consented to a dismissal of the Ontario Proceeding, and a discontinuance of the Quebec **Proceeding**, and release of all claims that have been or could have been asserted against the **Releasees** (defined below).

**NOW THEREFORE**, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the **Parties** that the **Proceedings** be settled on the following terms and conditions.

## SECTION 1 – DEFINITIONS

1. For the purpose of this **Settlement Agreement**, including the Recitals and Schedules hereto:

- (a) **Account** means an interest-bearing trust account under the control of the **Claims Administrator** at a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate **Approved Claimants**.
- (b) **Approval Hearing** means the hearing on the motion before **Ontario Court** for the approval of the **Settlement Agreement**.
- (c) **Approved Claimant** means a **Class Member** or **Derivative Claimant** whose claim has been approved for payment by the **Claims Administrator**.
- (d) **Bilateral Revision** means that a **Class Member** had a **Biomet Device** implanted in both the left and right hips and has undergone surgery or surgeries to remove the **Biomet Device** from both the left and right hips.
- (e) **Biomet Device** means any of the **M2a 38**, **M2a Magnum** or **M2a Recap**, or any combination thereof, only when implanted in Canada and used as a metal-on-metal hip implant system.
- (f) **Claimant Declaration** means the form attached as **Schedule A**.
- (g) **Claims Administrator** means the entity appointed to administer the **Settlement Agreement**.



- (h) **Claims Deadline** means the day that is 270 days after the date on which the **Notice of Settlement Approval** is disseminated to the Class.
- (i) **Class Counsel Fees** means the fees and applicable taxes or charges of **Class Counsel** specified in Section 9 of this **Settlement Agreement**.
- (j) **Class Counsel** means Koskie Minsky LLP, Stevenson Whelton LLP, Klein Lawyers LLP and Sylvestre Painchaud et associés.
- (k) **Class Member** or **Class** means any person who was implanted in Canada with a **Biomet Device**, and who:
  - (i) was implanted at Grace General Hospital (Winnipeg), Winnipeg Grace General Hospital (Winnipeg), Health Sciences Centre (Winnipeg), Santa Cabrini Hospital (Montreal), and Hospital Maisonneuve-Rosemont (Montreal), and did not opt out of the **Ontario Proceedings** on or before August 8, 2019, for all class members except for those who were residents of the province of Quebec, and on or before December 5, 2019 for Class members who were residents of the province of Quebec; or
  - (ii) was implanted at any other hospital in Canada and did not opt out of the **Ontario Proceeding** on or before May 31, 2017, unless their opt out form was validated by Order of the Ontario Superior Court of Justice dated March 8, 2019;

and shall include all other persons who by reason of a personal relationship to a person described above have standing pursuant to section 61(1) of the *Family Law Act* (Ontario) or equivalent legislation in other provinces and territories, and has not opted out of the Ontario Proceeding on or before May 31, 2017.

This definition excludes any **Derivative Claimants** related to a person who opted out in accordance with the deadlines set out in sub paragraphs (i) and (ii) above.

- (l) **Complication** means any of the conditions listed in **Schedule H** to this **Settlement Agreement** associated with or related to a **Revision Surgery**.
- (m) **Courts** means the Ontario Superior Court and Superior Court of Quebec.
- (n) **Defendants' Counsel** means Davies Ward Phillips & Vineberg LLP.
- (o) **Derivative Claimant(s)** means all residents of Canada asserting the right to sue the Defendants independently or derivatively by reason of their familial relationship to a **Class Member** who has undergone a **Single Revision** or **Bilateral Revision**, or is **Medically Precluded** from undergoing a **Revision Surgery**, and shall mean for the purposes of this **Settlement Agreement** a **Principal Caregiver** or a **Minor Child** of a **Class Member**.
- (p) **Disbursements** means funds paid out by **Class Counsel** for expenses incurred in connection with the **Proceedings**.

- (q) ***Discretionary Fund*** means the funds in the amount of \$750,000 to be paid by the **Defendants** to the **Claims Administrator**, and distributed in accordance with the **Special Claims Protocol** referred to in section 4.2.11 below.
- (r) ***Effective Date*** means the later of the date on which a **Final Order** has been received from (i) the **Ontario Court** approving this **Settlement Agreement**, or (ii) the **Quebec Court** recognising the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and discontinuing the **Quebec Proceeding**.
- (s) ***Extraordinary Expense Pool*** means the amount of \$50,000 established by this **Settlement Agreement** to compensate **Class Members** who demonstrate to the **Claims Administrator** that they have incurred extraordinary expenses in accordance with the terms hereof.
- (t) ***Final Order(s)*** means the final orders entered by the **Ontario Court** in respect of the approval of this **Settlement Agreement** and from the **Quebec Court** recognising the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and discontinuing the **Quebec Proceeding**, once the time to appeal such orders has expired without any appeal being taken, or if an appeal from a **Final Order** is taken, once there has been affirmation of the approval of this **Settlement Agreement** and of the **Quebec Court's** order recognising said affirmation upon a final disposition of all appeals.

- (u) **Index Surgery** means the surgical implantation of a **Biomet Device** in a surgery on a hip occurring in Canada.
- (v) **Initial Deposit** means the sum of \$5 million (USD) paid by the **Defendants** into the Account, which includes \$750,000 for the **Discretionary Fund**.
- (w) **In Vivo Time** means the total amount of time during which the **Biomet Device** was implanted, starting from the date of the implantation and ending on the date of **Revision Surgery**.
- (x) **Label** means the peel-and-stick label from a **Biomet Device** that is ordinarily affixed to the medical record or operative report from an **Index Surgery**.
- (y) **M2a 38** means the medical device system and components known in Canada as the M2a Acetabular System or M2a 38, including the components and parts that were licensed in Canada under Medical Device Licence #62943.
- (z) **M2a Magnum** means the medical device system and components known in Canada as the M2a Magnum System (which may include a Magnum femoral head or a Selex femoral head), including the components and parts that were licensed in Canada under Medical Device Licence #66287 or #69328.
- (aa) **M2a Recap** means the medical device system and components known in Canada as the ReCap Resurfacing Hip System, M2a Recap or

ReCapFemoral Resurfacing System, including the components and parts that were licensed in Canada under Medical Device Licence #63799 or #72082.

- (bb) **Medically Precluded** means a **Class Member** for whom a **Revision Surgery** was determined to be necessary within 12 years and 1 day of the **Index Surgery**, but who was unable to undergo a **Revision Surgery** due to the existence of a medical condition, as demonstrated pursuant to section 4.4 below.
- (cc) **Minor Child** and **Minor Children** means the child or children of a **Class Member** who has undergone a **Single Revision, Bilateral Revision**, or is **Medically Precluded** from undergoing **Revision Surgery**, who was or are less than eighteen years of age when the **Class Member** underwent a **Single Revision, Bilateral Revision**, or was first **Medically Precluded** from undergoing **Revision Surgery**.
- (dd) **Notice and Administration Costs** means fees, costs, applicable taxes, and any other amounts incurred for the approval, implementation and operation of this **Settlement Agreement**, including the costs of notices, the costs of translation of the notice, and the fees and expenses of the **Claims Administrator**, but excluding all costs, fees and expenses to administer and distribute the Discretionary Fund, **Class Counsel Fees** and **Disbursements**, and excluding any costs and disbursements associated with the **Reconsideration Officer** (which shall instead be paid in accordance with **Schedule I**).

- (ee) **Notice of Approval Hearing** means the form of notice agreed to by the **Parties**, as set forth in **Schedule B**, or such other form as may be approved by the **Courts**, that informs the **Class** of the date and location of an **Approval Hearing**, the principal elements of this **Settlement Agreement**, and the process by which **Class Members** may object to the **Settlement Agreement**.
- (ff) **Notice of Settlement Approval** means the form of notice, agreed to by the **Parties** and set forth in **Schedule F** and **Schedule F.1** or such other form as may be approved by the **Ontario Court**, that informs the **Class** of the approval of this **Settlement Agreement**.
- (gg) **Ontario Court** means the Ontario Superior Court of Justice.
- (hh) **Ontario Proceeding** means the action commenced by the **Plaintiff** by Notice of Action dated October 4, 2013 and Statement of Claim dated November 4, 2013 in the Ontario Superior Court of Justice bearing Court File No. CV-13-490112-CP.
- (ii) **Parties** means the **Defendants**, **Ontario Plaintiff**, and **Quebec Plaintiff**.
- (jj) **Plaintiffs** means the **Ontario Plaintiff** and **Quebec Plaintiffs**.
- (kk) **Principal Caregiver** means an adult spouse, child, grandchild, parent, grandparent, brother or sister of a **Class Member**, who provided care for the **Class Member** who underwent a **Single Revision**, **Bilateral Revision**, or is **Medically Precluded** from undergoing a **Revision Surgery**.

- (ll) **Proceedings** means the **Ontario Proceeding** and **Quebec Proceeding**.
- (mm) **Product Identification** (also known as the “catalogue number”) means the number on the peel-and-stick **Label** from a Biomet Device that is affixed to the medical record from a claimant’s implant surgery (sometimes called the implant operative report).
- (nn) **Provincial Health Insurers** means all provincial and territorial Ministries of Health or their equivalents and/or provincial and territorial plans funding medical services throughout Canada pursuant to applicable legislation as listed in **Schedule K**, and **Provincial Health Insurer Release** means a release in the form attached hereto as **Schedule L**.
- (oo) **Public Litigation Funder** means the Ontario Class Proceedings Fund and/or the Quebec Fonds d’Aide aux Actions Collectives, as applicable. For a claimant resident in Quebec at the time of their claim, the applicable **Public Litigation Funder** is the Fonds d’Aide aux Actions Collectives. For a claimant resident outside of Quebec at the time of their claim, the applicable **Public Litigation Funder** is the Class Proceedings Fund.
- (pp) **Qualified Revision Surgery Claimant** means a claimant who has had a **Revision Surgery** or who has a **Scheduled Revision Surgery**, and who satisfies each of the following criteria:
  - (i) They were implanted with a **Biomet Device** in Canada;

- (ii) They have had or will have a **Revision Surgery** that did not or will not take place within 180 days after the **Index Surgery**; and
  - (iii) Their **Revision Surgery** was not or is not necessitated by infection or trauma, unless medical records establish that the claimant would likely have required the revision regardless of the infection or trauma.
- (qq) **Quebec Court** means the Superior Court of Quebec.
- (rr) **Quebec Proceeding** means the action commenced by the **Quebec Plaintiffs** in the Superior Court of Quebec, Action No. 500-06-000745-154.
- (ss) **Reconsideration Officer** means the independent person to be agreed on by **Class Counsel** and **Defendants Counsel**, or appointed by the **Ontario Court** at its discretion (or absent agreement by **Counsel**), and thereafter retained by the **Claims Administrator**, to oversee the settlement administration process and make final and nonappealable decisions with respect to the adjudication of any claim decisions of the **Claims Administrator**.
- (tt) **Released Claims** means any and all manner of claims, demands, actions, suits, civil law and statutory liabilities, and causes of action relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been alleged relating in any way to the subject matter of the **Proceedings**, from the beginning of time to the date hereof, whether indirect or direct, class, individual, or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature



whatsoever, including interest, costs, expenses, penalties and lawyers' fees that the **Releasors**, or any one of them, whether directly or indirectly, representatively, derivatively, or in any other capacity, had, have or may have against the **Releasees** from the beginning of time to the date hereof relating in any way to any conduct alleged or which could have been alleged in the subject matter of the **Proceedings** from the beginning of time to the date hereof, whether known or unknown, including any claims, demands, actions, suits, civil law or statutory liabilities, or causes of actions which any of the **Releasors** may assert against any person or entity that could or does result in a claim over against the **Releasees** or any of them for contribution, indemnity in common law, or equity, or under the provisions of the *Negligence Act* or equivalent legislation relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been alleged relating in any way to the subject matter of the **Proceedings**, from the beginning of time to the date hereof, in all cases only where related in any way to a **Biomet Device** or a component thereof, including but not limited to the use, purchase, implantation, or revision of a **Biomet Device** or a component thereof.

- (uu) **Releasees** means, jointly and severally, the **Defendants** and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, and representatives, and the successors, heirs, executors, administrators, trustees and assigns of each of the foregoing, as well as any other person, corporation or entity, including without limitation any health care

professionals, health care providers, and hospitals or other health care facilities, against whom a **Releasor** has asserted or could have asserted a **Released Claim**.

- (vv) **Releasors** means, jointly and severally, the **Plaintiffs** and **Class Members**, including all **Derivative Claimants**, and their respective successors, heirs, executors, administrators, trustees and assigns, and their affiliated, predecessor, successor and related companies or entities, as applicable.
- (ww) **Revision Surgery** means an operation to remove a **Biomet Device** or a component thereof.
- (xx) **Scheduled Revision Surgery** means that, as of the **Claims Deadline**, the claimant has been: (i) scheduled to receive a **Revision Surgery** but the **Revision Surgery** has not occurred as of 270 days after the date on which the **Notice of Settlement Approval** was disseminated; or (ii) indicated by a physician as requiring a **Revision Surgery** and the **Revision Surgery** has been planned, even if the date and time has not yet been finalized, in either case evidenced by the claimant submitting to the **Claims Administrator** by the **Claims Deadline**:
  - (i) Documentation from a hospital or physician confirming the claimant has been scheduled to receive a **Revision Surgery** but the **Revision Surgery** has not occurred as of 270 days after the date on which the **Notice of Settlement Approval** was disseminated; or

- (ii) a properly executed Physician's Declaration in the form of **Schedule D** attached to this **Settlement Agreement**, which confirms that: (i) the **Revision Surgery** has been scheduled as of the **Claims Deadline**; or (ii) the claimant has been indicated by a physician as requiring a **Revision Surgery** as of the **Claims Deadline** and the **Revision Surgery** has been planned (even if the date and time have not yet been finalized), in either case including the date on which the need for a **Revision Surgery** was indicated.
  
- (yy) **Settlement Agreement** means this Agreement, including the Recitals and Schedules thereto.
  
- (zz) **Settlement Amount** means the aggregate amount payable by the **Defendants** pursuant to Section 4 of this **Settlement Agreement**.
  
- (aaa) **Single Revision** means either that (i) a **Class Member** had a **Biomet Device** implanted into one hip that and subsequently underwent a **Revision Surgery** to remove that **Biomet Device** from that hip, or (ii) a **Class Member** had **Biomet Devices** implanted into each the left and right hip and subsequently underwent a **Revision Surgery** to remove only one of the implanted **Biomet Devices** from one of the hips.
  
- (bbb) **Special Claims Protocol** shall mean the protocol applicable to claims against the **Discretionary Fund**, and shall be determined by **Class Counsel** and approved by the **Ontario Court**.
  
- (ccc) **Submission Deadline** shall mean:

- (i) For a **Qualified Revision Surgery Claimant** who has had a **Revision Surgery** as of 90 days before the **Claims Deadline**, the **Submission Deadline** shall be the **Claims Deadline**.
- (ii) For a **Class Member** who has not yet undergone a **Revision Surgery** as of the **Claims Deadline** but who, as of the **Claims Deadline**, has a **Scheduled Revision Surgery**, the **Submission Deadline** shall be 90 days after the **Revision Surgery**.
- (iii) For a **Qualified Revision Surgery Claimant** who has undergone a **Revision Surgery** within 90 days of the **Claims Deadline**, the **Submission Deadline** shall be 90 days after the **Revision Surgery**.
- (iv) For an **Unrevised** claimant who is **Medically Precluded**, the **Submission Deadline** shall be the **Claims Deadline**.
- (v) For an **Unrevised** claimant who is not **Medically Precluded**, the **Submission Deadline** shall be the **Claims Deadline**.

The **Submission Deadline** is the deadline by which a **Class Member** claiming under this **Agreement** must submit the requisite documents in support of their claim, as set out in section 4.4 below.

- (ddd) **Subsequent Deposit** means further amounts paid by the **Defendants** into the **Account** after the **Initial Deposit**.

- (eee) **Unrevised** means that a **Class Member** has not undergone a **Revision Surgery** and does not have a **Scheduled Revision Surgery** as of the **Claims Deadline**.

## **SECTION 2 – CALCULATION OF DEADLINES AND CONDITION PRECEDENT**

1. If any deadline identified in this **Settlement Agreement** falls on a weekend or statutory holiday in Ontario or Quebec, the deadline shall occur on the following weekday that is not a statutory holiday in Ontario or Quebec.
2. Subject to section 8.1 below, this **Settlement Agreement** shall be null and void and of no force or effect unless the **Ontario Court** approves this **Settlement Agreement**, the **Quebec Court** recognises the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and discontinues the **Quebec Proceeding**, and the orders so made have become **Final Orders** and the **Effective Date** has occurred.

## **SECTION 3 – SETTLEMENT APPROVAL**

### **3.1. Best Efforts**

1. The Parties shall use their best efforts to effect this settlement and to secure the prompt, complete and final dismissal with prejudice of the **Ontario Proceeding** and the discontinuance of the **Quebec Proceeding** against the **Defendants**.

### **3.2. Motion Approving Notice**

1. At a time mutually agreed to by the **Parties** after the **Settlement Agreement** is executed, the **Ontario Plaintiff** shall bring a motion before the **Ontario Court** for an order substantially in the form attached at **Schedule B** approving the Notice of the Approval Hearing.

2. After the Notice of the Approval Hearing has been approved by **Ontario Court**, the **Claims Administrator** and **Class Counsel**, as applicable, shall disseminate the Notice of Approval Hearing to the **Class** set out in **Schedule B**, or as otherwise amended on consent of the parties or as ordered by the Court. Pursuant to the **Defendants'** obligations in section 4.2.12 of the **Settlement Agreement**, the **Defendants** will pay the cost of dissemination of notice up to \$150,000. If **Class Counsel** determines that expenditures on notice above \$150,000 are in the best interests of the **Class**, such amounts may be drawn from the **Discretionary Fund**.

### **3.3. Motion for Approval**

1. After the **Ontario Court** issues an order substantially in the form attached as **Schedule B**, or as otherwise amended on consent of the parties or as ordered by the Court, the **Ontario Plaintiff** shall file a motion in the **Ontario Court** for an order approving this **Settlement Agreement**. The order shall be substantially in the form attached at **Schedule C**, or as otherwise amended on consent of the parties or as ordered by the Court.

2. After the **Ontario Court** has issued an order approving this **Settlement Agreement** in the form attached at **Schedule C** (or as otherwise amended on consent of the parties or as ordered by the Court), the **Quebec Plaintiff** shall file a motion in the **Quebec Court** for an order recognising the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and discontinuing the **Quebec Proceeding** without costs.

### 3.4. Effect of Court's Approval Order

1. Subject to the **Ontario Court's** approval, the order approving this **Settlement Agreement** shall:

- (a) approve this **Settlement Agreement** and order the **Parties** and all **Class Members** who have not validly opted out to comply with it;
- (b) declare that this **Settlement Agreement** constitutes a "transaction" pursuant to Article 2631 of the Civil Code of Quebec, which is binding on the **Parties** and all **Class Members**, including those resident in Quebec;
- (c) declare that this **Settlement Agreement** is reasonable, fair, adequate and in the best interests of the **Class**;
- (d) order publication of the Notice of Settlement Approval as well as the form, contents and method of its dissemination;
- (e) confirm the appointment of the **Claims Administrator**;
- (f) enter such other orders as are needed to effect the terms of this **Settlement Agreement**; and
- (g) enjoin all **Class Members** (other than those who have validly opted out) entitled to benefits hereunder from asserting or continuing to prosecute claims against **Defendants** or any other **Releasee**, as well as any **Released Claim** that such **Class Member** has, had or may have in the future.

### **3.5. Publication of Notice of Settlement Approval**

1. After the **Settlement Agreement** has been approved by the **Ontario Court**, and after the **Quebec Proceeding** as been discontinued by the **Quebec Court**, the **Claims Administrator** and **Class Counsel**, as applicable, shall disseminate the Notice of Settlement Approval to the **Class** set out in **Schedule F** and **Schedule F.1**, or as otherwise amended on consent of the parties or as ordered by the Court. Pursuant to the **Defendants'** obligations in section 4.2.12 of the **Settlement Agreement**, the **Defendants** will pay the cost of dissemination of notice up to \$150,000. If **Class Counsel** determines that expenditures on notice above \$150,000 are in the best interests of the **Class**, such amounts may be drawn from the **Discretionary Fund**.

## **SECTION 4 – SETTLEMENT BENEFITS**

### **4.1. Applicable Currency**

1. Except where stated expressly to the contrary, all monetary amounts provided herein, including all amounts due to **Approved Claimants**, are stated and payable in Canadian dollars.

2. The **Parties** agree that the **Defendants** shall make all payments to the **Claims Administrator** in U.S. dollars by wire transfer, and the **Claims Administrator** shall promptly convert the payment funds to Canadian dollars no later than one business day after receipt of the funds from **Defendants**.

### **4.2. Payment of Settlement Amount**

1. An individual is eligible for recovery under this **Settlement Agreement** only if:



- (a) they are a **Class Member**;
- (b) they are a **Qualified Revision Surgery Claimant, Medically Precluded, Unrevised**, or allocated amounts from the **Discretionary Fund** pursuant to section 4.2.9 below;
- (c) in the case of a **Medically Precluded Class Member**, the claim is supported by either (i) an affidavit from a qualified physician in Canada detailing the medical condition that precludes the claimant from receiving a **Revision Surgery**, or (ii) medical records or other medical reports that clearly indicate that the claimant is **Medically Precluded** from undergoing **Revision Surgery**; and
- (d) the claimant complies with the following before the applicable **Submission Deadline**:
  - (i) The claimant must submit to the **Claims Administrator Product Identification** that confirms the reference number (sometimes referred to as “catalogue number”) and lot number of the Biomet Device that was implanted, where the reference/catalogue number is as follows (or is a number which the **Parties** agree is a qualifying reference/catalogue number):

- (1) The claimant must submit a **Product Identification** for both a femoral head and a one-piece acetabular cup.

The following reference/catalogue numbers correspond to

**femoral heads** used with the **M2a Magnum**:

157442	S031138
157444	S031140
157446	S061138
157448	S061140
157450	S121138
157452	S121140
157454	S331138
157456	S331140
157458	S661138
157460	S661140
S001138	S991138
S001140	S991140

The following reference/catalogue numbers correspond to the

**acetabular cups** used with the **M2a Magnum**:

US157844	US257844
US157846	US257846
US157848	US257848
US157850	US257850
US157852	US257852
US157854	US257854
US157856	US257856
US157858	US257858
US157860	US257860
US157862	US257862
US157864	US257864
US157866	US257866

The following reference/catalogue numbers correspond to the  
**femoral heads or caps** used with the **M2a Recap**:

157238	157256	157341	US 157343	157145	US 157140
157239	157257	157342	US 157344	157146	US 157141
157240	157258	157343	US 157345	157147	US 157142
157241	157259	157344	US 157346	157148	US 157143
157242	157260	157345	US 157347	157149	US 157144
157243	US 157239	157346	US 157348	157150	US 157145
157244	US 157241	157347	US 157349	157151	US 157146
157245	US 157243	157348	US 157350	157152	US 157147
157246	US 157245	157349	US 157351	157153	US 157148
157247	US 157247	157350	US 157352	157154	US 157149
157248	US 157249	157351	US 157353	157155	US 157150
157249	US 157251	157352	157138	157156	US 157151
157250	US 157253	157353	157139	157157	US 157153
157251	US 157255	US 157338	157140	157158	US 157154
157252	US 157257	US 157339	157141	157159	US 157155
157253	157338	US 157340	157142	157160	US 157156
157254	157339	US 157341	157143	US 157138	US 157157
157255	157340	US 157342	157144	US 157139	

The following reference/catalogue numbers correspond to the  
**acetabular cups** used with the **M2a Recap**:

157844	157944	130846	130846 HA	157438
157846	157946	130848	130848 HA	157440
157848	157948	130850	130850 HA	157442
157850	157950	130852	130852 HA	157444
157852	157952	130854	130854 HA	157446
157854	157954	130856	130856 HA	157448
157856	157956	130858	130858 HA	157450
157858	157958	130860	130860 HA	157452
157860	157960	130862	130862 HA	157454
157862	157962	130864	130864 HA	157456
157864	157964	130866	130866 HA	157458
157866	157966	130868	130868 HA	157460

The following reference/catalogue numbers correspond to the **femoral heads** used with the **M2a 38**:

11-173660
11-173661
11-173662
11-173663
11-173664
11-173665
11-173666

The following reference/catalogue numbers correspond to **acetabular cups** used with the **M2a 38**:

15-105048	15-106048	RD118848
15-105050	15-106050	RD118850
15-105052	15-106052	RD118852
15-105054	15-106054	RD118854
15-105056	15-106056	RD118856
15-105058	15-106058	RD118858
15-105060	15-106060	RD118860
15-105062	15-106062	RD118862
15-105064	15-106064	RD118864
15-105066	15-106066	RD118868
15-105068	15-106068	RD118870
15-105070	15-106070	

- (2) Where a **Product Identification** submitted by a claimant specifies a reference/catalogue number which is listed above, except that it includes or excludes an alphabetical prefix (e.g. "US"), the **Claims Administrator** shall deem the claimant to have submitted qualifying **Product Identification** for that component.

- (ii) If the **Parties** are unable to agree that a number which is not listed under section 4.1.1(d)(i) is a qualifying reference/catalogue number, the **Plaintiffs** or the **Defendants** may bring a motion to the **Ontario Court** to request a direction that the number be considered a qualifying reference/catalogue number.
- (iii) Subject to section 4.2.1(d)(iv), a claimant shall submit **Product Identification** in the form of the **Label** from the **Biomet Device** that is ordinarily affixed to the medical record or operative report from the **Index Surgery**.
- (iv) If, and only if, a claimant is unable to obtain the **Label** because the **Index Surgery** hospital could not locate it, then the claimant may provide the following to prove that they received a **Biomet Device**:
  - (1) If the **Biomet Device** has been explanted and still exists, the claimant must provide (1) a color photograph of the **Biomet Device** that shows the identification numbers on the edge of the **Biomet Device**, and (2) a Physician Declaration confirming the implantation with a **Biomet Device** and the date of the implantation; or
  - (2) If the claimant is unable to obtain a photograph because the **Biomet Device** is not within the claimant's possession, custody, or control, the claimant must provide (1) a copy of the **Index Surgery** operative report from the hospital where

the claimant was implanted, which confirms that the claimant was implanted with a Biomet Device, and (2) a Physician Declaration confirming that the claimant was implanted with a **Biomet Device** and the date of implantation.

2. With the exception of: (i) **Provincial Health Insurers**, which are entitled to compensation under this **Settlement Agreement** as provided in section 4.2.9; and (ii) **Public Litigation Funders**, which are entitled to a levy on awards paid to Class Members as set out below, only **Class Members** who have submitted all the necessary information to the **Claims Administrator** by the applicable **Submission Deadline** shall be entitled to receive compensation under this **Settlement Agreement**. For all claimants, “necessary information” includes a completed Claimant Declaration attached at **Schedule A** and the information described in sections 4.2 and 4.4.

3. As described below and in the Claimant Declaration, certain claimants will also be required to submit a properly executed Physician’s Declaration in the form of **Schedule D**.

4. The amount of recovery for any **Class Member** otherwise eligible for recovery under sections 4.2.1 and 4.2.2 above shall be established as of the later of the date the Claim Declaration and any other documentation required by the **Claims Administrator** pursuant to the terms of this **Settlement Agreement** is submitted by the **Class Member** to the **Claims Administrator**.

5. The **Defendants** agree to pay amounts in accordance with this **Settlement Agreement**, in full satisfaction of all of the **Released Claims** against the **Releasees**,

contingent on dismissal of the **Claims** of the **Class Members** in the **Ontario Proceeding** and discontinuance of the **Quebec Proceeding**.

6. The **Class Members** shall be compensated as follows, less their (i) respective share of any **Class Counsel Fees** that the **Court** may award to **Class Counsel** in accordance with section 9.1.1(b) of the **Settlement Agreement** (and any individual legal fees as agreed between a **Class Member** and counsel individually retained by the **Class Member**), and (ii) the levy payable to the applicable **Public Litigation Funder**:

- (a) **Class Members** who are **Unrevised** and not **Medically Precluded** from undergoing a **Revision Surgery** each receive \$500;
- (b) **Class Members** who are **Unrevised** and are **Medically Precluded** from undergoing a **Revision Surgery** each receive \$45,000;
- (c) Subject to paragraph (f), **Qualified Revision Surgery Claimants** who have undergone a **Single Revision** each receive \$75,000;
- (d) Subject to paragraph (f), **Qualified Revision Surgery Claimants** who have undergone **Bilateral Revision** each receive \$90,000;
- (e) Subject to paragraph (f), **Qualified Revision Surgery Claimants** who have: (i) undergone a **Single Revision** and who have experienced one or more **Complications** will receive additional funds up to \$40,000; and (ii) undergone a **Bilateral Revision** and who have experienced one or more **Complications** will receive additional funds of up to \$50,000. The amount

to which such a **Claimant** may be entitled for a **Complication** is set out in **Schedule H**.

- (f) **Class Members** who underwent a **Revision Surgery** for a purpose other than explanting a **Biomet Device** or component thereof are not entitled to compensation provided in paragraphs (a) to (e) above.
  
- (g) **Class Members** who underwent a **Single Revision** or a **Bilateral Revision**, or who are **Medically Precluded** from undergoing a **Revision Surgery**, will be reimbursed for expenses they incurred in connection with the **Biomet Device**, upon submission of all documentation required by **Schedule A** and **Schedule E** of this **Settlement Agreement** and approval from reimbursement from the **Claims Administrator**, as follows:
  - (i) **Class Members** who do not have receipts to support their claimed expenses will each receive up to \$750;
  
  - (ii) **Class Members** who have receipts documenting their claimed expenses will each receive the amount of those documented expenses, up to a cap of \$2,500;
  
  - (iii) **Class Members** who believe they have incurred extraordinary expenses in connection with a **Biomet Device** may apply for reimbursement from the **Extraordinary Expense Pool**. **Class Counsel Fees** and a levy to the applicable **Public Litigation Funder** will be deducted from any **Extraordinary Expense Pool** award, in accordance with section 9.1.1(b). If the total amount of approved



claims payable from the **Extraordinary Expense Pool** exceeds \$50,000 each reimbursable claim will be reduced on a *pro rata* basis. If the total amount of approved **Disbursements** from the **Extraordinary Expense Pool** is less than \$50,000 the **Claims Administrator** shall refund the difference to the **Defendants**.

- (h) **Derivative Claimants** shall be compensated as follows:
- (i) The **Principal Caregiver** of a **Qualified Revision Surgery Claimant** or **Medically Precluded Class Member** is entitled to \$4,500. If there is more than one **Principal Caregiver**, all **Principal Caregivers** shall share this amount equally. **Principal Caregivers** of **Unrevised Class Members** are not entitled to any amounts under this **Settlement Agreement**.
  - (ii) All **Minor Children** of any particular **Qualified Revision Surgery Claimant** or **Medically Precluded Class Member** shall be entitled to, in total amongst them, \$4,500. **Minor Children** of **Unrevised Class Members** are not entitled to any amounts under this **Settlement Agreement**.
  - (iii) For clarity, **Derivative Claimants** who are related to a person who opted out of the **Proceedings** in accordance with the deadlines set out in section 1(l) above are not entitled to recover under this **Settlement Agreement**.

- (i) **Class Members** may be entitled to compensation pursuant to the terms of the **Special Claims Protocol** applicable to the **Discretionary Fund**.

7. **Qualified Revision Surgery Claimants** and **Medically Precluded Class Members** are in all cases subject to the following reductions from the amounts payable pursuant to paragraph 4.2.6 above:

<b>In Vivo Time</b>	<b>Cumulative Reduction of Total Amount</b>
7 years, 1 day	5%
8 years, 1 day	10%
9 years, 1 day	20%
10 years, 1 day	30%
11 years, 1 day	40%
12 years and 1 day and beyond	No compensation subject to section 4.2.11 below concerning the <b>Discretionary Fund</b> .

8. For **Qualified Revision Surgery Claimants** whose **Revision Surgeries** occurred more than 10 years and 1 day but less than 12 years following an **Index Surgery** at which a **Biomet Device** was implanted, the claimant is not entitled to compensation unless the claimant submits medical records (such as office visit or examination records, operative reports, or pathology reports) or a **Physician's Declaration** that establishes that one or more of the following was found intra-operatively to the **Revision Surgery**:

- (a) Adverse local tissue reaction (“ALTR”) or adverse reaction to metal debris (“ARMD”), including:

- (i) Necrotic tissue or muscle necrosis;
  - (ii) Pseudotumor (whether solid, mass-like, or cystic);
  - (iii) Aseptic lymphocyte dominated vasculitis-associated lesion (“ALVAL”);
  - (iv) Abductor muscle deterioration or damage; or
  - (v) Osteolysis.
- (b) Both (i) and (ii):
- (i) One or more of:
    - (1) Trunionosis; or
    - (2) Histiocytic reaction; AND
  - (ii) Pre-revision blood cobalt or chromium levels, either of which exceed the following thresholds:<sup>1</sup>

	<b>Serum (µg/L)</b>	<b>Serum (nmol/L)</b>	<b>Whole Blood (µg/L)</b>	<b>Whole Blood (nmol/L)</b>
Cobalt	4.1 µg/L	69.5 nmol/L	3.948 µg/L	67 nmol/L
Chromium	4.2 µg/L	81 nmol/L	2.576 µg/L	49.5 nmol/L

- (c) Pre-revision blood cobalt or chromium levels, either of which exceed the following thresholds:<sup>2</sup>

	<b>Serum (µg/L)</b>	<b>Serum (nmol/L)</b>	<b>Whole Blood (µg/L)</b>	<b>Whole Blood (nmol/L)</b>
Cobalt	10 µg/L	169.5 nmol/L	9.14 µg/L	154.9 nmol/L
Chromium	10 µg/L	192.3 nmol/L	5.94 µg/L	114.2 nmol/L

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<sup>1</sup> If the documentation submitted with the claim does not specify whether the cobalt or chromium level was measured in serum or in whole blood, the threshold for serum will apply.

<sup>2</sup> If the documentation submitted with the claim does not specify whether the cobalt or chromium level was measured in serum or in whole blood, the threshold for serum will apply.

9. Each **Provincial Health Insurer** will receive \$15,000 for each **Revision Surgery** (i) that takes place before 12 years and 1 day following the **Index Surgery**, (ii) that takes place within the territorial jurisdiction of the **Provincial Health Insurer**, and (iii) for which a **Class Member** has submitted a proper and approved claim for recovery under this **Settlement Agreement**.

10. In addition to any other amounts to which he may be entitled under this **Settlement Agreement**, and subject to the approval of the **Ontario Court**, the **Ontario Plaintiff** shall receive a \$7,500 honorarium that the **Claims Administrator** shall pay from the **Account** within 60 days following the **Effective Date**. No other **Class Member** or **Derivative Claimant** is entitled to any honorarium under this **Settlement Agreement**.

11. It shall be the responsibility of the **Claims Administrator** to award amounts to **Class Members** and **Provincial Health Insurers** (if applicable) from the **Discretionary Fund**. The **Special Claims Protocol** applicable to claims against the **Discretionary Fund** shall be determined by **Class Counsel** and approved by the **Ontario Court**. The **Public Litigation Funders** shall be entitled to levies on the **Discretionary Fund** in accordance with, as applicable, *Class Proceedings*, O. Reg. 771/92; *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, f-3.2.0.1.1, r. 2; and the *Code of Civil Procedure*, CQLR c C-25.01.

12. All **Notice and Administration Costs** shall be paid by the **Defendants**. **Notice Costs** shall not exceed a maximum of \$150,000. Notwithstanding the foregoing, if **Class Counsel** determine that additional expenditures on notice are in the best interests of the **Class**, such expenditures may be drawn from the **Discretionary Fund**.

13. Within 30 days of the **Effective Date**, the **Defendants** shall pay the **Initial Deposit** into the **Account**.

14. The **Claims Administrator** shall pay **Class Counsel** for **Class Counsel Fees** and **Disbursements** owing under section 9.1.1 of the **Settlement Agreement** from the **Account** and the levy payable to the applicable **Public Litigation Funder**. The **Claims Administrator** may also draw upon the **Account** to pay the **Notice and Administration Costs**.

15. The **Claims Administrator** shall make determinations as to the entitlement of **Approved Claimants** prescribed by sections 4.2.6 to 4.2.10 of the **Settlement Agreement**. It shall pay those entitlements from the **Account** to the **Approved Claimants**, or their legal representative or counsel, less the **Class Counsel Fees** prescribed by section 9.1.1(b) of this **Settlement Agreement** and less the levy payable to the applicable **Public Litigation Funder**.

16. At the same time the **Claims Administrator** pays each **Approved Claimant**, the **Claims Administrator** shall also remit from the **Account** to **Class Counsel** the **Class Counsel Fees**, if any, prescribed by section 9.1.1(b) of this **Settlement Agreement**, as well as the levy payable to the applicable **Public Litigation Funder**.

17. If the amount in the **Account** falls below \$500,000 (CDN), the **Claims Administrator** shall notify the **Defendants**. **Defendants** shall make a **Subsequent Deposit** of \$1 million (USD) into the **Account** within 30 business days following receipt of such notice.

18. Once the **Claims Administrator** determines that all amounts owing under this **Settlement Agreement** have been paid, the **Claims Administrator** shall notify the **Defendants** and **Class Counsel**. If there are residual funds in the **Account** at the time of this notification, **Defendants' Counsel** and **Class Counsel** shall confer within 10 business days and, if Class Counsel and Defendants' Counsel agree that all amounts owing under the Settlement Agreement have been paid, within 30 days of such agreement, such funds and any interest accrued thereon shall be immediately returned to the **Defendants** by the **Claims Administrator**. If there is any disagreement about the operation of this section, the **Ontario Plaintiff** or the **Defendants** may request that the disagreement be summarily adjudicated by the **Ontario Court**.

19. The **Claims Administrator** will maintain the funds received pursuant to this **Settlement Agreement** in the **Account**. All interest accrued will be added to the funds used to compensate **Approved Claimants**.

20. The **Claims Administrator** shall maintain the **Account** and shall not pay out funds from the **Account** in a manner inconsistent with the provisions of this **Settlement Agreement** except by **Court** order made on notice to, or on the consent of **Defendants' Counsel** and **Class Counsel**.

#### **4.3. Appointment and Role of Claims Administrator**

1. The **Parties** will agree on a **Claims Administrator** to be appointed by the **Ontario Court** for the purpose of administering this **Settlement Agreement**.

2. The **Claims Administrator** shall make a determination as to whether each **Class Member** who seeks payment under the **Settlement Agreement** is an **Approved**

**Claimant.** If such person is an **Approved Claimant**, the **Claims Administrator** shall determine the amount of funds due to the **Approved Claimant** under the **Settlement Agreement**. The **Claims Administrator** shall be subject to removal by the **Ontario Court** for cause.

3. The **Claims Administrator** shall sign and adhere to a confidentiality statement, in a form satisfactory to the **Parties**, by which it agrees to keep confidential any information concerning **Class Members** or **Defendants**. Further, the **Claims Administrator** shall institute and maintain procedures to ensure that the identity of all **Class Members** and all information regarding any claims and submissions will be kept strictly confidential.

4. The **Claims Administrator** shall administer all monies payable under the **Settlement Agreement**, except as specifically provided for herein, and process all claims of **Class Members** and **Provincial Health Insurers** in accordance with the terms of this **Settlement Agreement**.

5. The funds payable under the **Settlement Agreement** that **Defendants** are required to submit to the **Claims Administrator** under the **Settlement Agreement** shall be held in an **Account**. The **Claims Administrator** shall distribute payments in accordance with the terms of the **Settlement Agreement**. Funds submitted to the **Claims Administrator** shall be maintained and invested in a manner consistent with that of a prudent and reasonable administrator.

6. The **Defendants** shall retain a reversionary interest in all funds provided to the **Claims Administrator** and all interest earned on such funds, other than the **Discretionary Fund** and **Notice and Administration Costs**. If any funds remain in the

**Claims Administrator's** trust account by the date of the agreement of **Class Counsel** and **Defendant's** Counsel described in section 4.2.18, other than those funds comprising the **Discretionary Fund** or in respect of **Notice and Administration Costs**, such funds and any interest accrued thereon shall be immediately returned to **Defendants' Counsel**, less any funds that have been approved for payment to an **Approved Claimant** but have not yet been paid out.

7. The **Claims Administrator** shall offer all of its services to **Class Members** in both English and French.

8. The **Claims Administrator** shall report monthly to **Class Counsel** and **Defendants' Counsel**, in a format substantially the same as that set out in **Schedule J** to this **Settlement Agreement**.

9. The **Claims Administrator** shall retain all records relating to each **Class Member's** claim and any funds disbursed from the **Account**. **Defendants' Counsel**, the **Defendants**, and the **Releasees**, as well as their respective insurers may, at their expense and upon providing seven days' written notice to **Class Counsel**, inspect the **Claims Administrator's** records. Any **Party** inspecting such records under this paragraph shall maintain the confidentiality of the records to the extent necessary to protect the identity and privacy of the **Class Members**. Nothing in this paragraph shall preclude the **Claims Administrator** from making accessible to **Class Counsel** or **Defendants' Counsel** all records relating to each **Class Member's** claim at any time and on an ongoing, rolling basis, nor shall this paragraph preclude **Defendants' Counsel** from agreeing to a process for such sharing with the **Claims Administrator**.



10. All submissions, requests or motions made by the **Claims Administrator** to the **Ontario Court** must be served at least 15 days prior to the proposed date for the hearing of the request or motion.

#### **4.4. Claims and Claimants**

1. In order to recover under this **Settlement Agreement**, **Class Members** must electronically file, hand-deliver, email or mail a properly executed Claimant Declaration in the form attached as **Schedule A** along with a Physician's Declaration (if applicable) in the form attached as **Schedule D** such that they are received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the applicable **Submission Deadline**.

2. For a **Class Member** who has not yet undergone a Revision Surgery as of 270 days after the date on which the Notice of Settlement is disseminated but who, as of that date, has a **Scheduled Revision Surgery**, to recover under this **Settlement Agreement**, the **Class Member** must electronically file, hand-deliver, email or mail, either:

- (a) Documentation from a hospital or physician confirming the claimant has been scheduled to receive a **Revision Surgery** but the **Revision Surgery** has not occurred as of 270 days after the date on which the **Notice of Settlement Approval** was disseminated; or
- (b) a properly executed Physician's Declaration in the form of **Schedule D** attached to this **Settlement Agreement**, which confirms that: (i) the **Revision Surgery** has been scheduled as of the **Claims Deadline**; or (ii) the claimant has been indicated by a physician as requiring a **Revision**

**Surgery** as of the **Claims Deadline** and the **Revision Surgery** has been planned (even if the date and time have not yet been finalized), in either case including the date on which the need for a **Revision Surgery** was indicated.

The Physician's Declaration or hospital documentation referred to in sections 4.4.2(a) and 4.4.2(b) above must be received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the **Claims Deadline**. For clarity, such a **Class Member** must also hand-deliver, email or mail a properly executed Claimant Declaration in the form attached as **Schedule A** along with a Physician's Declaration (if applicable) in the form attached as **Schedule D** such that they are received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the day that is 90 days after their **Scheduled Revision Surgery** takes place (defined above in section 1(yy)(ii) as the **Submission Deadline**).

3. To recover as **Medically Precluded**, the **Class Member** must electronically file, hand-deliver, email or mail, either:

- (a) a Physician's Declaration in the form attached as **Schedule D** that confirms that the claimant is **Medically Precluded** from undergoing **Revision Surgery**; or
- (b) medical records or other medical reports that explicitly state that the claimant is **Medically Precluded** from undergoing **Revision Surgery**.

The Physician's Declaration or medical records or other medical reports referred to in this section 4.4.3 must be received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the **Submission Deadline**.

4. To recover from the **Extraordinary Expense Pool**, a **Class Member** must hand-deliver, email or mail a properly executed **Extraordinary Expense Pool Claim Form** in the form attached as **Schedule E**, and any supporting documentation, such that it is received by the **Claims Administrator** no later than 5:00 p.m. Pacific Time on the applicable **Submission Deadline**.

5. No later than 60 days from the date that the **Claims Administrator** receives a completed version of **Schedule A** to this **Settlement Agreement** from a **Class Member**, the **Claims Administrator** shall notify the **Class Member** and relevant **Provincial Health Insurer** whether they or it will receive payment under this **Settlement Agreement**, or, if the **Class Member** will not receive payment, the **Claims Administrator** shall inform that **Class Member** of the reason(s) why the claim was rejected.

6. If the **Claims Administrator** determines that the materials submitted by a **Class Member** are deficient, the **Claims Administrator** shall notify the **Class Member** in writing of the deficiency and shall provide the **Class Member** with 90 days to rectify the deficiency by delivering further or amended materials. The **Claims Administrator** shall have discretion to extend this deadline by up to 30 days, on request by the **Class Member**, where the **Class Member** demonstrates extenuating circumstances, but only one such extension may be granted to a particular **Class Member**, after which any further extension(s) shall only be granted on consent of the **Defendants**, which consent shall not unreasonably be withheld.

7. The **Claims Administrator** shall determine and certify, in its sole discretion, whether a claim for compensation under **Schedule A** to this **Settlement Agreement** has been properly made. If a **Class Member** or the **Defendants** disagrees with the decision

of the **Claims Administrator**, reconsideration of the decision by the **Reconsideration Officer** may be requested in accordance with the Reconsideration Protocol outlined in **Schedule I**. A **Claims Administrator's** decision will be deemed received ten days after it is mailed or emailed to a **Class Member**.

8. Pursuant to **Schedule I**, all reconsiderations will be decided by the **Reconsideration Officer**. All decisions rendered by the **Reconsideration Officer** shall be final and not subject to further review or appeal.

9. After approving a claim for payment made by a **Class Member**, the **Claims Administrator** shall promptly pay the Approved Claimant or their legal representative or counsel, the applicable **Public Litigation Funder**, and where applicable, the Provincial Health Insurer. However, payment under the **Settlement Agreement** shall not be made to an **Approved Claimant** until the **Approved Claimant** satisfies the requirements of sections 4.2 and 4.4 and any other conditions in this **Settlement Agreement**.

10. **Class Members** and **Class Counsel** agree to secure all authorizations from **Provincial Health Insurers** necessary to facilitate the fulfillment of the terms of the **Settlement Agreement**.

11. Within 30 days after receiving notice that they will receive payment under the **Settlement Agreement**, a **Class Member** is required to make best efforts to return any explanted **Biomet Device** or component thereof, if it is in their possession, custody or control, to **Defendants' Counsel** at the address below, or to make best efforts to enable a third party to return the explanted **Biomet Device** or component thereof to **Defendants'**

**Counsel**, and the **Defendants** shall compensate the **Class Member** for the reasonable costs of that return.

12. Within 30 days after the **Effective Date**, **Class Counsel** will return to **Defendants'** **Counsel** any and all explanted **Biomet Devices** and any other explanted medical device(s) manufactured by any of the **Defendants** that are in the possession, custody or control of **Class Counsel** within 30 days after the **Effective Date**.

## **SECTION 5 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

### **5.1. Settlement Distribution**

1. Any **Settlement Amounts** held by the **Claims Administrator** shall be held in trust for the benefit of **Class Members**, the **Public Litigation Funders**, and **Provincial Health Insurers**, and after the **Effective Date**, shall only be paid in accordance with the provisions of this **Settlement Agreement**.

### **5.2. Monies in the Account**

1. In no event shall the **Defendants** have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use or administration of monies in the **Account**, including but not limited to the costs and expenses of such investment, distribution, use and administration, and **Class Counsel Fees**, except to the extent the **Defendants** are required to make the **Initial Deposit** or **Subsequent Deposit(s)** into the **Account** under this **Settlement Agreement**.

### **5.3. Taxes and Interest**

1. All interest earned on funds in the **Account** shall become and remain part of the **Account**.
2. The **Claims Administrator** shall bear all risks related to investment of the funds in the **Account**.
3. All taxes payable on any interest that accrues on the funds in the **Account** shall be the responsibility of the **Claims Administrator**, who shall be solely responsible to fulfill all tax reporting and payment requirements arising from the **Settlement Amount** in the **Account**, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect of the income earned by the **Settlement Amount** shall be paid from the **Account**.
4. The **Defendants** shall have no responsibility to make any tax filings related to the **Account** and shall have no responsibility to pay tax on any income earned by the funds in the **Account** or pay any taxes on the monies in the **Account**.

## **SECTION 6 – OBJECTIONS**

### **6.1. Procedure to Object or to Submit Contentions**

1. **Class Members** can object to the **Settlement Agreement** or submit contentions relative to said agreement. At the time that approval of the **Ontario Court** of the **Notice of Approval Hearing** is sought, the **Ontario Plaintiff** will seek approval of the following protocol for **Class Members** who wish to object or submit contentions to this **Settlement**

**Agreement**, the whole with the goal to facilitate documentation and timely communication of objections and contentions:

- (a) A **Class Member** may object to the approval of the **Settlement Agreement** or submit contentions by sending a written objection by email to **Class Counsel**. **Class Counsel** is required to forward all objections and contentions to **Defendants' Counsel** within 48 hours after receipt by email at the addresses listed below.
- (b) Objections and contentions should be received by **Class Counsel** before 5:00 p.m. Pacific Time on a date that is 14 days before the date of the **Approval Hearing** which will be reported to the **Ontario Court** in a timely manner.
- (c) A **Class Member** who wishes to object to the approval of the **Settlement Agreement** or to submit contentions should state:
  - (i) the full name, current mailing address, telephone number and email address of the person who is objecting or submitting a contention;
  - (ii) a brief statement of the nature and reasons for the objection or contention;
  - (iii) a declaration that the person believes he or she is a member of the **Class** and the reason for that belief including, if available, the part, reference, catalogue and lot numbers of their **Biomet Device(s)**;

- (iv) whether the person intends to appear at the relevant **Approval Hearing** or intends to appear by counsel and, if by counsel, the name, address, telephone number and email address of counsel; and
- (v) a declaration that the foregoing information is true and correct.

2. For all objections or contentions received five days before the **Approval Hearing Class Counsel** shall, no later than three days before the date of the relevant **Approval Hearing**, report to the **Court**, by affidavit, with a copy to counsel for the **Defendants**, the names of persons who objected and copies of any objections. All other objections or contentions will be reported on a timely manner.

## **SECTION 7 – RELEASES AND DISMISSALS**

### **7.1. Release of Releasees**

1. Upon the **Effective Date**, and in consideration of the payment of the **Settlement Amount** and for other valuable consideration set forth in the **Settlement Agreement**, the **Releasors** forever and absolutely release the **Releasees** from the **Released Claims**, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been alleged relating in any way to the subject matter of the **Proceedings**, in either case from the beginning of time to the date hereof. For the consideration provided herein, the **Releasors** agree not to make any claim or take or continue any proceedings relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been



alleged relating in any way to the subject matter of the **Proceedings**, in either case from the beginning of time to the date hereof, against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, and hospitals or other health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* (Ontario) or other comparable provincial legislation and amendments thereto, the common law, equity, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the **Releasees** in relation to the **Released Claims**.

2. Without limiting any other provisions herein, each **Class Member** who has not affirmatively opted out of the **Proceedings**, whether or not they submit a claim or receive an award, will be deemed by this **Settlement Agreement** completely and unconditionally to have released and forever discharged the **Releasees** from any and all **Released Claims**, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever relating in any way to any conduct alleged in the subject matter of the **Proceedings**, or which could have been alleged relating in any way to the subject matter of the **Proceedings**, from the beginning of time to the date hereof.

3. Each **Class Member** who has not affirmatively opt out of the **Proceedings**, whether or not they or it submits a claim or otherwise receives an award, will be forever barred and enjoined from continuing, commencing, instituting, or prosecuting any action, litigation, investigation, or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum,

directly, representatively or derivatively, asserting against any of the **Defendants** or **Releasees** any **Released Claims** covered by this **Settlement Agreement**.

4. The **Provincial Health Insurers** shall each execute and deliver a **Provincial Health Insurer Release** to **Class Counsel** forthwith following execution of this **Settlement Agreement**, which **Class Counsel** will forward to **Defendants' Counsel** to be held in escrow pending court approval of this **Settlement Agreement**.

## **7.2. No Further Claims**

1. The **Releasors** shall not now or hereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, or demand against any **Releasees**, or against any other person who may claim contribution or indemnity from any **Releasees** in respect of any **Released Claim**. The **Parties** agree that no **Class Members** shall recover, directly or indirectly, any sum from the **Defendants** or the **Releasees** other than those authorized under the **Settlement Agreement** in connection with a **Biomet Device**. In the event that the **Releasors** have made or should make any claims or demands or threaten to commence any actions, claims or class actions or make any complaints against the **Releasees** arising out of the **Released Matters**, this **Release** may be raised as an estoppel and complete bar to any such claim, demand, action, class action, or complaint.

### **7.3. Dismissal and Discontinuance of the Proceedings**

1. The Ontario **Proceeding** shall be dismissed with prejudice and without costs as against the **Defendants**, and the **Quebec Proceeding** shall be discontinued without costs.

## **SECTION 8 – TERMINATION OF SETTLEMENT AGREEMENT**

### **8.1. Right of Termination**

1. The **Defendants** shall have the right to terminate this **Settlement Agreement** if:
  - (a) the **Ontario Court** declines to approve this **Settlement Agreement** or any term or part thereof deemed material by the **Defendants**, or the **Quebec Court** declines to recognise the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** and to discontinue the **Quebec Proceeding** without costs;
  - (b) any order approving the **Settlement Agreement** does not become a **Final Order**;
  - (c) any judgment recognising the **Final Order** of the **Ontario Court** approving this **Settlement Agreement** does not become a **Final Order**;
  - (d) any judgment discontinuing the **Quebec Proceeding** does not become a **Final Order**;
  - (e) the form and content of any of the **Final Orders** approved by the **Ontario Court** or **Quebec Court** do not materially comply with the terms of this **Settlement Agreement**, or as otherwise agreed by the Parties; or

- (f) Defendants' Counsel does not receive a duly executed Provincial Health Insurer Release from each of the Provincial Health Insurers prior to the approval by the Ontario Court of this Settlement Agreement.

2. To exercise a right of termination, the **Defendants** shall deliver a written notice of termination to **Class Counsel**. Upon delivery of such a written notice, this **Settlement Agreement** shall be terminated and, except as provided for in sections 8.2 and 8.3, it shall be null and void and have no further force or effect, shall not be binding on the **Parties**, and shall not be used as evidence or otherwise in any litigation.

## **8.2. If Settlement Agreement is Terminated**

1. If this **Settlement Agreement** is not approved by the **Ontario Court**, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

- (a) any order approving this **Settlement Agreement** shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (b) all negotiations, statements, and proceedings relating to the settlement and the **Settlement Agreement** shall be deemed to be without prejudice to the rights of the **Parties**, and the **Parties** shall be deemed to be restored to their respective positions existing immediately before it was executed; and
- (c) all funds in the **Account** (including accrued interest and the **Discretionary Fund**) shall be returned to **Defendants' Counsel** within 10 days after the

date of termination, except for the non-reversionary amounts set out in 8.2.1(d).

- (d) The **Defendants** shall remain responsible for **Notice and Administration Costs** incurred by the **Claims Administrator** up to the date that the **Settlement Agreement** is terminated in accordance with its terms, subject to the \$150,000 cap set out in section 4.2.12 above.

### **8.3. Survival of Provisions After Termination**

- 1. If this **Settlement Agreement** is not approved by the **Ontario Court**, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, the provisions of this section, sections 8.2, 11, 12.1 to 12.13 and 12.15 to 12.17, and the Recitals, Definitions, and Schedules applicable thereto shall survive the termination and continue in full force and effect.

## **SECTION 9 – LEGAL FEES AND DISBURSEMENTS**

### **9.1. Class Counsel Fees**

- 1. **Class Counsel** will be compensated as follows:
  - (a) the sum of \$1,250,000.00 (CAD) payable by the **Defendants**, representing a contribution towards **Class Counsel Fees, Disbursements**, and applicable taxes;
  - (b) **Class Counsel Fees** payable by **Class Members**, which may be determined and approved by the **Ontario Court**. Such **Class Counsel Fees** shall be deducted by the **Claims Administrator** from the settlement

awards to **Approved Claimants** and paid to **Class Counsel**. For certainty, this **Settlement Agreement** is not conditional on the **Court's** approval of any **Class Counsel Fees** and **Disbursements**, and in no circumstances shall the **Defendants** be required to contribute more than \$1,250,000.00 (CAD) inclusive of all applicable taxes as their contribution towards **Class Counsel Fees** and **Disbursements**, subject to **Court** approval; and

- (c) additional legal fees and disbursements related to an individual claim, which may be agreed upon by a claimant and a lawyer (including **Class Counsel**).

## 9.2. Procedure

1. **Class Counsel** will bring a motion, with notice to **Defendants' Counsel**, to the **Ontario Court** for (i) determination and approval of **Class Counsel Fees** and **Disbursements** payable by the **Class Members**, and (ii) the honourarium for the **Ontario Plaintiff**, at the time **Class Counsel** seeks approval of this **Settlement Agreement**. The **Defendants** shall take no position on the **Class Counsel Fees** and **Disbursements** sought by **Class Counsel**.

2. **Class Counsel Fees** and **Disbursements** payable pursuant to section 9.1.1 may be paid out of the **Account** only after **Class Counsel** obtains the approval of the **Ontario Court**. **Class Counsel Fees** and **Disbursements** shall be paid in the manner prescribed by sections 4.2.6, 4.2.14 and 4.2.16 of the **Settlement Agreement**.

3. **Class Members** who have retained, or in the process of making a claim do retain, lawyers to assist them in making their individual claims in this **Settlement Agreement** shall be responsible for the legal fees and expenses of such lawyers.

4. **Class Members** are responsible for their own costs in filing and perfecting their claims under this **Settlement Agreement**. **Defendants** are not responsible for these costs and expenses.

5. **Defendants** shall make a deposit in an amount not to exceed the amount set forth in section 9.1.1(a) to enable the **Claims Administrator** pay approved **Class Counsel Fees** and **Disbursements** up to the amounts set forth in that section within 14 days of the **Court's** approval of **Class Counsel Fees** and **Disbursements**. However, if the award of **Class Counsel Fees** and **Disbursements** is appealed, **Class Counsel** agrees to return to the **Account** such **Class Counsel Fees** and **Disbursements** paid from the **Account** until such award is final without the possibility of further appeal at which time the payment will be returned to **Class Counsel**.

## **SECTION 10 – ADMINISTRATION AND IMPLEMENTATION**

### **10.1. Mechanics of Administration**

1. Except to the extent provided for in this **Settlement Agreement**, the mechanics of the implementation and administration of this **Settlement Agreement** shall be determined by agreement of the Parties, or by the **Ontario Court** on motion brought by the **Parties**, or the Claims Administrator, or any one of them.

### **10.2. Notices Required**

1. The bilingual Notice of Approval Hearing and the bilingual Notice of Settlement Approval are to be approved by the **Ontario Court** prior to dissemination.

2. **Class Counsel** and **Defendants' Counsel** will jointly prepare the bilingual Notice of Approval Hearing and the Notice of Settlement Approval, substantially in the form attached in **Schedule B**, **Schedule F**, and **Schedule F.1** as well as a plan for dissemination of the notices as set out in **Schedule G**.

#### **SECTION 11 – NO ADMISSION OF LIABILITY**

1. The **Parties** agree that whether or not this **Settlement Agreement** is approved by the **Ontario Court** or is terminated, this **Settlement Agreement** and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this **Settlement Agreement**, and any action taken to carry out this **Settlement Agreement**, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing of liability by the **Releasees**, or of the truth of any of the claims or allegations made in the **Proceedings** or in any other pleading filed by the **Plaintiffs**.

2. The **Parties** further agree that whether or not this **Settlement Agreement** is approved by the **Ontario Court** or is terminated, neither this **Settlement Agreement** nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency, or tribunal, except to seek court approval of this **Settlement Agreement** or to give effect to and enforce the provisions of this **Settlement Agreement**.



## SECTION 12 – MISCELLANEOUS

### 12.1. Motions for Directions

1. The **Ontario** and **Quebec Plaintiffs, Class Counsel, Claims Administrator, Provincial Health Insurers** or **Defendants** may apply to the **Ontario Court** for directions in respect of the implementation and administration of this **Settlement Agreement**.

2. All motions contemplated by this **Settlement Agreement**, including applications to the **Ontario Court** for directions, shall be on notice to the **Parties**.

### 12.2. Releasees have no liability for administration

1. The **Releasees** shall have no responsibility for and no liability whatsoever with respect to the administration of the **Settlement Agreement**. All such responsibility lies with the **Claims Administrator**.

### 12.3. Headings, etc.

1. In this **Settlement Agreement**, the division of the **Settlement Agreement** into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this **Settlement Agreement**. The terms “this Settlement Agreement”, “the Settlement Agreement”, “hereof”, “hereunder”, “herein”, “hereto” and similar expressions refer to this **Settlement Agreement** and not to any particular section or portion of this **Settlement Agreement**.

#### **12.4. Ongoing Jurisdiction**

1. Subject to the specific references to the role of the **Quebec Court** in this **Settlement Agreement**, the **Ontario Court** shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this **Settlement Agreement**.

#### **12.5. Governing Law**

1. Except as expressly provided otherwise, this **Settlement Agreement** shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

#### **12.6. Entire Agreement**

1. This **Settlement Agreement** and the Schedules attached hereto constitute the entire agreement among the **Parties**, and supersede any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The **Parties** agree that they have not received or relied on any agreements, representations, or promises other than as contained in this **Settlement Agreement**. None of the **Parties** shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this **Settlement Agreement**, unless expressly incorporated herein. This **Settlement Agreement** may not be modified or amended except in writing and on consent of all **Parties** hereto, and any such modification or amendment must be approved by the **Ontario Court**.

### **12.7. Survival**

1. The representations and warranties contained in this **Settlement Agreement** shall survive its execution and implementation.

### **12.8. Counterparts**

1. This **Settlement Agreement** may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement. This **Settlement Agreement** may be delivered and is fully enforceable in either original or other electronic form provided that it is duly executed.

### **12.9. Negotiated Agreement**

1. This **Settlement Agreement** has been the subject of negotiations and discussion among the **Parties**, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this **Settlement Agreement** shall have no force and effect. The **Parties** further agree that the language contained or not contained in previous drafts of this **Settlement Agreement**, or any agreement in principle, shall have no bearing upon the proper interpretation of this **Settlement Agreement**.

### **12.10. Dates**

1. Dates referred to in this **Settlement Agreement** may be altered with the written consent of the **Parties** and with the approval of the **Ontario Court**.

### **12.11. French Translation**

1. The **Parties** acknowledge that they have required and consented that the **Settlement Agreement**, including Schedules, be prepared in English and French.
2. The English version of the **Settlement Agreement** is authoritative in Ontario (and is authoritative as to all **Class Members** in any province or territory of Canada except Quebec), and the French and English versions of the **Settlement Agreement** have equal force in Quebec (and are authoritative as to all **Class Members** who reside in Quebec). A French translation of the **Settlement Agreement** and all schedules, protocols and final notices pursuant to this **Settlement Agreement** shall be paid for by the **Defendants**.

### **12.12. Confidentiality**

1. The **Parties** agree that no public statements shall be made regarding these **Proceedings** or their settlement that are in any way inconsistent with the terms of the **Settlement Agreement**.
2. In particular, the **Parties** agree that any public statements regarding these **Proceedings** will indicate that the settlement has been negotiated and agreed by the **Parties** and approved by the **Ontario Court** without any admissions or findings of liability or wrongdoing and without any admissions or conclusions as to the truth of any of the facts alleged in the **Proceedings**, all of which are specifically denied.

### **12.13. Recitals**

1. The Recitals to this **Settlement Agreement** form part of the **Settlement Agreement**.

## 12.14. Schedules

1. The Schedules annexed hereto form part of this **Settlement Agreement** and are:

Schedule A – Claimant Declaration

Schedule B – Order on Notice of Approval Hearing

Schedule C – Order on Approval of Settlement Agreement

Schedule D – Physician’s Declaration

Schedule E – Extraordinary Expense Pool Claim Form

Schedule F – Short-Form Notice to Class Members of Settlement Approval

Schedule F.1 – Long-Form Notice to Class Members of Settlement Approval

Schedule G – Plan for Dissemination of Class Notices

Schedule H – List of Complications and Corresponding Payment Amounts

Schedule I – Reconsideration Protocol

Schedule J – Form of Monthly Reporting by Claims Administrator

Schedule K – List of Provincial Health Insurers and applicable legislation

Schedule L – form of Provincial Health Insurer Release

### **12.15. Acknowledgements**

1. Each of the **Parties** hereby affirms and acknowledges that:
  - (a) they or a representative of the **Party** with the authority to bind the **Party** with respect to the matters set forth herein has read and understood the **Settlement Agreement**;
  - (b) the terms of this **Settlement Agreement** and the effects thereof have been fully explained to them or the **Party's** representative by their or its counsel;
  - (c) they or the **Party's** representative fully understands each term of the **Settlement Agreement** and its effect; and
  - (d) no **Party** has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other **Party** with respect to the first **Party's** decision to execute this **Settlement Agreement**.

### **12.16. Authorized Signature**

1. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this **Settlement Agreement**.

### **12.17. Notice**

1. Where this **Settlement Agreement** requires a **Party** to provide notice or any other communication or document to another, such notice, communication, or document shall

be provided by email, or letter by overnight delivery to the representatives for the **Party** to whom notice is being provided, as identified below:

(a) For **Plaintiffs, Provincial Health Insurers and Class Counsel:**

**KOSKIE MINSKY LLP**  
Barristers and Solicitors  
20 Queen Street West  
Suite 900  
P.O. Box 52  
Toronto ON M5H 3R3

**Jonathan Ptak**  
**Jamie Shilton**

Tel: 416.977.8353  
Email: [jptak@kmlaw.ca](mailto:jptak@kmlaw.ca)  
[jshilton@kmlaw.ca](mailto:jshilton@kmlaw.ca)

**STEVENSON WHELTON LLP**  
Barristers and Solicitors  
15 Toronto Street  
Suite 200  
Toronto ON M5C 2E3

**J. Daniel McConville**

Tel: 416.599.7900  
Email: [dmccconville@swlawyers.ca](mailto:dmccconville@swlawyers.ca)

**KLEIN LAWYERS**  
100 King Street West  
Suite 5600  
Toronto ON M5X 1C9

**Brent Ryan**  
Tel: 604-874-7171  
Email: [bryan@callkleinlawyers.com](mailto:bryan@callkleinlawyers.com)

**SYLVESTRE PAINCHAUD ET ASSOCIÉS**  
740, Avenue Atwater  
Montréal, Québec, H4C 2G9

**Normand Painchaud**  
**Sophie Estienne**

Tel: 514.937.2881  
Email: [n.painchaud@spavocats.ca](mailto:n.painchaud@spavocats.ca)  
[s.estienne@spavocats.ca](mailto:s.estienne@spavocats.ca)

(b) For the **Defendants** and **Defendants' Counsel**:

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
Toronto ON M5V 3J7

**Derek D. Ricci**  
**Chantelle Cseh**

Tel: 416.367.7471  
Email: [dricci@dwpv.com](mailto:dricci@dwpv.com)  
[ccseh@dwpv.com](mailto:ccseh@dwpv.com)

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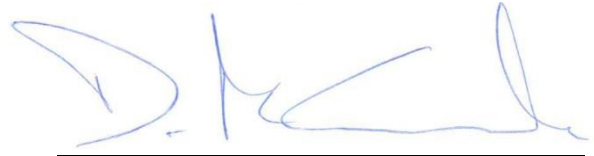
DATED AT TORONTO, ONTARIO this 18<sup>th</sup> day of July, 2024



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KOSKIE MINSKY LLP

DATED AT TORONTO, ONTARIO this 18th day of July,  
2024



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WHELTON HIUTIN LLP (formerly  
STEVENSON WHELTON LLP)

DATED AT TORONTO, ONTARIO this ■ day of ■, 2024

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■  
KLEIN LAWYERS

DATED AT MONTREAL, QUEBEC this 18th day of July, 2024

(s) SYLVESTRE PAINCHAUD ET  
ASSOCIÉS

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■  
SYLVESTRE PAINCHAUD ET  
ASSOCIÉS

DATED AT TORONTO, ONTARIO this 18<sup>th</sup> day of July, 2024



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KOSKIE MINSKY LLP

DATED AT TORONTO, ONTARIO this ■ day of ■, 2024

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■  
STEVENSON WHELTON LLP

DATED AT TORONTO, ONTARIO this 18th day of July, 2024



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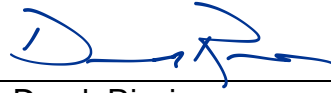
KLEIN LAWYERS  
BRENT D. RYAN

DATED AT TORONTO, ONTARIO this ■ day of ■, 2024

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■  
SYLVESTRE PAINCHAUD ET  
ASSOCIÉS

DATED AT TORONTO, ONTARIO this 18th day of July, 2024



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Derek Ricci  
DAVIES WARD PHILLIPS &  
VINEBERG LLP



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**Section B: Personal Representative**

Are you completing this form as someone with the legal capacity to act on behalf of the Claimant (*i.e.*, an individual with power of attorney, an estate representative, etc.)?

Yes  No

If “Yes”, please complete the remainder of Section B with information about yourself. If “No,” skip to Section C.

---

First Name

Middle

Last Name

---

Date of Birth (dd/mm/yyyy)

---

Address

---

City

Province/Territory

Postal Code

---

Email

Date of Death of the Claimant (if applicable) (dd/mm/yyyy)

---

Daytime Phone Number

Cellular Phone Number

**Relationship to Claimant:**

Please attach the documents that grant you the legal authority to act on behalf of the Claimant to this form (*i.e.* Power of Attorney, Last Will and Testament, Letters of Administration, etc.). If the Claimant is deceased, please also attach a copy of the Claimant’s death certificate to this form.

Power of Attorney

Certificate of Incapacity

Letters of Administration

Will

Death Certificate

Grant of Probate

Other. Please explain\_\_\_\_\_

**Section C: Lawyer Information (if applicable)**

\_\_\_\_\_  
Lawyer Last Name

\_\_\_\_\_  
Lawyer First Name

\_\_\_\_\_  
Name of Law Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

**Section D: Biomet Device Implant Information**

Location of the Device:  Right  Left  Bilateral

Implant Date (Right) \_\_\_\_\_  
(dd/mm/yyyy)

Name of Hospital \_\_\_\_\_

Surgeon \_\_\_\_\_

Implant Date (Left) \_\_\_\_\_  
(dd/mm/yyyy)

Name of Hospital \_\_\_\_\_

Surgeon \_\_\_\_\_

**Identification stickers and operative report(s) for your Biomet Device(s) must be submitted with this Claimant Declaration.**

**Section E: Revision Information**

Has the Claimant undergone a revision surgery or surgeries to remove the Biomet Device(s)?

Yes  No

If you checked "No," please skip to Section F below.

Location of Revision:  Right  Left  Bilateral

Implant Revision Date (Right) \_\_\_\_\_  
(dd/mm/yyyy)

Name of Hospital \_\_\_\_\_

Surgeon \_\_\_\_\_

Implant Revision Date (Left) \_\_\_\_\_  
(dd/mm/yyyy)

Name of Hospital \_\_\_\_\_

Surgeon \_\_\_\_\_

**Section F: Revision Medically Precluded**

Has the Claimant’s doctor recommended a revision, but also advised the Claimant that a revision is medically precluded?

Yes  No

If you checked “Yes,” please submit with this form either: (i) medical records of other medical reports that explicitly state that you are medically precluded from undergoing revision surgery; or (ii) Physician’s Declaration completed and signed by your physician. Complete the remainder of Section F.

If you checked “No,” please skip to Section G.

Identify the name and address of the doctor who advised the Claimant, the date of discussion, and the medical condition(s) that prevents the Claimant from having the surgery. Please state whether the Claimant has been advised that the condition(s) will permanently prevent the Claimant from having revision surgery, as opposed to delaying a revision surgery.

\_\_\_\_\_  
Date(s) of Discussion (MM/DD/YYYY)

\_\_\_\_\_  
Doctor

\_\_\_\_\_  
Address

Medical condition(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Section G: Claimant's Immediate Family Information**

**Complete this section if the Claimant had a revision surgery or is medically precluded from having revision surgery.**

**If the Claimant had at least one Revision Surgery to remove a Biomet Device, please answer the following:**

Did an adult spouse, child, grandchild, parent, grandparent, brother or sister provide the Claimant with care to assist in the Claimant's recovery after their revision surgery or surgeries to remove the Biomet Device(s)?

Yes  No

If you checked "Yes," list the family member's or members' name(s) and their relationship to the Claimant:

_____	_____
Name(s) of Family Member(s)	Relationship(s) to Claimant

Did the Claimant have children under the age of 18 who lived with them on the date of their revision surgery to remove the Biomet Device(s)?

Yes  No

If you checked "Yes," list the names and dates of birth:

_____	_____
Name	DOB: (dd/mm/yyyy)

_____	_____
Name	DOB: (dd/mm/yyyy)

**If the Claimant is medically precluded from undergoing a revision surgery, please answer the following:**

Did an adult spouse, child, grandchild, parent, grandparent, brother or sister provide the Claimant with care to assist in the Claimant's recovery after their surgery or surgeries to implant the Biomet Device(s)?

Yes  No

If you checked "Yes," list the family member's or members' name and their relationship(s) to the Claimant:

_____	_____
Name(s) of Family Member(s)	Relationship(s) to Claimant



Did the Claimant have children under the age of 18 who lived with them on the date of their surgery to implant the Biomet Device(s)?

Yes  No

If you checked “Yes,” list the names and dates of birth of those children:

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Name	DOB: (dd/mm/yyyy)
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Name	DOB: (dd/mm/yyyy)
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**Section H: Post-Revision Complications**

Did the Claimant’s revision surgery or surgeries cause any of the following? If so, state the date on which the complication occurred.

Date (dd/mm/yyyy)

**Second Revision** (surgery to remove a replacement hip implant that had been implanted as part of a Revision Surgery because the replacement hip device failed)

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**Third Revision** (surgery to remove a replacement hip implant that had been implanted as part of a Second Revision because the replacement hip device failed)

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**Infection** (any infection in the revised hip that is diagnosed within 30 days after a Revision Surgery and determined to have been caused by the Revision Surgery)

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**Femoral Fracture** (fracture of femur that occurs during a Revision Surgery or as a result of the Revision Surgery, and does not include fracture that results from trauma that occurs before or after the Revision Surgery)

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**Dislocation** (complete disassociation of femoral head and acetabular cup that occurs within 6 weeks of the Revision Surgery)

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**Blood Clot** (diagnosis made within 72 hours of a Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from a Revision Surgery)

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**Stroke** (cerebrovascular incident or insult occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)

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**Heart Attack** (myocardial infarction or cardiac arrest occurring within 72

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hours of a Revision Surgery and determined to have been caused by the Revision Surgery)

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**Permanent Nerve Damage** (nerve damage [including but not limited to meralgia paresthetica and foot drop caused by peroneal nerve damage] resulting from a Revision Surgery that is permanent as established by medical records or a Physician's Declaration, or that has persisted for 18 months or more.)

---

**Death** (class member died within 72 hours after a Revision Surgery as a result of the Revision Surgery)

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**Lost Wages** (economic loss supported by documentary evidence showing income loss in excess of 20% of the claimant's aggregate gross income for the two highest earning years in the four years preceding the Revision Surgery)

---

**To make a Post-Revision Complication claim (EXCEPT for a Lost Wages claim), you must submit the following with this form:**

- A) A Physician's Declaration documenting each complication; OR**
- B) Medical records or other medical reports, including operative reports, relating to each complication.**

**To make a Lost Wages claim, you must submit documentary evidence showing Post-Revision income loss in excess of 20% of the Claimant's aggregate gross income for the two highest earning years in the four years preceding the Revision Surgery. This documentary evidence shall include:**

- A) Income tax statements, T4s, Notices of Assessment, or similar documents from a recognized tax authority; OR**
- B) Employment records from before and after the Revision Surgery, meaning paystubs, employment letters, and similar documents.**

## Section I: Out-of-Pocket Expenses

**Complete this section only if the Claimant had a revision surgery or is medically precluded from undergoing revision surgery.**

- Check here if the Claimant purchased his or her Biomet Device(s) with his or her own funds (i.e., the cost of the implant was not paid by an insurer). If you checked the box, attach all receipts or other documentation reflecting the amount paid by the Claimant for the Biomet Device(s) to this form.

Did the Claimant (who has been revised or is medically precluded from undergoing a revision) incur any other out-of-pocket expenses in connection with a revision surgery, post-revision complications, or medical treatment?

- Yes  No

If you checked "No," skip to Section J. If you checked "Yes," please answer the following:

Are these claimed out-of-pocket expenses \$2,500 or less?

- Yes  No

If you checked "No," and you wish to seek reimbursement for the expenses you incurred that are greater than \$2,500, you may complete and submit the Extraordinary Expense Pool Claim Form. Please note that you are required to provide receipts substantiating all of your out-of-pocket expenses if you seek reimbursement totaling more than \$2,500. If you choose to complete the Extraordinary Expense Pool Claim Form, please attach the receipts substantiating the expenses you seek to recover up to \$2,500 to this Claimant Declaration and attach the receipts substantiating any additional expenses you seek to recover to the Extraordinary Expense Pool Claim Form.

If you checked "Yes" above, or you seek to recover no more than \$2,500 in out-of-pocket expenses, do you have receipts to substantiate the expenses you incurred?

- Yes  No

If "Yes," please attach your receipts to this form. If "No," please state the approximate total of the expenses you incurred: \$\_\_\_\_\_

The maximum amount which may be reimbursed for out-of-pocket expenses which are not documented by receipts is \$750.

## Section J: Declaration

I solemnly declare that:

The Claimant was implanted with one or more of M2a 38, M2a Magnum or ReCap Femoral Resurfacing System, or any combination thereof, in Canada that was used as a metal-on-metal hip implant system (“**Biomet Device**”). The Claimant wishes to make a claim for compensation in this class action.

Attached are copies of the Claimant’s implant and revision (if applicable) operative reports, medical records and documentation which include identifying catalogue and lot numbers of the Claimant’s Biomet Device(s). All complete operative reports, medical records and documentation have been submitted. If the information has not been submitted, it is because it is not available or within the Claimant’s possession, custody, or control and cannot be obtained from the hospital or physician where treatment occurred.

If I am not submitting copies of the Claimant’s Biomet Device(s) peel-and-stick labels as product identification, it is because the hospital at which the Claimant’s implant surgery occurred could not provide me with the labels because they are not in the Claimant’s hospital medical records.

If I am not submitting a photograph of the Claimant’s Biomet Device(s) in lieu of the Claimant’s Biomet Device(s) peel and-stick labels, I cannot submit a photograph because the Claimant’s Biomet Device(s) is not within the Claimant’s or my possession, custody, or control.

**I make this declaration believing it to be true, and knowing that it is of the same legal force and effect as if it were made under oath.**

\_\_\_\_\_  
Signature of Claimant or Representative

\_\_\_\_\_  
Date

**Please note: All pages of this Declaration and supporting documents must be submitted to the Claims Administrator on or before the applicable Submission Deadline**

**Schedule B - Order on Notice of Approval Hearing**

Court File No. CV-13-490112-CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) DAY, THE DAY  
JUSTICE ) OF , 2024

BETWEEN:

STEPHEN DALTON DINE

Plaintiff

-and-

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET MANUFACTURING CORP., BIOMET U.S.  
RECONSTRUCTION LLC and BIOMET CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION** by the Plaintiff for an order approving the form of notice that will advise class members of the hearing to approve the proposed settlement, as well as the manner of publicizing such notice, was heard this day in Toronto.

**UPON BEING ADVISED** that the Plaintiff and the Defendants have entered into the Settlement Agreement attached hereto as Schedule “1” and that the Defendants have consented to the terms of this Order, **THIS COURT ORDERS AND DECLARES** that:

1. For the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. The motion for approval of settlement in this proceeding shall be heard on **[date]** at the court house at Osgoode Hall, 130 Queen Street West, Toronto, Ontario (the “**Approval Hearing**”).

3. The form and content of the short-form and long-form hearing notices, substantially in the form attached hereto as Schedule “2” and Schedule "3" is approved (the “**Notices of Approval Hearing**”). The Notices of Approval Hearing shall be available in both English and French.

4. The proposed manner of publicizing the Hearing Notice as described in Schedule “4”, is approved (the “**Notice Plan**”).

5. Verita Global LLC is hereby appointed as the “**Notice Administrator**”, and shall disseminate the Notices of Approval Hearing in accordance with the Notice Plan.

6. The Hearing Notice and the Notice Plan constitute fair and reasonable notice to the class of the Approval Hearing.

7. Any Class Member may submit an objection or contention to the Settlement Agreement in accordance with the following procedure:

- (a) A Class Member may object to the approval of the Settlement Agreement or submit a contention by sending a written objection by email to counsel for the Plaintiff and the class (“**Class Counsel**”). Class Counsel is required to forward all objections and contentions to Defendants’ counsel within 48 hours after receipt by email at the addresses listed below.
- (b) Objections and contentions should be received by Class Counsel before 5:00 p.m. Pacific Time on a date that is 14 days before the date of the Approval Hearing which will be reported to the Court in a timely manner.
- (c) A Class Member who wishes to object to the approval of the Settlement Agreement or to submit contentions should state:
  - (i) the full name, current mailing address, telephone number and email address of the person who is objecting or submitting a contention;
  - (ii) a brief statement of the nature and reasons for the objection or

contention;

- (iii) a declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the part, reference, catalogue and lot numbers of their Biomet Device(s);
- (iv) whether the person intends to appear at the relevant Approval Hearing or intends to appear by counsel and, if by counsel, the name, address, telephone number and email address of counsel; and
- (v) a declaration that the foregoing information is true and correct.

8. For all objections or contentions received five days before the **Approval Hearing, Class Counsel** shall, no later than three days before the date of the relevant **Approval Hearing**, report to the **Court**, by affidavit, with a copy to counsel for the **Defendants**, the names of persons who objected and copies of any objections. All other objections or contentions will be reported on a timely manner.

---



## **Schedule “1”: Settlement Agreement**

## **Schedule “2”: Notice of Approval Hearing (Short Form)**

**Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Hip Implant, or any combination thereof, in Canada, which was used as a metal-on-metal hip implant system?**

**This notice may affect your rights. Please read carefully.**

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as the “**Biomet Device**”) were defective, and that they failed prematurely. The Defendants deny these claims. The Ontario Superior Court of Justice certified a class action on December 18, 2015 in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec as *Conseil pour la protection des malades c. Biomet Canada inc.*

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

### **Who is Included?**

The proposed settlement applies to all persons who were implanted with a Biomet Device in Canada who have not opted out of the *Dine* action, their estates and certain family members.

### **What does the Settlement Provide?**

If the settlement is approved, eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive compensation, less deductions for legal fees and levies to Public Litigation Funders.

Eligible class member payments will depend on various individual factors including when the implants were done and whether the implants were revised and when that revision took place. Some individual claims may also be awarded from a discretionary fund established by the Settlement Agreement.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to Public Litigation Funders. Additionally, the settlement includes provisions for payment to public health insurers.

Upon approval by the Courts, Class Members will have the option to file claims and submit required forms and documentation electronically, by hand, via email, or by mail.

The settlement provides for a Discretionary Fund, which will make other compensation available to eligible Class Members. Please refer to the Special Claims Protocol at [\[WEBSITE\]](#) for specific terms and conditions applicable to Discretionary Fund claims.

The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

### **What are your Legal Rights and Options?**

A motion to approve the settlement agreement is scheduled to be heard by the Ontario Superior Court of Justice in Toronto on [date]. Class Counsel will also ask the court to approve payments of fees and disbursements on each approved award for their work in connection with the proceedings, and the payment by the defendants of a contribution to their fees and disbursements.

Class members have several options at this stage:

1. **Do nothing** – Class members who support the settlement do not have to do anything right now. Please note that by doing nothing, class members give up any right to object to the settlement and the right to sue the Defendants on their own.
2. **Submit a contention or objection** – If class members do not wish to attend the hearing but wish to explain why they do not support the proposed settlement, they can submit a contention or objection. Your contention or objection will be delivered to the Court by Class Counsel.
3. **Participate in the hearing** – class members can attend the hearing in person on [date] to voice their objection to the proposed settlement. The Court will decide if class members will be permitted to make oral submissions at the time of the hearing. To be eligible to participate, class members must have submitted their contentions or objections prior to the hearing.

Contentions or objections need not adhere to a formal format but should be submitted in writing to Class Counsel at least 14 days before the hearing and should include:

- (a) The full name, current mailing address, telephone number, and email address of the person who is submitting a contention or objecting;
- (b) A brief statement of the nature and reasons for the contention or objection;
- (c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of their Biomet Device;
- (d) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, and email address of counsel; and
- (e) A declaration that the foregoing information is true and correct.

**Are Class Members responsible for Legal Fees?**

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of \$1.25 million as a contribution towards Class Counsel Fees, Disbursements and applicable taxes.

Class Counsel will be asking the court to approve Class Counsel Fees and Disbursements of 25 percent to be deducted from payments made to eligible Class Members (less the amounts paid by the Defendants) in respect of the work performed and disbursements incurred in the class action and to obtain the Settlement.

Further legal fees, disbursements, and taxes in order to assist each individual claimant to submit a claim in the settlement may also be payable in an amount to be agreed upon as between the Class Member and counsel. Class Counsel undertake not to charge in excess of 8.3 percent to assist with the Class Member's claim.

**For Additional Information and a Copy of the Settlement Agreement:**

<p><b>KOSKIE MINSKY LLP</b> Barristers and Solicitors 20 Queen Street West Suite 900 P.O. Box 52 Toronto ON M5H 3R3</p> <p><b>Jonathan Ptak</b> <b>Jamie Shilton</b></p> <p>Tel: 416.977.8353 Email: <a href="mailto:jptak@kmlaw.ca">jptak@kmlaw.ca</a> <a href="mailto:jshilton@kmlaw.ca">jshilton@kmlaw.ca</a></p>	<p><b>KLEIN LAWYERS</b> 100 King Street West Suite 5600 Toronto ON M5X 1C9</p> <p><b>Brent Ryan</b> Tel: 604-874-7171 Email: <a href="mailto:bryan@callkleinlawyers.com">bryan@callkleinlawyers.com</a></p>
<p><b>STEVENSON WHELTON LLP</b> Barristers and Solicitors 15 Toronto Street Suite 200 Toronto ON M5C 2E3</p> <p><b>J. Daniel McConville</b></p> <p>Tel: 416.599.7900 Email: <a href="mailto:dmconville@swlawyers.ca">dmconville@swlawyers.ca</a></p>	<p><b>SYLVESTRE PAINCHAUD ET ASSOCIÉS</b> 740, Avenue Atwater Montréal, Québec, H4C 2G9</p> <p><b>Normand Painchaud</b> <b>Sophie Estienne</b></p> <p>Tel: 514.937.2881 Email: <a href="mailto:n.painchaud@spavocats.ca">n.painchaud@spavocats.ca</a> <a href="mailto:s.estienne@spavocats.ca">s.estienne@spavocats.ca</a></p>

### Schedule “3”: Notice of Approval Hearing (Long Form)

**Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Hip Implant, or any combination of these, in Canada, which was used as a metal-on-metal hip implant system?**

**This notice may affect your rights. Please read carefully.**

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as the “**Biomet Device**”), were defective and failed prematurely when implanted in patients in Canada. The Defendants deny these claims. The Ontario Superior Court of Justice certified a class action on December 18, 2015, in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec under *Conseil pour la protection des malades v. Biomet Canada inc.*

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

A motion to approve the settlement agreement is scheduled to be heard by the Ontario Superior Court of Justice in Toronto on [date]. Class Counsel will also ask the court to approve an award of fees and disbursements for their work in connection with the proceedings during the hearing. Class members have several options at this stage:

- 1. Do nothing** – Class members who support the settlement do not have to do anything right now. Please note that by doing nothing, class members give up any right to object to the settlement and the right to sue the Defendants on their own.
- 2. Submit a contention or objection** – If class members do not wish to attend the hearing but wish to explain why they do not support the proposed settlement, they can submit a contention or objection. Your contention or objection will be delivered to the Court by Class Counsel.
- 3. Participate in the hearing** – class members can attend the hearing in person on [date] to voice their objection to the proposed settlement. The Court will decide if class members will be permitted to make oral submissions at the time of the hearing. To be eligible to participate, class members must have submitted their contentions or objections prior to the hearing.

Contentions or objections need not adhere to a formal format but should be submitted in writing to Class Counsel and the Ontario Court at least 5 days before the hearing and should include:

- a) The full name, current mailing address, telephone number, and email address of the person who is submitting a contention or objecting;

- b) A brief statement of the nature and reasons for the contention or objection;
- c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of their Biomet Device;
- d) Whether the person intends to appear at the hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, and email address of counsel; and
- e) A declaration that the foregoing information is true and correct.

## **What this Notice Contains**

### **Basic Information**

1. Why did Class Members get this Notice?
2. What is a Class Action?
3. What is this lawsuit about?
4. Why is there a settlement?

### **Who is Included in the Settlement?**

5. Who is included in the proposed settlement?

### **Proposed Settlement Benefits**

6. What does the proposed settlement provide?
7. How will the lawyers be paid?

### **The Lawyers Representing Class Members**

8. Who are Class Counsel, lawyers for the class?

### **Making Your Views Known**

9. How do Class Members tell the court if they approve of, or object to, the proposed Settlement?

### **The Approval Hearing**

10. When and where will the court decide whether to approve the proposed Settlement?
11. Do Class Members have to attend the hearing?
12. May Class Members speak at the hearing?
13. What if Class Members do nothing?



## **Basic Information**

### **1. Why did Class Members get this Notice?**

The Ontario Court has authorized this Notice to inform Class Members about the proposed settlement and their options before the Court decides whether to give final approval to the proposed settlement. This notice explains the lawsuits, the proposed settlement, and Class Members' legal rights.

### **2. What is a Class Action?**

In a class action, one or more people called a "Representative Plaintiffs" sue on behalf of those who have similar claims. All of these people are called a "Class" or "Class Members". The courts resolve the issues for everyone affected by the class action, except for those who excluded themselves, or "opt out" of the lawsuit.

### **3. What is this lawsuit about?**

The class actions relate to the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system. The Representative Plaintiffs claim that they were defective and failed prematurely when implanted in patients in Canada.

### **4. Why is there a settlement?**

The plaintiffs and the defendants have agreed to a proposed settlement of the class actions. The proposed settlement is not binding unless approved by the court. By agreeing to settle the lawsuit, the parties avoid the costs, uncertainty, and delay of going to trial and obtaining judgment, and the risks associated with being unsuccessful at trial. In this case, it also means that class members will not need to testify in court.

The plaintiffs and the lawyers for the class ("Class Counsel") believe that the proposed settlement is fair, reasonable, and in the best interests of the Class.

## **Who is Included in this Settlement?**

### **5. Who is included in the proposed settlement?**

The proposed settlement applies to all persons who were implanted with a Biomet Device in Canada who have not opted out of the *Dine v. Biomet et al.* action, their estates and certain family members.

## **Proposed Settlement Benefits**

### **6. What does the proposed settlement provide?**

If the settlement is approved, eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive

compensation.

Individual Payments to Class Members:

<b><u>Claim Category</u></b>	<b><u>Quantum</u></b>
Unrevised Claimant (not Medically Precluded)	\$500
Unrevised Claimant (Medically Precluded)	\$45,000
Single Revision for Qualified Revision Surgery Claimant	\$75,000
Bilateral Revision for Qualified Revision Surgery Claimants	\$90,000

“Qualified Revision Surgery Claimant” means a class member who, as of the Claims Deadline, was implanted with a Biomet Device in Canada and: (i) has had a revision surgery; (ii) has been scheduled for a revision surgery; or (iii) was indicated by a physician as requiring a revision surgery and the revision surgery is planned, even if the date and time have not yet been finalized. The revision must have taken place, or take place, at least 180 days after the Index Surgery and not have been required because of infection or trauma, unless medical records establish that the claimant would likely have required the revision regardless of the infection or trauma.

“Medically Precluded” means a Class Member for whom a Revision Surgery was determined to be necessary within 12 years and 1 day of the Index Surgery, but who was unable to undergo a Revision Surgery due to the existence of a medical condition.

The Settlement Agreement provides that for Qualified Revision Surgery Claimants and Medically Precluded Class Members are in all cases subject to the following reductions:

<b><u>In Vivo Time</u></b>	<b><u>Cumulative Reduction of Total Amount</u></b>
7 years, 1 day	5%
8 years, 1 day	10%
9 years, 1 day	20%
10 years, 1 day	30%
11 years, 1 day	40%

12 years and 1 day and beyond	No compensation unless provided for from the Discretionary Fund
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The settlement agreement also provides for:

- a) A Discretionary Fund to be distributed to Class Members pursuant to a Special Claims Protocol to be approved by the Ontario Court;
- b) Additional compensation for certain defined complications;
- c) Compensation for certain out-of-pocket expenses; and
- d) Compensation for family members who provided care in certain circumstances.

Please refer to the Special Claims Protocol at [[WEBSITE](#)] for specific terms and conditions applicable to Discretionary Fund claims.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to the Class Proceedings Fund or the Fonds d'aide aux actions collectives, as applicable. Additionally, the settlement includes provisions for payment to public health insurers.

Upon approval by the Courts, Class Members will have the option to file claims and submit required forms and documentation electronically, by hand, via email, or by mail.

For class members resident outside of Quebec, a 10% levy on each award will be paid to the Class Proceedings Fund. For class members resident in Quebec, a 10% levy on each award will be paid to the Fonds d'aide aux actions collectives.

## **7. How will the lawyers be paid?**

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of \$1.25 million as a contribution towards Class Counsel Fees, Disbursements and applicable taxes.

Class Counsel will be asking the court to approve Class Counsel Fees and Disbursements of 25 percent to be deducted from payments made to eligible Class Members (less the amounts paid by the Defendants) in respect of the work performed and disbursements incurred in the class action and to obtain the Settlement.

Further legal fees, disbursements, and taxes in order to assist each individual claimant to submit a claim in the settlement may also be payable in an amount to be agreed upon as between the Class Member and counsel. Class Counsel undertake not to charge in excess of 8.3 percent to assist with the Class Member's claim.

## **The Lawyers Representing Class Members**

### **8. Who are class Counsel, lawyers for the class?**

Class Counsel are the law firms Koskie Minsky LLP, Stevenson Whelton LLP, Klein Lawyers LLP, and Sylvestre Painchaud & Et Associes.

## **The Approval Hearing**

### **9. When and where will the court decide whether to approve the proposed Settlement?**

The Ontario Court will hold a hearing on [date] to decide whether to approve the proposed Settlement and Class Counsel's request for legal fees and disbursements. Class Members may attend the hearing in person and ask to speak but attendance is not required.

### **10. Do Class Members have to attend the hearing?**

No. Class Counsel will answer any questions the Court may have. If class members with so observe, they are welcome to attend. Class Members may also have their own lawyer attend at their own expense.

### **11. May Class Members speak at the hearing?**

Class Members may ask the Court for permission to speak at the approval hearing.

### **12. What if Class Members do nothing?**

If Class Members do nothing, they are choosing by default, not to object to the proposed settlement. The Settlement Approval Hearing will proceed, and the court will consider whether the settlement is fair, reasonable, and in the best interest of the Class, and whether Class Counsel's fees should be approved. If class members agree with the settlement, nothing further is required.

## **For Additional Information and a Copy of the Settlement Agreement:**

<p><b>KOSKIE MINSKY LLP</b> Barristers and Solicitors 20 Queen Street West Suite 900 P.O. Box 52 Toronto ON M5H 3R3</p> <p><b>Jonathan Ptak</b> <b>Jamie Shilton</b></p> <p>Tel: 416.977.8353 Email: <a href="mailto:jptak@kmlaw.ca">jptak@kmlaw.ca</a> <a href="mailto:jshilton@kmlaw.ca">jshilton@kmlaw.ca</a></p>	<p><b>KLEIN LAWYERS</b> 100 King Street West Suite 5600 Toronto ON M5X 1C9</p> <p><b>Brent D. Ryan</b> Tel: 604.714.6154 Email: <a href="mailto:bryan@callkleinlawyers.com">bryan@callkleinlawyers.com</a></p> <p><b>SYLVESTRE PAINCHAUD &amp; ET ASSOCIES</b> 740, Avenue Atwater Montréal, Québec, H4C 2G9</p>
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**STEVENSON WHELTON LLP**

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[s.estienne@spavocats.ca](mailto:s.estienne@spavocats.ca)

## **Schedule “4” - Notice Plan**

The Notice of Approval Hearing (short form and long-form) and the Notice of Settlement Approval (short form and long-form) (collectively the “**Notices**”) will be disseminated by the following means:

1. Class Counsel will send the Notices by mail or email to all class members who have contacted Class Counsel regarding this action and provided their contact information.
2. Class Counsel shall post a copy of the Notices and the Settlement Agreement to their respective websites.
3. Class Counsel shall issue the media release attached hereto as Schedule 5 with the Notice of Approval Hearing, and the media release will be distributed through Canada Newswire.
4. The Administrator shall arrange for publication of the information contained in the Short-Form Notice on various social media platforms including Facebook, Instagram, and LinkedIn.
5. In addition to the above, for Notice of Settlement Approval (Short-Form and Long-Form), the parties will reasonably cooperate on dissemination of notice to the Class through hospitals in Canada and/or by the Administrator based on Class Member contact information provided by hospitals. If required, the Plaintiffs will bring a motion to facilitate the dissemination of notice through hospitals and/or to facilitate the dissemination of notice by the Administrator using Class Member contact information provided by hospitals. The Defendants will reasonably cooperate with the Plaintiffs in this motion, and the Parties agree that no costs will be sought from the other Party in connection with the motion.

## Schedule “5”-Media Release

### **M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Metal-on-Metal Hip Implant Class Action Settlement**

Subject to court approval, a settlement has been reached in the certified class actions involving Canadians who were implanted in Canada with the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, that was used as a metal-on-metal hip implant system (“**Biomet Devices**”). A class action has been certified in Ontario (*Dine v. Biomet et al*) and was filed in Quebec (*Conseil pour la protection des malades c. Biomet Canada inc.*)

The settlement applies to “all persons who were implanted with the Biomet Devices in Canada”, their estates and certain family members.

The defendants do not admit liability, but have agreed to a settlement providing compensation to class members with certain injuries upon approval after receipt of supporting documentation, less deductions for legal fees and levies to public litigation funders. Public health insurers are also entitled to compensation under the settlement agreement. Please refer to the settlement agreement for compensation details.

A motion to approve the settlement agreement will be heard by the Ontario Superior Court of Justice in Toronto on **[date]**. At the hearing, Class Counsel will also ask the courts to approve payment of its fees and disbursements for its work in connection with the actions.

Class members who do not oppose the settlement do not need to appear at the hearings to indicate their desire to participate in the settlement. Class members who oppose the settlement or who want to assert contentions relative to the settlement have the right to present arguments to the courts or to object to the settlement, including by delivering a written submission to Class Counsel on or before **[date]**. A class member who wishes to object to the settlement or submit contentions should provide in their objection or contention the following information: (a) the full name, current mailing address, telephone number, and email address of the person objecting; (b) a brief statement of the reasons for the objection; (c) a declaration that the person believes he or she is a member of the Class, and the reason for that belief, including, if available, the catalogue and lot numbers of their Biomet Device(s); (d) whether the person intends to appear at the relevant approval hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, and email address of his or her counsel; and (e) a declaration that the foregoing information is true and correct.

For additional information and a copy of the settlement agreement, contact:

<p><b>KOSKIE MINSKY LLP</b> Barristers and Solicitors 20 Queen Street West Suite 900 P.O. Box 52 Toronto ON M5H 3R3</p> <p><b>Jonathan Ptak</b> <b>Jamie Shilton</b></p> <p>Tel: 416.977.8353 Email: <a href="mailto:jptak@kmlaw.ca">jptak@kmlaw.ca</a> <a href="mailto:jshilton@kmlaw.ca">jshilton@kmlaw.ca</a></p>	<p><b>KLEIN LAWYERS</b> 100 King Street West Suite 5600 Toronto ON M5X 1C9</p> <p><b>Brent Ryan</b> Tel: 604-874-7171 Email: <a href="mailto:bryan@callkleinlawyers.com">bryan@callkleinlawyers.com</a></p>
<p><b>STEVENSON WHELTON LLP</b> Barristers and Solicitors 15 Toronto Street Suite 200 Toronto ON M5C 2E3</p> <p><b>J. Daniel McConville</b></p> <p>Tel: 416.599.7900 Email: <a href="mailto:dmcconville@swlawyers.ca">dmcconville@swlawyers.ca</a></p>	<p><b>SYLVESTRE PAINCHAUD ET ASSOCIÉS</b> 740, Avenue Atwater Montréal, Québec, H4C 2G9</p> <p><b>Normand Painchaud</b> <b>Sophie Estienne</b></p> <p>Tel: 514.937.2881 Email: <a href="mailto:n.painchaud@spavocats.ca">n.painchaud@spavocats.ca</a> <a href="mailto:s.estienne@spavocats.ca">s.estienne@spavocats.ca</a></p>



**Schedule C – Order on Approval of Settlement Agreement**

Court File No. CV-13-490112-CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) DAY, THE DAY  
JUSTICE ) OF , 2024

BETWEEN:

STEPHEN DALTON DINE

Plaintiff

-and-

BIOMET INC., BIOMET ORTHOPEDICS LLC, BIOMET MANUFACTURING CORP., BIOMET  
U.S. RECONSTRUCTION LLC and BIOMET CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION**, made by the representative Plaintiff for approval of the settlement of this action pursuant to s. 29 of the *Class Proceedings Act*, in accordance with the terms of the Settlement Agreement dated [date] was heard this day in Toronto.

**UPON READING** the Plaintiff's motion record, and upon hearing the submissions of counsel for the Plaintiff and counsel for the Defendants, and upon being advised that the parties consent to this order,

**THIS COURT ORDERS AND DECLARES** that:

1. The definitions set out in the Settlement Agreement, which is attached as Schedule A, apply to and are incorporated into this Order.

2. The settlement of the action, as set out in the Settlement Agreement, is fair, reasonable, and in the best interests of the Class Members, and is hereby approved.
  3. The Defendants shall pay the amounts required under the Settlement Agreement, subject to the Right of Termination set out in Section 8 of the Settlement Agreement.
  4. The form and content of the Notice of Approval of Settlement to Class Members shall be substantially in the form which appears at Schedule F and Schedule F.1 to the Settlement Agreement.
  5. The Class Members shall be given notice of this order in accordance with the plan attached as Schedule G to the Settlement Agreement.
  6. The notification plan described in paragraphs 4 and 5 of this order satisfies the requirements of s. 17 of the *Class Proceedings Act*.
  7. The Settlement Agreement and this Order are binding upon each Class Member, whether or not such person receives or claims compensation, including persons who are minor or are mentally incapable.
  8. [Appointee] is hereby appointed as Claims Administrator.
  9. Upon the Effective Date, the Releasees are forever and absolutely released by the Releasors from the Released Claims. The Releasors are barred from making any claim or taking or continuing any proceedings arising out of or relating to the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable provincial legislation and any amendments thereto, the common law, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from one or more of the Releasees.
  10. This Court shall have continuing jurisdiction over the implementation and enforcement of the Settlement Agreement.
  11. This action is hereby dismissed without costs and with prejudice.
-

## Schedule D

### Physician's Declaration

In completing this Form, you may consider the patient's medical records, charts, reports, diagnostic films, medical history, or other sources of information that physicians regularly and routinely rely upon in their practice. By signing this Form, you certify that all opinions set forth below are offered to a reasonable degree of medical probability. In other words, by signing this form you certify that you are of the opinion that the conclusions set out in this Form have a probability greater, but not significantly higher, than 50%.

#### **1. PHYSICIAN BACKGROUND**

\_\_\_\_\_  
(First Name)

\_\_\_\_\_  
(Middle Initial)

\_\_\_\_\_  
(Last Name)

\_\_\_\_\_  
(Office Address)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(Province)

\_\_\_\_\_  
(Postal Code)

\_\_\_\_\_  
(Area Code & Telephone Number)

Check whether you are a/an:

Orthopedic surgeon

General Practitioner

Other.....

College of Physicians and Surgeons Registration Number: \_\_\_\_\_

#### **2. PATIENT INFORMATION**

State the name and birth date of the patient for whom you are providing the information contained in this Physician Declaration Form.

\_\_\_\_\_  
(First Name)

\_\_\_\_\_  
(Middle Initial)

\_\_\_\_\_  
(Last Name)

\_\_\_\_\_  
(Birth Date MM/DD/YYYY)

Are you one of the patient's treating physicians?

Yes  No

If "Yes", state your role in the patient's medical care and treatment relative to their M2a 38, M2a Magnum or ReCap Femoral Resurfacing System metal-on-metal implant:

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**3. IMPLANT INFORMATION**

State the reference and catalogue numbers that correspond to the patient's M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Metal-on-Metal Implant(s)

Date of Implantation (Right) \_\_\_\_\_  
(DD/MM/YYYY)

Implant Reference/Catalogue Numbers \_\_\_\_\_  
(if available)

Implant Lot Number \_\_\_\_\_  
(if available)

Date of Implantation (Left) \_\_\_\_\_  
(DD/MM/YYYY)

Implant Reference/ Catalogue Numbers \_\_\_\_\_  
(if available)

**4. REVISED PATIENT OR PATIENT INDICATED OR SCHEDULED FOR REVISION**

Has the patient been indicated for a revision surgery to replace the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System?

Yes  No

If "Yes," please answer the remaining questions in section 4. If "No," please skip to section 7.

Date of the indication: \_\_\_\_\_  
(DD/MM/YYYY)

Has a revision surgery been scheduled?  Yes  No

If "Yes," date/time on which the surgery is scheduled: \_\_\_\_\_

(MM/DD/YYYY)

If “No”, do you certify that the revision surgery is planned, even if the date and time have not yet been finalized?  Yes  No

If the revision surgery has been scheduled, has the surgery occurred?  Yes  No

If “Yes,” date on which the revision surgery took place: \_\_\_\_\_  
(DD/MM/YYYY)

Describe all reason(s) a revision surgery for the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System was indicated and identify all testing or films taken and the results that support this diagnosis:

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**5. UNREVISED PATIENT WHERE REVISION SURGERY IS PRECLUDED**

If a revision surgery has not been scheduled or will not take place, is there a medical condition that prevents the patient from undergoing a revision surgery (“Precluded” / “Preclusions”)?  Yes  No

If “Yes,” describe the Preclusion(s) that prevent(s) replacement of the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System, and state whether the Preclusion(s) is/are temporary or permanent:

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Provide the date on which you determined that a revision surgery for the patient was Precluded: \_\_\_\_\_  
(DD/MM/YYYY)

**6. COMPLICATIONS RESULTING FROM REVISION SURGERY**

Check here if the patient underwent a revision surgery or surgeries to remove their M2a 38, M2a Magnum or ReCap Femoral Resurfacing System implants.

If you checked the box above, and the patient sustained any of the following complications during or after their revision surgery, please state the date(s) on which the complication(s) occurred:

Complication	Date(s)
<b>Infection</b> (any infection in the revised hip that is diagnosed within 30 days after a Revision Surgery and determined to have been caused by the Revision Surgery)	
<b>Permanent Nerve Damage</b> (nerve damage [including but not limited to meralgia paresthetica and foot drop caused by peroneal nerve damage] resulting from a Revision Surgery that is permanent as established by medical records or a Physician's Declaration, or that has persisted for 18 months or more.	
<b>Second Revision</b> (surgery to remove a replacement hip implant that had been implanted as part of a Revision Surgery because the replacement hip device failed)	
<b>Blood Clot</b> (diagnosis made within 72 hours of a Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from a Revision Surgery)	
<b>Stroke</b> (cerebrovascular incident or insult occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	
<b>Third Revision</b> (surgery to remove a replacement hip implant that had been implanted as part of a Second Revision because the replacement hip device failed)	
<b>Death</b> (class member died within 72 hours after a Revision Surgery as a result of the Revision Surgery)	
<b>Femoral Fracture</b> (fracture of femur that occurs during a Revision Surgery or as a result of the Revision Surgery, and does not include fracture that results from trauma that occurs before or after the Revision Surgery)	
<b>Dislocation</b> (complete disassociation of femoral head and acetabular cup that occurs	

within 6 weeks of the Revision Surgery)	
<b>Lost Wages</b> (economic loss supported by documentary evidence showing income loss in excess of 20% of the claimant's aggregate gross income for the two highest earning years in the four years preceding the Revision Surgery)	
<b>Heart Attack</b> (myocardial infarction or cardiac arrest occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	

**Please attach medical records to this form that confirm that the complication(s) noted above occurred. Such medical records may include, but are not limited to, operative reports, pathology reports, office records, and/or discharge summaries.**

**7. DECLARATION**

I affirm that the foregoing representations are true and correct.

Executed on \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
Signature of Physician

\_\_\_\_\_  
Print Name






Total Amount Claimed: \$\_\_\_\_\_

## **Schedule F**

### **Notice to Class Members of Settlement Approval (Short-Form)**

**Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System, or any combination thereof, used as a Metal-on-Metal Hip Implant in Canada?**

**This notice may affect your rights. Please read carefully.**

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum, or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as a “**Biomet Device**”), were defective, and failed prematurely. The Defendants deny these claims. The Ontario Superior Court of Justice certified a class action on December 18, 2015, in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec under the name *Conseil pour la protection des malades c. Biomet Canada inc.*

These actions have now been settled, and the courts have approved the settlement. For a copy of the Settlement Agreement, please contact Class Counsel or the Claims Administrator at the address below.

#### **Who is Included?**

The settlement applies to all persons who were implanted with a Biomet Device in Canada who have not validly opted out of the *Dine v. Biomet et al.* action, their estates and certain family members.

#### **What does the Settlement Provide?**

Eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive compensation, less deductions for legal fees and levies to Public Litigation Funders.

Eligible class member payments will depend on various individual factors including when the implants were done and whether the implants were revised and when that revision took place. Some individual claims may also be awarded from a discretionary fund established by the Settlement Agreement.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to Public Litigation Funders. Additionally, the settlement includes provisions for payment to public health insurers.

#### **To Make a Claim**

In order to obtain benefits under this Settlement Agreement, Class Members must electronically file, hand-deliver, email or mail a completed Claimant Declaration along with a Physician’s Declaration (if applicable) before the applicable deadlines. These forms can be found on the Claims Administrator’s website [[website](#)].

For Class Members who are unrevised, medically precluded from having a revision surgery, or have had a revision surgery as of [90 days before Claims Deadline], all required documents in support of their claim must be submitted on [Claims Deadline].

For Class Members who have not yet had a revision surgery but as of the Claims Deadline have a scheduled revision surgery, or have been indicated by a physician as requiring a revision surgery and the revision surgery has been planned (even if the date and time have not yet been finalized), a claim must be submitted by [Claims Deadline]. All further required documents in support of their claim must be submitted within 90 days of the scheduled revision surgery.

For Class Members who have undergone a revision surgery [between 90 days before the Claims Deadline and the Claims Deadline], all required documents in support of their claim must be submitted within 90 days after the revision surgery.

**Are Class Members responsible for Legal Fees?**

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of \$1.25 million as a contribution towards Class Counsel Fees, Disbursements, and applicable taxes.

The Court also approved additional amounts to be deducted from payments made to eligible Class Members.

Any further legal fees, disbursements, and taxes would only be payable if an eligible class member agrees with their lawyer that those amounts will be paid.

**For More Information or to Obtain a Claim Form**

Please contact Class Counsel or the Claims Administrator at the address below:

**[NTD: insert Claims Administrator details.]**

**KOSKIE MINSKY LLP**  
Barristers and Solicitors  
20 Queen Street West  
Suite 900  
P.O. Box 52  
Toronto ON M5H 3R3

**Jonathan Ptak**  
**Jamie Shilton**

Tel: 416.977.8353  
Email: [jptak@kmlaw.ca](mailto:jptak@kmlaw.ca)  
[jshilton@kmlaw.ca](mailto:jshilton@kmlaw.ca)

**STEVENSON WHELTON LLP**

Barristers and Solicitors  
15 Toronto Street  
Suite 200  
Toronto ON M5C 2E3

**J. Daniel McConville**

Tel: 416.599.7900  
Email: [dmcconville@swlawyers.ca](mailto:dmcconville@swlawyers.ca)

**KLEIN LAWYERS**

100 King Street West  
Suite 5600  
Toronto ON M5X 1C9

**Brent Ryan**

Tel: 604.714.6154  
Email: [bryan@callkleinlawyers.com](mailto:bryan@callkleinlawyers.com)

**SYLVESTRE PAINCHAUD ET ASSOCIÉS**

740, Avenue Atwater  
Montréal, Québec, H4C 2G9

**Normand Painchaud**

**Sophie Estienne**

Tel: 514.937.2881  
Email: [n.painchaud@spavocats.ca](mailto:n.painchaud@spavocats.ca)  
[s.estienne@spavocats.ca](mailto:s.estienne@spavocats.ca)

## **Schedule F.1**

### **Notice to Class Members of Settlement Approval (Long Form)**

**Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Hip Implant, or any combination of these, in Canada, which was used as a metal-on-metal hip implant system?**

**This notice may affect your rights. Please read carefully.**

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum, or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as the “Biomet Device”), were defective and failed prematurely when implanted in patients in Canada. The Defendants deny these claims. The Ontario Superior Court of Justice certified a class action on December 18, 2015, in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec under *Conseil pour la protection des malades v. Biomet Canada inc.*

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

These actions have now been settled, and the courts have approved the settlement. For a copy of the Settlement Agreement, please contact Class Counsel or the Claims Administrator at the address below.

## **What this Notice Contains**

### **Basic Information**

1. Why did Class Members get this Notice?
2. What is a Class Action?
3. What is this lawsuit about?
4. Why is there a settlement?

### **Who is Included in the Settlement?**

5. Who is included in the settlement?
6. How is eligibility determined?

### **What are Class Members entitled to under the Settlement?**

7. What does the settlement provide?
8. How will the lawyers be paid?

### **Making a Claim**

9. Who is the Claims Administrator?
10. How can Class Members make a claim?
11. What if I decide not to have a Scheduled Revision Surgery?
12. What if I must cancel a Scheduled Revision Surgery because I am medically unable to proceed?
13. Can the Claims Deadline be extended for any reason?
14. Can the Submission Deadline be extended for any reason?

### **The Lawyers Representing Class Members**

15. Who are Class Counsel, lawyers for the class?

## **Basic Information**

### **1. Why did Class Members get this Notice?**

The Ontario Court has authorized this Notice to inform Class Members about the approval of the Settlement Agreement in these Class Actions. This notice explains the lawsuits, the settlement, and Class Members' legal rights.

### **2. What is a Class Action?**

In a class action, one or more people called a "Representative Plaintiffs" sue on behalf of those who have similar claims. All of these people are called a "Class" or "Class Members". The courts resolve the issues for everyone affected by the class action, except for those who excluded themselves, or "opt out" of the lawsuit.

### **3. What is this lawsuit about?**

The class actions relate to the M2a 38, M2a Magnum, or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system. The Representative Plaintiffs claim that they were defective and failed prematurely when implanted in patients in Canada. The Defendants deny these claims, and the Court has not decided whether the claims are correct.

### **4. Why is there a settlement?**

The plaintiffs and the defendants have agreed to a settlement of the class actions. By agreeing to settle the lawsuit, the parties avoid the costs, uncertainty, and delay of going to trial and obtaining judgment, and the risks associated with being unsuccessful at trial. In this case, it also means that class members will not need to testify in court.

The Representative Plaintiffs and the lawyers for the class ("Class Counsel") believe the settlement is fair, reasonable, and in the best interests of the Class. The Ontario Court has agreed.

## **Who is Included in this Settlement?**

### **5. Who is included in the proposed settlement?**

The settlement applies to all eligible class members who were implanted with a Biomet Device in Canada who have not opted out of the *Dine v. Biomet et al.* action, their estates and certain family members.

### **6. How is eligibility determined?**

To be eligible for compensation, Class Members must have been implanted with a Biomet Device in Canada.

In order to participate, Class Members must provide Product Identification that confirm the reference number (sometimes referred to as "catalogue number") and lot number of the device that

was implanted, in addition to other documents required by the Settlement Agreement. Product Identification confirms that Class Members were implanted with a Biomet Device. Product Identification can be found on the peel-and-stick label (the “Label”) from the Biomet Device that should be affixed to the medical record from the implant surgery (sometimes called the implant operative report). Class Members can obtain a copy of their implant surgery medical record from the hospital where the implant surgery occurred or from a physician. To be eligible for settlement, the reference/catalogue number on the Label must be as follows (or be a number which the Parties agree is a qualifying reference/catalogue number, or a number directed by the Court):

- The claimant must submit a **Product Identification** for both a femoral head and a one-piece acetabular cup.
- The following reference/catalogue numbers correspond to **femoral heads** used with the **M2a Magnum**:

157442	S031138
157444	S031140
157446	S061138
157448	S061140
157450	S121138
157452	S121140
157454	S331138
157456	S331140
157458	S661138
157460	S661140
S001138	S991138
S001140	S991140

- The following reference/catalogue numbers correspond to the **acetabular cups** used with the **M2a Magnum**:

US157844	US257844
US157846	US257846
US157848	US257848
US157850	US257850
US157852	US257852
US157854	US257854
US157856	US257856
US157858	US257858
US157860	US257860
US157862	US257862
US157864	US257864
US157866	US257866

- The following reference/catalogue numbers correspond to the **femoral heads or caps** used with the **M2a Recap**:



157238	157256	157341	US 157343	157145	US 157140
157239	157257	157342	US 157344	157146	US 157141
157240	157258	157343	US 157345	157147	US 157142
157241	157259	157344	US 157346	157148	US 157143
157242	157260	157345	US 157347	157149	US 157144
157243	US 157239	157346	US 157348	157150	US 157145
157244	US 157241	157347	US 157349	157151	US 157146
157245	US 157243	157348	US 157350	157152	US 157147
157246	US 157245	157349	US 157351	157153	US 157148
157247	US 157247	157350	US 157352	157154	US 157149
157248	US 157249	157351	US 157353	157155	US 157150
157249	US 157251	157352	157138	157156	US 157151
157250	US 157253	157353	157139	157157	US 157153
157251	US 157255	US 157338	157140	157158	US 157154
157252	US 157257	US 157339	157141	157159	US 157155
157253	157338	US 157340	157142	157160	US 157156
157254	157339	US 157341	157143	US 157138	US 157157
157255	157340	US 157342	157144	US 157139	

- The following reference/catalogue numbers correspond to the **acetabular cups** used with the **M2a Recap**:

157844	157944	130846	130846 HA	157438
157846	157946	130848	130848 HA	157440
157848	157948	130850	130850 HA	157442
157850	157950	130852	130852 HA	157444
157852	157952	130854	130854 HA	157446
157854	157954	130856	130856 HA	157448
157856	157956	130858	130858 HA	157450
157858	157958	130860	130860 HA	157452
157860	157960	130862	130862 HA	157454
157862	157962	130864	130864 HA	157456
157864	157964	130866	130866 HA	157458
157866	157966	130868	130868 HA	157460

- The following reference/catalogue numbers correspond to the **femoral heads** used with the **M2a 38**:

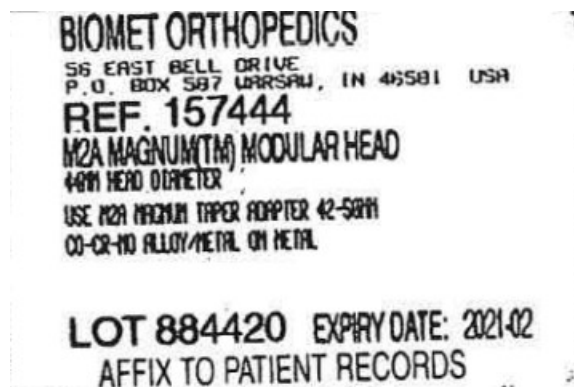
11-173660
11-173661
11-173662
11-173663
11-173664
11-173665
11-173666

- The following reference/catalogue numbers correspond to **acetabular cups** used with the **M2a 38**:

15-105048	15-106048	RD118848
15-105050	15-106050	RD118850
15-105052	15-106052	RD118852
15-105054	15-106054	RD118854
15-105056	15-106056	RD118856
15-105058	15-106058	RD118858
15-105060	15-106060	RD118860
15-105062	15-106062	RD118862
15-105064	15-106064	RD118864
15-105066	15-106066	RD118868
15-105068	15-106068	RD118870
15-105070	15-106070	

- Where a **Product Identification** submitted by a claimant specifies a reference/catalogue number which is listed above, except that it includes or excludes an alphabetical prefix (e.g. "US"), the **Claims Administrator** shall deem the claimant to have submitted qualifying **Product Identification** for that component.

The images below are *examples* of Product Identifications. Please note that not all product labels are identical to the example provided below, but they are all similar to it. This example is provided to help Class members identify the location of the reference and lot numbers of their device to assist them in determining whether they may be eligible for settlement.



BIOMET ORTHOPEDICS, INC.  
56 EAST BELL DRIVE  
P. O. BOX 537 WARSAW, IN 46581 USA  
REF. 15-106058  
M2A 38MM NON-FLARED ONE-PIECE CUP  
38MM I.O. X 38MM O.O. / POROUS COATED  
  
CO-CR-MD/TE 6AL 4U ALLOY  
USE ONLY WITH M2A MODULAR HEAD  
11-17369/66  
LOT 937580  
AFFIX TO PATIENT RECORDS

BIOMET ORTHOPEDICS, INC.  
56 EAST BELL DRIVE  
P. O. BOX 537 WARSAW, IN 46581 USA  
REF. US157252  
RECAPTM CEMENTED FEMORAL HEAD  
RESURFACING  
38MM O.O.  
CO-CR-MD ALLOY  
  
LOT 943140  
AFFIX TO PATIENT RECORDS

If a Class Member is unable to obtain the Label because their implant surgery hospital could not locate it in their hospital medical records, then they may provide the following to prove that they received a Biomet Device:

- a) If the Biomet Device has been explanted from the Class Member's body and it still exists, they must provide (1) a color photograph of the Biomet Device that shows the identification numbers on the edge of the Biomet Device, and (2) a Physician Declaration confirming that they were implanted with a Biomet Device and the date of the implantation;

OR

- b) If Class Members cannot obtain a photograph because the Biomet Device is not within their possession, custody, or control, they must provide (1) a copy of their implant surgery operative report from the hospital where they were implanted, which confirms that they were implanted with a Biomet Device, and (2) a Physician Declaration confirming that they were implanted with a Biomet Device and the date of implantation.

**What are Class Members entitled to under the Settlement?**

## 7. What does the settlement provide?

Eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive compensation.

Individual Payments to Class Members:

<u>Claim Category</u>	<u>Quantum</u>
Unrevised Claimant (not Medically Precluded)	\$500
Unrevised Claimant (Medically Precluded)	\$45,000
Single Revision for Qualified Revision Surgery Claimant	\$75,000
Bilateral Revision for Qualified Revision Surgery Claimants	\$90,000

“Qualified Revision Surgery Claimant” means a class member who, as of the Claims Deadline, was implanted with a Biomet Device in Canada and: (i) has had a revision surgery; (ii) has been scheduled for a revision surgery; or (iii) was indicated by a physician as requiring a revision surgery and the revision surgery is planned, even if the date and time have not yet been finalized. The revision must have taken place, or take place, at least 180 days after the Index Surgery and not have been required because of infection or trauma, unless medical records establish that the claimant would likely have required the revision regardless of the infection or trauma.

“Medically Precluded” means a Class Member for whom a Revision Surgery was determined to be necessary within 12 years and 1 day of the Index Surgery, but who was unable to undergo a Revision Surgery due to the existence of a medical condition.

The Settlement Agreement provides that for Qualified Revision Surgery Claimants and Medically Precluded Class Members are in all cases subject to the following reductions:

<u>In Vivo Time</u>	<u>Cumulative Reduction of Total Amount</u>
7 years, 1 day	5%
8 years, 1 day	10%

9 years, 1 day	20%
10 years, 1 day	30%
11 years, 1 day	40%
12 years and 1 day and beyond	No compensation unless provided for from the Discretionary Fund

The Settlement Agreement also provides for:

- a) A Discretionary Fund to be distributed to Class Members pursuant to a Special Claims Protocol and approved by the Ontario Court;
- b) Additional compensation for certain defined complications;
- c) Compensation for certain out-of-pocket expenses; and
- d) Compensation for family members who provided care in certain circumstances.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to Public Litigation Funders. Additionally, the settlement includes provisions for payment to public health insurers.

### **8. How will the lawyers be paid?**

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of \$1.25 million as a contribution towards Class Counsel Fees, Disbursements, and applicable taxes.

The Court also approved additional amounts to be deducted from payments made to eligible Class Members.

Any further legal fees, disbursements, and taxes would only be payable if an eligible class member agrees with their lawyer that those amounts will be paid.

### **Making a Claim**

#### **9. Who is the Claims Administrator?**

The Claims Administrator for this Class Action is [claims administrator]. The Claims Administrator can be contacted at: [contact information].

## 10. How can Class Members make a claim?

In order to recover under this Settlement Agreement, Class Members must electronically file, hand-deliver, email or mail a completed Claimant Declaration along with a Physician's Declaration (if applicable) before the applicable deadlines. These forms can be found on the Claims Administrator's website [[website](#)].

For Class Members who are unrevised, medically precluded from having a revision surgery, or have had a revision surgery as of [[90 days before Claims Deadline](#)], all required documents in support of their claim must be submitted on [[Claims Deadline](#)].

For Class Members who have not yet had a revision surgery but, as of the Claims Deadline, have a scheduled revision surgery or have been indicated by a physician as requiring a revision surgery that has been planned (even if the date and time have not yet been finalized), a claim must be submitted by [[Claims Deadline](#)]. All further required documents in support of their claim must be submitted within 90 days of the date on which the scheduled revision surgery takes place.

For Class Members who have undergone a revision surgery [[between 90 days before the Claims Deadline and the Claims Deadline](#)], all required documents in support of their claim must be submitted within 90 days after the revision surgery.

A "Scheduled Revision Surgery" means that the claimant has been scheduled to receive a Revision Surgery, or a Revision Surgery has been planned (even if the date and time have not yet been finalized), but the Revision Surgery has not occurred as of 270 days after the date on which the Notice of Settlement Approval was disseminated, evidenced by the claimant submitting to the Claims Administrator by the Claims Deadline documentation in the form of:

- a) Documentation from a hospital or physician confirming the claimant has been scheduled to receive a Revision Surgery but the Revision Surgery has not occurred as of 270 days after the date on which the Notice of Settlement Approval was disseminated; or
- b) a properly executed Physician's Declaration in the form attached to the Settlement Agreement, which confirms that: (i) the Revision Surgery has been scheduled as of the Claims Deadline; or (ii) the claimant has been indicated by a physician as requiring a Revision Surgery as of the Claims Deadline and the Revision Surgery has been planned (even if the date and time have not yet been finalized), in either case including the date on which the need for a Revision Surgery was indicated.

If a Class Member has been scheduled to receive a Revision Surgery as of the Claims Deadline or indicated as requiring a Revision Surgery that has been planned (even if the date and time have not yet been finalized), then the determination of the compensation owed to them will be postponed until the Scheduled Revision Surgery occurs, provided that they submit on the Claims Deadline and within 90 days after the Revision Surgery occurs the documentation or

Physician's Declaration referred to above.

### **11. What if I decide not to have a Scheduled Revision Surgery?**

If a Revision Surgery is not scheduled, or is cancelled and not rescheduled because the Class Member has decided not to have the Scheduled Revision Surgery, the Class Member may receive compensation under the Settlement Agreement as an unrevised claimant. In that case, the Class Member must submit a Claimant Declaration on or before the Claims Deadline setting out that they are unrevised.

### **12. What if I must cancel a Scheduled Revision Surgery because I am medically unable to proceed?**

If the Revision Surgery cannot occur due to a documented medical condition, Class Members may be eligible to receive compensation under the Settlement Agreement as an unrevised claimant for whom revision is medically precluded. In that case, Class Members must submit the appropriate documentation that reflects this status (as defined in the Settlement Agreement) on or before [the Claims Deadline] and their compensation will be determined.

### **The Lawyers Representing Class Members**

#### **13. Who are class Counsel, lawyers for the class?**

Class Counsel are the law firms Koskie Minsky LLP, Stevenson Whelton LLP, Klein Lawyers LLP, and Sylvestre Painchaud & Et Associes.

#### **For Additional Information and a Copy of the Settlement Agreement:**

<p><b>KOSKIE MINSKY LLP</b> Barristers and Solicitors 20 Queen Street West Suite 900 P.O. Box 52 Toronto ON M5H 3R3</p> <p><b>Jonathan Ptak</b> <b>Jamie Shilton</b></p> <p>Tel: 416.977.8353 Email: <a href="mailto:jptak@kmlaw.ca">jptak@kmlaw.ca</a> <a href="mailto:jshilton@kmlaw.ca">jshilton@kmlaw.ca</a></p> <p><b>STEVENSON WHELTON LLP</b> Barristers and Solicitors 15 Toronto Street Suite 200</p>	<p><b>KLEIN LAWYERS</b> 100 King Street West Suite 5600 Toronto ON M5X 1C9</p> <p><b>Brent D. Ryan</b> Tel: 604.714.6154 Email: <a href="mailto:bryan@callkleinlawyers.com">bryan@callkleinlawyers.com</a></p> <p><b>SYLVESTRE PAINCHAUD &amp; ET ASSOCIES</b> 740, Avenue Atwater Montréal, Québec, H4C 2G9</p> <p><b>Normand Painchaud</b> <b>Sophie Estienne</b></p> <p>Tel: 514.937.2881 Email: <a href="mailto:n.painchaud@spavocats.ca">n.painchaud@spavocats.ca</a></p>
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Toronto ON M5C 2E3

**Colin P. Stevenson**  
**J. Daniel McConville**

Tel: 416.599.7900

Email: [cstevenson@swlawyers.ca](mailto:cstevenson@swlawyers.ca)  
[dmcconville@swlawyers.ca](mailto:dmcconville@swlawyers.ca)

[s.estienne@spavocats.ca](mailto:s.estienne@spavocats.ca)



## **Schedule G**

### **Plan for Dissemination of Class Notices**

The Notice of Approval Hearing (Short Form and Long Form) and the Notice of Settlement Approval (Short Form and Long Form) ( collectively, the “Notices”) shall be disseminated by the following means:

1. Class Counsel shall send copies of the Notices by mail or email to all class members who have contacted Class Counsel regarding this action and provided their contact information.
2. Class Counsel shall post copies of the Notices and the Settlement Agreement to their respective websites.
3. The Administrator shall arrange for publication of the information contained in the Short-Form Notice on various social media platforms including Facebook, Instagram, and LinkedIn.
4. In addition to the above, for Notice of Settlement Approval (Short-Form and Long-Form), the parties will reasonably cooperate on dissemination of notice to the Class through hospitals in Canada and/or by the Administrator based on Class Member contact information provided by hospitals. If required, the Plaintiffs will bring a motion to facilitate the dissemination of notice through hospitals and/or to facilitate the dissemination of notice by the Administrator using Class Member contact information provided by hospitals. The Defendants will reasonably cooperate with the Plaintiffs in this motion, and the Parties agree that no costs will be sought from the other Party in connection with the motion.

## Schedule H

### List of Complications and Corresponding Payment Amounts

<u>Complication</u>	<u>Single Claimant</u>	<u>Bilateral Claimant</u>
<b>Infection</b> (any infection in the revised hip that is diagnosed within 30 days after a Revision Surgery and determined to have been caused by the Revision Surgery)	\$10,000	\$12,500
<b>Permanent Nerve Damage</b> (nerve damage [including but not limited to meralgia paresthetica and foot drop caused by peroneal nerve damage] resulting from a Revision Surgery that is permanent as established by medical records or a Physician's Declaration, or that has persisted for 18 months or more.	\$20,000	\$25,000
<b>Second Revision</b> (surgery to remove a replacement hip implant that had been implanted as part of a Revision Surgery because the replacement hip device failed)	\$20,000	\$25,000
<b>Blood Clot</b> (diagnosis made within 72 hours of a Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from a Revision Surgery)	\$10,000	\$12,500
<b>Stroke</b> (cerebrovascular incident or insult occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	\$40,000	\$50,000
<b>Third Revision</b> (surgery to remove a replacement hip implant that had been implanted as part of a Second Revision because the replacement hip device failed)	\$40,000	\$50,000

<b>Death</b> (class member died within 72 hours after a Revision Surgery as a result of the Revision Surgery)	\$40,000	\$50,000
<b>Femoral Fracture</b> (fracture of femur that occurs during a Revision Surgery or as a result of the Revision Surgery, and does not include fracture that results from trauma that occurs before or after the Revision Surgery)	\$16,000	\$19,000
<b>Dislocation</b> (complete disassociation of femoral head and acetabular cup that occurs within 6 weeks of the Revision Surgery)	\$12,000	\$15,000
<b>Lost Wages</b> (economic loss supported by documentary evidence showing income loss in excess of 20% of the claimant's aggregate gross income for the two highest earning years in the four years preceding the Revision Surgery)	\$12,000	\$25,000
<b>Heart Attack</b> (myocardial infarction or cardiac arrest occurring within 72 hours of a Revision Surgery and determined to have been caused by the Revision Surgery)	\$40,000	\$50,000
<b>CAP</b>	<b>\$40,000</b>	<b>\$50,000</b>

## Schedule I

### Reconsideration Protocol

The following procedure shall apply to any challenge of a decision made by the Claims Administrator that is brought by a Class Member, Class Counsel or the Defendants under the Settlement Agreement concerning the ability of the Class Member to recover under the Settlement Agreement:

1. An independent person will be retained by the Claims Administrator at the direction of and following agreement between Class Counsel and Defendants' Counsel, or the direction of the Ontario Court, to decide requests for reconsideration of decisions made by the Claims Administrator ("**Reconsideration Officer**"). Subject to the direction of the Ontario Court, the Reconsideration Officer shall be a senior litigation lawyer (20+ years' experience) or retired judge, associate judge or deputy judge (or their equivalent).
2. In discharging their duties under the Settlement Agreement, the Reconsideration Officer shall at all times act in a fair, equitable and impartial manner, and shall avoid conflicts of interest.
3. A party seeking reconsideration must submit to the Claims Administrator a written statement setting out the nature of, and the reasons for, the reconsideration (the "**Reconsideration Statement**"). A Reconsideration Statement must be received by the Claims Administrator within 30 days of the date on which the Claims Administrator issued the impugned determination, failing which the Claims Administrator's decision is final and binding.
4. Upon receipt of the **Reconsideration Statement**:
  - (a) The Claims Administrator shall contact the Reconsideration Officer and ask the Reconsideration Officer to provide a pre-estimate of its fee for conducting the reconsideration.
  - (b) **If a Class Member Submits a Reconsideration Statement:** The Claims Administrator shall send a copy of the Reconsideration Statement together with the applicable records submitted by the Class Member to the Defendants for review and consideration. The Defendants shall then inform the Claims Administrator of whether they agree or disagree with the Class Member's position within 30 days following receipt of the Reconsideration Statement. If the Defendants agree with the Class Member's position, the Claims Administrator shall issue a new claim determination reflecting the parties' agreement, and no costs will be payable by the Defendants. If the Defendants disagree with the Class Member's position, the parties shall notify the Claims Administrator and the Claims Administrator shall submit the Reconsideration Statement and related records to the Reconsideration Officer for review.
  - (c) **If the Defendants Submit a Reconsideration Statement:** The Claims Administrator shall send a copy of the Reconsideration Statement together with the applicable records submitted by the Class Member to the Class Member for review and consideration. The Class Member shall then inform the Claims Administrator of whether they agree or disagree with the Defendants' position within 30 days following the receipt of the Reconsideration Statement. If the Class Member agrees with the Defendants' position, the Claims Administrator shall issue a new claim determination reflecting the parties' agreement, and no costs will be payable by the Class Member. If the Class Member disagrees with the Defendants' position, the parties shall notify the Claims Administrator and the Claims Administrator shall submit the Reconsideration Statement at issue to the Reconsideration Officer for review.

5. If the Reconsideration Statement is submitted to the Reconsideration Officer:
  - (a) **If a Class Member Seeks Reconsideration:** as a condition precedent to contesting a decision of the Claims Administrator, the Class Member seeking reconsideration shall provide to the Claims Administrator (for forwarding to the Reconsideration Officer) a cheque payable to the Reconsideration Officer in an amount representing 75% of the Reconsideration Officer's pre-estimated fee and disbursements for conducting the reconsideration. As a precondition to contesting such reconsideration, the Defendants shall provide to the Claims Administrator (for forwarding to the Reconsideration Officer) a cheque payable to the Reconsideration Officer in an amount representing 25% of the Reconsideration Officer's pre-estimated fee and disbursements for conducting the reconsideration.
  - (b) **If the Defendants Seek Reconsideration:** as a condition precedent to contesting a decision of the Claims Administrator, the Defendants seeking reconsideration shall provide to the Claims Administrator (for forwarding to the Reconsideration Officer) a cheque payable to the Reconsideration Officer in an amount representing the entirety of the Reconsideration Officer's pre-estimated fee and disbursements for conducting the reconsideration.
6. A party responding to a Reconsideration Statement shall have the right to submit to the Reconsideration Officer a Responding Reconsideration Statement setting out the nature of, and the reasons for, its objection to the reconsideration within 30 days following written confirmation by the Reconsideration Officer to the parties of receipt of the Reconsideration Statement.
7. Neither the Reconsideration Statement nor the Responding Reconsideration Statement shall exceed 2,000 characters, inclusive of headers, footnotes, schedules and appendices.
8. The decision of the Reconsideration Officer shall be based solely on the records submitted by the Class Member to the Claims Administrator as of the Claims Deadline and Submission Deadline (subject to any applicable extensions of time), the parties' written submissions, and the prior decision of the Claims Administrator. No additional records may be submitted on Reconsideration and there will be no oral hearing on any reconsideration. The Reconsideration shall be conducted entirely in writing.
9. The decision of the Reconsideration Officer shall be final and binding on the Parties. There shall be no right of appeal from the decision.
10. Upon disposing of the reconsideration:
  - (a) **If a Class Member Submits a Reconsideration Statement:** the Reconsideration Officer shall order the unsuccessful party to pay to the successful party within 30 days following release of the reconsideration decision a reasonable and proportional amount of legal fees and disbursements on a partial indemnity basis, unless the Reconsideration Officer determines that success was divided equally, in which case neither party shall be required to pay costs. In addition, if the Reconsideration Officer's fees and disbursements exceed the amount of pre-estimated costs paid by the parties to a reconsideration in advance, then the Reconsideration Officer shall order the unsuccessful party to pay any outstanding balance within 30 days following the release of the reconsideration decision, unless the Reconsideration Officer determines that success was divided equally, in which case the additional costs shall be payable equally by the parties to the reconsideration.

- (b) **If the Defendants Submit a Reconsideration Statement:** regardless of which party is successful in the reconsideration, the Defendants shall cover their own costs and pay to the Class Member within 30 days following release of the reconsideration decision a reasonable and proportional amount of legal fees and disbursements on a partial indemnity basis. In addition, if the Reconsideration Officer's fees and disbursements exceed the amount of pre-estimated costs paid by the Defendants in advance of the reconsideration, then the Defendants shall pay any outstanding balance within 30 days following the release of the reconsideration decision.

**SCHEDULE J**

**Form of Monthly Reporting by Claims Administrator**

An Excel spreadsheet, substantially in the form of the table set out below, will be provided to the **Claims Administrator** by the **Parties**.

Description	This Month	As of [Current Reporting Date]	Comments
<b>Number of Claims Paid</b>			
<b>Total Paid to Claimants</b> <i>(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers, Notice and Admin Costs and Honoraria.</i>	\$ -		
<b>Total Paid to Provincial Health Insurers</b>	\$ -		
<b>Total Paid re Notice and Administration Costs</b>	\$ -		
<b>Total Paid re Honoraria</b>	\$ -		
<b>Total Paid Out of Settlement Account</b> <i>(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants, Honoraria and payments to the Provincial Health Insurers, as well as Notice and Admin Costs).</i>	\$ -		
<b>Balance of Settlement Account</b>			

Description	This Month	As of [Current Reporting Date]	Comments
<b>Unrevised Claims</b> (and not medically precluded)	<b>This Month</b>	<b>As of [Current Reporting Date]</b>	
<b>Number of Claims Paid</b>			
<b>Total Paid to Claimants</b> (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). <i>Excludes payments to Provincial Health Insurers and Honoraria.</i>	\$ -		
<b>Average Amount Paid to Claimants Total Paid to Claimants</b> (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). <i>Excludes payments to Provincial Health Insurers and Honoraria.</i>	\$ -		
<b>Single Revised Claims</b> (includes Claimants with bilateral implants who underwent only one revision surgery)	<b>This Month</b>	<b>As of [Current Reporting Date]</b>	
<b>Number of Claims Paid</b>			
<b>Total Paid to Claimants</b> (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). <i>Excludes payments to Provincial Health Insurers and Honoraria.</i>	\$ -		
<b>Average Amount Paid to Claimants Total Paid to Claimants</b> (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). <i>Excludes payments to Provincial Health Insurers and Honoraria.</i>	\$ -		



Description	This Month	As of [Current Reporting Date]	Comments
<b>Bilateral Revised Claims</b>	<b>This Month</b>	<b>As of [Current Reporting Date]</b>	
<b>Number of Claims Paid</b>			
<b>Total Paid to Claimants</b> (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). <i>Excludes payments to Provincial Health Insurers and Honoraria.</i>	\$ -		
<b>Average Amount Paid to Claimants</b> Total Paid to Claimants (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). <i>Excludes payments to Provincial Health Insurers and Honoraria.</i>	\$ -		
<b>Medically Precluded Claims</b>	<b>This Month</b>	<b>As of [Current Reporting Date]</b>	
<b>Number of Claims Paid</b>			
<b>Total Paid to Claimants</b> (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). <i>Excludes payments to Provincial Health Insurers and Honoraria.</i>	\$ -		
<b>Average Amount Paid to Claimants</b> Total Paid to Claimants (Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). <i>Excludes payments to Provincial Health Insurers and Honoraria.</i>	\$ -		

Description	This Month	As of [Current Reporting Date]	Comments
<b>Number of Claims Decided by Administrator But Not Paid</b> <i>(Ready to be paid, but insufficient funds available.) Includes those claims whose Reconsideration periods have NOT yet expired and those where a reconsideration is pending.</i>		<b>As of [Current Reporting Date]</b>	
<b>Total decisions rendered for which payment has not been issued</b>			
<b>Unrevised Claims</b> <i>(and not medically precluded)</i>			
<b>Single Revised Claims</b> <i>(includes Claimants with bilateral implants who underwent only one revision surgery)</i>			
<b>Bilateral Revised Claims</b>			
<b>Medically Precluded Claims</b>			
<b>Total Funds Due to Claimants</b> <i>(Includes Claimant award, Class Counsel Fees, payments to Public Litigation Funders and Derivative Claimants). Excludes payments to Provincial Health Insurers and Honoraria.</i>		\$ -	
<b>Number of Claims Being Reviewed by Administrator</b> <i>(includes all review statuses other than Approved, Payment Approved, Reconsideration in progress, and Rejected)</i>		<b>As of [Current Reporting Date]</b>	

Description	This Month	As of [Current Reporting Date]	Comments
<i>Unrevised Claims (and not medically precluded)</i>			
<i>Single Revision Surgery Claims</i>			
<i>Bilateral Revised Claims</i>			
<i>Medically Precluded Claims</i>			
Rejected claims whereby claimant provided product identification stickers for an eligible Biomet Device		As of [Current Reporting Date]	
<i>Rejected claims whereby claimant provided product identification stickers for an eligible Biomet Device</i>			
Reconsiderations		As of [Current Reporting Date]	
<i>Reconsiderations - In Progress</i>			
<i>Reconsiderations - Withdrawn</i>			
<i>Reconsiderations - Granted</i>			

Description	This Month	As of [Current Reporting Date]	Comments
<i>Reconsiderations - Denied</i>			
<b>Payments to Provincial Health Insurers</b>		<b>As of [Current Reporting Date]</b>	
<i>BC</i>			
<i>ON</i>			
<i>QC</i>			

**SCHEDULE “K”: LIST OF PROVINCIAL HEALTH INSURERS**

<b>Province/ Territory</b>	<b>Ministry / Department</b>	<b>Legislation</b>	<b>Right of Recovery</b>
Nova Scotia	Minister of Health and Wellness Department of Health and Wellness	<i>Health Services and Insurance Act</i> , RSNS 1989, c 197	“cost of the care, services and benefits”
New Brunswick	Minister of Health  Executive Council	<i>Medical Services Payment Act</i> , RSNB 1973, c M-7  <i>Health Services Act</i> , RSNB 2014, c 112  <i>Hospital Services Act</i> , RSNB 1973, c. H-9	“entitled services”
Prince Edward Island	Minister of Health and Wellness	<i>Health Services Payment Act</i> , RSPEI 1988, c H-2  <i>Hospital and Diagnostic Services Insurance Act</i> , RSPEI 1988, c H-8	“basic health services” “insured services”
Newfoundland and Labrador	Minister of Health and Community Services	<i>Medical Care and Hospital Insurance Act</i> , SNL 2016 c M-5.01	“insured services”
Ontario	Minister of Health and Minister of Long-Term Care	<i>Health Insurance Act</i> , RSO 1990 c H 6	“insured services”
Manitoba	Minister of Health, Seniors and Active Living	<i>Health Services Insurance Act</i> , CCSM, 2015 c H35	“insured services”
Saskatchewan	Minister of Health	<i>The Health Administration Act</i> , SS 2014, c E-13.1	“health services”
Quebec	Régie de l’assurance maladie du Québec	<i>Health Insurance Act</i> , 2017 CQLR c A-29	“insured services”

<b>Province/ Territory</b>	<b>Ministry / Department</b>	<b>Legislation</b>	<b>Right of Recovery</b>
		<i>Hospital Insurance Act</i> , CQLR c A-28	
Yukon	Minister of Health and Social Services	<i>Hospital Insurance Services Act</i> , RSY 2002, c 112  <i>Health Care Insurance Plan Act</i> , RSY 2002, c.107  <i>Travel for Medical Treatment Act</i> , RSY 2002, c. 222.	“insured services”  “insured health services”  “travel expenses”
Northwest Territories and Nunavut	Minister of Health and Social Services	<i>Hospital Insurance and Health and Social Services Administration Act</i> , RSNWT 1998, c T-3  <i>Medical Care Act</i> , R.S.N.W.T. 1988, c.M-8	“insured services”
Alberta	Minister of Health	<i>Crown’s Right of Recovery Act</i> , SA 2009, c C-35	“the Crown’s cost of health services”
British Columbia	Minister of Health	<i>Healthcare Costs Recovery Act</i> , SBC 2008 c. 27	“health care services”

## **SCHEDULE "L": PROVINCIAL HEALTH INSURER CONSENT AND RELEASE**

**WHEREAS** the legislation applicable to the Provincial Health Insurer executing this release, as set out in Schedule K to the Settlement Agreement defined below (the "**Act**"), permits a direct or subrogated claim (a "**Claim**") for the recovery of the costs for insured services, costs of care or analogous terms that have been incurred in the past and that may be incurred in the future and as further described in the Act and its regulations;

**AND WHEREAS** proceedings were commenced in Ontario and Quebec against Biomet Inc., Biomet Orthopedics LLC, Biomet Manufacturing Corp., Biomet U.S. Reconstruction LLC and Biomet Canada Inc. (collectively, the "**Defendants**") on behalf of a proposed class of Canadian residents who were implanted with Biomet Devices (as defined in the Settlement Agreement) (the "**Proceedings**");

**AND WHEREAS** pursuant to a Settlement Agreement dated [date] (the "**Settlement Agreement**") the Proceeding and all of the present and future claims of Class Members (as defined in the Settlement Agreement) relating to Biomet Devices are to be fully resolved, on a national basis, without admission of liability;

**AND WHEREAS** the Provincial Health Insurer (as defined in the Settlement Agreement) hereby consents to the Settlement Agreement;

**AND WHEREAS** pursuant to the Settlement Agreement, Class Members will have an opportunity to submit individual claims for settlement benefits;

**IN CONSIDERATION OF** payments to be made under the Settlement Agreement to the Provincial Health Insurers as good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged, the undersigned on behalf of the applicable Provincial Health Insurer (hereinafter "**Releasor**"), releases any and all manner of claims which the Provincial Health Insurer ever had, now has or hereafter can, shall or may have pursuant to provincial or territorial legislation that permits the recovery of healthcare costs or medical expenses from third parties, whether known or unknown, past or future, direct or indirect or subrogated, relating in any way to the design, manufacture, sale, distribution, labelling, and/or use of the Biomet Devices by Class Members, including the conduct in the subject matter of the Proceedings, and including all subrogated and/or direct claims in respect of Class Members that were or could have been brought for the cost of medical care or treatment provided to Class Members, as well as medical screening or monitoring, arising from the conduct alleged in the subject matter of the Proceedings, or relating in any way to the subject matter of the Proceedings, against the Releasees (as defined in the Settlement Agreement).

**AND THE RELEASOR ACKNOWLEDGES** and agrees that s/he has not been induced to execute this Release by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition express or implied or collateral agreement affecting the said release.

**AND FOR THE SAID CONSIDERATION** the Releasor covenants and agrees not to make a claim or to commence or take proceedings against any of the Releasees, including any person, firm, partnership, business or corporation who or which might claim contribution from, or to be indemnified by the Releasees, in respect of those matters to which this release applies.

**AND IT IS UNDERSTOOD** that the Releasees, and each of them, do not admit any liability to the Releasor or others and that such liability is specifically and expressly denied.

**IN WITNESS WHEREOF** the Releasor has hereunto set his/her hand and seal  
this day of       , 2024.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name of Statutorily  
Designated Official for the Provincial  
Health Insurer on behalf of [Province]

\_\_\_\_\_  
Signature of Statutorily Designated Official  
for the Provincial Health Insurer on behalf  
of [Province]



## **Schedule “2”: Notice of Approval Hearing (Short Form)**

**Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Hip Implant, or any combination thereof, in Canada, which was used as a metal-on-metal hip implant system?**

**This notice may affect your rights. Please read carefully.**

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as the “**Biomet Device**”) were defective, and that they failed prematurely. The Defendants deny these claims. The Ontario Superior Court of Justice certified a class action on December 18, 2015 in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec as *Conseil pour la protection des malades c. Biomet Canada inc.*

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

### **Who is Included?**

The proposed settlement applies to all persons who were implanted with a Biomet Device in Canada who have not opted out of the *Dine* action, their estates and certain family members.

### **What does the Settlement Provide?**

If the settlement is approved, eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive compensation, less deductions for legal fees and levies to Public Litigation Funders.

Eligible class member payments will depend on various individual factors including when the implants were done and whether the implants were revised and when that revision took place. Some individual claims may also be awarded from a discretionary fund established by the Settlement Agreement.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to Public Litigation Funders. Additionally, the settlement includes provisions for payment to public health insurers.

Upon approval by the Courts, Class Members will have the option to file claims and submit required forms and documentation electronically, by hand, via email, or by mail.

The settlement provides for a Discretionary Fund, which will make other compensation available to eligible Class Members. Please refer to the Special Claims Protocol at [[WEBSITE](#)] for specific terms and conditions applicable to Discretionary Fund claims.

The settlement also provides for payment to public health insurers. Please refer to the settlement agreement for specific terms and conditions.

### **What are your Legal Rights and Options?**

A motion to approve the settlement agreement is scheduled to be heard by the Ontario Superior Court of Justice in Toronto on [[date](#)]. Class Counsel will also ask the court to approve payments of fees and disbursements on

each approved award for their work in connection with the proceedings, and the payment by the defendants of a contribution to their fees and disbursements.

Class members have several options at this stage:

1. **Do nothing** – Class members who support the settlement do not have to do anything right now. Please note that by doing nothing, class members give up any right to object to the settlement and the right to sue the Defendants on their own.
2. **Submit a contention or objection** – If class members do not wish to attend the hearing but wish to explain why they do not support the proposed settlement, they can submit a contention or objection. Your contention or objection will be delivered to the Court by Class Counsel.
3. **Participate in the hearing** – class members can attend the hearing in person on [date] to voice their objection to the proposed settlement. The Court will decide if class members will be permitted to make oral submissions at the time of the hearing. To be eligible to participate, class members must have submitted their contentions or objections prior to the hearing.

Contentions or objections need not adhere to a formal format but should be submitted in writing to Class Counsel at least 14 days before the hearing and should include:

- (a) The full name, current mailing address, telephone number, and email address of the person who is submitting a contention or objecting;
- (b) A brief statement of the nature and reasons for the contention or objection;
- (c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of their Biomet Device;
- (d) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, and email address of counsel; and
- (e) A declaration that the foregoing information is true and correct.

### **Are Class Members responsible for Legal Fees?**

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of \$1.25 million as a contribution towards Class Counsel Fees, Disbursements and applicable taxes.

Class Counsel will be asking the court to approve Class Counsel Fees and Disbursements of 25 percent to be deducted from payments made to eligible Class Members (less the amounts paid by the Defendants) in respect of the work performed and disbursements incurred in the class action and to obtain the Settlement.

Further legal fees, disbursements, and taxes in order to assist each individual claimant to submit a claim in the settlement may also be payable in an amount to be agreed upon as between the Class Member and counsel. Class Counsel undertake not to charge in excess of 8.3 percent to assist with the Class Member's

claim.

**For Additional Information and a Copy of the Settlement Agreement:**

**KOSKIE MINSKY LLP**  
Barristers and Solicitors  
20 Queen Street West  
Suite 900  
P.O. Box 52  
Toronto ON M5H 3R3

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**Jamie Shilton**

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### Schedule “3”: Notice of Approval Hearing (Long Form)

**Were you, or a family member, implanted with a M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Hip Implant, or any combination of these, in Canada, which was used as a metal-on-metal hip implant system?**

**This notice may affect your rights. Please read carefully.**

Several individuals in Canada started class action lawsuits, alleging that the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system (referred to as the “**Biomet Device**”), were defective and failed prematurely when implanted in patients in Canada. The Ontario Superior Court of Justice certified a class action on December 18, 2015, in the case of *Dine v. Biomet et al.* Additionally, a proposed class action was filed in Quebec under *Conseil pour la protection des malades v. Biomet Canada inc.*

The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. For a copy of the settlement agreement, or for more information, please contact Class Counsel listed below.

A motion to approve the settlement agreement is scheduled to be heard by the Ontario Superior Court of Justice in Toronto on [date]. Class Counsel will also ask the court to approve an award of fees and disbursements for their work in connection with the proceedings during the hearing. Class members have several options at this stage:

- 1. Do nothing** – Class members who support the settlement do not have to do anything right now. Please note that by doing nothing, class members give up any right to object to the settlement and the right to sue the Defendants on their own.
- 2. Submit a contention or objection** – If class members do not wish to attend the hearing but wish to explain why they do not support the proposed settlement, they can submit a contention or objection. Your contention or objection will be delivered to the Court by Class Counsel.
- 3. Participate in the hearing** – class members can attend the hearing in person on [date] to voice their objection to the proposed settlement. The Court will decide if class members will be permitted to make oral submissions at the time of the hearing. To be eligible to participate, class members must have submitted their contentions or objections prior to the hearing.

Contentions or objections need not adhere to a formal format but should be submitted in writing to Class Counsel and the Ontario Court at least 14 days before the hearing and should include:

- a) The full name, current mailing address, telephone number, and email address of the person who is submitting a contention or objecting;

- b) A brief statement of the nature and reasons for the contention or objection;
- c) A declaration that the person believes he or she is a member of the Class and the reason for that belief including, if available, the catalogue and lot numbers of their Biomet Device;
- d) Whether the person intends to appear at the hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, and email address of counsel; and
- e) A declaration that the foregoing information is true and correct.

## **What this Notice Contains**

### **Basic Information**

1. Why did Class Members get this Notice?
2. What is a Class Action?
3. What is this lawsuit about?
4. Why is there a settlement?

### **Who is Included in the Settlement?**

5. Who is included in the proposed settlement?

### **Proposed Settlement Benefits**

6. What does the proposed settlement provide?
7. How will the lawyers be paid?

### **The Lawyers Representing Class Members**

8. Who are Class Counsel, lawyers for the class?

### **Making Your Views Known**

9. How do Class Members tell the court if they approve of, or object to, the proposed Settlement?

### **The Approval Hearing**

10. When and where will the court decide whether to approve the proposed Settlement?
11. Do Class Members have to attend the hearing?
12. May Class Members speak at the hearing?
13. What if Class Members do nothing?

## **Basic Information**

### **1. Why did Class Members get this Notice?**

The Ontario Court has authorized this Notice to inform Class Members about the proposed settlement and their options before the Court decides whether to give final approval to the proposed settlement. This notice explains the lawsuits, the proposed settlement, and Class Members' legal rights.

### **2. What is a Class Action?**

In a class action, one or more people called a "Representative Plaintiffs" sue on behalf of those who have similar claims. All of these people are called a "Class" or "Class Members". The courts resolve the issues for everyone affected by the class action, except for those who excluded themselves, or "opt out" of the lawsuit.

### **3. What is this lawsuit about?**

The class actions relate to the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, implanted in Canada and used as a metal-on-metal hip implant system. The Representative Plaintiffs claim that they were defective and failed prematurely when implanted in patients in Canada.

### **4. Why is there a settlement?**

The plaintiffs and the defendants have agreed to a proposed settlement of the class actions. The proposed settlement is not binding unless approved by the court. By agreeing to settle the lawsuit, the parties avoid the costs, uncertainty, and delay of going to trial and obtaining judgment, and the risks associated with being unsuccessful at trial. In this case, it also means that class members will not need to testify in court.

The plaintiffs and the lawyers for the class ("Class Counsel") believe that the proposed settlement is fair, reasonable, and in the best interests of the Class.

## **Who is Included in this Settlement?**

### **5. Who is included in the proposed settlement?**

The proposed settlement applies to all persons who were implanted with a Biomet Device in Canada who have not opted out of the *Dine v. Biomet et al.* action, their estates and certain family members.

## **Proposed Settlement Benefits**

### **6. What does the proposed settlement provide?**

If the settlement is approved, eligible class members who submit all required forms and documentation within the timelines set out in the Settlement Agreement will receive

compensation.

Individual Payments to Class Members:

<b><u>Claim Category</u></b>	<b><u>Quantum</u></b>
Unrevised Claimant (not Medically Precluded)	\$500
Unrevised Claimant (Medically Precluded)	\$45,000
Single Revision for Qualified Revision Surgery Claimant	\$75,000
Bilateral Revision for Qualified Revision Surgery Claimants	\$90,000

“Qualified Revision Surgery Claimant” means a class member who, as of the Claims Deadline, was implanted with a Biomet Device in Canada and: (i) has had a revision surgery; (ii) has been scheduled for a revision surgery; or (iii) was indicated by a physician as requiring a revision surgery and the revision surgery is planned, even if the date and time have not yet been finalized. The revision must have taken place, or take place, at least 180 days after the Index Surgery and not have been required because of infection or trauma, unless medical records establish that the claimant would likely have required the revision regardless of the infection or trauma.

“Medically Precluded” means a Class Member for whom a Revision Surgery was determined to be necessary within 12 years and 1 day of the Index Surgery, but who was unable to undergo a Revision Surgery due to the existence of a medical condition.

The Settlement Agreement provides that for Qualified Revision Surgery Claimants and Medically Precluded Class Members are in all cases subject to the following reductions:

<b><u>In Vivo Time</u></b>	<b><u>Cumulative Reduction of Total Amount</u></b>
7 years, 1 day	5%
8 years, 1 day	10%
9 years, 1 day	20%
10 years, 1 day	30%
11 years, 1 day	40%



12 years and 1 day and beyond	No compensation unless provided for from the Discretionary Fund
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The settlement agreement also provides for:

- a) A Discretionary Fund to be distributed to Class Members pursuant to a Special Claims Protocol to be approved by the Ontario Court;
- b) Additional compensation for certain defined complications;
- c) Compensation for certain out-of-pocket expenses; and
- d) Compensation for family members who provided care in certain circumstances.

Please refer to the Special Claims Protocol at [\[WEBSITE\]](#) for specific terms and conditions applicable to Discretionary Fund claims.

Any remaining funds from the settlement, if applicable, will be distributed to third parties approved by the Ontario Court after necessary legal levies have been paid to the Class Proceedings Fund or the Fonds d'aide aux actions collectives, as applicable. Additionally, the settlement includes provisions for payment to public health insurers.

Upon approval by the Courts, Class Members will have the option to file claims and submit required forms and documentation electronically, by hand, via email, or by mail.

For class members resident outside of Quebec, a 10% levy on each award will be paid to the Class Proceedings Fund. For class members resident in Quebec, a 10% levy on each award will be paid to the Fonds d'aide aux actions collectives.

## **7. How will the lawyers be paid?**

Under the terms of the Settlement Agreement, the Defendants have agreed to pay Class Counsel the sum of \$1.25 million as a contribution towards Class Counsel Fees, Disbursements and applicable taxes.

Class Counsel will be asking the court to approve Class Counsel Fees and Disbursements of 25 percent to be deducted from payments made to eligible Class Members (less the amounts paid by the Defendants) in respect of the work performed and disbursements incurred in the class action and to obtain the Settlement.

Further legal fees, disbursements, and taxes in order to assist each individual claimant to submit a claim in the settlement may also be payable in an amount to be agreed upon as between the Class Member and counsel. Class Counsel undertake not to charge in excess of 8.3 percent to assist with the Class Member's claim.

## **The Lawyers Representing Class Members**

### **8. Who are class Counsel, lawyers for the class?**

Class Counsel are the law firms Koskie Minsky LLP, Stevenson Whelton LLP, Klein Lawyers LLP, and Sylvestre Painchaud & Et Associes.

## **The Approval Hearing**

### **9. When and where will the court decide whether to approve the proposed Settlement?**

The Ontario Court will hold a hearing on [date] to decide whether to approve the proposed Settlement and Class Counsel's request for legal fees and disbursements. Class Members may attend the hearing in person and ask to speak but attendance is not required.

### **10. Do Class Members have to attend the hearing?**

No. Class Counsel will answer any questions the Court may have. If class members wish to observe, they are welcome to attend. Class Members may also have their own lawyer attend at their own expense.

### **11. May Class Members speak at the hearing?**

Class Members may ask the Court for permission to speak at the approval hearing.

### **12. What if Class Members do nothing?**

If Class Members do nothing, they are choosing by default, not to object to the proposed settlement. The Settlement Approval Hearing will proceed, and the court will consider whether the settlement is fair, reasonable, and in the best interest of the Class, and whether Class Counsel's fees should be approved. If class members agree with the settlement, nothing further is required.

## **For Additional Information and a Copy of the Settlement Agreement:**

<p><b>KOSKIE MINSKY LLP</b> Barristers and Solicitors 20 Queen Street West Suite 900 P.O. Box 52 Toronto ON M5H 3R3</p> <p><b>Jonathan Ptak</b> <b>Jamie Shilton</b></p> <p>Tel: 416.977.8353 Email: <a href="mailto:jptak@kmlaw.ca">jptak@kmlaw.ca</a> <a href="mailto:jshilton@kmlaw.ca">jshilton@kmlaw.ca</a></p>	<p><b>KLEIN LAWYERS</b> 100 King Street West Suite 5600 Toronto ON M5X 1C9</p> <p><b>Brent D. Ryan</b> Tel: 604.714.6154 Email: <a href="mailto:bryan@callkleinlawyers.com">bryan@callkleinlawyers.com</a></p> <p><b>SYLVESTRE PAINCHAUD &amp; ET ASSOCIES</b> 740, Avenue Atwater Montréal, Québec, H4C 2G9</p>
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## **Schedule “4” - Notice Plan**

The Notice of Approval Hearing (short form and long-form) and the Notice of Settlement Approval (short form and long-form) (collectively the “Notices”) will be disseminated by the following means:

1. Class Counsel will send the Notices by mail or email to all class members who have contacted Class Counsel regarding this action and provided their contact information.
2. Class Counsel shall post a copy of the Notices and the Settlement Agreement to their respective websites.
3. Class Counsel shall issue the media release attached hereto as Schedule 5 with the Notice of Approval Hearing, and the media release will be distributed through Canada Newswire.
4. The Administrator shall arrange for publication of the information contained in the Short-Form Notice on various social media platforms including Facebook, Instagram, and LinkedIn.
5. In addition to the above, for Notice of Settlement Approval (Short-Form and Long-Form), the parties will reasonably cooperate on dissemination of notice to the Class through hospitals in Canada and/or by the Administrator based on Class Member contact information provided by hospitals. If required, the Plaintiffs will bring a motion to facilitate the dissemination of notice through hospitals and/or to facilitate the dissemination of notice by the Administrator using Class Member contact information provided by hospitals. The Defendants will reasonably cooperate with the Plaintiffs in this motion, and the Parties agree that no costs will be sought from the other Party in connection with the motion.

## Schedule “5”-Media Release

### M2a 38, M2a Magnum or ReCap Femoral Resurfacing System Metal-on-Metal Hip Implant Class Action Settlement

Subject to court approval, a settlement has been reached in the certified class actions involving Canadians who were implanted in Canada with the M2a 38, M2a Magnum or ReCap Femoral Resurfacing System hip implants, or any combination thereof, that was used as a metal-on-metal hip implant system (“**Biomet Devices**”). A class action has been certified in Ontario (*Dine v. Biomet et al*) and was filed in Quebec (*Conseil pour la protection des malades c. Biomet Canada inc.*)

The settlement applies to “all persons who were implanted with the Biomet Devices in Canada”, their estates and certain family members.

The defendants do not admit liability, but have agreed to a settlement providing compensation to class members with certain injuries upon approval after receipt of supporting documentation, less deductions for legal fees and levies to public litigation funders. Public health insurers are also entitled to compensation under the settlement agreement. Please refer to the settlement agreement for compensation details.

A motion to approve the settlement agreement will be heard by the Ontario Superior Court of Justice in Toronto on **[date]**. At the hearing, Class Counsel will also ask the courts to approve payment of its fees and disbursements for its work in connection with the actions.

Class members who do not oppose the settlement do not need to appear at the hearings to indicate their desire to participate in the settlement. Class members who oppose the settlement or who want to assert contentions relative to the settlement have the right to present arguments to the courts or to object to the settlement, including by delivering a written submission to Class Counsel on or before **[date]**. A class member who wishes to object to the settlement or submit contentions should provide in their objection or contention the following information: (a) the full name, current mailing address, telephone number, and email address of the person objecting; (b) a brief statement of the reasons for the objection; (c) a declaration that the person believes he or she is a member of the Class, and the reason for that belief, including, if available, the catalogue and lot numbers of their Biomet Device(s); (d) whether the person intends to appear at the relevant approval hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, and email address of his or her counsel; and (e) a declaration that the foregoing information is true and correct.

For additional information and a copy of the settlement agreement, contact:

**KOSKIE MINSKY LLP**  
Barristers and Solicitors  
20 Queen Street West  
Suite 900  
P.O. Box 52  
Toronto ON M5H 3R3

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**Jamie Shilton**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto  
Proceeding under the Class Proceedings Act, 1992

**ORDER**

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