

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

AUG -3 PM 2:03

CLERK'S OFFICE  
AT BALTIMORE

IN RE: SMITH & NEPHEW  
BIRMINGHAM HIP RESURFACING  
(BHR) HIP IMPLANT PRODUCTS  
LIABILITY LITIGATION

MDL No. 2775 BY \_\_\_\_\_ DEPUTY  
Master Docket No. 1:17-md-2775

JUDGE CATHERINE C. BLAKE

**THIS DOCUMENT RELATES TO ALL  
ACTIONS**

**[REDACTED] CASE MANAGEMENT ORDER NO. 3**

**Master Amended Consolidated Complaint, Short Form Complaints, and Motion to Dismiss**

The parties hereby submit this Stipulated Order regarding Plaintiffs' Master Amended Consolidated Complaint ("MACC"), Short Form Complaints, and briefing on Smith & Nephew, Inc.'s ("S&N") anticipated motion to dismiss the MACC.

1. On or before August 4, 2017, Plaintiffs will serve on S&N a draft of the MACC which may include references to documents or information designated as "Confidential" pursuant to the Protective Order entered by this Court. The parties will confer in an effort to determine whether any such documents or information can be included in the MACC without need of filing under seal.

2. On or before August 11, 2017, Plaintiffs will file their MACC. If necessary, Plaintiffs will file a redacted version of the MACC in the public record and will file an unredacted version under seal. Leave to file an unredacted version of the MACC under seal is hereby granted by the Court.

3. In addition, all Plaintiffs in matters pending in MDL 2775 as of August 4, 2017 shall file a Short Form Complaint on or by August 31, 2017, in substantially the form attached as Exhibit "A" to this Order. The MACC shall be deemed adopted by and applicable to all Plaintiffs in matters filed in or transferred to MDL 2775 before or after the entry of this Order.

4. On or by October 16, 2017, S&N shall answer and/or file a motion to dismiss Plaintiffs' MACC and any other claims in any Short Form Complaint submitted in cases that were in this MDL 2775 as of August 4, 2017. The memorandum in support of the motion to dismiss filed pursuant to this paragraph shall not exceed, in total, fifty (50) pages, exclusive of any caption, table of contents, table of authorities, certifications, and signature block.

5. On or by November 30, 2017, Plaintiffs shall file their response to S&N's motion to dismiss. The response filed pursuant to this paragraph shall not exceed, in total, fifty (50) pages, exclusive of any caption, table of contents, table of authorities, certifications, and signature block.

6. On or by January 5, 2018, S&N shall file its reply brief in support of the motion to dismiss. Any reply brief filed pursuant to this paragraph shall not exceed, in total, twenty-five (25) pages, exclusive of any caption, table of contents, table of authorities, certifications, and signature block.

7. Any plaintiff whose case is pending in MDL 2775 as of August 4, 2017, who does not file a Short Form Complaint on or before August 31, 2017 must file by September 7, 2017, a motion for leave to file the Short Form Complaint after the August 31, 2017 deadline. The motion for leave should address the reasons the Short Form Complaint was not timely filed and must establish good cause for failing to meet the deadline. Defendant shall have until September

21, 2017 to file any oppositions to motions for leave to file a Short Form Complaint. Plaintiffs shall have until September 28, 2017 to file their replies.

8. Nothing in this Order shall be deemed to revive any claim asserted in any case pending in or transferred into this MDL that was dismissed with prejudice prior to the commencement of this MDL.

9. Any plaintiff whose case is transferred to this MDL after August 4, 2017 shall file a Short Form Complaint within thirty (30) days of transfer. All responses by S&N to any Short Form Complaint either direct filed in this MDL or submitted in cases transferred to this MDL after August 4, 2017 shall be stayed pending further Order of this Court, without prejudice to S&N to answer or move to dismiss on such schedule as the Court may later determine.

IT IS SO ORDERED, this 3<sup>d</sup> day of August 2017.



\_\_\_\_\_  
HON. CATHERINE C. BLAKE  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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IN RE: SMITH & NEPHEW  
BIRMINGHAM HIP RESURFACING  
(BHR) HIP IMPLANT PRODUCTS  
LIABILITY LITIGATION

MDL-17-md-2775  
Hon. Catherine C. Blake

This Document Relates to  
ALL ACTIONS

**SHORT FORM COMPLAINT**  
Case No. \_\_\_\_\_

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**SHORT FORM COMPLAINT**

1. Plaintiff, \_\_\_\_\_, states and brings this civil action in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint pursuant to CMO No. XX, entered DATE by this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff is a resident and citizen of \_\_\_\_\_ and claims damages as set forth below.

3. Plaintiff's Spouse \_\_\_\_\_ is a resident and citizen of \_\_\_\_\_ and claims loss of consortium damages as set forth below.

4. Federal jurisdiction is proper based on diversity of citizenship.

5. The Federal District in which Plaintiff's initial implant took place: \_\_\_\_\_

6. The Federal District in which Plaintiff's revision(s) surgeries took place:  
\_\_\_\_\_

7. Plaintiff brings this action [*check the applicable designation*]:

\_\_\_\_\_ On behalf of [himself/herself];

\_\_\_\_\_ In a representative capacity as the \_\_\_\_\_ of the

\_\_\_\_\_ having been duly appointed as the \_\_\_\_\_ by the \_\_\_\_\_ Court of \_\_\_\_\_. A copy of the Letters of Administration for a wrongful death claim is annexed hereto if such letters are required for the commencement of such a claim by the Probate, Surrogate or other appropriate court of the jurisdiction of the decedent.

*[Cross out if not applicable.]*

**FACTUAL ALLEGATIONS**

8. On or about \_\_\_\_\_, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's (LEFT/RIGHT) hip.

9. [IF BILATERAL]: On or about \_\_\_\_\_, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's (LEFT/RIGHT) hip.

10. Plaintiff's [LEFT/RIGHT] BHR implant surgery was performed at \_\_\_\_\_ by \_\_\_\_\_.

11. Plaintiff underwent medically-indicated revision of the BHR hip implant on or about \_\_\_\_\_.

12. Plaintiff suffered the following complications, injuries, and/or indications, some or all of which made revision surgery medically necessary: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. Plaintiff's revision surgery was performed by \_\_\_\_\_ at \_\_\_\_\_.

14. Plaintiff adopts the allegations of the Master Amended Consolidated Complaint (“MACC”) filed August 4, 2017, and all amendments to the MACC.

15. Notwithstanding the foregoing, Plaintiff does not adopt the following paragraphs of the MACC: \_\_\_\_\_.

16. Notwithstanding the foregoing, Plaintiff additionally alleges that:

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**ALLEGATIONS AS TO INJURIES**

17. (a) Plaintiff claims damages as a result of (check all that are applicable):

- \_\_\_\_\_ INJURY TO HERSELF/HIMSELF
- \_\_\_\_\_ INJURY TO THE PERSON REPRESENTED
- \_\_\_\_\_ WRONGFUL DEATH
- \_\_\_\_\_ SURVIVORSHIP ACTION
- \_\_\_\_\_ ECONOMIC LOSS

(b) Plaintiff’s spouse claims damages as a result of (check all that are applicable):

*[Cross out if not applicable.]*

- \_\_\_\_\_ LOSS OF SERVICES
- \_\_\_\_\_ LOSS OF CONSORTIUM

18. Defendant, by its actions or inactions, proximately caused the injuries to Plaintiff(s).

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

19. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

\_\_\_\_\_ COUNT I  
Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT II  
Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT III  
Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT IV  
Specific state common law and statutory law that applies: \_\_\_\_\_

\_\_\_\_\_ COUNT V  
Specific state common law and statutory law that applies: \_\_\_\_\_

In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff(s) pray for judgment against Defendant as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;



4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement; and
7. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: \_\_\_\_\_

Respectfully submitted,