

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF INDIANA
 SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP)	
IMPLANT PRODUCTS LIABILITY)	
LITIGATION (MDL 2391))	
	)	CAUSE NO. 3:12-MD-2391
_____)	
)	
<i>This Document Relates to:</i>)	
)	
BRADY v. BIOMET, INC., et. al.	)	CAUSE NO. 3:18-CV-672
EASTERLING v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-675
HAYDEN v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-678
WALCH v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-679
ANDREWS v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-680
CONNOR v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-683
FITZGERALD v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-684
FOWLER v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-685
FRANZESE v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-686
KELLEY v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-691
BAYE v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-696
ANDERSON v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-698
ALEXANDER v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-711
GIFT v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-713
MOORE v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-714
STONE v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-715
ROBINSON v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-716
HOWELL v. BIOMET, INC., et. al	)	CAUSE NO. 3:18-CV-717
_____)	

ORDER

On March 7, I granted defendants’ motion to dismiss several of the claims in these 18 cases [Doc. No. 36]. I dismissed: a) fraud (counts 1 and 2), b) fraudulent concealment (count 3), c) misrepresentation (count 8), and d) information negligently supplied for the guidance of others (count 10) brought by each plaintiff. For the fraud and misrepresentation allegations, I found that

none of the complaints pleaded necessary facts with requisite particularity required by Fed. R. Civ. P. 9(b).

Each plaintiff now asks for an extension of time in which to file an amended complaint [Doc. Nos. 38-39], arguing that group case-specific discovery will reveal more information to support their fraud and misrepresentation claims. This misunderstands the federal pleading standard. Under Fed. R. Civ. P. 8, a plaintiff is to adequately plead his or her claims in the complaint, not after or during litigation. Further, case-specific discovery wouldn't disclose the information each plaintiff needs to plead reliance with particularity. This information – what statements the plaintiff relied upon, who made the statements, how the statements reached the plaintiff, and how the plaintiff acted upon the statements – is something entirely within the knowledge of each plaintiff. If a plaintiff can't point today to a specific person or statement on which he or she relied, the remote possibility that discovery will produce the statement doesn't justify the delay in the multi-district litigation process.

Accordingly, the court DENIES the plaintiffs' motion for an extension of time to file an amended complaint and DISMISSES the fraud and misrepresentation claims with prejudice in accordance with the March 7, 2019 opinion and order [Doc. No. 36].

SO ORDERED.

ENTERED: May 14, 2019

/s/ Robert L. Miller, Jr.
Judge, United States District Court