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JODI MURPHY

Per local Rule, This case is assigned to Judge Reyes, Benjamin T, II, for all purposes.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

UNLIMITED JURISDICTION

JODI MURPHY, an individual,

Plaintiff,

vs

WENDY WONG, M.D, an individual; GOLDEN STATE ORTHOPEDICS, a California corporation; ZIMMER BIOMET, an Indiana corporation; ZIMMER BIOMET CORPORATE SERVICES, a Delaware corporation, and DOES 1-30, inclusive,

Defendants.

Case No. C25-01916

COMPLAINT FOR PROFESSIONAL (MEDICAL) NEGLIGENCE, FAILURE TO OBTAIN INFORMED CONSENT, MEDICAL BATTERY, BREACH OF PRIVACY, AND DEMAND FOR JURY TRIAL

SUMMONS ISSUED

Plaintiff, who for causes of actions against the Defendants, and each of them, including DOES 1 through 30, inclusive, alleges as follows:

SUBJECT MATTER JURISDCITION AND VENUE

1. This Court has subject matter jurisdiction and is a proper venue because Plaintiff's injuries occurred in Contra Costa County and Defendants conduct business in Contra Costa County.

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GENERAL ALLEGATIONS

2. Plaintiff, JODI MURPHY, ("Plaintiff" or "Ms. Murphy") at all material times herein resided in Contra Costa County and is suing Defendants in her individual capacity. The acts complained of herein occurred in Contra Costa County.

3. Defendant GOLDEN STATE ORTHOPEDICS ("GSO") is a California corporation that conducts business in and maintains multiple locations in Contra Costa County, California.

4. Defendant ZIMMER BIOMET is an Indiana corporation that conducted business and provided medical devices and/or hardware to hospitals and surgeons in Contra Costa County, California.

5. Defendant ZIMMER BIOMET CORPORATE SERVICES is a Delaware corporation that is registered to do business in California and operates as a corporate services entity for the Zimmer Biomet family of companies. In that capacity, it has conducted business and provided medical devices and/or surgical hardware, including orthopedic implants and related products, to hospitals and surgeons in Contra Costa County, California.

6. The true names or capacities, whether individual, corporate, associate or otherwise, of Defendants, DOES 1 through 30, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such fictitious names and will seek leave of Court to amend this Complaint when the same has been ascertained. Plaintiff is informed and believes, and upon such information and belief, alleges that each Defendant designated herein as a DOE was responsible, negligently or in some other actionable manner, for the events and happenings referred to herein which proximately caused injury to Plaintiff as hereinafter alleged.

7. At all times mentioned herein Defendant WENDY WONG, M.D. ("Dr. Wong"), Defendant GSO, and DOES 1 through 30, inclusive (collectively "Defendants"), and each of them, were and now are physicians and/or medical providers licensed by the State of California to practice in said State.

8. At all times mentioned herein, each Defendant, including each DOE Defendant, was the agent and employee of each of remaining Defendant and was at all times acting within the

purpose and scope of said agency and employment. Further, each act herein described by each Defendant was accepted, approved, and ratified by each of remaining Defendant.

9. Prior to the commencement of this action, Plaintiff gave notice to Defendants Dr. Wong and GSO, pursuant to Code of Civil Procedure § 364, notifying them of Plaintiff's intent to file suit. A true and correct copy of said notice is attached to this Complaint as **Exhibit A** and is incorporated herein by reference.

FIRST CAUSE OF ACTION
PROFESSIONAL (MEDICAL) NEGLIGENCE
(AGAINST DEFENDANTS WENDY WONG, M.D. AND GOLDEN STATE ORTHOPEDICS AND DOES 1-30)

10. Plaintiff incorporates each and every allegation contained in the previous paragraphs of the Complaint herein.

11. On November 14, 2024, Ms. Murphy underwent a procedure for a Total Knee Replacement ("TKR") performed by Dr. Wong at GSO in Walnut Creek, California. During the surgery, Dr. Wong placed a Zimmer Biomet knee replacement implant into Ms. Murphy's knee. Unbeknownst to Ms. Murphy and without her informed consent, Dr. Wong also implanted a Zimmer Biomet Persona IQ implant, which is an additional piece of hardware or extension of the knee replacement hardware.

12. Defendants Dr. Wong and GSO undertook the handling, control, and care of Ms. Murphy when she had the implant as part of her TKR at GSO in Walnut Creek.

13. The morning after the surgery on November 15, 2024, Ms. Murphy was contacted by a Zimmer Biomet representative informing Ms. Murphy that her surgeon had enrolled her in Mymobility, Zimmer Biomet's patient care app. The Zimmer Biomet representative also informed Ms. Murphy that Dr. Wong implanted a 30mm x 14mm electronic device in her body that included a battery and sensors for use with the app. This implant required additional surgical insult to Ms. Murphy's bone that would not have been injured had Defendants not implanted the device. Zimmer Biomet's direct involvement in both the surgical procedure and post-operative communications substantially assisted the implantation of the device, despite Plaintiff never being informed of or consenting to the electronic device being implanted.

14. At all times mentioned herein, Defendants Dr. Wong and GSO undertook the duty to handle and control the care and treatment of Plaintiff. Defendants Dr. Wong and GSO thereby breached their duty of care insofar as they negligently failed to exercise ordinary skills possessed and exercised by other hospitals, health care business, physicians and other health care professionals engaged in said profession in the same or similar locality by implanting an unauthorized device and foreign body in Ms. Murphy's knee and causing an unauthorized surgical insult to Ms. Murphy. As a direct result of Defendants' negligence, Plaintiff has been harmed.

15. As a proximate result of the improper acts of the Defendants, and each of them, Plaintiff was hurt and injured in her physical and mental health, all of which said injuries have caused and continue to cause Plaintiff great mental and physical pain and suffering, and other damages. By reason of said injuries, Plaintiff has sustained general damages.

16. As a further, direct and proximate result of the negligence of the Defendants, and each of them, as aforesaid, Plaintiff was injured and damaged and may in the future employ the services of hospitals, physicians, and the like to care for and treat Plaintiff.

SECOND CAUSE OF ACTION
(FAILURE TO OBTAIN INFORMED CONSENT AGAINST DEFENDANT WENDY WONG M.D., GOLDEN STATE ORTHOPEDICS, ZIMMER BIOMET, INC., ZIMMER BIOMET CORPORATE RESOURCES, AND DOES 1 TO 30)

17. Plaintiff incorporates each and every allegation contained in the previous paragraphs of the Complaint herein.

18. On November 14, 2024, Ms. Murphy underwent a procedure for a Total Knee Replacement ("TKR") performed by Dr. Wong at GSO in Walnut Creek, California with Zimmer Biomet personnel assisting with the surgical procedure and oversight from Zimmer Biomet Corporate Services. During the surgery, Dr. Wong, with the assistance of Zimmer Biomet personnel, placed a Zimmer Biomet knee replacement implant into Ms. Murphy's knee. Unbeknownst to Ms. Murphy and without her informed consent, Defendants implanted a Zimmer Biomet Persona IQ ("ZBPIQ") device into Plaintiff's knee without disclosing this device or obtaining Plaintiff's specific informed consent for its use.

19. Defendants failed to inform Plaintiff of the nature, purpose, and potential risks of the ZBPIQ device, including but not limited to its smart-tracking functionality, its compatibility with a third-party mobile application, and its ongoing data transmission from within her body.

20. At no time prior to the procedure was Plaintiff informed that an electronic device would be implanted into her knee or that her post-operative care would be linked to an app-based tracking system. Plaintiff would not have consented to the installation of the ZBPIQ device had she been fully and adequately informed.

21. The failure of Defendants, and each of them, to obtain Plaintiff's informed consent prior to implanting the ZBPIQ device constituted a breach of their duty to disclose material information necessary for the Plaintiff to make an informed decision about her medical care. Zimmer Biomet and Zimmer Biomet Corporate Services aided and abetted the failure to obtain informed consent by assisting in the implantation and managing the follow-up enrollment process through which Plaintiff first learned of the device.

22. As a direct and proximate result of Defendants' failure to obtain informed consent, Plaintiff has suffered severe injuries, emotional distress, and other damages, in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(MEDICAL BATTERY AGAINST DEFENDANT WENDY WONG M.D., GOLDEN STATE ORTHOPEDICS, ZIMMER BIOMET, INC., ZIMMER BIOMET CORPORATE SERVICES, AND DOES 1 TO 30)

23. Plaintiff incorporates each and every allegation contained in the previous paragraphs of the Complaint herein.

24. On November 14, 2024, Ms. Murphy underwent a procedure for a Total Knee Replacement ("TKR") performed by Dr. Wong at GSO in Walnut Creek, California with Zimmer Biomet personnel assisting with the surgical procedure. During the surgery, Dr. Wong, with the assistance of Zimmer Biomet personnel and oversight from Zimmer Biomet Corporate Services, placed a Zimmer Biomet knee replacement implant into Ms. Murphy's knee. Unbeknownst to Ms. Murphy and without her informed consent, Defendants implanted a Zimmer Biomet Persona IQ ("ZBPIQ") device into Plaintiff's knee without disclosing this device or obtaining Plaintiff's

specific informed consent for its use. Zimmer Biomet's participation in the procedure materially contributed to the unauthorized physical intrusion that exceeded the scope of Plaintiff's consent.

25. The implantation of the ZBPIQ device constituted a medical battery because it involved a substantial deviation from the procedure Plaintiff consented to and Defendants' actions exceeded the scope of Plaintiff's consent and involved an unauthorized physical intrusion into her body.

26. Zimmer Biomet and Zimmer Biomet Corporate Services aided and abetted the battery committed by Dr. Wong and GSO by facilitating the implantation of the unauthorized device and communicating with Plaintiff about its presence only after the fact.

27. Defendants' conduct was intentional, harmful, and offensive, and would be considered a battery by a reasonable person under similar circumstances.

28. As a direct and proximate result of Defendants' failure to obtain informed consent, Plaintiff has suffered severe injuries, emotional distress, and other damages, in an amount to be proven at trial.

29. Defendants' actions were despicable and carried out with willful and knowing disregard for Plaintiff's rights and safety. The implantation of an electronic device without Plaintiff's knowledge or consent exceeded the scope of the authorized procedure and violated her fundamental right to bodily autonomy. Accordingly, an award of punitive damages is warranted.

FOURTH CAUSE OF ACTION

(INVASION OF PRIVACY – IN VIOLATION OF COMMON LAW AND CAL. CIV. CODE § 56.10, AGAINST DEFENDANT WENDY WONG M.D., GOLDEN STATE ORTHOPEDICS, ZIMMER BIOMET, INC., ZIMMER BIOMET CORPORATE SERVICES, AND DOES 1 TO 30)

30. Plaintiff incorporates each and every allegation contained in the previous paragraphs of the Complaint herein.

31. On November 14, 2024, Ms. Murphy underwent a procedure for a Total Knee Replacement ("TKR") performed by Dr. Wong at GSO in Walnut Creek, California with Zimmer Biomet personnel assisting the surgical procedure and oversight from Zimmer Biomet Corporate Services. During the surgery, Dr. Wong, with the assistance of Zimmer Biomet personnel, placed a Zimmer Biomet knee replacement implant into Ms. Murphy's knee. Unbeknownst to Ms. Murphy

and without her informed consent, Defendants implanted a Zimmer Biomet Persona IQ ("ZBPIQ") device into Plaintiff's knee without disclosing this device or obtaining Plaintiff's specific informed consent for its use.

32. At all relevant times, Plaintiff had a reasonable expectation of privacy in decisions regarding her own body, including the right to bodily autonomy and to control whether any medical device or foreign object would be implanted in her during surgery.

33. Zimmer Biomet's actions in facilitating implantation of the smart device and contacting Plaintiff to activate its tracking functionality without prior disclosure contributed to the violation of Plaintiff's bodily autonomy and privacy rights.

34. Defendants' conduct, implanting a foreign electronic device capable of collecting and transmitting data from inside Plaintiff's body without her consent, constituted an intentional intrusion upon Plaintiff's private affairs and bodily integrity.

35. The unauthorized implantation of the ZBPIQ device constituted a serious invasion of Plaintiff's personal autonomy and bodily privacy that would be highly offensive to a reasonable person.

36. In addition, Defendants Wendy Wong, M.D., and Golden State Orthopedics violated the California Confidentiality of Medical Information Act ("CMIA"), Civil Code §§ 56 et seq. These Defendants meet the definition of "providers of health care" as defined by statute.

37. The ZBPIQ device implanted in Plaintiff's knee was capable of collecting, storing, and transmitting individualized data related to Plaintiff's physical condition and treatment, constituting 'medical information' under Civil Code § 56.05(j).

38. Dr. Wong and GSO obtained, used, and attempted to disclose Plaintiff's medical information without obtaining her written authorization, in violation of Civil Code § 56.10(a). Plaintiff never consented to the implantation or activation of a device that would collect or transmit her personal medical data.

39. Dr. Wong and GSO's conduct was negligent, reckless, or willful and constituted a violation of Plaintiff's statutory rights under the CMIA. As a direct and proximate result, Plaintiff

suffered harm including emotional distress, anxiety, loss of dignity, and fear of ongoing bodily surveillance.

40. Pursuant to California Civil Code §§ 56.35 and 56.36, Plaintiff seeks nominal damages of $1,000, actual damages according to proof, attorneys' fees and costs, and punitive damages based on the willful and grossly negligent nature of the CMIA violations.

41. As a direct and proximate result of Defendants' unlawful intrusion, Plaintiff has suffered severe injuries, emotional distress, and other damages, in an amount to be proven at trial.

42. Zimmer Biomet's conduct, including assisting in the implantation of the Persona IQ device and communicating directly with Plaintiff about the device and its functionality, substantially assisted and encouraged the wrongful conduct of Dr. Wong and GSO. Zimmer Biomet knew or should have known that Plaintiff had not consented to the device, and its conduct was a substantial factor in causing Plaintiff's harm. Zimmer Biomet is therefore liable under a theory of aiding and abetting.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For medical, hospital and other expenses according to proof;
2. For general damages according to proof;
3. For interest on all sums found to be due and owing, said interest accruing at the legal rate from the date of said incident;
4. For prejudgment interest on all amounts claimed;
5. For costs of suit herein incurred;
6. For attorneys' fees as allowed by law;
7. For punitive damages;
8. For such other and further relief as the Court may deem just and proper.

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Dated: July 2, 2025

MARK VENARDI
Attorney for the Plaintiff
JODI MURPHY