UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TWILA BEASLEY, SIMONE CLARK, KAREN BROWN, DESIREE BYRD, NAKKISHA CLAIBORNE-JORDAN, SANDRA KRAMER, VERONICA CREPPEL, JEROME FINKELSTEIN, HAROLD FLYNN, JR., DONALD FORNEA, WILLIAM GRANGER, CONNIE HIBBEN, LEROY ROBIN, HERBERT THEODORE, JR., and NOLAN WEBER, **Plaintiffs ,** **-against-** **INTUITIVE SURGICAL, INC.,** **Defendant.**	**Index No. _13__ CV_2497___** **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiffs, complaining of the defendant by their attorneys, Becnel Law Firm, LLC, respectfully allege, upon information and belief, the following:

THE PARTIES

1. The Plaintiff TWILA BEASLEY is a resident of and domiciled in Orleans Parish, City of New Orleans, and State of Louisiana.

2. The Plaintiff SIMONE CLARK is a resident of and domiciled in Jefferson Parish, City of Gretna, and State of Louisiana.

3. The plaintiff KAREN BROWN is a resident of and domiciled in Jefferson Parish, City of Bridge City, and State of Louisiana.

4. The plaintiff DESIREE BYRD is a resident of and domiciled in Jefferson Parish, City of Marrero, and State of Louisiana.

5. The plaintiff NAKKISHA CLAIBORNE-JORDAN is a resident of and domiciled in Tangipahoa Parish, City of Hammond, and State of Louisiana.

6. The plaintiff SANDRA KRAMER is a resident of and domiciled in St. Tammany Parish, City of Lacombe, and State of Louisiana.

7. The plaintiff VERONICA CREPPEL is a resident of and domiciled in Jefferson Parish, City of Gretna, and State of Louisiana.

8. The plaintiff JEROME FINKELSTEIN is a resident of and domiciled in Tangipahoa Parish, City of Hammond, and State of Louisiana.

9. The plaintiff HAROLD FLYNN, JR. is a resident of and domiciled in St. John the Baptist Parish, City of Laplace, and State of Louisiana.

10. The plaintiff DONALD FORNEA is a resident of and domiciled in St. Tammany Parish, City of Covington, and State of Louisiana.

11. The plaintiff WILLIAM GRANGER is a resident of and domiciled in St. John the Baptist Parish, City of Laplace, and State of Louisiana.

12. The plaintiff CONNIE HIBBEN is a resident of and domiciled in Jefferson Parish, City of Westwego, and State of Louisiana.

13. The plaintiff LEROY ROBIN is a resident of and domiciled in Jefferson Parish, City of Marrero, and State of Louisiana.

14. The plaintiff HERBERT THEODORE, JR. is a resident of and domiciled in Orleans Parish, City of New Orleans, and State of Louisiana.

15. The plaintiff NOLAN WEBER is a resident of and domiciled in St. John the Baptist Parish, City of Laplace, and State of Louisiana.

16. The defendant, INTUITIVE SURGICAL, INC. (hereinafter "INTUITIVE"), is a foreign business corporation, duly organized and existing under and by virtue of the laws of the State of Delaware.

17. Upon information and belief, the defendant INTUITIVE is a foreign corporation with its principal place of business being located in the State of California.

JURISDICTION AND VENUE

18. Jurisdiction for this action in the United States District Court arises under 28 U.S.C. Sections 1332(a)(1) and 1332(c)(2) as this is a civil action based on complete diversity of citizenship in that the surgeries were performed in the Eastern District of Louisiana and the defendant was domiciled in another state. The amount in controversy exceeds $75,000 exclusive of costs and interest.

GENERAL ALLEGATIONS

19. Plaintiffs required a surgical procedure in which the DaVinci Robotic Procedure was used.

20. Plaintiffs suffered severe physical, financial and emotional injuries as a result of the damages caused by the DaVinci Robotic Device.

21. Defendant INTUITIVE is a Delaware corporation with its principal place of business in Sunnyvale, CA.

22. Defendant INTUITIVE is a publically traded company on the NASDAQ exchange, with a current market value of more than two billion dollars.

23. Defendant designed, manufactured, tested, sold, promoted and labeled the da Vinci surgical robot.

24. On its website, defendant asserts that it is the global technology leader in surgical robotic products.

25. Said robotic device is used in hospitals for a variety of surgeries.

26. Defendant has promoted its device as (a) safe, and (b) safer than other comparative methods of surgery including, laparoscopy, vaginal surgery, prostatectomy surgery and open surgery.

27. Defendant utilizes prominent websites aimed at consumers, seeking to create demand for the use of its robotic device by patients who consult surgeons.

28. Defendant sold its device through a calculated program of intimidation and market management, forcing hospitals and physicians to purchase it in order to appear to be competitive, and creating a fear in their minds that if they did not have this technology they would lose business to competitors.

29. Defendant reinforced its calculated program, as stated in the preceding paragraph, by placing, on its website for potential patients, names of certain physicians who had performed 20 surgeries with the device.

30. The use of defendant's robotic device in surgery presents substantial risks of complications and injuries, including de-vascularization of the vaginal cuff impeding healing, partial thermal injury burns to bowel, post-surgical abscesses, tears, dehiscences, bleeding, hematomas, sepsis, and fistulas.

31. More specifically, defendant's robotic device can cause damage to the bowel, blood vessels, arteries, ureters, bladder, vaginal cuff and other nerve injuries.

32. In addition, due to lengthened time of surgery, patients are unnecessarily exposed to anesthesia for a dangerous period of time.

33. On occasion these complications and injuries cause and/or contribute to infectious processes from thermal injury causing abscess formation and can lead to the untimely and premature death of the patient.

34. Defendant is aware of the aforesaid risks and complications associated with the use of said robotic device.

35. Defendant does not provide adequate warnings to physicians and patients about the risks and complications associated with the use of its robotic device.

36. Defendant has not done, nor sponsored, adequate testing on its device before and after marketing it to determine whether in random tests its device is either safer or more effective or otherwise superior to other surgical and laparoscopic methods to which it compares itself.

37. Defendant has not done adequate post marketing surveillance of complications and injuries that have occurred in actual practice.

38. Defendant has not done, nor sponsored, any testing as to long-term outcomes, in comparison to other surgical and laparoscopic methods.

39. Defendant has not revealed, through publications or reports to the Food and Drug Administration and other governmental bodies, the true extent of complications and injuries, which have occurred in actual practice.

40. Defendant has suppressed reports and complaints of complications and performance errors due to the use of its device.

41. Defendant does not adequately train physicians nor proctor them properly on the use of its device, thereby inducing them to cause complications and injuries, which would be avoided in the hands of properly trained physicians.

42. Defendant represents that they will have skilled technicians in the operating room or on emergency call in the event of problems arising with its device, but often has neglected to do so.

43. Defendant has over-promoted its device to hospitals, physicians and the public, including potential consumers, minimizing the risks and complications associated with its use.

44. The device is defective in that it relies upon the use of monopolar energy to cut, burn and cauterize tissue, whereas safer methods are available such as bipolar energy and ultrasonic energy, which would substantially reduce the risk of complications.

45. The device has inadequate insulation for its arms, allowing electrical current to pass into tissue outside of the operative field.

46. The insulation on the shafts of the device becomes torn and worn in places, without the awareness of the physician user, allowing electrical current to pass into tissue outside of the operative field, causing damage.

47. Defendant has failed to warn users and consumers of the robotic device about the inadequate insulation on the arms and the potential for electrical current to pass into tissue outside of the operative field.

48. Due to design defects, defendant's devices have malfunctioned during the course of operative use causing injury, including the necessity of converting the procedure into open surgery, or often requiring subsequent surgeries to deal with complications of robotic use.

49. Defendant has failed to warn users and consumers of its device of the design flaws stated in the preceding paragraphs, although it has reached out directly to consumers to promote its asserted advantages.

50. Defendant had specific knowledge and awareness of the dangers of monopolar current and that there were safety modalities commercially available that could have greatly diminished or eliminated some of these risks, yet the Defendant elected not to include these safety features on the da Vinci Robotic Surgery platform.

51. Defendant has obtained and continues to maintain approval of the uses of its device from the Food and Drug Administration by failing to fully inform them of its knowledge of risks and complications associated with the use of its device.

FIRST CAUSE OF ACTION – PRODUCT LIABILITY

52. Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth in full in this cause of action.

53. Defendant placed into the stream of commerce its aforesaid device which was defective in design, as previously pleaded.

54. Defendant owed Plaintiffs a duty to exercise reasonable care when designing, testing, manufacturing, marketing, advertising, promoting, distributing, and/or selling da Vinci Robots for surgery.

55. At all relevant times to this action, Defendant owed a duty to properly warn Plaintiffs, the medical community and the Public of the risks, dangers and adverse side effects of the da Vinci Robotic Surgery platform.

56. Defendant breached its duty by failing to exercise ordinary care in the preparation, design, research, testing, development, manufacturing, inspection, labeling,

marketing, promotion, advertising and selling of da Vinci Robotic Surgery, as set forth below:

a. Failing to test da Vinci Robotic surgery properly and thoroughly before promoting the robotic surgical platform using monopolar current to the market;

b. failing to analyze properly and thoroughly the data resulting from the pre-marketing tests of monopolar current used in the da Vinci Robotic surgery;

c. failing to report to the FDA, the medical community, and the general public those data resulting from pre- and post-marketing tests of the da Vinci Robotic surgery platform which indicated risks associated with its use;

d. failing to conduct adequate post-market monitoring and surveillance of post-surgical complications associated with the da Vinci Robotic surgery platform using monopolar current;

e. failing to conduct adequate analysis of adverse event reports;

f. designing, manufacturing, marketing, advertising, distributing and promoting the da Vinci Robotic surgery directly to consumers, including Plaintiffs, without adequate warning of the significant and dangerous risks of monopolar current and the da Vinci Robotic surgery platform and without proper instructions to avoid the harm which could foreseeably occur as a result of using monopolar energy on the existing da Vinci Robotic surgery platform;

g. failing to exercise due care when advertising and promoting da Vinci Robotic surgery;

h. negligently continuing to manufacture, market, advertise, and promote da Vinci Robotic surgery after Defendant knew or should have known of the risks of serious injury

and/or death associated with using monopolar current to perform certain aspects of the surgery including the colpotomy incision;

i. failing to use due care in the preparation and development of the da Vinci Robotic surgery to prevent the aforementioned risk of injuries to individuals through the use of monopolar current;

j. failing to use due care in the design of the da Vinci Robotic surgery platform with special regard to the insulation of the robotic arms and instruments to prevent the aforementioned risk of injuries to individuals during the routine course of surgery;

k. failing to conduct adequate pre-clinical testing and research to determine the safety of the use of monopolar current and the insulation of the robotic instruments to be used in robotic surgery, with special regard to the reusing of the instruments up to ten times in ten different patients;

l. failing to conduct adequate intra-operative surveillance and post operative complication studies to determine the safety of the use of monopolar energy during the surgical robotic surgery procedure taught by INTUITIVE SURGICAL INC., while defendant knew or should have known that intra-operative surveillance and post-operative complication analysis would be the only means to determine the relative risk of using monopolar during important surgical steps when performing a robotic surgery with specific attention to the risks of performing a colpotomy incision or an amputation of the uterus, causing severe thermal injury to bladder, ureter, bowel, vaginal cuff, and blood vessels, in the absence of clinical trials which cannot be conducted for this purpose, and that such surveillance would be necessary for a due diligence program that would alert

defendant to the need to change the technique for the use of monopolar current or to withdraw it from the market altogether;

m. failing to completely, accurately and in a timely fashion, disclose the results of the pre-marketing testing of issues with monopolar energy and post-marketing surveillance of monopolar energy related injuries and complications to Plaintiffs, consumers, the medical community, and the FDA;

n. failing to accompany marketing materials promoting the da Vinci Robotic Surgery platform using monopolar current with proper warnings regarding all possible adverse side effects associated with the use of the same;

o. failing to use due care in the manufacture, inspection, and safety evaluation of the da Vinci Robotic Surgery platform to prevent the aforementioned risk of injuries to individuals who underwent a da Vinci Robotic Surgery;

p. failing to use due care in the promotion of da Vinci Robotic Surgery to prevent the aforementioned risk of injuries to individuals when the robot was used;

q. failing to use due care in the sale and marketing of the da Vinci Robot to prevent the aforementioned risk of injuries to individuals who were to undergo robotic Surgery;

r. failing to use due care in the selling of the monopolar scissors to prevent the aforementioned risk of injuries to individuals who underwent da Vinci Robotic Surgery;

s. failing to provide adequate and accurate training and information to the sales representatives who sold the da Vinci Robot;

t. failing to provide adequate and accurate training and information to healthcare providers for the appropriate use of the da Vinci Robot for hysteretomy;

u. failing to conduct or fund research into the development of safer robotic surgical instruments which would pose the least risk of causing severe thermal injury to bowel, bladder, ureter, and blood vessels;

v. failing to educate healthcare providers and the public about the safest use of the monopolar scissors in da Vinci Robotic surgery;

w. failing to give healthcare providers adequate information to weigh the risks of serious injury and/or death for a given patient using the da Vinci Robotic Surgery platform and technique featuring the use of monopolar current; and,

x. being otherwise reckless, careless and/or negligent.

57. Defendant placed into the stream of commerce its aforesaid device, which was defective in its labeling and warnings, as previously pleaded.

58. Defendant placed into the stream of commerce its aforesaid device, which was defective in its testing and approval, as previously pleaded.

59. At the time the device left the possession of defendant it was in an unreasonably dangerous and defective condition for application for robotic Surgery using monopolar energy.

60. Despite the fact that Defendant knew or should have known that the da Vinci Robotic Surgery platform using monopolar current had increased the risk of serious injury and/or death, Defendant continued to promote and market the da Vinci Robotic Surgery to consumers, including Plaintiffs, when safer and more effective methods of treatment were available.

61. The Defendant designed, tested, manufactured, packaged, marketed, distributed, promoted, and sold the da Vinci Robot, placing the da Vinci Robotic Surgery into the stream of commerce.

62. The da Vinci Robot was designed, tested, inspected, manufactured, assembled, developed, labeled, sterilized, licensed, marketed, advertised, promoted, sold, packaged, supplied and/or distributed by Defendant in a defective and unreasonably dangerous condition to consumers, including the Plaintiffs.

63. The da Vinci Robot was expected to reach, and did reach, users and/or consumers, including Plaintiffs, without substantial change in the defective and unreasonably dangerous condition in which it was manufactured and sold.

64. Plaintiff's surgeon used the da Vinci robotic Surgery platform including monopolar current as instructed by and certified by and in the foreseeable manner normally intended, recommended, promoted, and marketed by Defendant.

65. The da Vinci Robotic Surgery platform was unreasonably dangerous in that, as designed, it failed to perform safely when used by ordinary consumers, including Plaintiff's surgeon, including when it was used as intended and in a reasonably foreseeable manner.

66. The da Vinci Robotic Surgery platform was unreasonably dangerous in that, as designed, the risks of serious injury and/or death, including bowel, bladder, ureteral, vaginal cuff, abscess formation, permanent scarring, or vascular injury, posed by its monopolar current risks exceeded any benefit the Robotic approach was designed to or might in fact bestow.

67. The da Vinci Robotic Surgery platform was unreasonably dangerous in that, as designed, it was dangerous to an extent beyond that contemplated by the medical community, and ordinary regulars, including the Plaintiffs.

68. The da Vinci Surgical Robot was defective in its design in that it neither bore, nor was packaged with, nor accompanied by, warnings adequate to alert the medical community, including Plaintiff's surgeon, to the risks described herein, including, but not limited to, the risk of serious injury and/or death, including bowel, bladder, ureteral, vaginal cuff devascularization, vascular injury or other nerve damage posed by its monopolar current risks. The da Vinci Robot was not accompanied by adequate labeling, instructions for use and/or warnings to fully apprise the medical, hospital, operating room and/or scientific communities, and potential patients, including Plaintiffs, of the potential risks and serious side effects associated with its use, thereby rendering Defendant liable to the Plaintiffs.

69. There were safer alternative energy modalities available including bipolar energy and ultrasonic energy.

70. Monopolar energy, as used and taught on the da Vinci Robotic Surgery platform, was unsafe for normal or reasonably anticipated use in performing the colpotomy incision or the amputation of the uterus.

71. In light of the potential and actual risk of harm associated with the use of monopolar energy so close to bowel, bladder, ureter, vaginal cuff, and blood vessels, a reasonable person who had actual knowledge of this potential and actual risk of harm would have concluded that the da Vinci Robotic Surgery platform should not have been marketed in that condition.

72. Although Defendant knew or should have known of the defective nature of its da Vinci Robotic Surgery platform using monopolar current, it continued to design, manufacture, market, and promote the use of it's da Vinci Robotic Surgery platform so as to maximize sales and profits at the expense of the public health and safety. Defendant thus acted with conscious and deliberate disregard of the foreseeable harm caused by the continued use of monopolar energy on its robotic platform.

73. Plaintiffs could not, through the exercise of reasonable care, have discovered the risk of serious injury and/or death associated with and/or caused by the da Vinci Robotic Surgery platform featuring monopolar current. Plaintiffs, if aware of these additional risks, could have chosen surgical procedures with similar efficacies but without these additional risks. As a result, Plaintiffs suffered the personal injuries described herein.

74. Information given by Defendant to the medical community and to the consumers concerning the safety and efficacy of the da Vinci Robotic Surgery platform, especially the information contained in the advertising and promotional materials, did not accurately reflect the serious and potentially fatal side effects.

75. Had adequate warnings and instructions been provided, Plaintiff's surgeon would not have suggested a robotic approach, and Plaintiffs would have had a much lower risk of the harmful side effects described herein.

76. As a direct and proximate consequence of Defendant's negligence, willful, wanton, and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described herein, the Plaintiffs sustained injuries and damages alleged herein.

77. That by reason of the foregoing and defendant's aforesaid conduct, among other things, the Plaintiffs suffered injuries which caused them to undergo additional surgery and medical procedures, endured pain and suffering and will continue to do so in the future, have suffered mental anguish and will continue to do so in the future, have lost the pleasure of sexual activity, and have incurred medical expenses.

78. Plaintiffs have incurred and Defendant is liable for certain expenses, including hospital, surgical and medical treatment, transportation costs, as a result of, among other things, defendant's conduct.

79. As a result of its conduct, Defendant has become strictly liable to Plaintiffs.

80. Defendant's conduct in continuing to market, sell and distribute the aforesaid devices after obtaining knowledge they were defective and not performing as represented and intended, showed complete indifference to and/or a conscious disregard for the safety of others justifying an award of punitive damages for aggravating circumstances in such a sum which will serve to deter defendant and others from similar conduct in the future.

WHEREFORE, Plaintiffs, demand judgment against Defendant and seeks compensatory damages, and exemplary and punitive damages together with interest, the costs of suit and attorneys' fees and such other and further relief as this Court deems just and proper.

SECOND CAUSE OF ACTION – GENERAL NEGLIGENCE, NEGLIGENT TRAINING & PROCTORING & NEGLIGENT CERTIFICATION

81. Plaintiffs repeat, reiterate and reallege each and every allegation and cause of action contained herein as if the same were set forth more fully at length herein.

82. Defendant was careless in the design, testing, manufacturing, labeling and promotion of its aforesaid device, as pleaded in previous paragraphs.

83. Specifically, defendant failed to warn users and consumers of the risk of complications associated with the use of its device, risks of monopolar current use, including the damage to the bladder, bowel, ureter, vaginal cuff, the nervous system and blood vessels; the bladder and ureter which was a proximate cause of Plaintiffs' additional surgery and/or medical treatments resulting in long term pain and suffering.

84. Defendant took it upon itself to "train" and "certify" Plaintiffs' surgeon on the use of the da Vinci Robotic Surgery platform using monopolar current. Upon belief, the Defendant specifically trained Plaintiffs' surgeons on the use of monopolar current via operative endoshear scissors during the dissection of the bladder and the colpotomy incision causing thermal injury and devascularization of the vaginal cuff leading to increased tissue damage, abscess, and chronic inflammatory changes.

85. Defendant did not properly proctor and/or properly instruct Plaintiffs' surgeons and attending staff as to the safe use of its device nor how to detect complications which its said device causes and is known to cause.

86. Defendant had a financial incentive to promptly train, proctor, and certify Plaintiff's surgeon without regard to whether or not Plaintiffs' surgeons was truly skilled and competent on the da Vinci Robotic Surgery platform.

THIRD CAUSE OF ACTION – FRAUD

87. Plaintiffs repeat, reiterate and reallege each and every allegation and cause of action set forth herein as if the same were set forth more fully at length herein.

88. Defendant misrepresented the safety and comparative efficacy of its device, upon which Plaintiffs' surgeons relied, to Plaintiffs' detriment.

89. Defendant misrepresented the safety and comparative efficacy of its device, upon which the hospital and surgery department where Plaintiffs were operated on relied, in purchasing and using the device, to Plaintiffs' detriment.

90. Defendant was aware, or should have been aware, of the known dangers of monopolar current in regard to unsuspected current leaving the shaft of a poorly insulated instrument. Furthermore, Defendant suggested to Hospitals that multiple uses of the robotic instruments could be done yet Defendant did so without regard to re-testing of the insulation along the shaft of their robotic instruments or at the wrist of the robotic instrument.

91. Defendant was aware, or should have been aware, of the known dangers of monopolar current in regard to capacitive coupling, which like insulation failure can cause a thermal injury to occur in adjacent structures like bowel, bladder, ureter, vaginal cuff, or blood vessel. Defendant was aware, or should have been aware, of the known increased incidence of vaginal cuff dehiscence, de-vascularization and abscess formation due to the use of monopolar current while performing the colpotomy portion of the da Vinci Robotic total laparoscopic Surgery.

92. Defendant was aware that there were safer energy modalities including ultrasonic energy and bipolar energy, yet maintained teaching the use of monopolar

current in the da Vinci Robotic Surgery. Defendant did so based on not wanting to pay for the cost of having to license these safer energy technologies.

93. Defendant was also aware, or should have been aware, of the Active Electrode Monitoring System, or AEM Technology, which shields and monitors instruments continuously directing stray energy, the cause of stray electrosurgical burns, away from the patient. With the AEM system, the patient is never at risk for stray electrosurgical burns due to insulation failure and capacitive coupling. Despite having specific knowledge of this safety system the Defendant choose not to purchase it for its da Vinci Robotic Surgery platform using monopolar current.

94. Further, defendant concealed from consumers and users, including those mentioned in the preceding paragraphs, the risks of complications of which it was aware, which would have been material to consumers and users in making the decision to use the said device.

95. Further, defendant suppressed reports of adverse outcomes with the use of its device, which would have been material to consumers and users in making the decision to use the said device.

96. Further, defendant over-promoted its device and minimized its risks, for the purpose of making sales of its device, its maintenance, and the use of replaceable parts, and skewed the cost-benefit ratio inaccurately in its favor.

97. The said conduct was so willful, wanton, malicious and reckless that it merits the imposition of punitive damages.

FOURTH CAUSE OF ACTION - BREACH OF EXPRESS WARRANTY

98. Plaintiffs repeat, reiterate and reallege each and every allegation and cause of action set forth herein as if the same were set forth more fully at length herein.

99. Defendant made express warranties of safety to the buyers and consumers of the device utilized during Plaintiffs' surgeries, upon which the buyers and users, as agents of Plaintiffs, relied, to their detriment. Defendant expressly represented to the Plaintiffs (and to other consumers and the medical community) that the da Vinci robotic Surgery was safe, efficacious and fit for its intended purposes that it was of merchantable quality, that it did not produce any unwarned-of dangerous side effects, and that it was adequately tested.

100. Defendant breached expressed warranties with respect to the da Vinci robotic Surgery in the following ways:

a) Defendant represented through its labeling, advertising, marketing materials, detail persons, seminar presentations, surgeon training sessions, publications, notice letters, and regulatory submissions that the da Vinci Robotic Surgery was safe, and fraudulently withheld and concealed information about the substantial risks or serious injury and/or death associated with using monopolar current on the existing da Vinci robotic platform;

b) Defendant represented that the da Vinci Robotic Surgery was as safe and/or safer than alternative surgical methods, and fraudulently concealed information which demonstrated that the da Vinci robotic Surgery approach was not safer than alternatives available on the market; and,

c) defendant represented that the da Vinci Robotic Surgery was more efficacious than other alternative surgical methods, and fraudulently concealed information that it was not more efficacious than alternative surgical methods.

101. Da Vinci Robotic Surgery does not conform to Defendant's express representations, because it is not safe, efficacious, has numerous serious unwarned-of side effects, causes severe and permanent injuries including death, and was not adequately tested.

102. The da Vinci Robotic Surgery platform including the use of monopolar current did not perform as safely as an ordinary physician, as an agent of the patient, would have expected when used as intended or in a reasonably foreseeable manner.

103. Plaintiffs surgeons and others in the medical community, relied upon Defendant's express warranties, resulting in the Plaintiff's da Vinci Robotic Surgery.

104. Plaintiffs, after ascertaining through their own injuries that the da Vinci Robotic Surgery violated express warranties, hereby supply notice to Defendant INTUITIVE SURGICAL INC. of same through the filing of this lawsuit.

105. As a direct and proximate consequence of Defendant's breach of express warranty and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described herein, the Plaintiffs sustained injuries and damages alleged herein.

106. By selling the said device, defendant made implied warranties of safety, merchantable quality, and fitness for use, which were breached when Plaintiffs were injured during surgery.

107. As a further direct and proximate result of the acts of Defendant, Plaintiffs' suffered emotional distress.

WHEREFORE, Plaintiffs demand judgment against Defendant and seeks compensatory damages, and exemplary and punitive damages together with interest, the costs of suit and attorneys' fees and such other and further relief as this Court deems just and proper.

FIFTH CAUSE OF ACTION – BREACH OF IMPLIED WARRANTY

108. Plaintiffs incorporate by reference each and every paragraph of this complaint as though set forth in full in this cause of action.

109. At all relevant and material times, Defendant manufactured, distributed, advertised, promoted, and sold the da Vinci Robot.

110. At all relevant times, Defendant intended that the da Vinci Robot be used in the manner that the Plaintiffs' surgeon in fact used it and Defendant impliedly warranted the product to be of merchantable quality, safe and fit for such use, and was adequately tested.

111. Defendant breached various implied warranties with respect to the da Vinci Robot including the particulars:

a. Defendant represented through its labeling, advertising, marketing materials, detail persons, seminar presentations, publications, notice letters, and regulatory submissions that the da Vinci Robotic Surgery platform was safe and fraudulently withheld and concealed information about the substantial risks of serious injury and/or death associated with using the da Vinci Robot with monopolar current;

b. Defendant represented that the da Vinci Robotic Surgery with monopolar current was as safe and/or safer than other alternative surgical approaches that did not include the use of the da Vinci Robot, and fraudulently concealed information, which

demonstrated that the da Vinci Robotic Surgery was not safer than alternatives available on the market; and,

c. Defendant represented that the da Vinci Robotic Surgery was as more efficacious than other alternative surgical approaches and techniques and fraudulently concealed information, regarding the true efficacy of the robotic Surgery with monopolar current.

112. In reliance upon Defendant's implied warranty, Plaintiffs' surgeon used the da Vinci Robotic Surgery platform as prescribed and in the foreseeable manner normally intended, recommended, promoted, instructed, and marketed by Defendant.

113. Defendant breached its implied warranty to Decedent in that the da Vinci Robotic Surgery platform with monopolar current was not of merchantable quality, safe and fit for its intended use, or adequately tested.

114. As a direct and proximate consequence of Defendant's breach of implied warranty and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described herein, the Plaintiffs sustained injuries and damages alleged herein including pain and suffering.

115. As a further direct and proximate result of the acts of Defendant, Plaintiffs suffered emotional distress and loss of consortium.

Wherefore, Plaintiffs demand judgment against Defendant and seeks compensatory damages, and exemplary and punitive damages together with interest, the costs of suit and attorneys' fees and such other and further relief as this Court deems just and proper.

SIXTH CAUSE OF ACTION - UNJUST ENRICHMENT

116. Plaintiffs incorporate by reference each and every paragraph of this complaint as though set forth in full in this cause of action.

117. At all times relevant to this action, Defendant designed, advertised, marketed, promoted, manufactured, distributed, supplied, and/or sold the da Vinci Robot for Surgery use.

118. Plaintiffs surgeons' hospitals purchased the da Vinci Robot from the Defendant for the purpose of using it for Robotic Surgery. These same hospitals purchased disposable and reusable instrument for the performing of Plaintiffs' surgeries.

119. Defendant has accepted payment from said aforementioned hospital for both the da Vinci robot used in Plaintiffs' surgeries, but also for the routine maintenance and per surgery cost of additional items including disposable items.

120. Plaintiffs did not receive the safe and effective surgical product for which they intended to purchase; nor did the hospital where Plaintiffs had their surgeries.

121. It is inequitable and unjust for Defendant to retain this money because the Plaintiffs did not in fact receive the safe and efficacious surgical procedure Defendant represented da Vinci Robotic Surgery to be.

WHEREFORE, Plaintiffs demand judgment against Defendant and seeks equitable relief, the costs of suit and attorneys' fees, and such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all counts and issues so triable.

GLOBAL PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant on each count as follows:

1. On the First Cause of Action for Product Liability including personal injury and pain and suffering and emotional distress, the sum of $100 million;
2. On the Second Cause of Action for Negligence, the sum of $100 million;
3. On the Third Cause of Action for Fraud, the sum of $100 million;
4. On the Fourth & Fifth Cause of Action for Breach Of Express Warranty and Breach of Implied Warranty, the sum of $100 million;
5. On the Sixth Cause of Action for Unjust Enrichment, the sum of $800 million
6. Reasonable attorney's fees when recoverable
7. Such other additional and further relief to which Plaintiffs may be justly entitled, in law or equity.

All together with the interest, costs and disbursements of this action.

Respectfully submitted,

/s/ Daniel E. Becnel, Jr.
BECNEL LAW FIRM, LLC
Daniel E. Becnel, Jr. (LA. BAR #2926)
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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Twila Beasley

(b) County of Residence of First Listed Plaintiff Orleans
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Daniel E. Becnel, Jr., Becnel Law Firm, LLC, P.O. Drawer H, Reserve, LA 70084 985-536-1186

DEFENDANTS

Intuitive Surgical, Inc.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☒ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. 1332(a)(1) & 1332(c)(2)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
04/29/2013

SIGNATURE OF ATTORNEY OF RECORD
/s/Daniel E. Becnel, Jr.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Twila Beasley, et al

Plaintiff(s)

v.

Intuitive Surgical, Inc.

Defendant(s)

Civil Action No. 2:13-cv-2497

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Intuitive Surgical, Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel E. Becnel Jr.
Becnel Law Firm, LLC
P.O. Drawer H
Reserve, LA 70084

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 2:13-cv-2497

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: