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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PRESCOTT DIVISION**

WILLIAM FRAZE and ANNA FRAZE, §
Plaintiffs, §

v. §

Civil Action No **CV 12-08097-PCT-PGJ**

PORTLAND ORTHOPEDICS LIMITED, §
an Australian company; PLUS §
ORTHOPEDICS, a California corporation; §
SMITH & NEPHEW, INC., a Delaware §
corporation; MAXX HEALTH, INC., a §
Pennsylvania corporation; MIPRO US, §
INC., a Pennsylvania corporation; ENCORE §
MEDICAL CORPORATION, a §
Pennsylvania corporation; ENCORE §
ORTHOPEDICS, INC., a Texas §
corporation; ENCORE ORTHOPEDICS OF §
EASTERN PA, a Pennsylvania corporation; §
and ENCORE ORTHOPEDICS OF §
SOUTHERN CALIFORNIA, a California §
corporation, §

Defendants. §

COMPLAINT

COME NOW WILLIAM FRAZE and ANNA FRAZE, Plaintiffs herein, complaining of PORTLAND ORTHOPEDICS LIMITED, an Australian company; PLUS ORTHOPEDICS, a California corporation; SMITH & NEPHEW, INC., a Delaware corporation; MAXX HEALTH, INC., a Pennsylvania corporation; MIPRO US, INC., a Pennsylvania corporation; ENCORE MEDICAL CORPORATION, a Pennsylvania corporation; ENCORE ORTHOPEDICS, INC., a Texas corporation; ENCORE ORTHOPEDICS OF EASTERN PA, a Pennsylvania corporation;

and ENCORE ORTHOPEDICS OF SOUTHERN CALIFORNIA, a California corporation, Defendants herein, and for cause of action say:

Parties

1. Plaintiff William Frazee (“Plaintiff”) and Plaintiff Anna Frazee (“Plaintiff Spouse”) are, and at all times material hereto were, residents of Bullhead City, Mohave County, Arizona, citizens of Arizona. Plaintiff and Plaintiff Spouse are, and at all times material hereto were, husband and wife.

2. Defendant Portland Orthopedics Limited was a corporation organized under the laws of Australia, is a citizen of Australia, and may be served with process by serving , and may be served with process by serving Officer Ashesh Shah, 2260 Butler Pike, Suite 100, Plymouth Meeting, PA 19462.

3. Defendant Plus Orthopedics was a corporation organized under the laws of California with its principal place of business in California, a citizen of California, and may be served with process by serving Joel Zeffl, 9690 Graveland Wang, San Diego, CA 92129.

4. Defendant Smith & Nephew, Inc. is, and at all times material hereto was, a corporation organized under the laws of the State of Delaware, doing business in the State of Arizona. Plaintiff believes the principal place of business of Defendant Smith & Nephew, Inc. at the time of filing of this lawsuit and at the present time was, and is, the State of Tennessee. Thus, Plaintiff alleges that Defendant is, and at all times material hereto was, a citizen of Delaware and Tennessee. Defendant Smith & Nephew, Inc. may

be served with process by serving its registered agent for service, CT Corporation System, 2394 E Camelback Rd, Phoenix, AZ 85016-3429.

5. Defendant Maxx Health, Inc. is, and at all times material hereto was, a corporation organized under the laws of the state of Pennsylvania, with its principal place of business in Pennsylvania, a citizen of Pennsylvania, and may be served with process by serving Officer Ashesh Shah, 2260 Butler Pike, Suite 100, Plymouth Meeting, PA 19462.

6. Defendant Mipro US, Inc. is, and at all times material hereto was, a corporation organized under the laws of the state of Pennsylvania, with its principal place of business in Pennsylvania, a citizen of Pennsylvania, and may be served with process by serving Officer Ashesh Shah, 2260 Butler Pike, Suite 100, Plymouth Meeting, PA 19462.

7. Defendant Encore Medical Corporation is, and at all times material hereto was, a corporation organized under the laws of the state of Pennsylvania, with its principal place of business in Pennsylvania, a citizen of Pennsylvania, and may be served with process by serving Officer Michael S. Smith, 267 W 30th St, Northampton, PA 18067-1030.

8. Defendant Encore Orthopedics, Inc. was a corporation organized under the laws of the state of Texas with its principal place of business in Texas, a citizen of Texas, and may be served with process by serving Harry L. Zimmerman, 9800 Metric Blvd, Austin, TX 78758-5445.

9. Defendant Encore Orthopedics of Eastern PA is, and at all times material hereto was, a corporation organized under the laws of the state of Pennsylvania, with its principal place of business in Pennsylvania, a citizen of Pennsylvania, and may be served with process by serving its president at 11 Clover Ln, Mechanicsburg, PA 17050-3130.

10. Defendant Encore Orthopedics of Southern California, Inc. is, and at all times material hereto was, a corporation organized under the laws of the state of California, with its principal place of business in California, a citizen of California, and may be served with process by serving its registered agent for service, Ted Stream, 3750 University Ave, Ste 250, Riverside, CA 92501-3335.

11. Defendant Portland Orthopedics Limited, Defendant Plus Orthopedics, Defendant Smith & Nephew, Inc., Defendant Maxx Health, Inc., Defendant Mipro US, Inc., Defendant Encore Medical Corporation, Defendant Encore Orthopedics, Inc., Defendant Encore Orthopedics of Eastern PA, and Defendant Encore Orthopedics of Southern California shall hereinafter, jointly and severally, be referred to as “Defendant,” “Defendants,” or “Manufacturer.”

Jurisdiction

The basis for jurisdiction in this action is based on diversity jurisdiction under 28 U.S.C. § 1332. Diversity jurisdiction exists as the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and complete diversity of citizenship exists between Plaintiff and Defendants. 28 U.S.C. § 1332.

Venue

Venue lays in the United States District Court for the District of Arizona because jurisdiction is not based solely on diversity of citizenship and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in such District. 28 U.S.C. § 1391(b)(2).

Jury Demand

Plaintiff requests trial by jury.

Statement of Facts Applicable to All Counts

1. On or about June 27, 2007, Blake A. Stamper, DO implanted a hip implant into Plaintiff's left hip in Western Arizona Regional Medical Center in Bullhead City, Mohave County, Arizona. During that surgery, Dr. Stamper implanted the following hip implant components("hip implant"):

M-COR
Item: Femoral neck
REF: 1-825-043
LOT: 1894
SN: 43-000055

Encore Orthopedics
Item: Femoral head
REF: 497-34-000
LOT:53856829

Encore Orthopedics
Item: Hemispherical shell with holes
REF: 430-01-054
LOT: 53837556

Encore Orthopedics
Item: Liner-metal/metal
REF: 499-34-008
LOT: 53862172

M-COR
Item: Femoral Stem
REF: 1-820-099
LOT: 2164
SN: 37x13-000002

Encore Orthopedics
Item: Offset sleeve – Neutral
REF: 411-00-000
LOT: 53856845

2. On or about August 29, 2007, Blake A. Stamper, DO implanted a hip implant into Plaintiff's right hip in Western Arizona Regional Medical Center in Bullhead City, Mohave

County, Arizona. During that surgery, Dr. Stamper implanted the following hip implant components("hip implant"):

Encore Orthopedics
Item: Femoral head
REF: 497-38-000
LOT: 53849927

Encore Orthopedics
Item: Offset sleeve
REF: 411-00-000
LOT: 53856842

M-COR
Item: Femoral Stem
REF: 1-820-080
LOT: 1976
SN: 35x13-000081

M-COR
Item: Femoral Neck
REF: 1-825-043
LOT: 1961
SN: 43-000063

Encore Orthopedics
Item: Hemispherical shell with holes
REF: 430-01-056
LOT: 53866672

Encore Orthopedics
Item: Liner metal/metal
REF: 499-38-009
LOT: 53862173

3. Both hip implants shall hereinafter, jointly and severally, be referred to as the "hip implant" or "hip implants."

4. On or about Thursday, April 22, 2010, Plaintiff's left hip implant broke.

5. On or about Sunday, April 25, 2010, a large knot appeared in Plaintiff's lateral left hip. Even slight weight on Plaintiff's left hip caused excruciating pain. X-ray revealed fracture of the neck component of the left hip implant.

6. On April 28, 2010, Blake A. Stamper, DO revised the left hip implant in Western Arizona Regional Medical Center in Bullhead City, Mohave County, Arizona. During that surgery, it was found the femoral neck had fractured at its insertion to the stem. During that surgery, Dr. Stamper implanted the following hip implant components:

ALFA
Item: Modular femoral
LOT: x503E
Cat No: 651-03-135

Biomet Orthopedics, INC
Item: Stainless steel cable
REF: 350800
LOT: 780550

DJO
Item: Modular femoral neck
REF: 410-32-108
LOT: 54050136

Encore Orthopedics
Item: Offset sleeve
REF: 411-00-000
LOT: 53970176

DJO
Item: Femoral head
REF: 497-34-000
LOT: A1000002

Biomet Orthopedics, Inc
Item: Cable system crimp sleeve
REF: 350805
LOT: 125530

Biomet Orthopedics, Inc.
Item: Cable system crimp sleeve
REF: 350805
LOT: 077450

Biomet Orthopedics, Inc.
Item: Stainless steel cable
REF: 350800
LOT: 016040

Biomet Orthopedics, Inc.
Item: Stainless steel cable
REF: 350800
LOT: 384940

Biomet Orthopedics, Inc.
Item: Cable system crimp sleeve
REF: 350805
LOT: 194080

Biomet Orthopedics, Inc.
Item: Stainless steel cable
REF: 350800
LOT: 016040

7. On or about August 7, 2010, as Plaintiff was getting up, he heard a snap and his right leg gave out and he was unable to bear weight on his right leg. X-ray that date showed a suspected disruption of the right hip implant. The femoral neck of the right implant also dislocated.

8. On August 8, 2010, Blake A. Stamper, DO revised the right hip implant in Western Arizona Regional Medical Center in Bullhead City, Mohave County, Arizona. During that surgery, it was found the proximal neck of the hip stem had fractured. During that surgery, Dr. Stamper implanted the following hip implant components:

Biomet Orthopedics
Item: Cobalt chrome cable
REF: 120002
LOT: 130910

Biomet Orthopedics
Item: Cobalt chrome cable
REF: 120002
LOT: 203610

Biomet Orthopedics
Item: 2.0 MM Dia. Cobalt chrome cable system crimp sleeve
REF: 120005
LOT: 538850

Biomet Orthopedics
Item: Cobalt chrome cable
REF: 120002
LOT:371600

Biomet Orthopedics
Item: Cobalt chrome cable
REF: 120002
LOT:784200

Biomet Orthopedics
Item: 2.0 MM Dia. Cobalt chrome cable system crimp sleeve
REF: 120005
LOT: 434440

Encore Orthopedics
Item: Alfa II modular hip stem
REF: 651-03-135
LOT: 53773521

DJO
Item: Femoral head
REF: 497-38-000
LOT: A1000000

DJO
Item: Modular femoral neck
REF: 410-32-108
LOT: 540580136

DJO
Item: Offset Sleeve
REF: 411-00-035
LOT: A1000008

9. Defendant was engaged in the design, manufacture and sale of medical orthopedic implants, including the implants made the basis of this lawsuit.

10. Defendant placed the hip implants made the basis of this lawsuit into the stream of commerce.

11. The hip implants made the basis of this lawsuit were in the same condition at the time they were implanted into Plaintiff as at the time they left the control of Defendant.

Statement of Facts Regarding Device Manufacturing and Marketing History

1. In or around 1991, Portland Orthopedics Limited, an Australian company, was established to commercialize a unique hip replacement system developed by Professor Ron Sekel.

2. In or around April 1992, Encore Medical Corporation and Encore Orthopedic, Inc. were formed.

3. In or around December 2005, Portland Orthopedics claims to be an innovative developer, manufacturer and distributor of a range of reconstructive orthopedic devices, predominantly joint replacement systems such as hips and knees.

4. In 2006, Portland Orthopedics Limited obtained a Pre-Market Approval (PMA) from the United States Food and Drug Administration (FDA) for the M-Cor Hip Implant. It began selling such M-Cor Hip Implants in the United States in 2006, with Plus Orthopedics, Inc., a California corporation, as one of its distributors.

5. In or around November 2006, Portland Orthopedic Limited's first set of M-Cor Primary Hip Replacements were implanted in three separate centers across the United States.

These first implants in six patients followed recent sales order announcements from United States distributor Plus Orthopedics, Inc.

6 In 2007, Smith & Nephew, a Delaware corporation located in Tennessee, acquired Plus Orthopedics, Inc.

7. In or around September 2008, Portland Orthopedics issued a recall on all lots of its MARGRON DTC Hip Replacement System. This was the precursor for the M-Cor implants distributed in the United States, due to Australia's higher than normal hip revision rate. Portland Orthopedics recommended that all Americans implanted with that hip be monitored even though Portland Orthopedics was unable to ascertain the particular design defect.

8. In April 2009, Maxx Health, Inc., a Pennsylvania corporation, acquired the assets of Portland Orthopedics Limited. Maxx Health marketed the M-Cor implant, while Mipro US, Inc., a Pennsylvania corporation, manufactured such implant.

Count One

For strict liability cause of action against Defendant, Plaintiff says:

1. Plaintiff adopts by reference each and every Paragraph of the Statement of Facts Applicable to All Counts of this Petition as if fully copied and set forth at length herein.

2. The hip implants contained a manufacturing, design or marketing defect, more particularly set forth below.

Manufacturing Defect

3. The hip implants may have contained a manufacturing defect.

4. ~~The hip implants may have deviated, in its construction or quality, from the~~ specifications or planned output.

5. As more particularly set forth below, Plaintiff invokes the doctrine of res ipsa loquitur as to whether the hip implants contained a manufacturing defect.

Marketing Defect

6. The hip implants contained one or more marketing defects:
- (a) there was an inherent risk in the intended or reasonably foreseeable use of the hip implants that the hip implants could fracture at the femoral neck, causing serious injury;
 - (b) there were inadequate warnings in that, among other things:
 - (1) the warnings failed to inform the user of the nature of the danger, such as that the hip implants could fracture at the femoral neck;
 - (c) Defendant knew or reasonably foresaw (or should have known or reasonably foreseen) the above risk; that the hip implants could fracture at the femoral neck;
 - (d) Defendant failed to warn the consumer (or to adequately warn the consumer of the above risk), failed to instruct the consumer (or failed to adequately instruct the consumer) how to safely use the hip implants, or both.

7. Among other things, Defendant should have truthfully informed users of its hip implants that they could fracture at the femoral neck.

Design Defects

8. The hip implants contained one or more of the following design defects:
- (a) in containing weakness at the femoral neck;
 - (b) in placing excessive stresses at the femoral neck;
 - (c) failing to contain metal (or other element) of sufficient strength such that the device would not fracture at the femoral neck.

9. One or more of the following safer alternative designs for the hip implants existed that would have prevented or significantly reduced the risk of Plaintiff's injury without substantially impairing the product's utility, and that was economically and technologically feasible at the time the hip implants left Defendant's control by the application of existing or reasonably achievable scientific knowledge:

- (a) designing the femoral neck, as with other implants, with a design that did not place undue stresses at that location that included or contained a sequential trip trigger;
- (b) In containing metal (or other ingredient) of sufficient strength so that the implants could withstand the stresses placed upon the femoral neck.

Unreasonable Dangerousness

10. The manufacturing and marketing defects, or any of them, rendered the hip implants unreasonably dangerous by making the hip implants dangerous to an extent beyond that which would be contemplated by the ordinary consumer with the knowledge common to the community as to its characteristics.

11. The design defect or defects rendered the hip implants unreasonably dangerous as designed considering the utility of the hip implants and the risks involved in its use.

Producing Cause

12. The above defects, or any of them, were producing causes of Plaintiff's injuries and damages, more particularly set forth below.

Count Two

For negligence cause of action against Defendant, Plaintiff says:

1. Plaintiff adopts by reference each and every Paragraph of the Statement of Facts Applicable to All Counts of this Petition as if fully copied and set forth at length herein.

2. Defendant owed Plaintiff a duty of reasonable care. Defendant owed Plaintiff a duty to exercise care to discover dangerous propensities of the hip implants. Defendant owed Plaintiff a duty to exercise ordinary care in the design, production (manufacture) and sale (marketing) of the hip implants.

3. Defendant breached the duties it owed to Plaintiff, failed to exercise ordinary care, and was negligent in the following particulars, among others:

- (a) in containing weakness at the femoral neck;
- (b) in placing excessive stresses at the femoral neck;
- (c) failing to contain metal (or other element) of sufficient strength such that the device would not fracture at the femoral neck.

4. ~~Each and every one of the foregoing acts or omissions, taken singularly or in any~~ combination, proximately caused Plaintiff's injuries and damages, more particularly set forth below.

Res Ipsa Loquitur

As a basis for application of res ipsa loquitur to this lawsuit, Plaintiff says:

1. Plaintiff adopts by reference each and every Paragraph of the Statement of Facts Applicable to All Counts of this Petition as if fully copied and set forth at length herein.

2. The character of the incident made the basis of this lawsuit was such that it would not ordinarily occur without negligence; and

3. The hip implants was under the management and control of Defendant.

Defendant was in control of the hip implants at the time that the negligence (inferable from the incident made the basis of this lawsuit) occurred, so that the reasonable probabilities point to the Defendant and support a reasonable inference that Defendant was the negligent party.

4. Defendant has superior knowledge or means of information to determine the cause of the incident made the basis of this lawsuit.

5. By reason of the above and foregoing circumstances, among others, the jury is permitted to infer Defendant's negligence.

Circumstantial Evidence of Defect

1. The malfunction that occurred ordinarily would not occur in the absence of a defect in the hip implants.

3. The circumstances provide a reasonable basis for concluding the defective condition did not arise subsequent to Defendant's exercise of control over the implants.

4. The likelihood of something other than a defect in the hip implants is so reduced that the most probable cause of the malfunction was a defect in the hip implants.

5. Thus, the stealth system was defective.

Damages Applicable to All Counts

1. Plaintiffs adopt by reference each and every Paragraph of the Statement of Facts Applicable to All Counts of this Petition as if fully copied and set forth at length herein.

2. Plaintiffs hereby adopt by reference each and every Count of this Petition as if fully copied and set forth at length herein.

3. Plaintiff suffered sustained and incurred, and in reasonable medical probability will suffer, sustain and incur, the following injuries and damages as a producing or proximate result (or both) of Defendant's conduct, the defective hip implants, or both, among others:

- (a) physical pain, past and future;
- (b) mental suffering, past and future;
- (c) physical impairment, past and future;
- (d) physical disfigurement, past and future;
- (e) reasonable and necessary medical bills, past and future;
- (f) loss of earnings/earning capacity, past and future;

4. Plaintiff Spouse suffered sustained and incurred, and in reasonable medical probability will suffer, sustain and incur, the following injuries and damages as a producing or proximate result (or both) of Defendant's conduct, the defective hip implants, or both, among others:

- (a) loss of consortium, past and future;
- (b) loss of household services, past and future.

Prayer

WHEREFORE, Plaintiffs pray Defendants be summoned to appear and answer, and that upon final trial, Plaintiff have judgment against Defendants, jointly and severally:

- (a) for compensatory damages in excess of the minimum jurisdictional limits of the Court;
- (b) for pre-judgment interest;
- (c) for post-judgment interest;

- (d) for costs of court;
- (e) for such other and further relief to which Plaintiffs show themselves justly entitled to receive.

Respectfully submitted,
Houssiere, Durant & Houssiere, LLP

By: 

Charles R. Houssiere, III
Texas Bar No. 10050700

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Houston, Texas 77056

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Email: cstinnett@HDHtex.com

choussiere@HDHtex.com

CIVIL COVER SHEET

JS 44 (Rev. 09/11)

The JS 44 civil coversheet 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.)

<p>I. (a) PLAINTIFFS WILLIAM FRAZE and ANNA FRAZE</p> <p>(b) County of Residence of First Listed Plaintiff <u>Mohave County</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Charles R. Houssiere, III, Houssiere, Durant & Houssiere, LLP, 1990 Post Oak Blvd., Ste. 800, Houston, TX 77056, telephone: 713-626-3700; fax: 713-626-3709; choussiere@hdhtex.com</p>	<p>DEFENDANTS PORTLAND ORTHOPEDICS LIMITED; PLUS ORTHOPEDICS; SMITH & NEPHEW, INC.; MAXX HEALTH, INC.; MIPRO US, INC.; ENCORE MEDICAL CORPORATION, et al.</p> <p>County of Residence of First Listed Defendant <u>Montgomery County</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice</p>	<p>PERSONAL INJURY</p> <p><input checked="" type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage - Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition)</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1995ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/ Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 448 Education</p>	<p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p>			

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

Brief description of cause: M-LR hip implants fractured

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

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