KELLER, FISHBACK & JACKSON LLP
Daniel L. Keller (State Bar No. 191738)
Dan C. Bolton (State Bar No. 104236)
Farid Zakaria (State Bar No. 280283)
28720 Canwood Street, Suite 200
Agoura Hills, CA 91301
Telephone: 818.342.7442
Facsimile: 818.342.7616

Attorneys for Plaintiff Juan Paredes

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JUAN PAREDES,

Plaintiff,

vs.

ATRIUM MEDICAL CORPORATION, PREMIER HEALTHCARE ALLIANCE, L.P., GETINGE GROUP, GETINGE USA, INC., MAQUET CARDIOVASCULAR LLC, MAQUET MEDICAL SYSTEMS USA, MAQUET CARDIOVASCULAR US SALES, LLC,

Defendants.

Case No. **'14CV0499 DMS DHB**

COMPLAINT AND DEMAND FOR JURY TRIAL

1. **Strict Liability**
2. **Negligence**
3. **Breach of Implied Warranty**
4. **Breach of Express Warranty**
5. **Fraud**
6. **Negligent Misrepresentation**

Plaintiff, Juan Paredes, by and through the undersigned counsel, Keller, Fishback & Jackson LLP, alleges as follows:

INTRODUCTION

1. This case involves a synthetic mesh medical device, known as ProLoop polypropylene mesh, manufactured, promoted, marketed, distributed and sold by Defendants for use in hernia repair.

2. The ProLoop polypropylene mesh is a non-absorbable three dimensional plug constructed of knitted rows of monofilament polypropylene with multiple protruding monofilament loops. Its unusual design was marketed to compete with, and take market share from, mesh plug devices manufactured by competitors.

3. Defendants misrepresented that ProLoop polypropylene mesh is a safe and effective medical device for hernia repair. In fact, ProLoop polypropylene mesh causes a litany of serious medical problems and complications, including, but not limited to, mesh shrinkage, expansion, deformation, cracking, foreign body reaction, chronic inflammation, migration, organ damage, nerve damage, chronic pain and sexual dysfunction.

4. ProLoop polypropylene mesh was never approved as safe and effective by the FDA. Most medical devices, including mesh devices used for hernia repair, are "cleared" for marketing by the FDA under the 510(k) process of the Federal Food, Drug and Cosmetic Act. This process requires only that the manufacturer claim that the new device is "substantially equivalent" to another legally marketed predicate device – a device that itself was never reviewed for safety and efficacy. Under the United States Supreme Court decision in *Medtronic Inc. v. Lohr* 518 U.S. 470 (1996), the preemption doctrine does not apply to devices cleared for marketing under the 510(k) process.

5. Plaintiff brings this action to recover damages for injuries resulting from the strict liability, failure to warn, negligence, negligent misrepresentation, fraud, and breach of implied and express warranties by Defendants in the manufacture, promotion, marketing, distribution and sale of ProLoop polypropylene mesh.

///

///

PARTIES

6. Plaintiff Juan Paredes is a resident of North Bergen, New Jersey.

7. Defendant Atrium Medical Corporation ("Atrium") is a Delaware corporation headquartered at 5 Wentworth Drive, Hudson, New Hampshire. Atrium is a pharmaceutical company involved in the research, development, testing, manufacture, production, distribution, marketing, promotion and/or sale of medical devices used for hernia repair, including ProLoop polypropylene mesh.

8. Defendant Premier Healthcare Alliance, L.P. ("Premier") is a California limited partnership headquartered at 12544 High Bluff, Suite 430, San Diego, California. Premier operates as a business involved in the research, development, testing, manufacture, production, distribution, marketing, promotion and/or sale of medical devices used for hernia repair, including ProLoop polypropylene mesh.

9. Defendant Getinge Group ("Getinge") is a Swedish corporation doing business in the United States. Getinge is a pharmaceutical company involved in the research, development, testing, manufacture, production, distribution, marketing, promotion and/or sale of medical devices used for hernia repair, including ProLoop polypropylene mesh.

10. Defendant Getinge USA, Inc. ("Getinge USA") is a Delaware corporation headquartered at 1777 East Henrietta Road, Rochester, New York. Getinge USA is a pharmaceutical company involved in the research, development, testing, manufacture, production, distribution, marketing, promotion and/or sale of medical devices used for hernia repair, including ProLoop polypropylene mesh.

11. Defendant Maquet Cardiovascular LLC ("Maquet") is a German corporation doing business in the United States. Maquet is a pharmaceutical company involved in the research, development, testing, manufacture, production, distribution, marketing, promotion and/or sale of medical devices used for hernia repair, including ProLoop polypropylene mesh. In October 2011, Atrium announced that it had signed an agreement to be acquired by Getinge and its subsidiary, Maquet.

12. Defendant Maquet Medical Systems USA ("Maquet USA") is a Delaware corporation headquartered at 45 Barbour Pond Drive, Wayne, New Jersey. Maquet USA is a pharmaceutical company involved in the research, development, testing, manufacture, production, distribution, marketing, promotion and/or sale of medical devices used for hernia repair, including ProLoop polypropylene mesh.

13. Defendant Maquet Cardiovascular US Sales, LLC ("Maquet Cardiovascular") is a Delaware corporation headquartered at 45 Barbour Pond Drive, Wayne, New Jersey. Maquet Cardiovascular is a pharmaceutical company involved in the research, development, testing, manufacture, production, distribution, marketing, promotion and/or sale of medical devices used for hernia repair, including ProLoop polypropylene mesh.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. section 1332. Plaintiff is a citizen of a state different from Defendants and the amount in controversy, exclusive of interest and costs, exceeds $75,000.

15. This Court has personal jurisdiction over each defendant because each defendant purposefully directed its marketing, sales and distribution of numerous pharmaceutical and/or healthcare products to California. Each defendant has substantial contacts with California such that maintenance of this action is consistent with traditional notions of fair play and substantial justice.

16. Venue is proper in this Court pursuant to 28 U.S.C. section 1391(b). Each defendant is a resident of this district, does business in this district, is subject to personal jurisdiction in this district, and a substantial part of the events giving rise to the claims set forth in this Complaint occurred in this district.

FACTUAL BACKGROUND

17. Hernia, a condition affecting thousands of men and women in the United States each year, is the protrusion or projection of an organ or tissue through the wall that normally contains it. Although a hernia may form in any part of the abdominal wall, the most common site is the groin. Groin hernias are known as inguinal or femoral, depending on the location of the hernia. Another type of hernia is the ventral hernia (also sometimes called abdominal hernia). There are two types

of ventral hernias. One is known as an umbilical hernia and occurs in the umbilical ring that surrounds the navel. The other is referred to as an incisional hernia which occurs around surgical incisions.

18. Until 1958, abdominal wall hernias were repaired without mesh. In 1958, Dr. Frances Usher published a medical journal article entitled *Marlex mesh, a new plastic mesh for replacing tissue defects*. Dr. Usher used polypropylene mesh in experimental canine work for abdominal repair. Polypropylene is a petroleum-based plastic initially used in the Hula-Hoop and for kitchen storage applications.

19. Heavily promoted by the medical device manufacturers, including Defendants, hernia mesh, typically made wholly or partly of polypropylene, is frequently used in hernia repair surgery. About one million hernia repair surgeries with mesh are performed world-wide each year. Despite the marketing push by mesh manufacturers, including Defendants, to persuade doctors to use mesh in hernia repair, many doctors steer away from polypropylene mesh and use the Shouldice technique for hernia repair. The Shouldice technique, used for decades, is a mesh-free hernia repair method.

20. It has been known since 1953 that any implanted device must not be physically modified by tissue fluids, be chemically inert, not incite an inflammatory or foreign body cell reaction, be non-carcinogenic, not produce allergic reactions, and be able to withstand mechanical stress. D. Ostergard, *Degradation, Infection and Heat Effects on Polypropylene Mesh for Pelvic Implantation: What Was Known and When it Was Known*, 22 INT'L UROGYNECOLOGY J. 771-774 (2011).

21. Polypropylene is not biologically inert in the human body, and can cause serious injury to patients, significantly impacting their quality of life. As one author stated, "[p]rosthetic meshes are … not the inert materials they are claimed to be and can expand as well as shrink." A. Coda, *Structural Alterations of Prosthetic Meshes in Humans*, 7 HERNIA 29-34 (2003).

22. A typical response to mesh implanted in the human body is inflammation, granuloma formation and a foreign body reaction. Scar tissue forms around the implant and causes contraction of the mesh up to 50%. This inflammation, foreign body response and scar tissue formation is a

permanent condition and can result in long-term complications. U. Klinge et al., *Foreign Body Reaction to Meshes Used for the Repair of Abdominal Wall Hernias*, 165 EUR. J. SURGERY 665-73 (1999).

23. Despite the promotion of mesh as safe and effective by Defendants, the published medical literature contradicts this unsupported belief. One author observed that "[t]he literature suggests otherwise with reports of various degrees of degradation, including depolymerization, cross-linking, oxidative degradation by free radicals, additive leaching, hydrolysis, stress cracking and mesh shrinkage along with infection, chronic inflammation and the stimulation of sclerosis." The author concluded, "Based on available evidence the polypropylene used for surgical treatment of various structural defects is not inert after implantation in the human body." G. Sternschuss et al., *Post-implantation Alterations of Polypropylene in the Human*, 188 J. UROL. 27-32 (2012). As the mesh degrades in the human body, small flakes of polypropylene can lead to infection and irritation, and resultant serious pain, as the body tries to rid itself of the foreign material.

24. Once implanted, mesh contracts as well as cracks substantially in the human body. In one study, a contracture rate of 30% to 50% was found four weeks after implantation. Another study reported an 85% contracture rate after eight years. Nerve fibers are entrapped in the contracted tissue causing severe pain.

25. A debilitating consequence of hernia repair with mesh is inguinodynia, or chronic groin pain. This condition results from nerves, such as the ilioinguinal, iliohypogastric and genitofemoral nerves, coming into contact with mesh, after its degradation and deformation in the body following implantation, and from the persistent and permanent foreign body reaction to the implantation of mesh. It has been reported that hernia repair with mesh results in an extraordinarily high rate of inguinodynia – in some reports approaching 50%. *See, e.g.*, J.E. Fischer, *Hernia Repair: Why Do We Continue to Perform Mesh Repair in the Face of Human Toll of Inguinodynia?* 206 AMER. J. SURG. 619-23 (2013).

26. Other studies have found an even higher rate of chronic pain after hernia repair with mesh. One study found that approximately 75% of patients had pain one year after hernia repair at

rest, and 78% had pain when moving. B. Page , *Pain From Primary Inguinal Hernia and the Effect of Repair on Pain*, 89 BRIT. J. SURG. 1315-18 (2002).

27. Despite the abundance of scientific and medical information published in the literature relating to the dangerous properties and serious risks of polypropylene mesh, Defendants made a deliberate decision to ignore these dangers and to aggressively promote ProLoop polypropylene mesh to healthcare providers and consumers. Defendants misrepresented and concealed from Plaintiff, his physicians and consumers, the serious risks, dangers and defects enumerated in this Complaint.

28. The ProLoop polypropylene mesh, with its unusual design, was nothing more than a marketing ploy to capture the revenue stream from the lucrative hernia mesh market.

PLAINTIFF FACTUAL ALLEGATIONS

29. Plaintiff Juan Paredes was 43 years old when he underwent double inguinal hernia repair surgery in July 18, 2011. He underwent a revision surgery to remove the ProLoop polypropylene mesh on December 10, 2012.

30. The hernia mesh implanted in Plaintiff was ProLoop polypropylene mesh manufactured, promoted, marketed, distributed and sold by Defendants.

31. The ProLoop polypropylene mesh caused Plaintiff to suffer permanent injuries, substantial pain and suffering, emotional distress, medical expenses, lost wages and earning capacity, and diminished quality of life.

32. Before Plaintiff underwent hernia repair surgery with ProLoop polypropylene mesh, he had no history of these physical and emotional injuries.

33. Plaintiff files this lawsuit within the applicable limitations period of first suspecting that ProLoop polypropylene mesh caused the harm and injuries suffered by Plaintiff. Plaintiff could not, by the exercise of reasonable diligence, have discovered the wrongful cause of his injuries at an earlier time because the injuries were caused without perceptible trauma or harm, and when the injuries were discovered, their cause was unknown to Plaintiff. Plaintiff did not suspect, nor did Plaintiff have reason to suspect, that Plaintiff had been injured, the cause of the injuries, or the wrongful nature of the conduct causing the injuries, until less than the applicable limitations period

before the filing of this Complaint. Moreover, Plaintiff was prevented from discovering this information sooner because Defendants misrepresented and concealed, and continue to misrepresent and conceal to the public and the medical profession, the dangers of ProLoop polypropylene mesh, as well as the true facts that could have led Plaintiff to discover a cause of action against Defendants for their wrongful conduct.

FIRST CAUSE OF ACTION

STRICT LIABILITY

34. Plaintiff incorporates by reference herein all of the above allegations in this Complaint as if fully set forth herein.

35. Defendants designed, manufactured, distributed, promoted, marketed and sold the ProLoop polypropylene mesh and it was expected to reach, and did reach, physicians and consumers, including Plaintiff, without substantial change in the condition in which it was sold.

36. The ProLoop polypropylene mesh manufactured, distributed, promoted, marketed and sold by Defendants was defective and dangerous at the time it was placed in the stream of commerce. Such defects included, but are not limited to, defects in manufacture, defects in design, and inadequate warnings and/or instructions that failed to inform Plaintiff and his physicians of the dangers associated with the use of ProLoop polypropylene mesh, as described in this Complaint, and withheld and concealed those dangers from Plaintiff and his physicians. Defendants knew or should have known of the substantial dangers of ProLoop polypropylene mesh as well as the defective nature of the device when used for hernia repair.

37. The ProLoop polypropylene mesh manufactured, sold, distributed and promoted by Defendants was defective due to inadequate post-marketing warnings and/or instructions because, after Defendants knew or should have known of the risk of serious bodily harm from the use of ProLoop polypropylene mesh, Defendants failed to provide an adequate warning to consumers and/or their health care providers of the product, knowing the product could cause serious injury.

38. Plaintiff and his physicians used the ProLoop polypropylene mesh as directed for its intended purpose in hernia repair. Defendants knew that the device would be used by consumers,

such as Plaintiff, without inspection for defects, and Plaintiff and his physicians did not know, and had no reason to know, of the existence of the above defects.

39. The ProLoop polypropylene mesh was not altered or modified in any way before it was implanted in Plaintiff.

40. As a direct and proximate result of the above defects and substantial dangers in the ProLoop polypropylene mesh, Plaintiff suffered serious injury, harm, damages, economic and non-economic loss, and will continue to suffer such harm, damages and losses in the future.

SECOND CAUSE OF ACTION

NEGLIGENCE

41. Plaintiff incorporates by reference herein all of the above allegations in this Complaint as if fully set forth herein.

42. At all times herein mentioned, Defendants had a duty to exercise reasonable care to manufacture, design, formulate, compound, test, produce, process, assemble, inspect, research, distribute, market, label, package, prepare for use, sell and adequately warn of the risks and dangers of ProLoop polypropylene mesh.

43. At all times herein mentioned, Defendants negligently, carelessly, recklessly and/or maliciously manufactured, designed, formulated, distributed, compounded, produced, processed, assembled, inspected, tested, distributed, marketed, labeled, packaged, prepared for use and sold ProLoop polypropylene mesh, and negligently, carelessly, recklessly and/or maliciously failed to adequately warn of the risks and dangers of ProLoop polypropylene mesh, and to adequately provide post-marketing warnings of such risks and dangers.

44. Despite the fact that Defendants knew or should have known that ProLoop polypropylene mesh caused unreasonable and dangerous risks and complications, and failed to warn of those risks and complications, Defendants continued to market ProLoop polypropylene mesh to consumers including Plaintiff.

45. Defendants knew or should have known that consumers such as Plaintiff would foreseeably suffer injury as a result of the failure of Defendants to exercise ordinary care as described above.

46. The negligence of Defendants was a proximate cause of Plaintiff's injuries, harm, economic and non-economic loss which Plaintiff suffered, and will continue to suffer, as described herein.

THIRD CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY

47. Plaintiff incorporates by reference herein all of the above allegations in this Complaint as if fully set forth herein.

48. Before ProLoop polypropylene mesh was implanted in Plaintiff, Defendants impliedly warranted to Plaintiff, and Plaintiff's physicians, that ProLoop polypropylene mesh was of merchantable quality, adequately contained, packaged and labeled, and safe and fit for the use in hernia repair.

49. Plaintiff was and is inexperienced in the research, design, manufacture, sale and distribution of medical devices such as ProLoop polypropylene mesh, and reasonably relied upon the skill, judgment and implied warranty of the Defendants in undergoing hernia repair surgery with ProLoop polypropylene mesh.

50. ProLoop polypropylene mesh was neither safe for its intended use nor of merchantable quality, as warranted by Defendants, since it causes serious medical problems and complications when used as intended and will cause injury to consumers who undergo hernia repair with ProLoop polypropylene mesh.

51. As a result of the breach of implied warranties by Defendants, Plaintiff suffered injuries and damages as herein alleged.

FOURTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

52. Plaintiff incorporates by reference herein all of the above allegations in this Complaint as if fully set forth herein.

53. At all times herein mentioned, Defendants expressly represented and warranted to Plaintiff and Plaintiff's physicians, by and through statements made by Defendants or their authorized agents or sales representatives, orally and in publications, package inserts and other

written materials intended for physicians, healthcare providers, medical patients and the general public, that ProLoop polypropylene mesh is safe, effective, fit and proper for its intended use in hernia repair.

54. In implanting ProLoop polypropylene mesh for hernia repair, Plaintiff relied on the skill, judgment, representations and foregoing express warranties of Defendants. These warranties and representations were false in that ProLoop polypropylene mesh is unsafe, unfit and ineffective for its intended purpose in hernia repair as described in this Complaint.

55. As a result of the breach of express warranties by Defendants, Plaintiff suffered injuries and damages as alleged herein.

FIFTH CAUSE OF ACTION

FRAUD

56. Plaintiff incorporates by reference herein all of the above allegations in this Complaint as if fully set forth herein.

57. Defendants, from the time they first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed ProLoop polypropylene mesh, and up to the present, wilfully deceived Plaintiff by concealing from him, Plaintiff's physicians and the general public, the true facts concerning ProLoop polypropylene mesh, which the Defendants had a duty to disclose.

58. At all times herein mentioned, Defendants conducted a sales and marketing campaign to promote the sale of ProLoop polypropylene mesh and wilfully deceive Plaintiff, Plaintiff's physicians and the general public as to the benefits, health risks and consequences of using ProLoop polypropylene mesh for hernia repair. Defendants knew of the foregoing, that ProLoop polypropylene mesh is not safe, fit or effective for human implantation, that undergoing implantation with ProLoop polypropylene mesh is hazardous to health, and that ProLoop polypropylene mesh has a serious propensity to cause injuries and harm to consumers, including but not limited to the injuries Plaintiff suffered.

59. Defendants suppressed and concealed the true facts concerning ProLoop polypropylene mesh with the intent to defraud Plaintiff, in that Defendants knew that Plaintiff's physicians would

not have used, and Plaintiff would not have undergone implantation with, ProLoop polypropylene mesh, if they were aware of the true facts concerning its dangers.

60. As a result of Defendants fraud and deceit, Plaintiff suffered the injuries and damages as herein alleged.

SIXTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

61. Plaintiff incorporates by reference herein all of the above allegations in this Complaint as if fully set forth herein.

62. From the time ProLoop polypropylene mesh was first tested, studied, researched, evaluated, endorsed, manufactured, marketed and distributed, and up to the present, Defendants made misrepresentations to Plaintiff, Plaintiff's physicians and the general public, including but not limited to the misrepresentation that ProLoop polypropylene mesh was safe, fit and effective for use in hernia repair. At all times herein mentioned, Defendants conducted a sales and marketing campaign to promote the sale of ProLoop polypropylene mesh and wilfully deceive Plaintiff, Plaintiff's physicians and the general public as to the health dangers and consequences of the use of ProLoop polypropylene mesh in hernia repair.

63. The Defendants made the foregoing representations without any reasonable ground for believing them to be true. These representations were made directly by Defendants, by sales representatives and other authorized agents of Defendants, and in publications and other written materials directed to physicians, medical patients and the public, with the intention of inducing reliance, and the purchase and use of ProLoop polypropylene mesh for hernia repair.

64. The representations by the Defendants were in fact false, in that ProLoop polypropylene mesh is not safe, fit or effective for use in hernia repair, using ProLoop polypropylene mesh is hazardous to health, and ProLoop polypropylene mesh has a serious propensity to cause injuries to consumers, including but not limited to the injuries suffered by Plaintiff.

65. The above representations by Defendants were made with the intention of inducing eliance, and the purchase and use of ProLoop polypropylene mesh for hernia repair by Plaintiff.

66. In reliance on the misrepresentations by the Defendants, Plaintiff was induced to use ProLoop polypropylene mesh for hernia repair. If Plaintiff had known the true facts and the facts concealed by Defendants, Plaintiff would not have used ProLoop polypropylene mesh. The reliance of Plaintiff upon Defendants' misrepresentations was justified because such misrepresentations were made and carried out by individuals and entities that were in a position to know the true facts.

67. As a result of the above negligent misrepresentations by Defendants, Plaintiff suffered injuries and damages as alleged herein.

PUNITIVE DAMAGES ALLEGATIONS

68. Plaintiff incorporates by reference herein all of the allegations in this Complaint as if fully set forth herein.

69. The acts, conduct and concealment of Defendants, as alleged in this Complaint, were willful, malicious, oppressive and fraudulent. Defendants committed these acts with a conscious disregard for the rights and safety of Plaintiff and other consumers, and for the primary purpose of increasing Defendants' profits from the distribution and sale of ProLoop polypropylene mesh. Defendants' outrageous and unconscionable conduct warrants the imposition of punitive damages against Defendants in an amount appropriate to punish and deter such conduct in the future.

70. Before the manufacture, promotion, distribution and sale of ProLoop polypropylene mesh to Plaintiff, Defendants knew that it was in a defective condition, and knew that they had made a strategic decision to fraudulently represent and intentionally conceal the significant risks and serious dangers of ProLoop polypropylene mesh, as described in this Complaint, and knew that consumers who used ProLoop polypropylene mesh for hernia repair would, and did, experience severe physical, mental and emotional injuries. Further, Defendants, through their officers, directors, managers and agents, knew that ProLoop polypropylene mesh presented a substantial and unreasonable risk of harm to the public, including Plaintiff. Thus, Defendants unreasonably, maliciously, oppressively and fraudulently subjected consumers of ProLoop polypropylene mesh, including Plaintiff, to the risk of serious injury.

71. Despite their knowledge, Defendants, acting through their officers, directors and managing agents for the purpose of enhancing the profits of Defendants, knowingly and deliberately failed to remedy the known defects in ProLoop polypropylene mesh and failed to warn the public, including Plaintiff, of the serious risk of injury caused by the defects in ProLoop polypropylene mesh. Defendants and their officers, directors and managing agents, intentionally proceeded with the manufacture, sale, distribution and marketing of ProLoop polypropylene mesh knowing these actions would expose consumers, including Plaintiff, to serious danger in order to advance Defendants' financial interests and increase revenue.

72. Defendants' conduct was despicable and so contemptible that it would be looked down upon and despised by ordinary decent people, and was carried on by Defendants with willful and conscious disregard for the rights and safety of Plaintiff and other consumers, thereby entitling Plaintiff to the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants, as follows:

1. General damages, according to proof;
2. Special damages, according to proof;
3. Loss of earnings and earning capacity, according to proof;
4. Medical expenses, past and future, according to proof;
5. Mental and emotional distress, past and future, according to proof;
6. Punitive damages, according to proof;
7. Costs of suit herein;
8. Pre-judgment and post-judgment interest, as provided by law; and
9. Such other and further relief as the Court may deem just and proper.

///

///

///

///

///

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all counts and as to all issues.

Dated: March 5, 2014

KELLER, FISHBACK & JACKSON LLP

By: _____

Dan C. Bolton (State Bar No. 104236)
28720 Canwood Street, Suite 200
Agoura Hills, CA 91301
Telephone: 818.342.7442
Attorneys for Plaintiff Juan Paredes

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
Juan Paredes

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Dan C. Bolton
Keller, Fishback & Jackson LLP
28720 Canwood St., Suite 200, Agoura Hills, CA 91301, 818.342.7442

DEFENDANTS
Atrium Medical Corporation et al.

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)*

'14CV0499 DMS DHB

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

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

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

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

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

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:
Personal Injury/Product Liability

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
03/05/2014

SIGNATURE OF ATTORNEY OF RECORD
Dan C. Bolton

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE