

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. **'14 CV0499 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**

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

3 **INTRODUCTION**

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

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

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

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

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

27 ///

28 ///

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.

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

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

11 **JURISDICTION AND VENUE**

12 14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. section
13 1332. Plaintiff is a citizen of a state different from Defendants and the amount in controversy,
14 exclusive of interest and costs, exceeds \$75,000.

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

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

23 **FACTUAL BACKGROUND**

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

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

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

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

16 20. It has been known since 1953 that any implanted device must not be physically modified
17 by tissue fluids, be chemically inert, not incite an inflammatory or foreign body cell reaction, be
18 non-carcinogenic, not produce allergic reactions, and be able to withstand mechanical stress. D.
19 Ostergard, *Degradation, Infection and Heat Effects on Polypropylene Mesh for Pelvic*
20 *Implantation: What Was Known and When it Was Known*, 22 INT'L UROGYNECOLOGY J. 771-774
21 (2011).

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

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

1 permanent condition and can result in long-term complications. U. Klinge et al., *Foreign Body*
2 *Reaction to Meshes Used for the Repair of Abdominal Wall Hernias*, 165 EUR. J. SURGERY 665-73
3 (1999).

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

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

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

26 26. Other studies have found an even higher rate of chronic pain after hernia repair with
27 mesh. One study found that approximately 75% of patients had pain one year after hernia repair at
28

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

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

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

11 **PLAINTIFF FACTUAL ALLEGATIONS**

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

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

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

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

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

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

6 **FIRST CAUSE OF ACTION**

7 **STRICT LIABILITY**

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

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

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

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

26 38. Plaintiff and his physicians used the ProLoop polypropylene mesh as directed for its
27 intended purpose in hernia repair. Defendants knew that the device would be used by consumers,
28

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **NEGLIGENCE**

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

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

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

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

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

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

4 **THIRD CAUSE OF ACTION**

5 **BREACH OF IMPLIED WARRANTY**

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

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

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

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

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

22 **FOURTH CAUSE OF ACTION**

23 **BREACH OF EXPRESS WARRANTY**

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

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

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

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

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

10 **FIFTH CAUSE OF ACTION**

11 **FRAUD**

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

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

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

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

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

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

5 **SIXTH CAUSE OF ACTION**

6 **NEGLIGENT MISREPRESENTATION**

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

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

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

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

26 65. The above representations by Defendants were made with the intention of inducing
27 reliance, and the purchase and use of ProLoop polypropylene mesh for hernia repair by Plaintiff.
28

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

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

9 **PUNITIVE DAMAGES ALLEGATIONS**

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

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

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

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

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

13
14 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, as follows:

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

24 ///

25 ///

26 ///

27 ///

28 ///

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

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

DEFENDANTS

Atrium Medical Corporation et al.

(b) County of Residence of First Listed Plaintiff Hudson

(EXCEPT IN U.S. PLAINTIFF CASES)

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.

(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

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	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input 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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 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 ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332Brief 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

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE