UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHELLE MERCURIO,

Plaintiffs,

vs.

C.R. BARD, INC. and BARD PERIPHERAL VASCULAR, INC.

Defendants.

COMPLAINT and DEMAND FOR JURY TRIAL

Civil Action No.

Plaintiff by and through her attorneys, Faraci Lange, LLP, complaining of the defendants herein, respectfully allege to this Court upon and belief the following:

PARTIES

1. Michelle Mercurio ("Plaintiff") is a resident of the State of New York, residing in Rochester, Monroe County, New York.

2. Plaintiff was born in 1970.

3. Plaintiff has suffered and continues to suffer substantial injury resulting from her implantation with the Bard G2 Express Inferior Vena Cava filter.

4. On information and belief, defendant, C.R. Bard, Inc. ("Bard"), is a corporation organized and existing under the laws of Delaware with its principal place of business in New Jersey. Bard designed, manufactured, marketed and sold the G2 Express IVC filter that is the subject of this lawsuit.

5. On information and belief, defendant Bard Peripheral Vascular, Inc. ("BPV") is a wholly owned subsidiary of Bard with its principal place of business in Tempe, Arizona. BPV is

a resident and citizen of Arizona. BPV designed, manufactured, marketed and sold the G2 Express IVC filter that is the subject of this lawsuit.

6. At all times mentioned herein, each of the defendants was the representative, agent, employee, or alter ego of the other defendant and in doing the things alleged in this Complaint was acting within the scope its authority.

7. Bard and BPV are collectively referred to as "Defendants."

DEMAND FOR JURY TRIAL

8. Plaintiff hereby demands trial by jury as to all issues.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds $75,000.00, exclusive of interest and costs, and because complete diversity exists between the parties, as plaintiff is a citizen of New York, which is different from the states where the defendants are incorporated and have their principal places of business.

10. Venue is proper within this District pursuant to 28 U.S.C. § 1391 because it is a judicial district where a substantial part of the events and omissions giving rise to the claims occurred.

TAG-A-LONG ACTION

11. This is a potential tag-along action and in accordance with 28 U.S.C. § 1407, it should be transferred to the United States District Court for the District of Arizona, Phoenix Division, for inclusion in *In re Bard IVC Filters Products Liability Litigation*, MDL 2641 (Hon. David G. Campbell).

GENERAL FACTUAL ALLEGATIONS

12. The inferior vena cava ("IVC") is a vein that returns blood to the heart from the lower extremities. In certain individuals, blood clots or thrombi travel from the blood vessels in the leg and pelvis, through the IVC and into the lungs, causing a pulmonary embolism ("PE"). This thrombi can also develop in the deep leg veins and are referred to a deep vein thrombosis ("DVT"). PEs are dangerous and can often result in death.

13. Individuals who are at risk of clotting are often treated with anticoagulants such as heparin, warfarin or Lovenox to reduce the risk.

14. For individuals who are at high risk for PE/DVT or for whom anticoagulants are contraindicated, doctors may recommend implantation of an IVC filter to reduce the risk of a thrombotic event.

15. An IVC filter is a medical device that is designed to prevent blood clots from traveling from the lower extremities to the heart and lungs. It is inserted into the IVC and works by trapping and filtering clots that form in the lower portions of the body.

16. The first transvenous method of interrupting bloods clots in the IVC was developed in 1967 with the advent of the Mobin-Uddin umbrella filter followed by the Greenfield filter in 1973. These are permanent filters with no retrieval option.

17. Beginning in or around 2003, medical device manufacturers also began marketing optional or retrievable IVC filters. These filters are designed to be removed from a patient when the risk of PE/DVT has passed. They were not designed to remain inside the IVC indefinitely. The Recovery Filter, G2, G2 Express, G2x, Eclipse and Denali filters are retrievable IVC filters manufactured by defendants.

The Recovery® Filter

18. On November 27, 2002, the United States Food & Drug Administration ("FDA") granted defendants' 510(k) application and cleared the Recovery Filter for marketing and use in prevention of recurrent PE via permanent placement in the IVC. The device was approved for use in the following situations:

a. Pulmonary thromboembolism when anticoagulants are contraindicated;

b. Failure of anticoagulant therapy for thromboembolic disease;

c. Emergency treatment following massive PE where anticipated benefits of conventional therapy are reduced; and

d. Chronic, recurrent PE where anticoagulant therapy has failed or is contraindicated.

19. The 1976 Medical Device Amendments to the Food, Drug and Cosmetics Act of 1938 ("MDA") allow a medical device marketed after the MDA's effective date to bypass the rigorous premarket approval process if the device is "substantially equivalent" to a "grandfathered" pre-MDA device (i.e., a device approved prior to May 28, 1976) by utilizing the 510(k) process. The 510(k) process simply requires the manufacturer to notify the FDA under section 510(k) of the MDA of its intent to market a device at least 90 days prior to the device's introduction on the market, and to explain the device's substantial equivalence to a pre-MDA predicate device. The FDA may then approve the new device for sale in the United States.

20. The MDA does not require an FDA determination that the device is in fact substantially equivalent to a grandfathered device.

21. Instead of assuring the safety of the Recovery Filter through appropriate clinical trials, defendants sought to market its Recovery Filter by obtaining FDA approval under section 510(k).

22. Defendants avoided the rigorous safety review required for premarket approval, including clinical trials, by telling the FDA that the Recovery Filter was "substantially equivalent" to other permanent IVC filters on the market.

23. In April 2003, Defendants submitted a Section 510(k) premarket notification of intent to market the Recovery® Filter for the additional intended use of optional retrieval. This additional intended use was cleared by the FDA on July 23, 2003.

24. The Recovery Filter was released to the market in or around 2004 and in addition to being used for the reasons above Defendants were well-aware that the filters were also being used extensively for off-label purposes. For example, Defendants knew that these filters were being used for purely prophylactic reasons for patient with upcoming bariatric surgeries such as occurred in this case.

25. The Recovery Filter consists of two levels of six radially distributed NITINOL struts that are designed to anchor the filter into the IVC and to trap clots. There are six short struts or arms and six long struts or legs. Each strut is held together by a single connection to a cap located at the top of the device. Based on the patent, the arms are primarily for "centering" or "positioning" within the IVC, and the legs with attached hooks are designed to prevent the device from migrating.

26. The Recovery Filter is inserted by a catheter that is guided by a doctor through a blood vessel into the IVC. Following implantation, the surgeon usually conducts an imaging

study to confirm the correct placement. The Recovery Filter is designed to be retrieved in a similar fashion.

27. The Recovery Filter has not lived up to its promise and instead has an unreasonably high rate of failure. Within a year of its release, Defendants began receiving a significant number of adverse event reports (AERs) from healthcare providers. There were at least 32 AERs regarding facture and at least 22 AERs regarding migration with nine device migrations associated with patient death. AERs continued to accumulate in the years that followed.

28. These devices are prone to fracture and fractured pieces can migrate from the IVC to the heart causing serious life threatening complications requiring emergency surgical intervention and in some cases death. In addition, the IVC filter itself can migrate to another part of the IVC, the heart or to the pulmonary outflow tract.

29. The filters struts can also perforate or puncture the wall of the IVC as happened in this case. Puncture of the IVC can lead to, *inter alia*, aortic penetration, ureteral perforation, duodenal perforation, and lumbar vessel laceration by the struts.

30. Studies have reported the Recovery Filter has a fracture and migration rate ranging from 21% to 31.7%.[1]

31. In addition, the device is manufactured with "draw markings" and circumferential grinding markings on its exterior surface that further compromise its structural integrity while in the body. Upon information and belief, the device is prone to failure at or near the location of these markings.

[1] Hull, *et al.* Bard Recovery Filter: evaluation and management of vena cava limb perforation, fracture, and migration. *J Vasc Interv Radiol.* 2009;20(1):52-60; Nicholson, W, *et al.*Prevalence of Fracture and Fragment Embolization of the Bard Recovery and Bard G2 Cava Filters and Clinical Implications Including Cardiac Perforation and Tamponade. *Arch. Int. Med.* 2010 Nov.; 170:1827-31.

32. In late 2004 or early 2005, defendants began redesigning the Recovery Filter in an attempt to correct the flaws that were causing the high failure rate. During the redesign process, defendants continued to sell the Recovery Filter and failed to warn healthcare providers or the public of the risks or the significant failure rate.

The G2 Filters

33. The redesign of the Recovery Filter lead to the release defendants' G2 Filter, which stands for second generation Recovery Filter. This was followed by the release of the G2 Express, implanted in this case, the G2x and the Eclipse filter.

34. On August 29, 2005, the FDA cleared the G2 Filter for the same intended uses as the Recovery Filter, except that it was not cleared for retrievable use. It was subsequently cleared for use as a retrievable filter on January 15, 2008.

35. Defendants marketed the G2 Filter as having "enhanced fracture resistance," "improved centering," and "increased migration resistance." Defendants, however, failed to ensure that the changes made to the device were sufficient to correct the problems that plagued the Recovery Filter resulting in the same defects and health risks.

36. Upon information and belief, no *in vivo* clinical testing was done to determine whether any of the G2 filters would perform as expected and were safe once implanted into patients such as plaintiff and subject to normal *in vivo* stresses.

37. Like the Recovery Filter, the G2 Filter's design is of insufficient strength and integrity to withstand normal *in vivo* stresses. As a result, the G2 Filter is also prone to fracturing, migrating, tilting and/or perforating the IVC.

38. The G2 Filter like is predecessor is manufactured with "draw markings" and circumferential grinding markings its exterior surface, which compromise the structural integrity

of the device when implanted and make the device more susceptible to failure. Specifically, the G2 Filter is prone to fail at or near the location of draw markings/circumferential grinding markings on the struts of the device.

39. Again, within a short period of time, defendants began receiving a substantial number of AERs reporting that the G2 Filter was fracturing, migrating, excessively tilting and perforating the IVC. These failures were often associated with severe injuries such as death, hemorrhage, cardiac/pericardial tamponade, cardiac arrhythmia, severe and persistent pain and perforation of tissue, vessels and organs.

40. Defendants represented the failure rate of the G2 Filter to be 1.2%, but data from the FDA's MAUDE database and medical literature indicate that this is not an accurate representation of the true incidence of fracture.

41. The FDA MAUDE database establishes that between 2004 and 2008, Defendants' IVC filters are responsible for 50% of all adverse events related to IVC filters. Specific to this case, Defendants' filters account for 69% of all reports detailing IVC puncture/perforation.

42. The G2 Express Filter was cleared by the FDA on July 30, 2008. The only significant difference between the G2 Filter and the G2 Express is a new snare tip which was designed to optimize retrieval. Defendants began marketing the G2 Express in August 2008. This was the filter that was implanted in Plaintiff.

43. The G2 and G2 Express are essentially the same filter and share the same defects, risks and complications.

44. The G2x Filter was cleared for marketing by the FDA on October 31, 2008 and again the design difference between it and the G2 Express are minimal. The G2x Filter was

launched in January 2009 and shares the same defects, risks and complications as its predecessor devices.

45. Again, defendants failed to warn healthcare providers and the public of the true risks associated with the G2 line of filters and instead began to redesign its IVC filter while continuing to sell the G2x Filter

46. Given the similarity in design between all iterations of its IVC filter, defendants should have known that each of the G2 filters would suffer the same complications as its predecessor device.

47. Moreover, Defendants have knowledge of the substantially higher failure rate of its devices and failed to warn healthcare providers and the public.

48. Upon information and belief, rather than warn the public of the true risk associated with implantation of its G2 Filter, defendant embarked on an aggressive campaign of off-label marketing. This included representations made to physicians, healthcare professionals, and other members of the medical community that the G2 Filter was safe and effective for retrievable use prior to the FDA approving the device for retrievable use.

The Eclipse Filter

49. Defendants returned to the drawing board again in an attempt to resolve the complications associated with the G2 Filters and designed the Eclipse Filter as the next generation of IVC filter.

50. The Eclipse filter was cleared by the FDA for marketing on January 14, 2010. The only design change from the G2 line of filters was the addition of hooks to the legs of the filter and the electropolishing of the struts.

51. The Eclipse Filter was launched in 2010 and is prone to the same complications associated with its predecessor devices.

PLAINTIFFS' SPECIFIC FACTUAL ALLEGATIONS

52. On or about October 19, 2009, Plaintiff underwent a surgical procedure to insert defendants' Bard G2 Express IVC Filter at Rochester General Hospital in Rochester, New York. Plaintiff's filter was implanted as a prophylactic measure because she had a history of DVT and was undergoing gastric bypass surgery on October 27, 2009.

53. On October 19, 2009, an angiogram was done to check placement and confirmed that Plaintiff's filter was overlying the top of the L2 vertebra.

54. On or around September 4, 2014, Plaintiff presented to Strong Memorial Hospital with abdominal pain and right common iliac artery occlusive thrombus. She was treated with Lovenox.

55. On or around September 4, 2014, imaging showed that Plaintiff's Bard G2 Express Filter had migrated and punctured her vena cava resulting in several struts protruding toward the right of her lumbar spine.

56. On or around December 10, 2014, Plaintiff consulted with a vascular surgeon regarding removal of her IVC filter. Her surgeon determined that endovascular retrieval was to risky in the absence of symptoms because it would require open surgery involving a cavotomy and large laparotomy. The surgeon also noted that Plaintiff is at risk of certain complications such as thrombosis and fistulization.

57. The IVC filter that has migrated and punctured Plaintiffs' vena cava remains in Plaintiff.

58. Plaintiff is a single mother of two children without any support financially or otherwise from the children's father. She lives with constant anxiety, stress and worry that she will have an accident or something will happen that will cause complications with her punctured IVC filter resulting in serious injury or death.

CLAIM I
STRICT PRODUCTS LIABILITY – DEFECTIVE DESIGN

59. Plaintiff repeats and realleges each and every allegation previously set forth herein.

60. The G2 Express IVC Filter designed, marketed, manufactured and distributed by Defendants was defective and not reasonably safe due to its improper, inadequate and defective design.

61. Defendants are strictly liable in tort to Plaintiff for designing, marketing, manufacturing and distributing a product that was defective and not reasonably safe for its intended use.

62. As a direct and proximate result of the wrongful acts and omissions of Defendants, Plaintiff has suffered economic damages, severe and possibly permanent injuries, and emotional distress. Plaintiff has also endured and continues to suffer the mental anguish and psychological trauma of living with this defective product implanted in her body.

CLAIM II
STRICT PRODUCTS LIABILITY – FAILURE TO WARN

63. Plaintiff repeats and realleges each and every allegation previously set forth herein.

64. Defendants developed, tested, assembled, manufactured, packaged, labeled, prepared, distributed, marketed and/or supplied G2 Express IVC Filter for sale and sold it to Plaintiff in the ordinary course of their business.

65. Defendants in developing, testing, assembling, manufacturing, packaging, labeling, preparing, distributing, marketing, supplying and/or selling the G2 Express IVC Filter distributed promotional materials, publicity and/or information to healthcare providers and patients, including Plaintiff, with information printed on the instructions for use, labeling and/or packaging.

66. Defendants expected the G2 Express IVC Filter to reach consumers in the State of New York, and it did reach consumers in New York, including Plaintiff, without substantial change in the condition.

67. Defendants failed to adequately warn the public, including Plaintiff, as well as physicians and surgeons of the risk of suffering the type and manner of injuries suffered by Plaintiff, which risks and/or danger were known or should have been known to the defendants and are strictly liable to Plaintiff because their product was not reasonably safe for its intended use.

68. Defendants knew or should have known that the G2 Express IVC Filters were defective and dangerous and showed reckless indifference to or conscious disregard for the Plaintiff's safety by failing to provide proper warnings to the public and the medical community.

69. As a direct and proximate result of the wrongful acts and omissions of Defendants, Plaintiff has suffered economic damages, severe and possibly permanent injuries, and emotional distress. Plaintiff has also endured and continues to suffer the mental anguish and psychological trauma of living with this defective product implanted in her body.

CLAIM III
NEGLIGENCE

70. Plaintiff repeats and realleges each and every allegation previously set forth herein.

71. Defendants had a duty to exercise reasonable care in designing, testing, manufacturing, marketing, promoting, selling and distributing the G2 Express IVC Filter and to warn health care providers and users of the risks, dangers and adverse side effects.

72. Defendants knew or should have known the G2 Express IVC Filter were unsafe when used as designed and manufactured and failed to exercise due care and were otherwise negligent in the design, manufacture and marketing of this device including the failure to adequately test the product and the failure to provide adequate warnings.

73. The conduct of Defendants was intentional, wanton, willful and outrageous beyond all standards of common decency and in reckless disregard and callous indifference to the public and users of the G2 Express IVC Filter.

74. The limitations of liability set forth in New York's CPLR § 1601 do not apply to this action because Defendants were engaged in intentional misconduct (CPLR § 1602.5), Defendants acted with reckless disregard (CPLR § 1602.7), Defendants acted knowingly and intentionally and in concert to cause the acts or failures upon which liability is based (CPLR § 1602-11).

75. As a direct and proximate result of the wrongful acts and omissions of Defendants, Plaintiff has suffered economic damages, severe and possibly permanent injuries, and emotional distress. Plaintiff has also endured and continues to suffer the mental anguish and psychological trauma of living with this defective product implanted in her body.

CLAIM IV

BREACH OF EXPRESS WARRANTY

76. Plaintiff repeats and realleges each and every allegation previously set forth herein.

77. Defendants expressed in their literature, advertisements, and promotions and through representations by their marketing team and sales agents that G2 Express IVC Filters were safe, effective and fit for implantation into the IVC to prevent pulmonary emboli for which they were designed, manufactured and marketed.

78. By making such representations, defendants expressly warranted that the G2 Express IVC Filters were safe and effective, and fit for the uses for which they were designed, marketed, manufactured and distributed.

79. As explained above, in fact, the G2 Express IVC Filter were not safe, effective, fit nor proper for the use for which they were designed, manufactured and marketed.

80. Plaintiffs, and their healthcare providers, and the medical profession relied on defendants' express warranties.

81. As a direct and proximate result of the wrongful acts and omissions of Defendants, Plaintiff has suffered economic damages, severe and possibly permanent injuries, and emotional distress. Plaintiff has also endured and continues to suffer the mental anguish and psychological trauma of living with this defective product implanted in her body.

CLAIM V
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

82. Plaintiff repeats and realleges each and every allegation previously set forth herein.

83. Upon information and belief, on or around October 19, 2009 Plaintiff received and began using a G2 Express IVC Filter manufactured by defendants.

84. Defendants impliedly warranted that the G2 Express IVC Filter was merchantable pursuant to UCC § 2-314 and suitable for the ordinary purpose for which it was intended to be used for implantation into the IVC to prevent PE.

85. Defendants' G2 Express IVC Filter were not merchantable nor reasonably suited for the ordinary purpose for which they were being used.

86. As a result, defendants breached UCC § 2-314.

87. As a direct and proximate result of the wrongful acts and omissions of Defendants, Plaintiff has suffered economic damages, severe and possibly permanent injuries, and emotional distress. Plaintiff has also endured and continues to suffer the mental anguish and psychological trauma of living with this defective product implanted in her body.

CLAIM VI
BREACH OF IMPLIED WARRANTY OF FITNESS

88. Plaintiff repeats and realleges each and every allegation previously set forth herein.

89. Defendants impliedly warranted, pursuant to UCC § 2-315, that the G2 Express IVC Filters were fit for a particular purpose for which they were being used, implantation into the IVC to prevent pulmonary emboli.

90. Defendant's G2 Express Filters were not fit for the particular purpose for which they were being used.

91. As a result, defendants breached UCC § 2-315.

92. As a direct and proximate result of the wrongful acts and omissions of Defendants, Plaintiff has suffered economic damages, severe and possibly permanent injuries, and emotional distress. Plaintiff has also endured and continues to suffer the mental anguish and psychological trauma of living with this defective product implanted in her body.

CLAIM VII
VIOLATION OF NEW YORK GENERAL BUSINESS LAW § 349

93. Plaintiff repeats and realleges each and every allegation previously set forth herein.

94. Defendants engaged in commercial conduct by selling G2 Express Filters and misrepresented and omitted material information regarding this product by failing to disclose the known risks of their G2 Express Filters and predecessor devices.

95. By failing to disclose the known dangers and risks of the G2 Express Filters and predecessor devices, Defendants engaged in unfair and deceptive consumer-oriented acts.

96. Reasonable consumers, including Plaintiff, were injured by Defendants' unfair and deceptive acts.

97. As a direct and proximate result of the wrongful acts and omissions of Defendants, Plaintiff has suffered economic damages, severe and possibly permanent injuries, and emotional distress. Plaintiff has also endured and continues to suffer the mental anguish and psychological trauma of living with this defective product implanted in her body.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

A. On Claims I through VII for Plaintiff in a sum in excess of $75,000 each;

B. For the court costs and disbursements;

C. For such other and further relief as is just and proper.

Dated: September 8, 2015
Rochester, New York

FARACI LANGE, LLP

/s/ Hadley L. Matarazzo
HADLEY L. MATARAZZO, ESQ.
Attorneys for Plaintiff
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Rochester, New York 14614
Telephone: (585) 325-5150
Facsimile: (585) 325-3285

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
Michelle Mercurio

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Hadley L. Matarazzo, Esq., Faraci Lange, LLP, 28 E. Main Street, Suite 1100, Rochester, NY 14614, Phone: (585) 325-5150

DEFENDANTS
C.R. Bard, Inc. and Bard Peripheral Vascular

County of Residence of First Listed Defendant Union
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Richard B. North, Jr., Esq., Nelson Mullins Riley & Scarborough, 201 17th Street NW, #1700, Atlanta, GA 30363, Phone: (404) 322-6155

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

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

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

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

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

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

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

TORTS

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

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

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

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

PRISONER PETITIONS

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

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

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

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

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

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- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

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

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

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

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

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

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

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. 1332
Brief description of cause:
Personal Injury - Products 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 David G. Campbell DOCKET NUMBER MDL 2641

DATE
09/08/2015

SIGNATURE OF ATTORNEY OF RECORD
/s/ Hadley L. Matarazzo

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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

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

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

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

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

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

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

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

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

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

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of New York

Michelle Mercurio

Plaintiff

v.

C.R. Bard, Inc. and Bard Peripheral Vascular, Inc.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* SEE ATTACHED RIDER

A lawsuit has been filed against you.

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

Hadley L. Matarazzo, Esq.
Faraci Lange, LLP
28 E. Main Street, Suite 1100
Rochester, New York 14614
Phone: (585) 325-5150
Fax: (585) 325-3285

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

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

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

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

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

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

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

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

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

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

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

DEFENDANT LIST

C.R. Bard, Inc.
730 Central Avenue
Murray Hill, NJ 07974

Bard Peripheral Vascular, Inc.
1625 West 3rd Street
Tempe, AZ 85181