UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

THOMAS JEFFERSON FEENEY

Plaintiff,

v.

CASE NO: 6:16-cv-1791-Orl-41-KRS

C.R. BARD, INC.

Defendant.
_____/

COMPLAINT AND JURY DEMAND

The Plaintiff, THOMAS JEFFERSON FEENEY by and through the undersigned counsel, hereby files this Complaint against the Defendant, C.R. BARD, INC. in this litigation and states as follows:

1. At all times material Plaintiff FEENEY was a resident of Orange County, Florida.
2. Defendant is a New Jersey corporation with its principal place of business in New Jersey.
3. Jurisdiction is proper in US District Court for the Middle District of Florida as the amount in controversy exceeds $75,000 exclusive with interests and costs.
4. Defendant has substantial contacts with Orange County, Florida which are more than sufficient to cause them to be subject to personal jurisdiction in said county.
5. A substantial part of the events and omissions giving rise to Plaintiff's claim occurred in Orange County, Florida such that venue is proper.
6. The Plaintiff was operated on to repair a hernia, during which operation a variety of surgical mesh manufactured, sold and marketed by Defendant was implanted.
7. The surgical mesh used in the surgery was known as the "Ventralex Hernia Patch" (herein

referred to as "Product") and it was designed, manufactured, packaged, labeled, marketed, sold, and distributed by Defendant.

8. The Product was made of materials which are biologically incompatible with human tissue and react negatively and sometimes dangerously with a large number of those on whom it is used.
9. Defendant knew or should have known that their Product was unreasonably harmful.
10. The scientific evidence Defendant knew or should have known of demonstrates that the mesh is incompatible with human tissue and often causes a negative immune response in patients implanted with the Product, including Plaintiff.
11. Ventralex is marketed to the medical community and to patients as a safe, effective, and reliable medical device, implanted by safe and effective, minimally invasive surgical techniques, and is safer and more effective as compared to other products.
12. Defendant failed to perform proper and adequate testing and research in order to determine and evaluate the risks and benefits of the Product.
13. Feasible and suitable alternatives to the Product have existed at all times relevant that do not present the same frequency or severity of risks as the Product.
14. The Product was at all times utilized and implanted in a manner foreseeable to and in fact intended by Defendant, its instructions and procedures for use and its training of the health care providers.
15. The Product was implanted in Plaintiff in the same or substantially similar condition as when it left Defendant's possession.
16. Defendant failed to disclose the known risks and failed to warn of known or scientifically knowable dangers and risks associated with the Product.
17. The Product as designed, manufactured, distributed, sold and/or supplied by Defendant was

defective as marketed due to inadequate warnings, instructions, labeling and/or inadequate testing.

18. As a result of having the Product implanted, the Plaintiff has experienced significant mental and physical pain and suffering and mental anguish, has sustained permanent injury, has undergone medical treatment and will likely undergo further medical treatment and procedures, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, and/or lost income, and other damages.

CAUSES OF ACTION
COUNT I: NEGLIGENCE

19. Paragraphs 1-18 of this Complaint are hereby incorporated by reference as if fully set forth herein.
20. Defendant had a duty to individuals, including the Plaintiff, to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling their Product.
21. Defendant breached its duty to its customers, including Plaintiff, by failing to design, manufacture, market, label, package and/or sell its Product in such a manner as the exercise of reasonable care would dictate.
22. Defendant negligently failed to warn or instruct the Plaintiff and/or his health care providers of the full extent of the risks and hazards known to exist with use of the mesh in a manner commensurate with the exercise of reasonable care.
23. As a direct and proximate result of Defendant's negligence, Plaintiff has experienced significant physical injury, mental and physical pain and suffering, permanent injury, has undergone medical treatment and will likely undergo further medical treatment and procedures, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, lost income, and other damages.

COUNT II: STRICT LIABILITY – DESIGN DEFECT

24. Plaintiff incorporates by reference paragraphs 1-18 of this Complaint as if fully set forth herein.

25. The Product implanted in Plaintiff was not reasonably safe for its intended uses and was designed in a defective manner so as to be hazardous and harmful to the human body.

26. As a direct and proximate result of the mesh's aforementioned defects as described herein, Plaintiff has experienced significant mental and physical pain and suffering, has sustained permanent injury, has undergone medical treatment and will likely undergo future medical treatment and procedures, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, lost income, and other damages.

27. Defendant is strictly liable to the Plaintiff for designing, manufacturing, marketing, labeling, packaging and selling a defective product(s).

COUNT III: STRICT LIABILITY – MANUFACTURING DEFECT

28. Plaintiff incorporates by reference paragraphs 1-18 of this Complaint as if fully set forth herein.

29. The Product implanted in Plaintiff was not reasonably safe for its intended use and was manufactured defectively due to having deviated materially from Defendant's design specifications.

30. The deviations from design specs resulted in defective manufacturing which posed unreasonable risks of serious bodily harm to customers, including the Plaintiff.

31. As a direct and proximate result of the aforementioned defects, Plaintiff has experienced mental and physical pain and suffering, has sustained permanent injury, has undergone medical treatment and/or corrective surgery and hospitalization, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses,

and/or lost income, and other damages.

32. Defendant is strictly liable to the Plaintiff for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT IV: STRICT LIABILITY – FAILURE TO WARN

33. Plaintiff incorporates by reference paragraphs 1-18 of this Complaint as if fully set forth herein.

34. The Product was not reasonably safe for its intended uses and was defective due to its lack of appropriate and necessary warnings. Specifically, Defendant's did not provide sufficient or adequate warnings regarding, among other things, the serious risk of bodily harm posed by the incompatibility of the material used to make the mesh and human blood and tissue or the serious risk of infection or serious scarring.

35. As a direct and proximate result of the Product's defects, the Plaintiff has experienced significant mental and physical pain and suffering, has sustained permanent injury, has undergone medical treatment and will likely undergo further medical treatment and procedures, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, and/or lost income, and other damages.

36. Defendant is strictly liable to the Plaintiff for designing, manufacturing, marketing, labeling, packaging and selling a defective Product.

COUNT V: BREACH OF EXPRESS WARRANTY

37. Plaintiff incorporates by reference paragraphs 1-18 of this Complaint as if fully set forth herein.

38. Defendant made assurances as described herein to the general public, hospitals and health care professionals that the Product was safe and reasonably fit for its intended purposes.

39. The Plaintiff and/or his healthcare provider chose the Product based upon Defendant's warranties and representations regarding the safety and fitness of its product.

40. The Plaintiff, individually and/or by and through his health care providers, reasonably relied upon Defendant's express warranties and guarantees that the product was safe, merchantable, and reasonably fit for its intended purposes.

41. Defendant breached these express warranties because the Product was unreasonably dangerous and defective as described herein and not as Defendant had represented.

42. Defendant's breach of its express warranties resulted in the implantation of an unreasonably dangerous and defective product.

43. As a direct and proximate result of Defendant's breach of the aforementioned express warranties, the Plaintiff has experienced significant mental and physical pain and suffering, has sustained permanent injury, has undergone medical treatment and will likely undergo further medical treatment and procedures, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, and/or lost income, and other damages.

COUNT VI: BREACH OF IMPLIED WARRANTY

44. Plaintiff incorporates by reference paragraphs 1-18 of this Complaint as if fully set forth herein.

45. Defendant impliedly warranted that the subject mesh was merchantable and was fit for the ordinary purposes for which it was intended.

46. When the mesh was implanted in the Plaintiff to treat a hernia, the product was being used for the ordinary purpose for which it was intended.

47. Plaintiff, individually and/or by and through his providers, relied upon Defendant's implied warranties of merchantability in consenting to have the subject mesh implanted.

48. The Defendant breached these implied warranties of merchantability because the Product implanted in Plaintiff was neither merchantable nor suited for their intended uses as warranted.

49. Defendant's breach of their implied warranties resulted in the implantation of an unreasonably dangerous and defective product which placed Plaintiff's health and safety in jeopardy.

50. As a direct and proximate result of Defendant's breach of the aforementioned implied warranties, Plaintiff has experienced significant mental and physical pain and suffering, has sustained permanent injury, has undergone medical treatment and will likely undergo further medical treatment and procedures, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, and/or lost income, and other damages.

WHEREFORE, Plaintiff THOMAS JEFFERSON FEENEY demands judgment for damages from the Defendant for an amount in excess of Seventy-five Thousand Dollars ($75,000.00) together with interest and costs.

REQUEST FOR JURY TRIAL

The Plaintiffs herein request trial by jury of all issues triable by right.

DATED: This 13th day of October, 2016.

By: _____

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JS 44 (Rev 09/10)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law.

Plaintiff(s):

First Listed Plaintiff:
Mr. Thomas Jefferson Feeney ;
1 Citizen of This State;
County of Residence: Orange County

Defendant(s):

First Listed Defendant:
C.R. Bard, Inc. ;
2 Citizen of Another State; New Jersey
County of Residence: Outside This District

County Where Claim For Relief Arose: Orange County

Plaintiff's Attorney(s):

Mr. Stephen Asher Ostrow (Thomas Feeney)
The Pendas Law Firm
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Fax: 407-770-6066
Email: sostrow@pendaslaw.com

Defendant's Attorney(s):

Basis of Jurisdiction: 4. Diversity of Citizenship

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: 1 Citizen of This State

Defendant: 2 Citizen of Another State

Origin: 1. Original Proceeding

Nature of Suit: 367 Health Care/Pharmaceutical Product Liability

Cause of Action: 28 U.S. Code § 1332 - This is a product liability case regarding faulty surgical mesh.

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands): in excess of 75

Jury Demand: Yes

Related Cases: Is NOT a refiling of a previously dismissed action

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Signature: Stephen Ostrow

Date: 10/13/2016

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.