UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JAMES M. SMITH and CINDY F. SMITH, Plaintiffs, v. HOWMEDICA OSTEONICS d/b/a STRYKER ORTHOPAEDICS, STRYKER CORP., STRYKER SALES CORPORTION and STRYKER IRELAND LIMITED, Defendants.	COMPLAINT AND JURY DEMAND

COMPLAINT

COME NOW Plaintiffs, James M. Smith ("Plaintiff") and Cindy F. Smith, by and through the undersigned counsel, and bring this complaint against Defendants, HOWMEDICA OSTEONICS d/b/a STRYKER ORTHOPAEDICS, STRYKER CORP., STRYKER SALES CORPORTION and STRYKER IRELAND LIMITED (hereinafter collectively "Defendants" and "Stryker"), and allege as follows:

1. This is an action for damages relating to Defendants' development, testing, assembling, manufacture, packaging, labeling, preparing, distribution, marketing, supplying, and/or selling the defective product(s) sold under the names "The Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head" (hereinafter, "Defective Devices").

PARTIES, JURISDICTION AND VENUE

2. Plaintiffs are citizens and residents of Spicer, Kandiyohi County, Minnesota.

3. Defendants are subject to the *in personam* jurisdiction of this Court, and venue is therefore proper herein pursuant to 28 U.S.C. § 1391, because Defendants did (and do) business within the State of Minnesota and have had continuous and systematic contacts with the State of Minnesota, and they have consented to jurisdiction in the State of Minnesota. Upon information and belief, Defendants also advertised in this District, made material omissions and representations in this District and breached warranties in this District.

4. Defendant, Howmedica Osteonics d/b/a Stryker Orthopaedics, is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business in Mahwah, New Jersey. Defendant does business throughout the United States, including in the State of Minnesota. Defendant Howmedica Osteonics d/b/a Stryker Orthopaedics is a wholly owned subsidiary of parent corporation, Stryker Corporation.

5. Defendant Stryker Corporation is the parent corporation organized and existing under the laws of the State of Michigan, with its principal place of business in Kalamazoo, Michigan. Defendant does business throughout the world and throughout the United States, including the State of Minnesota. Stryker holds itself out as "one of the world's leading medical technology companies and is dedicated to helping healthcare professionals perform their jobs more efficiently while enhancing patient care. Stryker provides innovative orthopaedic implants as well as state-of-the-art medical and surgical equipment to help people lead more active and more satisfying lives." www.stryker.com.

6. Defendant Stryker Sales Corporation is a corporation organized and existing under the laws of the State of Michigan having its principal place of business located at 2825 Airview

Boulevard, Kalamazoo, Michigan 49002 and conducts business throughout the United States, including the State of Minnesota. Stryker Sales Corporation is a wholly owned subsidiary of Stryker Corporation. It employs field representatives throughout the United States. (Source: http://www.law360.com/articles/408121/stryker-field-service-reps-win-class-cert-in-flsa-suit.)

7. Defendant Stryker Ireland Limited is a foreign corporation that is also a wholly owned subsidiary of Stryker Corporation. Stryker Ireland Limited has three facilities located in Ireland (two in Cork and one in Limerick) and employs approximately 1,200 people in total. These sites are held out as "centres of excellence" in R&D, Manufacturing and Customer Service. Stryker Ireland Limited's product profile includes: Hip Replacement Systems, Knee Replacement Systems, Bone Cement and Precise Cutting Accessories including Micro Rotary instruments and Bone Saw Blades. Stryker develops minimally invasive surgical instruments which are used for cutting, drilling, burring and shaping of bone and soft tissue. Upon information and belief, these products are used during Orthopaedic, Ear Nose and Throat (ENT), Spine, Neuro and Plastic Surgeries. Much of the research and design and manufacturing of the Devices at issue in this litigation occurred at Stryker Ireland Limited before moving the operation to Howmedica Osteonic in Mahwah, New Jersey.

8. The Devices manufactured at Stryker Ireland were sold throughout the United States and in the State of Minnesota. *See* http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfres/res.cfm?id=110699.

9. Upon information and belief, at all times herein mentioned, the employees of Defendants, their subsidiaries, affiliates, and other related entities, as well as the employees of each of the individual Defendants' subsidiaries, affiliates, and other related entities, were the agents, servants and employees of Defendants, and at all relevant times, were acting within the

purpose and scope of said agency and employment. Whenever reference in this Complaint is made to any act or transaction of Defendants, such designations shall be deemed to mean that the principals, officers, employees, agents and/or representatives of the Defendants committed, knew of, performed, authorized, ratified and/or directed such transactions on behalf of Defendants while actively engaged in the scope of their duties.

THE PRODUCTS

10. At all times material hereto, Defendants developed, tested, assembled, manufactured, packaged, labeled, prepared, distributed, marketed, supplied, and/or sold the defective products under the name "The Accolade® TMZF Hip Stem and LFIT Anatomic V40 Femoral Head" (hereinafter, "Defective Devices"), either directly or indirectly, to members of the general public within the State of Minnesota, including Plaintiff James M. Smith.

11. Defendant's Defective Devices were placed into the stream of interstate commerce and were implanted in Plaintiff James M. Smith on July 19, 2007.

12. As a direct and proximate result of Defendant placing the Defective Products into the stream of commerce, Plaintiff James M. Smith has suffered and continues to suffer both injuries and damages, including but not limited to: past, present and future physical and mental pain and suffering; and past, present and future medical, hospital, rehabilitative and pharmaceutical expenses, and other related damages.

13. On March 16, 2000, Defendant received FDA clearance to sell its Accolade prosthetic hip stem in the United States.

14. The Accolade TMZF Stem is a hip replacement prosthesis. It is indicated for patients requiring primary total hip arthroplasty or replacement due to joint disease.

15. The Accolade TMZF Stem is a monoblock, single piece artificial hip replacement device that is designed to be implanted into the patient's femur. The Accolade TMZF Stem is designed to be used with any number of bearing surface components comprised of the modular ball or artificial femoral head and an acetabular cup or socket.

16. Stryker's L-FIT Anatomic V40 femoral head is one of the modular balls or heads designed to be used with the Accolade TMZF Stem. It is made of chromium/cobalt alloy.

17. The titanium stem is manufactured utilizing a proprietary titanium alloy consisting of titanium, molybdenum, zinc and iron. Howmedica's alloy was designed and patented by Defendant and is different than the titanium alloy employed in the manufacture of prosthetic hip implants. The Defendants claim in their Accolade TMZF Stem promotional materials that TMZF alloy is both stronger and less rigid than other titanium alloys. They also claim that the particular titanium alloy has been tested and proven by Defendants to resist the effects of corrosion and fretting.

18. At all times material hereto, the Accolade TMZF Stem and L-FIT Anatomic V40 femoral head implanted in the Plaintiff was designed, manufactured, marketed, retailed, distributed, and/or supplied by Defendants.

19. After the implantation of the Defective Devices, Plaintiff James M. Smith began experiencing discomfort in the area of his Defective Devices. He also developed an audible clunk in the hip when he walked.

20. Initial diagnostic workup revealed gross failure of the Accolade trunnion and marked elevation of serum cobalt, chromium and titanium.

21. As a result, the Plaintiff was forced to have the device surgically removed. Upon removal, it was apparent the device had failed causing gross deformation of the Accolade TMZF Stem together with severe and permanent tissue and muscle damage.

THE STRYKER ACCOLADE HISTORY

22. In March 2000, Stryker released its Accolade TMZF Hip Stem, the latest evolution in the Company's Meridian Titanium Femoral Stem, the Howmedica Asymmetric Stem Femoral Component, the Osteonics Omnifit AD-HA Hip Stem Series all cleared for market between the years of 1994 and 1997.

23. According to Stryker's materials, the Accolade TMZF Stem was developed to maximize a patient's hip range of motion, increase stability, and prevent dislocation. These materials also state that the Accolade TMZF Hip Stem is designed to be used with V40 Femoral Heads, which are offered in both forged Vitallium alloy (CoCrMo) and zirconia ceramic. The Accolade TMZF Stem is also designed with two neck angles, the standard 132 degrees and extended 127 degrees offset, to assist with joint stability and proper restoration of joint kinematics without lengthening the leg. The neck lengths are proportional relative to the patient's body geometry to accommodate a wider patient population using a standard femoral head.

24. The Accolade TMZF Stem combines the material characteristics of TMZF (Ti-12Mo-6Zr-2Fe) with a plasma sprayed ingrowth/ongrowth coating of PureFix HA. The LFIT Anatomic V40 Femoral Head was commonly used with the Accolade TMZF Hip Stem. It is made from a chromium/cobalt alloy. Defendants claim that laboratory testing demonstrates the compatibility of these materials without concern for fretting and corrosion.

25. Despite Defendants' claims, this material combination has been reported to cause corrosion. For decades, scientists have reported the occurrence of accelerated fretting and corrosion issues when dissimilar metals are combined. In their marketing and sale of the device, Defendants represented and warranted that proprietary materials alleviate concerns for this problem.

26. In 2012, Stryker recalled its Rejuvenate and ABG II modular hip systems. These two systems employed the same TMZF titanium metal in the femoral stem. The modular neck of both recalled devices were manufactured from chromium/cobalt. These devices were recalled after reports surfaced indicating excessive device failure due to fretting and corrosion at the taper junction where these dissimilar metals were joined.

27. Patients in whom Stryker Rejuvenate and ABG II hip stems had been implanted were experiencing device failure, symptoms and diagnostic findings identical to Plaintiff, James M. Smith. Information disseminated by Stryker at or about the time of the recall cited this failure mechanism as the reason for the recall.

28. Since the recall, revision rates for the Rejuvenate have been reported to exceed 50% in a very short period of time.

29. At or about the same time Stryker recalled the Rejuvenate and ABG II, it redesigned its Accolade TMZF Stem. Stryker abandoned use of TMZF titanium and, instead, its new Accolade II stem is manufactured from a different titanium alloy.

30. Upon information and belief, Stryker has abandoned the use of TMZF titanium through its product line.

31. In addition, Stryker has now recalled a large number of L-FIT Anatomic V40 chromium/cobalt heads. The recall cites gross trunnion failure, metal wear, adverse tissue

reaction and the need for revision surgery as causes for recalling the heads. Mr. Smith suffered each of the above and the combination resulted in the need to surgically remove his Accolade TMZF Stem and L-FIT Anatomic V40 head.

CAUSES OF ACTION

COUNT I
COMMON LAW NEGLIGENCE

32. Plaintiff realleges and incorporates by reference the allegations set forth above.

33. Defendants designed, manufactured, marketed, detailed, and advertised both the Accolade TMZF Stem and L-FIT Anatomic V40 head to physicians and consumers.

34. As a result, Defendants had a duty to perform each of these functions reasonably and with reasonable and due care for the safety and well-being of patients in whom the devices would be implanted.

35. Defendants failed to use reasonable and due care for the safety and well-being of those in whom the device would be implanted and is therefore negligent in the following respects:

a. Defendants failed to adequately design and manufacture the devices to insure that when combined each would not fret, corrode, erode, deteriorate and induce severe metal toxicity in patients. The flaws include but are not limited to:

i. The incompatibility of the TMZF titanium with chromium/cobalt heads;

ii. Use of the TMZF alloy that contains a modulus of elasticity with far inferior stiffness characteristics to other available titanium alloys;

iii. Use of the TMZF alloy with a known corrosion/fretting profile inferior to other titanium alloys;

iv. Poor design of the taper junction between femoral head and neck such that micro motion was predictable;

v. Poor design of the Accolade neck such that the "softer" TMZF alloy would induce suffer from excessive bending and movement;

vi. Poor manufacturing practices such that the taper junction between the femoral head and neck do not "fit" as deigned and intended;

vii. Not restricting authorized or recommended use of the Accolade TMZF Stem to ceramic heads only;

viii. Allowing and promoting the use of large metal heads on Stryker's small and insufficient V40 trunnion which would predictably lead to excessive motion, fretting, mechanically assisted crevice corrosion and ultimately device failure; and

ix. A combination of the above factors leads to rapid, severe heavy metal cast off causing soft tissue and bony necrosis, pain and premature failure of the device.

b. Defendants failed to adequately test the "Defective Devices" and their combination to insure they would not fret, corrode, erode, deteriorate and induce severe metal toxicity in the patient;

c. Prior to marketing the "Defective Devices," Defendants failed to conduct anything other than simple, basic bench testing. At the time Defendants designed the "Defective Devices," sufficient scientific art and knowledge

existed to conduct testing that would have exposed the defects in the Accolade TMZF Stem when implanted in patients with the chromium/cobalt head;

d. In fact, Stryker has likely conducted testing that reveals the incompatibility of these two materials when used in this design;

e. Defendants made affirmative representations that the "Defective Devices" would not fret or corrode in the human body. These representations were false and misleading to both physicians and the consumer;

f. Defendants trained its sales force to detail the "Defective Devices" utilizing representations the Defendants knew or should have known to be false, creating in the minds of both surgeons and consumers the belief that the "Defective Devices" were safe for its intended use;

g. Defendants specifically marketed the "Defective Devices" as a safe alternative to metal-on-metal bearing surface "Defective Devices" that had been widely publicized as capable of causing premature failure due to heavy metal toxicity;

h. Defendants failed to manufacture the products to Defendants' own internal specifications such that the taper junction between the neck and stem prematurely failed causing metal debris cast-off and severe metal toxicity in patients;

i. Defendants failed to adequately test the TMZF alloy's compatibility with chromium/cobalt components in an effort to prevent corrosion and fretting at the bearing surface junction of this stem;

j. Defendants failed to promptly act upon reports of failure or warn surgeons such that the device continued to be implanted in combination with chromium/cobalt femoral heads well after it should have been recalled or redesigned; and

k. Defendants chose these materials to be used in combination as a system at a time when safer alternative designs and materials were available.

36. The above conduct exhibits Defendants' failure to exercise reasonable care. It was foreseeable that such negligence would lead to premature device failure as well as severe, debilitating injury that is permanent.

37. As a direct and proximate result of the Defendants' negligence, Plaintiff suffered severe physical pain and suffering, emotional distress, mental anguish, loss of the capacity for the enjoyment of life, medical and nursing expenses, surgical expenses, lost wages and loss of earning capacity. These damages have occurred in the past and will continue into the future.

COUNT II

BREACH OF EXPRESS WARRANTY UNDER MINNESOTA LAW

38. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

39. Through its public statements and description of the Accolade TMZF Stem and its promises relating to the Accolade TMZF Stem, Defendants expressly warranted among other things that the Accolade TMZF Stem was efficacious and safe for its intended use and was designed and constructed of materials that would prevent fretting and corrosion and would provide superior component longevity to or over competing products.

40. Through its public statements and descriptions of the L-FIT Anatomic V40 heads

and its promises relating to the these heads, Defendants expressly warranted among other things that the L-FIT Anatomic V40 heads were efficacious and safe for their intended use and were designed and constructed of materials that would prevent fretting and corrosion and would provide superior component longevity to or over competing products.

41. These warranties came in the form of (i) publicly made written and verbal assurances of safety; (ii) press releases and dissemination via the media of uniform promotional information that was intended to create demand for the Accolade TMZF Stem and L-FIT Anatomic V40 heads, but which contained material misrepresentations and failed to warn of the risks of the Accolade TMZF Stem and L-FIT Anatomic V40 heads; (iii) verbal assurances made by Defendants' consumer relations personnel to the public about the safety of the Accolade TMZF Stem and L-FIT Anatomic V40 heads and the downplaying of the risks associated with the Accolade TMZF Stem and L-FIT Anatomic V40 heads; and (iv) false and misleading written information supplied by Defendants.

42. Plaintiff further alleges that all of the aforementioned written materials are known to Defendants and in its possession, and it is Plaintiff's reasonable belief that these materials shall be produced by Defendants and be made of record once Plaintiff is afforded the opportunity to conduct discovery.

43. When Defendants made these express warranties, Defendants knew the purpose for which Accolade TMZF Stem and L-FIT Anatomic V40 heads were to be used and warranted them to be in all respects safe and proper for such purpose including their use in combination.

44. Defendants drafted the documents and/or made the statements upon which these warranty claims are based, and in so doing, defined the terms of those warranties.

45. The Accolade TMZF Stem and L-FIT Anatomic V40 heads do not conform to Defendants' representations in that their use in combination is not safe and produces serious side effects.

46. As such, the Accolade TMZF Stem and L-FIT Anatomic V40 heads did not conform to Defendants' promises, descriptions or affirmations of fact and were not adequately packaged, labeled, promoted or fit for the ordinary purposes for which such "Defective Devices" are used.

47. Defendants, therefore, breached their express warranties to Plaintiff in violation of both Minnesota statutory and common law by manufacturing, marketing and selling the Accolade TMZF Stem and L-FIT Anatomic V40 heads to Plaintiff causing damages as will be established at trial.

WHEREFORE, Plaintiff respectfully requests that he be granted relief against Defendants, as contained in the Prayer For Relief.

COUNT III

STRICT LIABILITY
FAILURE TO WARN UNDER MINNESOTA COMMON LAW

48. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

49. The Accolade TMZF Stem implanted into Plaintiff contained no warnings or, in the alternative, inadequate warnings as to the risk that the product could cause significant heavy metal toxicity.

50. The Accolade TMZF Stem implanted into Plaintiff contained no warnings that it should not be implanted with chromium/cobalt femoral heads which posed significant increased risk of fretting, corrosion and heavy metal toxicity in patients.

51. The warnings that accompanied the Accolade TMZF Stem failed to provide that level of information that an ordinary consumer would expect when using the Accolade implant in a manner reasonably foreseeable to the Defendants.

52. The corollary is also true. The L-FIT Anatomic V40 head implanted into Plaintiff contained no warnings as described in paragraphs 44 – 46.

53. Had Plaintiff or his surgeon received a proper or adequate warning as to the risks associated with using the Accolade and L-FIT Anatomic V40 heads, the product would not have been used.

54. Reasonable and adequate alternatives to chromium/cobalt femoral heads existed at the time Plaintiff was implanted with his Accolade TMZF Stem and L-FIT Anatomic V40 heads.

55. Had Plaintiff's surgeon received a proper or adequate warning as to the risks associated with using the Accolade TMZF Stem and its combination with chromium/cobalt femoral heads, he would not have recommended the device; would have used an alternate device or at a minimum, provided Plaintiff with adequate warning and obtained his informed consent. As stated above, had Plaintiff received an adequate warning, Plaintiff would not have agreed to have the Accolade implanted or would have demanded that the Accolade be combined with a ceramic femoral head.

56. The failure to warn of the Accolade and L-FIT Anatomic V40 head's risks caused serious damage to Plaintiff including bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a preexisting condition, loss of the capacity for the enjoyment of life, the costs of medical care and expenses, loss of earnings and loss of the ability to earn money, all of which damages and losses will continue in the future.

COUNT IV

STRICT LIABILITY
DESIGN DEFECT UNDER MINNESOTA COMMON LAW

57. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

58. This is an action based upon design defect against Defendants.

59. Integral to the design of the Accolade TMZF Stem was its compatibility with Stryker's chromium/cobalt L-FIT Anatomic V40 femoral heads.

60. Defendants' Accolade TMZF Stem is designed in such a way that, when used as intended in combination with L-FIT Anatomic V40 chromium/cobalt femoral heads, it causes serious, permanent and devastating damage to patients in which it is implanted. The damage and mechanism of injury have been previously described.

61. When combined with L-FIT Anatomic V40 chromium/cobalt femoral heads, Defendants' Accolade TMZF Stems do not perform as safely as an ordinary consumer would expect when used as intended or in a manner reasonably foreseeable to Defendants.

62. The risks of using Defendants' Accolade TMZF Stems in combination with L-FIT Anatomic V40 heads chromium/cobalt femoral heads outweigh the benefits of using them.

63. The Accolade TMZF Stem and L-FIT Anatomic V40 head installed in Plaintiff's hip was defectively designed.

64. The design defect in Defendants' Accolade TMZF Stem and L-FIT Anatomic V40 head caused serious damage to Plaintiff including bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a preexisting condition, loss of the capacity for the enjoyment of life, the costs of medical care and expenses,

loss of earnings and loss of the ability to earn money, all of which damage and losses will continue in the future.

COUNT V

STRICT LIABILITY
MANUFACTURING DEFECT UNDER MINNESOTA COMMON LAW

65. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth herein.

66. This is an action based on a manufacturing defect against the Defendants.

67. The Accolade TMZF Stem and L-FIT Anatomic V40 heads are designed for implantation into the human body and to last fifteen or more years. They are also designed to be compatible with human tissue and bone.

68. The Accolade TMZF Stem and L-FIT Anatomic V40 head implanted in the Plaintiff prematurely failed as previously described.

69. The Accolade TMZF titanium stem was manufactured in a substandard manner such that either:

a. The tapers were poorly manufactured so that they did not "fit;"

b. The TMZF titanium material was fashioned in such a manner that it did not maintain structural integrity when implanted in the biologic environment;

c. The TMZF titanium material was fashioned in such a manner that it did not maintain structural integrity when mated with a chromium/cobalt femoral head;

d. The chromium/cobalt femoral head was manufactured such that it did not "fit;"

e. The chromium/cobalt femoral head was fashioned in such a manner that it did

not maintain structural integrity when implanted in the biologic environment; and

f. The chromium/cobalt femoral head was fashioned in such a manner that it did not maintain structural integrity when mated with a chromium/cobalt femoral head.

70. This combination was not compatible with human tissue and bone. Through a process of fretting and corrosion, it released heavy metals into the Plaintiff's body causing severe and permanent destruction of bone and tissue. Defendants failed to manufacture the product in a manner that prevented fretting and corrosion and, in fact, manufactured the product such that it caused fretting and corrosion.

71. The Accolade TMZF Stem and L-FIT Anatomic V40 head installed in Plaintiff's hip contained a manufacturing defect.

72. The manufacturing defect in the Accolade TMZF Stem and L-FIT Anatomic V40 head caused serious damage to Plaintiff including bodily injury, pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a preexisting condition, loss of the capacity for the enjoyment of life, the costs of medical care and expenses, loss of earnings and loss of the ability to earn money, all of which damage and losses will continue in the future.

COUNT VI

LOSS OF CONSORTIUM
CINDY F. SMITH

73. Plaintiffs reallege and incorporate by reference the paragraphs above, as though fully set forth herein.

74. At all times relevant to this Complaint, Plaintiffs James M. Smith and Cindy F.

Smith were, and are, legally married as husband and wife.

75. As a direct and proximate result of the aforementioned conduct of the Defendants, and as a result of the injuries and damages to Plaintiff James M. Smith, Plaintiff Cindy F. Smith has been deprived of the love, companionship, comfort, affection, society, solace or moral support, protection, loss of enjoyment of sexual relations, and loss of physical assistance in the operation and maintenance of the home, of her husband, James M. Smith, and has thereby sustained, and will continue to sustain damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for judgment against the Defendants as follows:

a. Awarding compensatory damages resulting from Defendants' breach of warranty, negligence and for strict liability.

b. Awarding loss of consortium damages.

c. Awarding actual damages to the Plaintiff James M. Smith incidental to James M. Smith's purchase and use of the Accolade TMZF Stem in an amount to be determined at trial;

d. Awarding pre-judgment and post-judgment interest to the Plaintiffs;

g. Awarding the costs and the expenses of their litigation to the Plaintiffs; and

i. Granting all such other relief as the Court deems necessary, just and proper.

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial by jury.

Respectfully submitted,

ROBINS KAPLAN, LLP

Dated: 11/14/2016

/s/ Tara D. Sutton, Esq.
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JS 44 (Rev. 08/16)

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

James M. Smith and Cindy F. Smith

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Tara Sutton & Holly Dolejsi, Robins Kaplan LLP, 800 LaSalle Ave, Ste 2800, Mpls, MN 55402, 612-349-8500; C. Calvin Warriner, III, Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409, 561-686-6300; Peter Flowers, Meyers & Flowers, 225 W. Wacker Dr., Ste. 1515, Chicago, IL 60606, 312-214-1017; Mark DiCello, The Diello Law Firm,

DEFENDANTS

Howmedica Osteonics d/b/a Stryker Orthopaedics, Stryker Corp., Stryker Sales Corporation and Stryker Ireland Limited,

County of Residence of First Listed Defendant Bergen, NJ
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Unknown

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)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 840 Trademark	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	SOCIAL SECURITY	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	☐ 861 HIA (1395ff)	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	☐ 862 Black Lung (923)	☐ 480 Consumer Credit
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 863 DIWC/DIWW (405(g))	☐ 490 Cable/Sat TV
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 864 SSID Title XVI	☐ 850 Securities/Commodities/ Exchange
☐ 196 Franchise				☐ 865 RSI (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	FEDERAL TAX SUITS	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	**Habeas Corpus:**	☐ 462 Naturalization Application	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	☐ 465 Other Immigration Actions	☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence			☐ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General			☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	**Other:**			
	☐ 448 Education	☐ 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 - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 USC 1332

Brief description of cause:
Personal injury action arising out of allegedly defective hip implant.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ In excess of $75,000 CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. John R. Tunheim; Hon. Susan Richard Nelson DOCKET NUMBER 16-cv-02073; 16-cv-02881

DATE 11/14/2016

SIGNATURE OF ATTORNEY OF RECORD /s/ Tara D. Sutton

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
(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
(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" 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
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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven 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.
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
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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

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.