

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**MARQUETTA FOX,**

**Plaintiff,**

**v.**

**ATRIUM MEDICAL CORPORATION,  
MAQUET CARDIOVASCULAR US  
SALES, LLC, and  
GETINGE AB,**

**Defendants.**

**Civil Action No.: 1:16-cv-02844**

**Jury Trial Demanded**

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**COMPLAINT**

Comes now Plaintiff, Marquette Fox (“Plaintiff”), by and through undersigned counsel, and brings this action against Defendants Atrium Medical Corporation, Maquet Cardiovascular US Sales, LLC, and Getinge AB (hereinafter “Defendants”), and alleges as follows:

**Parties**

1. Plaintiff is, and was, at all relevant times, a citizen and resident of Shelby, Ohio located in Richland County, Ohio and the United States.

2. Atrium Medical Corporation (“Atrium”) is incorporated under the laws of Delaware with its principal place of business located at 5 Wentworth Drive, Hudson, New Hampshire 03051. At all pertinent times, Atrium’s manufacturing and support facilities were located in Hudson, New Hampshire. Atrium is a medical device company involved in the research, development, testing, manufacture, production, marketing, promotion and/or sale of medical devices including C-QUR Mesh (hereinafter “C-QUR” or “product” or “mesh”).

3. Maquet Cardiovascular US Sales, LLC (“Maquet”) is a limited liability company organized under the laws of New Jersey, with its principal place of business located at 45 Barbour Pond Drive, Wayne, New Jersey 07470. Maquet is registered with the Ohio Secretary of State to transact business in Ohio. At all times pertinent hereto, Atrium has operated within, and as a business unit of, Maquet.

4. Getinge AB (“Getinge”) is a Swedish corporation, organized under the laws of Sweden with its principal place of business in Sweden. At all times pertinent hereto, Maquet was a wholly-owned subsidiary of Getinge AB.

5. Getinge is a holding company the purpose of which is to coordinate the administration, finances and activities of its subsidiary companies, including Maquet and its business unit/division Atrium, and to act as manager and to direct or coordinate the management of its subsidiary companies or of the business, property and estates of any subsidiary company, including Maquet and its business unit/division Atrium.

6. The financial accounts of Maquet and its business unit/division Atrium are consolidated within those of Getinge.

7. In 2011, prior to the implantation of the C-QUR Mesh in Plaintiff Marquette Fox, Getinge acquired Atrium through a merger. When Getinge acquired Atrium through a merger, it acquired Atrium’s assets and assumed Atrium’s liabilities.

8. Since the merger, Atrium has operated as a division/business unit of Getinge subsidiary Maquet.

9. Getinge is the owner of 100% of the controlling shares of Atrium stock and assets, including the rights to Atrium’s C-QUR patents. Maquet has direct control over Atrium’s activities. Following the merger with Atrium, Getinge and Maquet have continued to

manufacture and sell the same defective C-QUR product line as Atrium under the same brand so as to hold themselves out to the public as a continuation of Atrium and benefit from Atrium's brand and goodwill. The Maquet Getinge Group website ([www.maquet.com](http://www.maquet.com)) lists the C-QUR product as one of Maquet Getinge Group's "biosurgery" products.

(<http://www.maquet.com/us/products/C-QUR-mesh/?ccid=231>).

10. Defendants Getinge and Maquet represent that Atrium is "part of 'Maguet Getinge Group.'" See <http://www.atriummed.com> (stating that "Atrium is now part of Maguet Getinge Group"); <http://www.atriummed.com/News/atriumnews.asp?articleid=60&zoneid=1> (press release detailing the acquisition of Atrium by Maguet Getinge Group).

11. Getinge and Maquet are liable for any acts and/or omissions by or through Atrium. Following the merger, which occurred prior to the sale and implantation of the C-QUR mesh implanted in Plaintiff Marquette Fox, Atrium was so organized and controlled and its business conducted in such manner as to make it merely an alter ego or business conduit of Getinge and Maquet. Because Atrium's assets and capital are subject to the ownership and control of Maquet and Getinge, Atrium is undercapitalized and the failure to disregard Atrium's corporate form would result in the inequitable and unjust result that Plaintiff may be unable to satisfy any judgment ultimately obtained against Atrium. Atrium acts as agent for Getinge and Maquet. Maquet, Getinge and Atrium combine their property and labor in a joint undertaking for profit, with rights of mutual control.

12. Maquet and Getinge, directly and/or through the actions of their Atrium division and business unit, have at all pertinent times been responsible for the research, development, testing, manufacture, production, marketing, promotion, distribution and/or sale of C-QUR Mesh.

13. Defendants are individually, jointly and severally liable to Plaintiff for damages suffered by Plaintiff arising from the Defendants' design, manufacture, marketing, labeling, distribution, sale and placement of its defective mesh products at issue in the instant suit, effectuated directly and indirectly through their respective agents, servants, employees and/or owners, all acting within the course and scope of their representative agencies, services, employments and/or ownership.

14. Defendants are vicariously liable for the acts and/or omissions of its employees and/or agents who were at all times relevant hereto acting on behalf of Defendants and within the scope of their employment or agency with Defendants.

#### **Jurisdiction and Venue**

15. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) based on complete diversity of citizenship between Plaintiff and all Defendants. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

16. This Court has personal jurisdiction over each of the Defendants pursuant to the Ohio Long-Arm Statute, Ohio Rev. Code § 2307.382. Defendants transact business within the State of Ohio, contracted to sell and supply their C-QUR mesh products in the State of Ohio, and committed tortious acts and omissions in Ohio. Defendants' tortious acts and omissions caused injury to Plaintiff in the State of Ohio. Defendants employ sales representatives in the State of Ohio to sell their C-QUR mesh products throughout the State, including the C-QUR Mesh implanted in Plaintiff. Defendants have purposefully engaged in the business of developing, manufacturing, publishing information, marketing, distributing, promoting and/or selling, either directly or indirectly, through third parties, as successor in interest, or other related entities, medical devices including C-QUR mesh products in Ohio, for which they derived significant and

regular income. The Defendants intended and reasonably expected that that their defective mesh products, including C-QUR, would be sold and implanted in Ohio and could cause injury in Ohio.

17. Maquet is registered to transact business in Ohio.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial district.

### **Facts Common To All Counts**

19. On August 18, 2014, Plaintiff was treated at MedCentral South in Mansfield, Ohio for laparoscopic repair of an incisional hernia. A 11.4 x 11.4 cm piece of C-Qur Tacshield mesh was implanted to repair this hernia.

20. On February 3, 2016, Plaintiff presented to the Emergency Room with severe abdominal pain, nausea, and vomiting. She was found to have an incarcerated hernia with small bowel obstruction. She underwent repair surgery, during which it was noted the C-Qur mesh was adherent to the small bowel and omentum. The surgeon noted the mesh had taken a "cone like" appearance extending up towards to subcutaneous tissue, where the bowel had become adherent.

21. Plaintiff reported to the Emergency Room again on February 5, 2016 with severe vomiting. She was diagnosed with a small bowel blockage and was admitted for a five-day hospital stay for treatment.

22. Getinge and Maquet were, at all times relevant hereto, responsible for the actions of Atrium and exercised control over Atrium's functions specific to the oversight and compliance with applicable safety standards relating to including C-QUR Mesh sold in the United States. In such capacity, Defendants committed or allowed to be committed tortious and

wrongful acts, including the violation of numerous safety standards relating to device manufacturing, quality assurance/control, and conformance with design and manufacturing specifications. Defendants' misfeasance and malfeasance caused Plaintiff to suffer injury and damages.

23. Defendants were responsible for the research, design, development, testing, manufacture, production, marketing, promotion, distribution and sale of C-QUR™ Mesh, including providing the warnings and instructions concerning the product.

24. Among the intended purposes for which Defendants designed, manufactured and sold C-QUR Mesh was use by surgeons for hernia repair surgeries, the purpose for which the C-QUR Mesh was implanted in Plaintiff Marquette Fox.

25. Defendants represented to Plaintiff and Plaintiff's physicians that C-QUR Mesh was a safe and effective product for hernia repair.

26. Defendants' C-QUR Mesh was defectively designed and/or manufactured, was not reasonably safe for its intended use in hernia repair, and the risks of the design outweighed any potential benefits associated with the design. As a result of the defective design and/or manufacture of the C-QUR Mesh, there was an unreasonable risk of severe adverse reactions to the mesh or mesh components including: chronic pain; recurrence of hernia; foreign body response; rejection; infection; inadequate or failure of incorporation/ingrowth; scarification; improper wound healing; excessive and chronic inflammation; allergic reaction; adhesions to internal organs; abscess; fistula formation; granulomatous response; seroma formation; nerve damage; tissue damage and/or death; and other complications.

27. The C-QUR Mesh was manufactured from polypropylene, and has a unique Omega 3 gel coating derived from fish oil ("Omega 3 coating"), which is not used in any other

hernia repair product sold in the United States. The Omega 3 coating was represented by the Defendants to prevent or minimize adhesion and inflammation and to facilitate incorporation of the mesh into the body, but it did not. Instead, the Omega 3 coating prevented adequate incorporation of the mesh into the body and caused an intense inflammatory and chronic foreign body response resulting in an adverse tissue reaction including damage to surrounding tissue in the form of sclerotic, granulomatous and/or fibrotic tissue and improper healing.

28. When affixed to the body's tissue, the impermeable Omega 3 coating of the C-QUR Mesh prevents fluid escape, which leads to seroma formation, and which in turn can cause infection or abscess formation and other complications.

29. The Omega 3 coating provides an ideal bacteria breeding ground in which the bacteria cannot be eliminated by the body's immune response, which allows infection to proliferate.

30. The Omega 3 coating of Defendants' C-Qur Mesh is cytotoxic, immunogenic, and not biocompatible, which causes or contributes to complications such as delayed wound healing, inflammation, foreign body response, rejection, infection, and other complications.

31. Defendants knew or should have known of the cytotoxic and immunogenic properties of the Omega 3 coating of the C-Qur Mesh prior to introducing it into the stream of commerce.

32. When the Omega 3 coating is disrupted and/or degrades, the "naked" polypropylene mesh is exposed to the adjoining tissue and viscera, and can become adhered to organs, and cause incarceration of organs, and fistula formation.

33. Due to serious problems with sterilization and quality control in the Atrium manufacturing facilities, the Omega 3 coating was not uniformly applied to the C-QUR Mesh

devices. The Omega 3 coating applied to the mesh caused or contributed to the propensity of the C-QUR Mesh to roll, curl and deform upon insertion into the body, intensifying the inflammatory and foreign body response to the mesh, and exacerbating the lack of adequate incorporation and improper healing response, and potential for adhesion. The Omega 3 coating was also unreasonably susceptible to deterioration and degradation, and even separation from the polypropylene mesh, both in the packaging and inside the body. The Omega 3 coating of the C-QUR Mesh also failed to conform to the manufacturer's specifications in terms of shelf-life, thickness, durability, and quality.

34. These manufacturing and design defects associated with the C-QUR Mesh were directly and proximately related to the injuries suffered by Plaintiff Marquetta Fox.

35. Neither Plaintiff Marquetta Fox nor her implanting physician were adequately warned or informed by Defendants of the defective and dangerous nature of C-QUR Mesh. Moreover, neither Plaintiff Marquetta Fox nor her implanting physician were adequately warned or informed by Defendants of the risks associated with the C-QUR Mesh.

36. The C-QUR Mesh implanted in Plaintiff Marquetta Fox failed to reasonably perform as intended. The mesh caused serious injury and had to be surgically removed via invasive surgery, and necessitated additional invasive surgery to repair the hernia that the C-QUR was initially implanted to treat.

37. Plaintiff Marquetta Fox's severe adverse reaction, and the necessity for surgical removal of the C-QUR Mesh, directly and proximately resulted from the defective and dangerous condition of the product and Defendants' defective and inadequate warnings about the risks associated with the product. Plaintiff Marquetta Fox has suffered, and will continue to suffer, both physical injury and pain and mental anguish, permanent and severe scarring and



disfigurement, lost wages and earning capacity, and has incurred substantial medical bills and other expenses, resulting from the defective and dangerous condition of the product and from Defendants' defective and inadequate warnings about the risks associated with the product.

**COUNT I**

**Strict Product Liability: Defective Manufacture**  
**(ORC § 2307.74, *et seq.*)**

38. Plaintiff incorporates herein by reference the allegations in all prior Paragraphs.

39. Defendants expected and intended the C-QUR Mesh product to reach users such as Plaintiff Marquette Fox in the condition in which the product was sold.

40. The implantation of C-QUR Mesh in Plaintiff's body was medically reasonable, and was a type of use that Defendants intended and foresaw when it designed, manufactured and sold the product.

41. At the time the C-QUR Mesh that was implanted in Plaintiff Marquette Fox's body, the product was defectively manufactured.

42. Defendants' manufacturing and quality control/assurance facilities where the C-QUR Mesh is manufactured, processed, inspected and packaged failed to comply to minimum industry and governmental standards and regulatory requirements regarding quality assurance, manufacturing practices, and sterilization, and as a result, the C-QUR Mesh products manufactured and sold by Defendants, including the C-QUR Mesh implanted in Plaintiff Marquette Fox, suffered manufacturing defects adversely affecting the safety and efficacy of the device.

43. Defendants' manufacturing and quality control/assurance non-compliance resulted in the non-conformance of the C-QUR Mesh implanted in Plaintiff Marquette Fox with

intended manufacturing and design specifications. The Omega-3 gel coating was incapable of being adequately sterilized and applied consistently in accordance with the Defendants' specifications.

44. Defendants' ETO sterilization process was changed without performing adequate testing or verification of sterility or other potential effects on the safety of the C-QUR Mesh. This change in the manufacturing process was a deviation from the initial design and was carried out without first conducting tests to determine the effect of the change on patient safety.

45. The Omega 3 coating of the C-QUR Mesh also failed to conform to the Defendants' specifications in terms of shelf-life, thickness, durability, and quality.

46. Upon information and belief, Defendants utilized substandard and adulterated polypropylene and raw fish oil materials in their finished C-QUR Mesh devices which deviated from Defendants' material and supply specifications.

47. As a direct and proximate result of the defective manufacture of the C-QUR Mesh, Plaintiff suffered injuries and damages as summarized herein.

## **COUNT II**

### **Strict Product Liability: Defective Design** **(ORC § 2307.75, et seq.)**

48. Plaintiff incorporates herein by reference the allegations in all prior Paragraphs.

49. At the time the C-QUR Mesh that was implanted in Plaintiff Marquetta Fox's body, the product was defectively designed. As described above, there was an unreasonable risk that the product would not perform safely and effectively for the purposes for which it was intended, and Defendants failed to design against such dangers, and failed to provide adequate warnings and instructions concerning these risks.

50. Defendants expected and intended the C-QUR Mesh product to reach users such as Plaintiff Marquette Fox in the condition in which the product was sold.

51. The implantation of C-QUR Mesh in Plaintiff's body was medically reasonable, and was a type of use that Defendants intended and foresaw when it designed, manufactured and sold the product.

52. The risks of the C-QUR Mesh significantly outweigh any benefits that Defendants contend could be associated with the product. The Omega 3 coating, which is not used in any other hernia mesh product sold in the United States, prevents tissue from incorporating into the mesh, leading to encapsulation, scarification and contraction, migration and rejection. The impermeable Omega 3 coating leads to seroma formation, and provides a breeding ground for infection, and protects bacteria from being eliminated by the body's natural immune response. This fish oil coating also caused immunogenic response, and was known to be cytotoxic.

53. The Omega 3 coating of the C-QUR Mesh, which was marketed, promoted and intended as a barrier against adhesion to the bowel, was only temporary; it was expected and intended to degrade over time inside the body. Thus, this coating prevented tissue ingrowth in the short term, and degraded in the long-term, eventually leaving the "naked" polypropylene mesh exposed to the internal viscera and tissues. Once exposed to the viscera, the mesh will inevitably adhere to the viscera, initiating a cascade of adverse consequences. Any purported beneficial purpose of the coating (to prevent adhesion to the bowel and internal viscera) was non-existent; the product provided no benefit while substantially increasing the risks to the patient.

54. The polypropylene mesh within the defective Omega 3 coating of the C-QUR Mesh was in itself dangerous and defective, particularly when used in the manner intended by

Defendants in the C-QUR Mesh. The particular polypropylene material used in the C-QUR Mesh was substandard, adulterated and non-medical grade, and was unreasonably subject to oxidative degradation within the body, further exacerbating the adverse reactions to the product once the Omega 3 coating degraded. When implanted adjacent to the bowel and other internal organs, as Defendants intended for C-QUR Mesh, polypropylene mesh is unreasonably susceptible to adhesion, bowel perforation or erosion, fistula formation and bowel strangulation or hernia incarceration, and other injuries.

55. The appropriate treatment for complications associated with C-QUR Mesh involves additional invasive surgery to remove the mesh from the body, thus eliminating any purported benefit that the mesh was intended to provide to the patient.

56. The C-QUR Mesh was designed and intended for intraperitoneal implantation, which required the product to be placed in contact with internal organs, which unnecessarily increased the risks of adhesion, erosion, fistula formation, and other injuries.

57. At the time the C-QUR Mesh was implanted in Plaintiff Marquette Fox, there were safer feasible alternative designs for hernia mesh products that would have prevented the injuries she suffered.

58. The C-QUR Mesh product cost significantly more than competitive products because of its unique Omega 3 coating, even though the Omega 3 coating provided no benefit to consumers, and increased the risks to patients implanted with these devices.

59. The C-QUR Mesh implanted in Plaintiff Marquette Fox failed to reasonably perform as intended, and had to be surgically removed necessitating further invasive surgery to repair the very issue that the product was intended to repair, and thus provided no benefit to her.

60. As a direct and proximate result of the defective and unreasonably dangerous condition of the product, Plaintiff suffered injuries and damages as summarized herein.

### **COUNT III**

#### **Strict Product Liability: Failure to Warn** **(ORC § 2307.76, et seq.)**

61. Plaintiff incorporates herein by reference the allegations in all prior Paragraphs.

62. At the time the C-QUR Mesh that was implanted in Plaintiff Marquetta Fox's body, the warnings and instructions provided by Defendant for the C-QUR Mesh were inadequate and defective. As described above, there was an unreasonable risk that the product would not perform safely and effectively for the purposes for which it was intended, and Defendants failed to design and/or manufacture against such dangers, and failed to provide adequate warnings and instructions concerning these risks.

63. Defendants expected and intended the C-QUR Mesh product to reach users such as Plaintiff Marquetta Fox in the condition in which the product was sold.

64. Plaintiff and her physicians were unaware of the defects and dangers of C-QUR Mesh, and were unaware of the frequency, severity and duration of the risks associated with the C-QUR Mesh.

65. The Defendants' Instructions for Use provided with the C-QUR Mesh expressly understates and misstates the risks known to be associated specifically with the C-QUR Mesh by representing that the complications associated with C-QUR Mesh were the same as those "with the use of any surgical mesh." No other surgical mesh sold in the United States has the dangerous and defective Omega 3 coating, which itself causes or increases the risks of numerous complications, including prevention of incorporation, increased risk of seroma formation,

increased risk for infection, and increased inflammatory reaction and foreign body response. Defendants knew or should have known that their product was defective and unreasonable dangerous, but Defendants provided no warning to physicians about the risks or increased risks specifically associated with the unique design of the C-QUR Mesh.

66. The Defendants' Instructions for Use for the C-QUR Mesh failed to adequately warn Plaintiff's physicians of numerous risks which Defendants knew or should have known were associated with the C-QUR Mesh, including the risks of the product's inhibition of tissue incorporation, pain, encapsulation, rejection, migration, adhesion to internal organs and viscera, erosion through adjacent tissue and viscera, bowel obstruction, or hernia incarceration or strangulation.

67. Defendants failed to adequately train or warn Plaintiff or her physicians about the necessity for invasive surgical intervention in the event of complications, or how to properly treat such complications when they occurred.

68. Defendants failed to adequately warn Plaintiff or her physicians that the surgical removal of the C-QUR Mesh in the event of complications would leave the hernia unrepaired, and would necessitate further medical treatment to attempt to repair the same hernia that the failed C-QUR Mesh was intended to treat.

69. Defendants represented to physicians, including Plaintiff's physician, that the Omega 3 coating would prevent or reduce adhesion, and expressly intended for the C-QUR Mesh to be implanted in contact with the bowel and internal organs and marketed and promoted the product for said purpose. Defendants failed to warn physicians that the Omega 3 coating prevented tissue ingrowth, which is the desired biologic response to an implantable mesh device. Defendants failed to warn physicians that the Omega 3 coating was only temporary and therefore

at best would provide only a temporary adhesion barrier, and when the coating inevitably degraded, the exposed polypropylene would become adhered to the bowel.

70. With respect to the complications that were listed in the Defendants' warnings, Defendants provided no information or warning regarding the frequency, severity and duration of those complications, even though the complications associated with C-QUR Mesh were more frequent, more severe and lasted longer than those with safer feasible alternative hernia repair treatments.

71. If Plaintiff Marquette Fox and/or her physicians had been properly warned of the defects and dangers of C-QUR Mesh, and of the frequency, severity and duration of the risks associated with the C-QUR Mesh, Plaintiff Marquette Fox would not have consented to allow the C-QUR Mesh to be implanted in her body, and Plaintiff Marquette Fox's physicians would not have implanted the C-QUR Mesh in Plaintiff Marquette Fox.

72. As a direct and proximate result of the inadequate and defective warnings and instructions, Plaintiff suffered injuries and damages as summarized herein.

#### **COUNT IV**

##### **Strict Product Liability: Defect Due to Nonconformance with Representations** **(ORC § 2307.77, et seq.)**

73. Plaintiff incorporates herein by reference the allegations in all prior Paragraphs.

74. Defendants expected and intended the C-QUR Mesh product to reach users such as Plaintiff Marquette Fox in the condition in which the product was sold.

75. Defendants represented to Plaintiff and/or to her implanting physician that the C-QUR Mesh was safe and effective. At the time her implanting physician chose the C-QUR Mesh for implantation in Plaintiff, he reasonably and justifiably relied upon Defendants'

representations that the product was safe for use in hernia repair surgery and would conform to Defendants' representations regarding the character and quality of the C-QUR Mesh for such use, including but not limited to its ability to prevent adhesions to the bowel, which it knew or should have known to be inaccurate.

76. As a direct and proximate result of Plaintiff's and/or her physician's reliance on Defendants' representations about the C-QUR Mesh, Plaintiff suffered injuries and damages as summarized herein.

### **COUNT V**

#### **Punitive Damages**

77. Plaintiff incorporates herein by reference the allegations in all prior Paragraphs.

78. Defendants failed to adequately test and study the C-QUR Mesh to determine and ensure that the product was safe and effective prior to releasing the product for sale for permanent human implantation, and Defendants continued to manufacture and sell C-QUR Mesh after obtaining knowledge and information that the product was defective and unreasonably unsafe. Even though Defendants has other hernia repair mesh devices that do not present the same risks as the C-QUR Mesh, Defendants developed, designed and sold C-QUR Mesh, and continue to do so, because the C-QUR Mesh has a significantly higher profit margin than other hernia repair products. Defendants were aware of the probable consequences of implantation of the dangerous and defective C-QUR Mesh, including the risk of failure and serious injury, such as suffered by Plaintiff Marquetta Fox. Defendants willfully and deliberately failed to avoid those consequences, and in doing so, Defendants acted with conscious indifference, indifference to, and/or flagrant disregard of, the safety of those persons who might foreseeably have been



harmd by the C-QUR product, including Plaintiff, justifying the imposition of punitive damages.

WHEREFORE, as a result of the acts and omissions and conduct of Defendants set forth herein, Plaintiff Marquette Fox is entitled to recover damages and prays for relief as follows:

1. Compensatory and punitive damages in excess of the jurisdictional amount, including, but not limited to non-economic damages in the form of past, present, and future mental and physical pain and suffering in excess of any statutory cap alleged to apply, and punitive damages in excess of any statutory cap alleged to apply;
2. Economic damages in the form of past, present, and future medical and related expenses; out of pocket expenses; past, present, and future lost wages; past present and future loss of earning capacity; and other economic damages in an amount to be determined at trial of this action;
3. Attorneys' fees, expenses, and costs of this action; and
4. Such further relief as the Court deems necessary, just, and proper.

Respectfully submitted,

/s/ Calvin S. Tregre, Jr.  
Janet G. Abaray (0002943)  
Calvin S. Tregre, Jr. (0073454)  
**BURG SIMPSON**  
**ELDREDGE HERSH & JARDINE, P.C.**  
312 Walnut Street, Suite 2090  
Cincinnati, OH 45202  
Tel: (513) 852-5600  
Fax: (513) 852-5611  
E-mail: jabaray@burgsimpson.com  
E-mail: ctregre@burgsimpson.com

**Attorneys for Plaintiffs**

**OF COUNSEL:**

Josh B. Wages

**BLASINGAME, BURCH**

**GARRARD & ASHLEY, P.C.**

440 College Avenue

P.O. Box 832

Athens, Georgia 30603

Phone: (706) 354-5119

Fax: (706) 549-3545

E-mail: jbw@bbgbalaw.com

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

/s/ Calvin S. Tregre, Jr.

## 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**

Marquetta Fox

**DEFENDANTS**

Atrium Medical Corporation, Maquet Cardiovascular US Sales, LLC and Getinge AB

(b) County of Residence of First Listed Plaintiff Richland

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Hillsborough

(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)

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 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)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" 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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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"/> 376 Qui Tam (31 USC 3729(a)) <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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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 - 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):  
U.S. C. 1332(a)-(c)Brief description of cause:  
Personal injuries due to defective product**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$  
75,001.00CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
11/22/2016SIGNATURE OF ATTORNEY OF RECORD  
s/Calvin S. Tregre, Jr.**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

I. Civil Categories: (Please check one category only).

1. ☒ General Civil  
2. ☐ Administrative Review/Social Security  
3. ☐ Habeas Corpus Death Penalty

\*If under Title 28, §2255, name the SENTENCING JUDGE: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is ☐ **RELATED** to another **PENDING** civil case. This action is ☐ **REFILED** pursuant to **LR 3.1**.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule **3.8**, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

**COUNTY:**

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

**COUNTY:**

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

**COUNTY:**

Richland County, Ohio

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

**EASTERN DIVISION**

☐

AKRON

(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)

☒

CLEVELAND

(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)

☐

YOUNGSTOWN

(Counties: Columbiana, Mahoning and Trumbull)

**WESTERN DIVISION**

☐

TOLEDO

(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

**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 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. 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 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 statute.
- 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.