IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

JOSEPH J. SIMS, **Plaintiff,** **v.** **ATRIUM MEDICAL CORP.** **Defendant.**	**CASE NO.: XX** 4:17CV-00160-JHM **PLAINTIFF'S COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Joseph J. Sims (hereinafter "Plaintiff"), by counsel, for his Complaint against Defendant Atrium Medical Corp., (hereinafter "Defendant" or "Atrium"), states as as follows:

INTRODUCTION

1. This is a product liability claim involving defective Atrium ProLite hernia mesh implanted in Plaintiff's body. The mesh subsequently failed causing a painful revision surgery and permanent injuries.

2. Atrium designed, patented, manufactured, packaged, labeled, marketed, and sold and distributed a line of hernia mesh products, including the ProLite mesh implanted in Plaintiff.

3. These ProLite products, made of mid-weight polypropylene, were designed primarily for the purposes of treating hernias, and were cleared for sale in the U.S. after Atrium made assertions to the U.S Food and Drug Administration of "Substantial Equivalence" under Section 510(k) of the Food, Drug and Cosmetic Act; this clearance process does not require the applicant to prove safety or efficacy.

4. Atrium represented to patients and the public that ProLite hernia mesh was a product designed to compete with other mesh products including Davol/Bard mesh, Ethicon

Prolene mesh, Covidien Surgipro mesh, and Covidien Parietex mesh, which have since become the subject of widespread litigation involving similar defects that lead to premature failure and permanent injuries.

VENUE AND JURISDICTION

5. Plaintiff Joseph J. Sims is a resident and citizen of Owensboro, Kentucky, which lies in Daviess County and is part of the Western District of Kentucky, U.S. District Court.

6. Atrium Medical Corporation ("Atrium") is incorporated under the laws of Delaware, and manufactures its hernia mesh at its corporate headquarters in New Hampshire, located at 40 Continental Blvd., Merrimack, NH 03054. Atrium therefore is a resident of 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 Prolite Mesh, which reached consumers and medical providers in the Western District of Kentucky.

7. Federal subject matter jurisdiction in the constituent actions is based upon 28 U.S.C. § 1332(a), becuase there is complete diversity between Plaintiff and Defendant, and the amount in controversy exceeds $75,000.

8. Defendant is liable to Plaintiff for damages resulting from its design, manufacture, marketing, packaging, 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.

9. A substantial part of the events and omissions giving rise to Plaintiff’s causes of action occurred in the Western District of Kentucky. Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper in the Western District of Kentucky, U.S. District Court.

FACTUAL BACKGROUND

10. Atrium's ProLite flat sheet surgical mesh products are designed, intended, and utilized for permanent implantation in the body in both open and laparoscopic hernia repair.

11. Atrium represented to Plaintiff and his physicians that ProLite mesh was a safe and effective product with smooth edges and strong knit construction.

12. Atrium received FDA approval to market and promote its ProLite surgical mesh on or about January 14, 2009, pursuant to a 510(k) decision pursuant to 21 CFR 878.3300. The FDA's letter stated that, because Atrium was relying on a "predicate device" created by a different company, Atrium was required to comply with certain labeling, manufacturing, and quality control standards, and that FDA was not making any warranties about the safety or efficacy of ProLite hernia mesh. [1]

13. Atrium failed to perform and/or rely on adequate testing and research in order to determine and evaluate the risks and benefits of the ProLite hernia mesh.

14. Prolite hernia 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 Prolite Mesh, there was an unreasonable risk of severe adverse reactions to the mesh or mesh components, including, but not limited to: 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; erosion; abscess; fistula formation; granulomatous response; seroma formation; nerve damage; tissue damage and/or death; and other complications.

[1] Mark Melkerson, FDA Office of Device Evaluation, 510(k) Letter to Joseph De Paolo, Atrium Medical Corp., January 14, 2009.

15. The Instructions for Use accompanying Atrium's monofilament knitted ProLite hernia mesh fail to warn surgeons and medical professionals that the product carries a risk of adhesion even if it does not come into contact with the viscera (intestines), of the patient, and even if the mesh is implanted correctly.[2]

PLAINTIFF'S INJURIES

16. Plaintiff, Joseph J. Sims, suffered a bilateral inguinal hernia in his lower abdomen in early 2015 at the age of 42.

17. On or about May 27, 2015, Dr. Anthony Kaiser performed a bilateral laparoscopic inguinal hernia repair on Plaintiff at Deaconess Health System in Evansville, Indiana. Dr. Kaiser used tacks and two identical pieces of surgical mesh that measured 6 inches by 6 inches, with 1 inch of mesh cut from each of two sides. The mesh was ProLite Mesh made by Atrium, Ref. 1000606, Lot. 10919314.

18. After conservative measures failed to resolve Plaintiff's ongoing severe pain and other symptoms following the above mesh placement, Dr. Kaiser performed a laparoscopic removal of the right mesh on or about Feb. 24, 2017, at the same facility in Evansville. Dr. Kaiser described in his operative report that Plaintiff suffered significant adhesions of the mesh, noting that he "tried to separate the peritoneum from the mesh, but it was clear that there was no way that was going to happen." Dr. Kaiser ultimately cauterized the mesh from Plaintiff's pubic tubercle, noting further adhesions to the pubis, and also to the iliac joint.

19. Dr. Kaiser performed repair surgery on Plaintiff's left hernia on or about Sept. 29, 2017, in which he removed more mesh which had adhered to Plaintiff's intestines.

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[2] ProLite Instructions for Use, available at http://www.atriummed.com/en/biosurgery/IFUs/ProLite.ProLiteUltra.IFU.pdf (last visited December 13, 2017).

20. Plaintiff suffered chronic pain both before and after his hernia repair surgeries to remove the defective ProLite hernia mesh. He was unable to continue working at his job due to recurrent hernia problems, and remains unable to work today.

21. If Plaintiff and his medical providers had been informed about the true risks of adhesion and tack failure in the ProLite mesh, Plaintiff would not have agreed to undergo hernia repair with the ProLite surgical mesh. For example, in an August 2017 article in the journal *Membranes*, ProLite monofilament mesh is described as having a risk of adhesions generally, as opposed to a risk of adhesions only when implanted incorrectly. See Baylon, et. al., *Past, Present and Future of Surgical Meshes: A Review*, Membranes 2017, 7, 47.

22. On information and belief, Defendants' numerous suppliers of various forms of polypropylene warn on their United States Material Safety Data Sheet ("MSDS") that it is prohibited to permanently implant polypropylene into the human body.

23. Defendants' failed to warn or notify doctors, regulatory agencies, and consumers of the Defendants' use of adulterated polypropylene in their Hernia Mesh Products.

24. Safer alternative procedures and instruments, as well as safer alternative designs for implantation and treatment of hernias and soft tissue repair, have existed at all times relevant as compared to the ProLite mesh used in Plaintiff's surgeries.

COUNT I - NEGLIGENCE

25. At all relevant times, Defendants had a duty to individuals, including the Plaintiff to exercise reasonable and ordinary care in the manufacture, design, packaging, labeling, instructions, warnings, sale, marketing, and distribution of the ProLite mesh, and to train surgeons in how to properly implant the product in patients.

26. Defendants breached their duty of care to Plaintiff, in the manufacture, design,

packaging, labeling, warnings, instructions, sale, marketing, distribution, and recruitment and training of physicians to implant the ProLite product.

27. Among other things, Atrium breached its duty by: failing to design the ProLite mesh so as to avoid an unreasonable risk of harm to Plaintiff; failing to manufacture the ProLite mesh so as to avoid an unreasonable risk of harm to patients in whom the ProLite mesh was implanted, including Plaintiff; failing to use reasonable care in the testing of the Products so as to avoid an unreasonable risk of harm to patients in whom the ProLite mesh was implanted, including Plaintiff; failing to conduct clinical studies to determine if the ProLite mesh was safe and effective.

28. Atrium also acted with negligence when it failed to warn patients and the public and medical professionals that the use of polypropylene material in ProLite mesh and the immune reaction that results from such material, causes adverse reactions and injuries, including adhesions.

29. Atrium also failed to appropriately study the risk of biomechanical issues with the design of the ProLite mesh, including its propensity to shrink or contract inside the body, which causes surrounding tissue to become fibrotic and contract, and results in injury; and/or the propensity of the ProLite mesh to degrade and fragment inside the body, which causes a chronic inflammatory and fibrotic reaction, resulting in injury over time.

30. Atrium also acted negligently when it placed the ProLite mesh on the market, and it was implanted in Plaintiff, because the ProLite mesh is no more effective than feasible, available alternatives hernia repair products that do not put patients at greater risk of failure due to adhesions.

31. Removal of the ProLite mesh due to complications significantly impaired patients'

quality of life, which increased risk of future injuries, including to Plaintiff.

32. As a direct, proximate, and foreseeable result of the Defendants' negligence, Plaintiffs have experienced significant mental and physical pain and suffering, have sustained severe and permanent injuries requiring past and future medical treatment, and resulting in disability, impairment, loss of enjoyment of life, loss of care, comfort, consortium, and have incurred financial or economic loss, including, but not limited to, obligations for medical expenses, lost income, and other damages.

COUNT II – STRICT PRODUCTS LIABILITY

33. Atrium is the manufacturer and/or supplier of the ProLite surgical mesh and placed this pruduct into the stream of commerce in a defective and unreasonably dangerous condition such that the foreseeable risks exceeded the benefits associated with the design and/or formulation of the mesh.

34. The ProLite surgical mesh manufactured, marketed, distributed and/or supplied by Atrium was defective in design or formulation in that, when it left the hands of the manufacturers and/or suppliers, the foreseeable risks exceeded the benefits associated with the design or formulation.

35. The ProLite surgical mesh was expected to and did reach Plaintiff without substantial change in condition. Alternatively, the ProLite surgical mesh manufactured and/or supplied by Atrium was defective in design or formulation, because when the mesh left the hands of Atrium, the manufacturers and/or suppliers, it was unreasonably dangerous and more dangerous than an ordinary consumer would expect.

36. The ProLite surgical mesh was designed and/or manufactured in a manner violative of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321 *et seq.*, and the Medical

Devices Amendment thereto (hereinafter "FDCA"). The facilities or controls used by Atrium in the manufacture, packing, storage, or installation of the mesh were not in conformity with applicable requirements of the FDCA.

37. The ProLite surgical mesh manufactured and/or supplied by Atrium was defective due to inadequate warnings and/or inadequate trials, testing and study, inadequate exposure of the real risks inherent with the device as determined by the clinical trials, and inadequate reporting of the results of the clinical trials and post-marketing clinical experiences with the device.

38. The ProLite surgical mesh manufactured and/or supplied by Atriu,m was defective due to inadequate post-marketing warnings or instructions because, after Atrium knew or had reason to know of the risk of injury from the mesh, it failed to provide adequate warnings to the medical community, patients, and the public, including Plaintiff, and continued to promote and advertise the ProLite surgical mesh as safe and effective.

39. The ProLite surgical mesh was designed, manufactured, distributed, tested, sold, marketed, and advertised defectively by Atrium. As a direct and proximate cause of Atrium's defective design of the ProLite surgical mesh, Plaintiff and other patients had the mesh implanted in their bodies, and suffered and will continue to suffer increased risk of long-term complications and pain and additional surgeries, personal injuries, the need for corrective surgery, and pain and suffering.

40. Atrium was or should have been in possession of evidence demonstrating that the ProLite surgical mesh caused serious injuries and would fail. Nevertheless, Atrium continued to market the device by providing false and misleading information with regard to the safety and efficacy of the ProLite surgical mesh.

41. Atrium's actions, as described above, were performed willfully, intentionally and with reckless disregard for the rights of Plaintiff, other patients and the public.

42. As a direct and proximate result of Atrium's wrongful conduct, Plaintiff has sustained and will continue to sustain severe physical injuries, severe emotional distress, mental anguish, economic losses and other damages. As a direct result, Plaintiff expended money and will continue to expend money for medical bills and expenses. Plaintiff is entitled to compensatory damages in an amount to be proven at trial.

COUNT III – NEGLIGENCE PER SE

43. Atrium has an obligation to not violate the law in the manufacture, design, testing, assembly, inspection, labeling, packaging, supplying, marketing, selling, advertising, preparing for use, warning of the risks and dangers of ProLite surgical mesh, and otherwise distributing the mesh.

44. Atrium's acts and omissions constitute an adulteration, misbranding, or both, as defined by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 331(a) and 333(a)(2), and constitute a breach of duty subjecting Defendants to civil liability for all damages arising therefore, under theories of negligence per se.

45. Atrium's acts and omissions also constitute a violation of the Kentucky Products Liability Act, KRS § 411.300, because Plaintiff's surgical mesh failed and required removal in fewer than five years after purchase and implantation.

46. Plaintiff, as a purchaser of the ProLite surgical mesh, is within the class of persons the statutes and regulations (described above) are designed to protect and Plaintiff's injuries are the type of harm these statutes and regulations are designed to prevent.

47. As a direct and proximate result of Atrium's wrongful conduct, Plaintiff has

sustained and will continue to sustain severe physical injuries, severe emotional distress, mental anguish, economic losses and other damages for which he is entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT IV – BREACH OF IMPLIED WARRANTY

48. Atrium impliedly warranted that the ProLite surgical mesh, which Atrium designed, manufactured, assembled, promoted and sold to Plaintiff and his physicians, was merchantable and fit and safe for ordinary use.

49. Atrium further impliedly warranted that the ProLite surgical mesh, which Atrium designed, manufactured, assembled, promoted and sold to Plaintiff and his physicians, was fit for the particular purposes for which it was intended and was sold.

50. Contrary to these implied warranties, the ProLite surgical mesh was defective, unmerchantable, and unfit for its ordinary use when sold, and unfit for the particular purpose for which it was sold.

51. As a direct and proximate result of Atrium's wrongful conduct, has sustained and will continue to sustain severe physical injuries, severe emotional distress, mental anguish, economic losses and other damages for which he is entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT V – BREACH OF EXPRESS WARRANTY

52. Atrium expressly warranted to Plaintiff by and through Atrium and/or its authorized agents or sales representatives, in publications, package inserts, the internet, and other communications intended for physicians, patients, Plaintiff, and the general public, that the ProLite surgical mesh was safe, effective, fit and proper for its intended use.

53. In allowing the implantation of the ProLite surgical mesh, Plaintiff and his

physician relied on the skill, judgment, representations, and express warranties of Atrium, including those made in its labeling and Instructions for Use. These warranties and representations were false in that the ProLite surgical mesh was not safe and was unfit for the uses for which it was intended.

54. Atrium breached its warranty of the mechanical soundness of the ProLite surgical mesh by continuing sales and marketing campaigns highlighting the safety and efficacy of their product, while they knew or should have known of the defects and risk of product failure and resulting patient injuries.

55. As a direct and proximate result of Atrium's wrongful conduct, Plaintiff has sustained and will continue to sustain severe physical injuries, severe emotional distress, mental anguish, economic losses and other damages for which he is entitled to compensatory and equitable damages and declaratory relief in an amount to be proven at trial.

COUNT VI – NEGLIGENT MISREPRESENTATION

56. At the time Atrium manufactured, designed, marketed, sold and distributed the ProLite surgical mesh for use by Plaintiff, Atrium knew or should have known of the use for which the ProLite surgical mesh was intended and the serious risks and dangers associated with such use of the mesh.

57. Atrium owed a duty to physicians and patients using the ProLite surgical mesh, including Plaintiff, to accurately and truthfully disclose the risks of the mesh, including adhesion and failure of the tacks. Atrium breached that duty by misrepresenting and/or failing to adequately warn Plaintiff's physicians, the medical community, Plaintiff, and the public about the risks of the ProLite surgical mesh, which Atrium knew or in the exercise of diligence should have known.

58. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff sustained and will continue to sustain severe physical injuries, severe emotional distress, mental anguish, economic losses and other damages for which he is entitled to compensatory damages in an amount to be proven at trial.

JURY DEMAND

WHEREFORE, as to each of the foregoing matters, Plaintiff demands a trial by jury on all issues so triable as a matter of right.

Dated: December 14, 2017

Respectfully submitted,

JONES WARD PLC

s/ Alex C. Davis
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JS 44 (Rev. 06/17)

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

Joseph J. Sims

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Alex C. Davis and Jasper D. Ward, Jones Ward PLC,
1205 E. Washington St., Suite 111, Louisville KY 40206
Tel. 502-882-6000

DEFENDANTS

Atrium Medical Corp.

County of Residence of First Listed Defendant Hillsborough (NH)
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys *(If Known)*

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

TORTS

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

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

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

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

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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

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

PRISONER PETITIONS

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

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

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

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

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

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

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 U.S.C. § 1332

Brief description of cause:
Hernia surgical mesh products liability claim

VII. REQUESTED IN COMPLAINT:

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

DEMAND $ 75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/14/2017

SIGNATURE OF ATTORNEY OF RECORD s/ Alex C. Davis

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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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 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. 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 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.