IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

DONALD SIZEMORE, Plaintiff, v. DEPUY SYNTHES SALES, INC. d/b/a/ DEPUY SYNTHES JOINT RECONSTRUCTION; DEPUY ORTHOPAEDICS, INC.; DEPUY INTERNATIONAL LIMITED; JOHNSON & JOHNSON; JOHNSON & JOHNSON SERVICES, INC.; JOHNSON & JOHNSON INTERNATIONAL; ME[1]DICAL DEVICE BUSINESS SERVICES, INC.; DEPUY, INC.; DEPUY SYNTHES PRODUCTS, INC.; DEPUY SYNTHES, INC.; DEPUY IRELAND UNLIMITED COMPANY; DEPUY SYNTHES JOHNSON & JOHNSON IRELAND LTD. Defendants.	Case No. **COMPLAINT AND DEMAND FOR JURY TRIAL**

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DONALD SIZEMORE, by and through undersigned counsel, Hart, McLaughlin & Eldridge, LLC, for his Complaint at Law against Defendants, Medical Device Business Services, Inc.; DePuy Orthopaedics, Inc.; DePuy, Inc.; DePuy Synthes Products, Inc.; DePuy Synthes, Inc.; Depuy Synthes Sales, Inc. d/b/a DePuy Synthes Joint Reconstruction; DePuy International, Ltd.; DePuy Ireland Unlimited Company; DePuy Synthes Johnson & Johnson Ireland Ltd.; Johnson & Johnson

[1] Plaintiff filed his Complaint electronically on May 30, 2018 and received confirmation that it was assigned Case Number 9:18-cv-80706 but due to a computer or clerical error Plaintiff was instructed by the Court's staff to re-file his Complaint on May 31, 2018.

International; Johnson & Johnson; and Johnson & Johnson Services, Inc. (collectively "Defendants") pleads and alleges as follows:

BACKGROUND

1. On or about March 7, 2014, Plaintiff, underwent a right total knee replacement surgery at Orthopedic Specialists of Southwest Ohio.

2. During the March 7, 2014 surgery Plaintiff was implanted with an Attune® Knee System (hereinafter "ATTUNE" or "ATTUNE Device(s)"), which included a fixed tibial insert and a fixed tibial baseplate, which was designed, manufactured, marketed, distributed, labeled, marketed and sold throughout the United States by the Defendants.

3. The ATTUNE Device was purchased by Plaintiff.

4. After the ATTUNE Device was implanted, Plaintiff began experiencing severe pain and discomfort caused by, among other things, loosening of the defective tibial baseplate within the ATTUNE Device.

5. On May 30, 2014, Plaintiff underwent a revision surgery to surgically remove and replace the defective ATTUNE Device. The revision surgery was performed by Dr. Aivars Vitols at Grandview Hospital in Dayton, Ohio.

6. Neither Plaintiff nor his physicians were aware of the defects existing in the ATTUNE Device at the time it was implanted into Plaintiff, and had they been told by Defendants of the defects they would not have used the ATTUNE Device.

7. As a direct and proximate result of the Defendants placing the unreasonably dangerous and defective ATTUNE Device into the stream of commerce, Plaintiff has suffered and continues to suffer both bodily injuries and other damages.

8. Thus, this lawsuit arises out of the Defendants' development, designing, testing, assembling, manufacturing, packaging, monitoring, labeling, preparing, distribution, marketing, supplying, and/or selling of the ATTUNE Device.

9. Plaintiff, like countless other knee replacement patients who were implanted with the ATTUNE Device have been required to undergo one or more revision surgeries well before the advertised and promoted life expectancy of the ATTUNE Device.

10. The high failure rate of the ATTUNE Device is greater than reasonably expected for a safe and effective medical device or implant.

11. Despite knowing the ATTUNE Device is unsafe, ineffective and unreasonably dangerous, causing failures of the device and resulting in catastrophic bodily injuries and economic damages, Defendants continue to market and sell the device, placing their own selfish desire to profit over the health, well-being and safety of knee replacement patients like Plaintiff.

THE PARTIES

12. Plaintiff Donald Sizemore is a resident of Lecanto, Florida.

13. Plaintiff was implanted with a defective ATTUNE Device on or about March 7, 2014.

14. The ATTUNE Device implanted on or about March 7, 2014 failed, causing Plaintiff to have to undergo a revision surgery on or about May 30, 2014 at Grandview Hospital in Dayton, Ohio during which Plaintiff was implanted with a second ATTUNE Device.

15. The second ATTUNE Device caused Plaintiff to have to undergo a second revision surgery on or about June 20, 2014 at Grandview Hospital in Dayton, Ohio during which Plaintiff was implanted with a third ATTUNE Device.

16. Plaintiff underwent a fourth knee surgery on September 26, 2017 as a result of the catastrophic injury to his knee caused by the defective ATTUNE Device originally implanted into his right leg on March 7, 2014.

17. Defendant DePuy Synthes Sales, Inc. d/b/a/ DePuy Synthes Joint Reconstruction ("DSS") is and, at all times relevant, was a corporation organized and existing under the laws of the State of Massachusetts with its principal place of business in Massachusetts and regularly conducted business in Ohio and Florida by selling and distributing its products in those states.

18. Upon information and belief, DSS is a division and/or subsidiary of DePuy Orthopaedics, Inc. ("DOI"). DSS is a wholly-owned subsidiary of Johnson & Johnson.

19. DSS designs, makes, imports, distributes, sells and/or offers for sale total knee replacement prostheses, including the ATTUNE Device. DSS was engaged in the business of designing, licensing, manufacturing, distributing, selling, marketing, and/or introducing into interstate commerce, either directly or indirectly

through third parties or related entities, numerous orthopedic products, including the ATTUNE Device, as well as monitoring and reporting adverse events related to the ATTUNE Device.

20. Defendant Medical Device Business Services, Inc. ("Device Business Services") is and, at all times relevant, was a corporation organized and existing under the laws of the State of Indiana, with its headquarters and principal place of business located in Indiana, and regularly conducted business in the Ohio and Florida by selling and distributing its products in those states.

21. Upon information and belief, Device Business Services is a wholly-owned subsidiary of Johnson & Johnson.

22. Defendant DePuy Orthopaedics, Inc. ("DOI") is and, at all times relevant, was a corporation organized and existing under the laws of the State of Indiana, with its headquarters and principal place of business located in Indiana, and regularly conducted business in Ohio and Florida by selling and distributing its products in those states.

23. Upon information and belief, DOI is a wholly-owned subsidiary of Johnson & Johnson.

24. At all times relevant, DOI and Device Business Services were engaged in the business of designing, licensing, manufacturing, distributing, selling, marketing, packaging, labeling and/or introducing into interstate commerce, either directly or indirectly through third parties or related entities, numerous orthopedic products, including the ATTUNE Device, as well as monitoring and reporting adverse

events associated with ATTUNE. DOI and Device Business Services participated in the decision-making process and response of the Defendants, if any, related to ATTUNE adverse events and/or MAUDE reports.

25. Defendant DePuy Synthes Products, Inc. ("DSP") is and, at all times relevant, was a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Massachusetts, and regularly conducted business in the Ohio and Florida by selling and distributing its products in those states. DSP is division of DOI.

26. Upon information and belief, DSP is a wholly-owned subsidiary of Johnson & Johnson.

27. Defendant DePuy Synthes, Inc. ("DS") is and, at all times relevant, was a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Indiana, and at all relevant times was doing business in the Ohio and Florida by selling and distributing its products in those states.

28. DSP and DS design, manufacture, test, package, label, distribute, sell and/or offer for sale certain total knee replacement prostheses, including the ATTUNE Device.

29. Defendant DePuy, Inc. is and, at all times relevant, was a corporation organized and existing under the laws of the State of Delaware, with its headquarters and principal place of business in Delaware. At all relevant times, DePuy, Inc. conducted regular and sustained business in Ohio and Florida by selling and distributing its products in those states.

30. As DOI's parent company, DePuy, Inc. was, at all relevant times, involved in the business of designing, licensing, manufacturing, distributing, selling, marketing, and introducing into interstate commerce, either directly or indirectly through third parties or related entities, numerous orthopedic products, including the ATTUNE Device, as well as monitoring and reporting adverse events associated with ATTUNE.

31. Upon information and belief, DePuy, Inc. participated in reviewing, investigating and/or responding to FDA adverse events and/or MAUDE reports related to the ATTUNE Device, and in the decision of whether to submit reports of ATTUNE failures to the FDA.

32. Defendant DePuy International, Ltd. ("DIL") is a public entity or corporation organized and existing under the laws of the United Kingdom, with its principal place of business at St. Anthony's Road, Beeston, Leeds, West Yorkshire, LS11 8DT, United Kingdom, and at all times relevant was doing business within the United States. At all relevant times, DePuy, International, Ltd. conducted regular and sustained business in Ohio and Florida by selling and distributing its products in those states.

33. DIL makes, deigns, imports, distributes, labels, sells and/or offers for sale certain total knee replacement prostheses, including the ATTUNE Device.

34. DePuy Ireland Unlimited Company ("DePuy Ireland") is a company and a citizen of Ireland with its principal place of business located at Loughbeg Industrial Estate, Loughbeg Ringaskiddy, County Cork, Ireland, and at all relevant times was

doing business within the United States. At all relevant times, DePuy Ireland Unlimited Company conducted regular and sustained business in Ohio and Florida by selling and distributing its products in those states.

35. At all times relevant, DePuy Ireland was involved in the business of designing, manufacturing, distributing, selling, marketing, and introducing into interstate commerce, either directly or indirectly, through third parties or related entities, numerous orthopedic products, including the ATTUNE Device, as well as monitoring and reporting adverse events associated with ATTUNE. DePuy Ireland had a role in the decision-making process and response of the Defendants, if any, related to the handling of adverse events and MAUDE reports concerning ATTUNE Device failures.

36. DePuy Synthes Johnson & Johnson Ireland Ltd. ("Synthes Ireland") is an entity doing business and organized in Ireland with its principal place of business located at Unit 2, Block 10, Blanchardstown Corporate Park, Dublin 15, Ireland, and at all relevant times was doing business within the United States. At all relevant times, DePuy Synthes Johnson & Johnson Ireland Ltd. conducted regular and sustained business in Ohio and Florida by selling and distributing its products in those states.

37. At all times relevant, Synthes Ireland was involved in the business of designing, manufacturing, distributing, selling, marketing, and introducing into interstate commerce, either directly or indirectly, through third parties or related entities, numerous orthopedic products, including the ATTUNE Device, as well as

monitoring and reporting adverse events associated with ATTUNE. Synthes Ireland had a role in the decision-making process and response of the Defendants, if any, related to the handling of adverse events and/or MAUDE reports concerning ATTUNE Device failures.

38. Defendants DSS, DOI, DIL, DSP, DS, DePuy, Inc., Device Business Services, DePuy Ireland and Synthes Ireland are collectively referred to as "DePuy" and the "DePuy Synthes Companies." The DePuy Synthes Companies are part of the Johnson & Johnson Family of Companies. The DePuy Synthes Companies are a group of functionally-integrated companies with shared management, administrative and general functions, including human resources, legal, quality control, customer service, sales administration, logistics, information technology, compliance, regulatory, finance and accounting and are considered a single business enterprise.

39. Defendant Johnson & Johnson International is and, at all times relevant, was a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in New Jersey, and regularly conducted business in Ohio and Florida by selling and distributing its products in those states.

40. As one of DePuy's parent companies, Johnson & Johnson International is and, at all relevant times, was involved in the business of designing, licensing, manufacturing, distributing, selling, marketing, and introducing into interstate commerce, either directly or indirectly through third parties or related entities, numerous orthopedic products, including the ATTUNE Device, as well as monitoring and reporting adverse events associated with ATTUNE. Johnson & Johnson

International participated in the decision-making process and response, if any, related to adverse events and/or MAUDE reports concerning the ATTUNE Device.

41. At all times material hereto, Defendant Johnson & Johnson ("J&J") is and was a public entity or corporation organized and existing under the laws of the State of New Jersey, with a principal place of business in New Jersey, and at all relevant times was doing business in Ohio and Florida by selling and distributing its products in those states.

42. As DePuy's most senior parent company, Johnson & Johnson is and, at all relevant times, was involved in the business of designing, licensing, manufacturing, distributing, selling, marketing, and introducing into interstate commerce, either directly or indirectly through third parties or related entities, numerous orthopedic products, including the ATTUNE Device, as well as monitoring and reporting adverse events associated with ATTUNE. Johnson & Johnson participated in the decision-making process and response, if any, related to adverse events and/or MAUDE reports related to ATTUNE Device failures.

43. At all times material hereto, Defendant Johnson & Johnson Services ("J&J Services") was a public entity or corporation organized and existing under the laws of the State of New Jersey, with a principal place of business in New Jersey, and at all relevant times was doing business in Ohio and Florida by selling and distributing its products in those states.

44. J&J Services is and, at all relevant times, was involved in the business of designing, licensing, manufacturing, distributing, selling, marketing, and

introducing into interstate commerce, either directly or indirectly through third parties or related entities, numerous orthopedic products, including the ATTUNE Device, as well as monitoring and reporting adverse events associated with ATTUNE. J&J Services participated in the decision- making process and response, if any, related to adverse events and/or MAUDE reports related to ATTUNE Device failures.

45. Plaintiff has suffered personal injuries as a direct and proximate result of DePuy Synthes Sales, Inc. d/b/a/ DePuy Synthes Joint Reconstruction; Medical Device Business Services, Inc.; DePuy Orthopaedics, Inc.; DePuy Synthes Products, Inc.; DePuy Synthes, Inc.; DePuy, Inc.; DePuy International, Ltd.; DePuy Ireland Unlimited Company; DePuy Synthes Johnson & Johnson Ireland Ltd.; Johnson & Johnson International; Johnson & Johnson; and Johnson & Johnson Services Inc. (collectively "Defendants") conduct and misconduct, as described herein, in connection with the design, development, manufacturing, testing, packaging, advertising, marketing, distributing, labeling, warning and sale of the ATTUNE Device.

46. Defendant Johnson & Johnson is the parent company of Defendants DePuy International Limited, DePuy Ireland Unlimited Company and DePuy Synthes Johnson & Johnson Ireland Ltd.

47. Defendant Johnson & Johnson is the alter ego of wholly owned subsidiaries Defendants, DePuy International Limited; DePuy Ireland Unlimited Company and DePuy Synthes Johnson & Johnson Ireland Ltd ("subsidiary Defendants"). Defendant Johnson & Johnson has used these named subsidiary

Defendants as its agents; and/or Defendant Johnson & Johnson and the named subsidiary Defendants are one single integrated enterprise.

48. Defendants DePuy Ireland Unlimited Company and DePuy Synthes Johnson & Johnson Ireland Ltd. (hereinafter referred to as the "Ireland Defendants"), in addition to designing and manufacturing the ATTUNE Devices, were identified by the FDA as the manufacturer of failed ATTUNE Devices reported through the FDA's MAUDE system. Upon information and belief, the Ireland Defendants reported, and made decisions about whether or not to report failures of the ATTUNE Devices, which occurred within the United States, to the FDA.

49. Defendants DePuy International Limited; DePuy Ireland Unlimited Company and DePuy Synthes Johnson & Johnson Ireland Ltd. produced and disseminated misleading marketing publications throughout the United States, including Ohio and Florida, touting the safety and efficacy of the ATTUNE Device to consumers, hospitals and surgeons.

50. Defendants DePuy International Limited; DePuy Ireland Unlimited Company and DePuy Synthes Johnson & Johnson Ireland Ltd. engaged in substantial business within the United States related to the ATTUNE Device, availed themselves of the benefits of conducting business in the United States and derived benefits from that business within the United States.

51. At all times relevant, each of the Defendants was the representative, agent, employee, co-conspirator, servant, employee, partner, joint-venturer, franchisee, or alter ego of the other Defendants and was acting within the scope of

such authority in such conspiracy, service, agency, employment, partnership, joint venture and/or franchise.

JURISDICTION AND VENUE

52. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 in that the amount in controversy exceeds $75,000.00, exclusive of interest and costs, and this is an action by an individual Plaintiff against Defendants who are citizens of different states.

53. Venue in the Southern District of Florida is proper pursuant to 28 U.S.C. § 1391(a) because a Plaintiff is a resident of the State of Florida, and Defendants regularly conducted business in the Southern District of Florida.

54. Defendants' commercial activities in the Southern District of Florida include, but are not limited to, the advertising, promotion, marketing and sale of ATTUNE Devices and a host of other medical devices, products and services.

THE ATTUNE DEVICE

55. DePuy sought 510(k) FDA "clearance" for the ATTUNE Device.

56. In or around 2010 DePuy Orthopaedics, Inc. received FDA clearance of the ATTUNE Device.

57. The basis for FDA clearance was substantial similarity or equivalence to several prior devices, including, but not limited to, the P.F.C. SIGMA Knee System.

58. The ATTUNE Device includes the Attune Tibial Base (510K Number K101433) ("ATTUNE tibial baseplate").

59. The FDA cleared the following specific medical device components as part of the DePuy Attune™ Knee Total System: (a) The Attune™ Cruciate Retaining

(CR) Femoral Component; (b) The Attune™ Fixed Bearing (FB) Tibial Inserts; (c) The Attune™ Tibial Base, which is available in 10 sizes; and (d) The Attune™ Patellae.

60. In August 2011, DePuy Orthopaedics, Inc. received 510K clearance for the DePuy Attune Posterior Stabilized (PS) Femoral Components and PS Fixed Bearing inserts, which were additions to the existing DePuy Attune™ Knee System. These components are compatible with the ATTUNE fixed tibial bases. This product was referred to as the DePuy Attune™ PS Knee System.

61. The claims in this Complaint focus only on the ATTUNE Device as defined herein, which includes the DePuy Attune™ Knee System (including its component parts) and the DePuy Attune™ PS Knee System (including its component parts) (collectively referred to as "ATTUNE" and "ATTUNE Device" herein). The design and composition of the ATTUNE Device, especially the tibial baseplate, is defective and failed resulting in harm to Plaintiff.

62. In March of 2013, DePuy and the J&J defendants introduced its ATTUNE Device, touting it as including new technology.

63. The most notable improvement Defendants purported to make between the SIGMA and ATTUNE is the patented S-curve design of the femoral component. This feature, according to Defendants, conferred greater mid flexion stability as the implanted knee moves from extension to flexion because of the more gradual change in the femoral component radius of curvature. This design feature was also proposed to offer greater functional benefits and a greater range of movement as compared to other implants.

64. However, in reality, the ATTUNE Device did not deliver on these promises, resulting in significantly higher failure rates than previous DePuy knee counterparts due to the debonding of the tibial baseplate.

65. As a result, thousands of knee replacement patients implanted with ATTUNE Devices have required or will require expensive and dangerous knee revision surgery to remove and replace the unreasonably dangerous and defective ATTUNE Device.

66. The primary reason the ATTUNE Device fails is mechanical loosening.

67. The mechanical loosening is caused by a failure of the bond between the tibial baseplate at the implant-cement interface.

68. Mechanical loosening means that the attachment between the artificial knee and the existing bone has become loose. Such loosening will eventually result in failure of the device.

69. Mechanical loosening has occurred at an unprecedented rate in patients implanted with an ATTUNE Device.

70. A loose artificial knee generally causes pain and wearing away of the bone. It can severely restrict a patient's daily activities.

71. Once the pain becomes unbearable or the individual loses function of the knee, a "revision surgery," may be required to remove the knee implant and replace it with a new one – a safe and effective one.

72. Unfortunately, a failed total knee prosthesis often causes severe bone loss. Therefore, revision surgeries on a failed total knee due to loosening often require reconstruction of the severe bone loss.

73. The success rate of a revision surgery is much lower than that of the initial total knee replacement and the risks and complications are higher, including limitations in range of motion, the ability to walk, and even death.

74. Beginning in 2013 and 2014, Defendants became aware of safety issues with the ATTUNE Device. These concerns were evidenced through failure reports submitted to and kept in the FDA's Manufacturer and User Facility Device Experience (MAUDE), which houses medical device reports submitted to the FDA by reporters such as manufacturers, importers and device user facilities. Most related reports concern failures caused by ATTUNE Device design elements which caused loosening and/or debonding at the tibial baseplate cement/implant interface. These MAUDE reports detail an extremely high incidence of aseptic loosening at the tibial baseplate of the ATTUNE Device resulting in subsequent revision surgeries.

75. Upon information and belief, the FDA MAUDE database, includes approximately 1,500 reports of failures.

76. Noticing the alarming rate of failure and subsequent revisions related to the ATTUNE Device, on March 10, 2016, DePuy Orthopaedics, Inc. submitted a Section 510(k) premarket notice of intent to market the "ATTUNE® *Revision* Knee System," which included a new stem, with added length and a keel for additional stability and recessed cement pockets intended to promote cement fixation. The stem

of the ATTUNE® Revision Knee System was designed with a cylindrical or tapered body geometry with a blasted and fluted fixation surface.

77. On March 15, 2017, DePuy Synthes, at the American Academy of Orthopaedic Surgeons ("AAOS") Annual Meeting in San Diego, California, announced the launch of the first ATTUNE Knee revision system, which included the ATTUNE Revision Fixed Bearing Tibial Base and a 14 x 50 mm Cemented Stem.

78. Without notifying consumers, doctors or patients, including Plaintiff and his physicians, Defendants recently attempted to replace the original ATTUNE Fixed Base tibial baseplate with a new tibial baseplate, also called a tibial tray, which received FDA 510(k) clearance on June 15, 2017.

79. This strategic decision to design and launch a newly designed tibial baseplate is an admission, or at the very least strong evidence, that the original ATTUNE Tibial Tray (baseplate) is defective and prone to failure.

80. However, upon information and belief, to date Defendants have not recalled the defective tibial baseplate or informed consumers and surgeons about the dangers of its use.

81. Defendants requested FDA approval of the new tibial baseplate by application dated March 17, 2017 which was "prepared" by Defendants on March 16, 2016. The application requested clearance of a new tibial baseplate component as part of the Attune™ Knee Total System, which, upon information and belief, has been called the "Attune S+ Technology" ("ATTUNE S+") by Defendants. In particular, the application identified the design changes that were implemented with the ATTUNE

S+, including a newly designed "keel to provide additional stability," "recessed undercut cement pockets," and a "grit blasted surface for enhanced cement fixation" or microblast finish.

82. Additionally, according to DePuy, the ATTUNE S+ tibial baseplate also features macro geometry and 45 degree undercut pockets designed to provide a macro-lock between the cement-implant interface. According to DePuy, the "ATTUNE S+ Technology finishing process increases the surface roughness compared with other, DePuy Synthes clinically proven, tibial tray designs that were tested."

83. Defendants knew about the design defects and resulting failures with the original ATTUNE tibial baseplate long before the newly designed tibial baseplate (ATTUNE S+) was cleared in June of 2017, yet they failed to share this information with orthopedic surgeons using the Attune devices. In fact, the application for approval for the ATTUNE S+ was submitted by DePuy to the FDA on March 16, 2016, and many surgeons are still in the dark about the new and improved Attune design.

84. By March 16, 2016 or before, Defendants had apparently recognized the existence of high failure rates of the original ATTUNE tibial baseplate, identified the defects and/or mechanisms of failure associated with it, researched and designed the new tibial tray/baseplate (Attune S+), conducted testing of this new tibial baseplate, as detailed in the application, and submitted the application to the FDA.

85. Although Defendants obviously knew about the high number of ATTUNE failures resulting in revision surgeries, they failed to warn surgeons, consumers and patients, and allowed the original, defective design to continue to be

implanted by unsuspecting surgeons into unsuspecting patients., including Plaintiff and Plaintiff's physicians.

86. In fact, beginning in December 2016, DePuy began openly admitting, in its responses in the MAUDE failure reports, that the ATTUNE Devices were failing.

87. Although DePuy decided to make a change, it did not inform the surgeons, consumers and/or patients.

88. After being notified of premature tibial baseplate failures, Defendants began blaming implanting surgeons and their surgical technique for the failures of the ATTUNE tibial baseplates rather than the ATTUNE's inherent defects, which Defendants knew existed long ago but purposefully hid from doctors and patients.

89. According to Defendants, the ATTUNE Device produces better stability of the knee in deep flexion, reduces the joint forces, and produces better patella tracking, operative flexibility and efficiency, and implant longevity. Defendants aggressively marketed the ATTUNE based on these assertions. Despite these claims, large numbers of revision cases appeared in a short period resulting from the defects in the ATTUNE tibial baseplate.

90. Patients were promised they could recover faster, and engage in more active lifestyles. Contrary to Defendants' representations, however, the ATTUNE Device is prone to failure, causing patients to experience additional pain and injury.

91. Defendants designed, manufactured, tested, labeled, packaged, distributed, supplied, marketed, advertised, and/or otherwise engaged in all activities that are part of the sale and distribution of medical devices, and by these activities,

caused ATTUNE Devices to be placed into the stream of commerce throughout the United States and within Louisiana.

92. Defendants actively and aggressively marketed to doctors and the public that the ATTUNE Devices were safe and effective total knee prostheses.

93. From the time that Defendants first began selling ATTUNE Devices, the product labeling and product information for the ATTUNE Device failed to contain adequate information, instructions, and warnings concerning the increased risk that the ATTUNE Device fails at an extremely high rate.

94. Despite Defendants' knowledge of the serious injuries associated with the use of the ATTUNE Device, Defendants continue to engage in marketing and advertising programs which falsely and deceptively create the perception that the ATTUNE Device is safe.

95. Upon information and belief, Defendants downplayed the health risks associated with the ATTUNE Device through promotional literature and communications with orthopedic surgeons. Defendants deceived doctors, including Plaintiff's surgeons, and potential users of the ATTUNE Device by relaying positive information, while concealing the nature and extent of the known adverse and serious health effects of the ATTUNE.

96. Based on the design changes made to the original ATTUNE tibial baseplate before it was put on the market, and the number of failures reported since it was launched, Defendants, through their premarketing and post-marketing

analysis, knew or should have known that the ATTUNE Device was prone to fail. Plaintiff alleges that the ATTUNE Device is defective and unreasonably dangerous.

FRAUDULENT CONCEALMENT

97. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully set forth herein and further alleges as follows.

98. Any applicable statutes of limitations have been tolled by the intentional and ongoing concealment and denial of the facts as alleged herein, namely the fraudulent concealment by Defendants of the defects existing in the ATTUNE Device.

99. Defendants have intentionally failed to disclose critical information and facts about the ineffectiveness and dangers of its ATTUNE Device to Plaintiff.

100. Defendants have a duty to accurately and completely disclose critical information and facts about the ineffectiveness and dangers of its ATTUNE Device to the Plaintiff as well as his physicians.

101. Because of their breach of their duty to disclose critical information and facts about the ineffectiveness and dangers of the ATTUNE Device, the Defendants are estopped from relying on any statute of limitations defense.

102. Indeed, to this day the Defendants have not yet fully acknowledged to physicians or patients, including Plaintiff, that the ATTUNE device is unsafe and defective.

103. As a result of Defendants' ongoing unlawful and fraudulent concealment of the defects of the ATTUNE Device, any statute of limitations has been suspended

with respect to claims that Plaintiff could bring against Defendants now or in the future.

CLAIMS FOR RELIEF

COUNT I
(Negligence, Gross Negligence, Willful and Wanton Conduct: Design Defect As to All Defendants)

104. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

105. At all times relevant herein, Defendants designed, selected, inspected, tested, assembled, equipped, marketed, distributed, and sold the ATTUNE Device and its components, including the Device's tibial baseplate system.

106. At all times relevant herein, Defendants designed the ATTUNE Device and its components including the Device's tibial baseplate system and each Defendant owed Plaintiff a duty of reasonable care to design, select, inspect, test, assemble, equip, market, distribute, and sell the ATTUNE Device and its components so that it would not be unreasonably dangerous when used as intended.

107. At all times relevant herein, as designed, selected, inspected, tested, assembled, equipped, marketed, distributed, and sold by Defendants the ATTUNE Device is and was defective, unreasonably dangerous, and unsafe for foreseeable and intended users because, among other things, the tibial baseplate system is and was inadequately designed and constructed, and failed to provide the degree of function and safety a reasonable consumer would expect with foreseeable use in the real world environment of its expected and intended use.

108. The ATTUNE Device caused serious complications, including debonding, bone loss, and detachment at the tibial baseplate – cement interface.

109. At all times relevant herein, Defendants each were collectively and respectively negligent, grossly negligent, willful, wanton, reckless and careless in the design of the subject ATTUNE Device and breached their duties of care owed to Plaintiff by, among other things:

a. failing to adopt and implement adequate safety hierarchy procedures and policies;

b. failing to design, test, manufacture, test and/or assemble the ATTUNE Device so as to prevent it from having the serious risk of loosening of the tibial baseplate system;

c. failing to ensure that the subject ATTUNE Device was reasonably safe and effective;

d. failing to exercise reasonable care in the design of the subject ATTUNE Device and its tibial baseplate system;

e. failing to exercise reasonable care in the testing of the subject ATTUNE Device and its tibial baseplate system;

f. failing to exercise reasonable care in the inspection of the subject ATTUNE Device and its tibial baseplate system;

g. failing to adopt and implement adequate warnings regarding the subject ATTUNE Device and its tibial baseplate system;

h. failing to incorporate appropriate quality assurance procedures in design of the of the subject ATTUNE Device and its tibial baseplate system; and

i. and on such other and further particulars as the evidence may show.

110. At all times relevant, as a direct and proximate result of Defendants' negligence and the breaches complained of herein, Plaintiff has suffered serious and

permeant injuries including scarring, excruciating pain and suffering, mental anguish, and emotional distress.

111. WHEREFORE, Defendants are liable, and Plaintiff demands judgment for a sum in excess of $75,000.00, together with interest, costs of suit, and all such other and further relief as the Court deems proper, for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and any such other and further relief as this Honorable Court or jury may deem just and proper in an amount to be determined at trial.

COUNT II
(Negligence, Gross Negligence, Willful and Wanton Conduct:
Manufacturing Defect As to All Defendants)

112. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

113. At all times relevant herein, all Defendants took part in and/or were responsible for the manufacture, selection, inspection, testing, design, assemblage, equipment, marketing, distribution, and/or sale of the subject ATTUNE Device including but not limited to its tibial baseplate system and its component parts, to Plaintiff at some point prior to the initial implant on or about March 7, 2014.

114. At all times relevant herein, Defendants manufactured the subject ATTUNE Device including but not limited to its tibial baseplate system and its component parts and each Defendant owed Plaintiff a duty of reasonable care to manufacture, select, inspect, test, assemble, equip, market, distribute, and sell the

subject ATTUNE Device including but not limited to its tibial baseplate system and its component parts during expected and intended use in the real world environment.

115. At all times relevant herein, as manufactured, selected, inspected, tested, assembled, equipped, marketed, distributed, and sold by Defendants, the ATTUNE device is and was ineffective, unreasonably dangerous, and unsafe for foreseeable users because its tibial baseplate system is inadequately designed and constructed, and failed to provide the degree of effectiveness and safety a reasonable consumer would expect in foreseeable use in the real world environment.

116. At all times relevant herein, Defendants each were collectively and respectively negligent, grossly negligent, willful, wanton, reckless and careless and breached their duties of care owed to Plaintiff by, among other things:

a. failing to adopt and implement adequate safety hierarchy procedures and policies;

b. failing to manufacture, test, assemble and/or install the subject ATTUNE Device and its tibial baseplate system so as to prevent it from excessive loosening;

c. failing to ensure that the subject ATTUNE Device and its tibial baseplate system was reasonably safe and effective;

d. failing to exercise reasonable care in the manufacture of the subject ATTUNE Device and its tibial baseplate system;

e. failing to exercise reasonable care in the testing of the subject ATTUNE Device and its tibial baseplate system;

f. failing to exercise reasonable care in the inspection of the subject ATTUNE Device and its tibial baseplate system;

g. failing to adopt and implement adequate warnings regarding the subject ATTUNE Device and its tibial baseplate system;

h. failing to incorporate appropriate quality assurance procedures in manufacture of the of the subject ATTUNE Device and its tibial baseplate system; and

i. and on such other and further particulars as the evidence may show.

117. As a direct and proximate result of the Defendants' negligence and the breaches complained of herein, Plaintiff suffered serious and permeant injuries including scarring, excruciating pain and suffering, mental anguish, and emotional distress.

118. By reason of the foregoing, Plaintiff is entitled to recover for all general and special damages he sustained as a direct and proximate result of Defendants' negligent and grossly negligent acts or omissions.

119. WHEREFORE, Defendants are liable, and Plaintiff demands judgment for a sum in excess of $75,000.00, together with interest, costs of suit, and all such other and further relief as the Court deems proper, for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and any such other and further relief as this Honorable Court or jury may deem just and proper in an amount to be determined at trial.

COUNT III
(Strict Liability in Tort As to All Defendants)

120. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

121. At all times relevant herein, Defendants are strictly liable for designing, testing, manufacturing, distributing, selling, and/or placing a defective and

unreasonably dangerous product into the stream of commerce, namely the ATTUNE Device and its components.

122. At all times relevant herein, the subject ATTUNE Device and its tibial baseplate system were defective and unreasonably dangerous as to its design, manufacture, distribution and warnings, causing the device to be in a defective condition that made it unreasonably dangerous for its intended use.

123. The ATTUNE Device caused serious complications, including debonding, bone loss, and detachment at the tibial baseplate – cement interface.

124. At all times relevant herein, all Defendants took some part in the manufacture and sale of the subject ATTUNE Device to Plaintiff prior to the initial March 7, 2014 implant.

125. At all times relevant, the subject ATTUNE Device was being used in an intended and/or foreseeable manner and Plaintiff neither misused nor materially altered the subject ATTUNE Device, and upon information and belief, the subject ATTUNE Device was in the same or substantially similar condition that it was in at the time of purchase.

126. At all times relevant herein, the subject ATTUNE Device is and was unreasonably dangerous and defective because it was designed, manufactured and sold with an tibial baseplate system which had the propensity to loosen when used as expected and intended in the real world environment.

127. At all times relevant herein, Defendants were aware of feasible alternative designs which would have minimized or eliminated altogether the risk of injury posed by the ATTUNE Device.

128. At all times relevant herein, Defendants had a duty to warn users of the dangers associated with the ATTUNE Device.

129. At all times relevant herein, Defendants failed to warn of the inherent and latent defects that made ATTUNE Device dangerous and unsafe for its intended use.

130. At all times relevant herein, Defendants failed to design, test, manufacture, inspect, and/or sell a product that was safe for its intended use.

131. As a direct and proximate result of the Defendants' negligence, failures, omissions, and breaches complained of herein, Plaintiff has incurred serious and permeant injuries including scarring, excruciating pain and suffering, mental anguish, and emotional distress.

132. WHEREFORE, Defendants are liable, and Plaintiff demands judgment for a sum in excess of $75,000.00, together with interest, costs of suit, and all such other and further relief as the Court deems proper, for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and any such other and further relief as this Honorable Court or jury may deem just and proper in an amount to be determined at trial.

COUNT IV
(Failure to Warn As to All Defendants)

133. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

134. At all times relevant herein, Defendants as manufacturers of subject ATTUNE Device owed duties to warn of foreseeable dangerous conditions of the subject ATTUNE Device which would impair its safety.

135. At all times relevant herein, Defendants knew or should have known that the subject ATTUNE Device's tibial baseplate system had the propensity to loosen when used as expected and intended in the real world environment.

136. At all times relevant herein, Defendants would have had and had no reason to believe that users would realize this potential danger.

137. At all times relevant herein, Defendants affirmatively failed to exercise reasonable care to inform users of the ATTUNE Device's dangerous condition created by the tibial baseplate system loosening.

138. As a direct and proximate result of Defendants' failure to warn of the dangers posed by the the tibial baseplate system and the breaches complained herein, Plaintiff suffered injuries including, but not limited to, excruciating pain and suffering, mental anguish, and emotional distress.

139. By reason of the foregoing, Plaintiff is entitled to recover for all general and special damages he sustained as a direct and proximate result of Defendants' negligent and grossly negligent acts or omissions.

140. WHEREFORE, Defendants are liable, and Plaintiff demands judgment for a sum in excess of $75,000.00, together with interest, costs of suit, and all such other and further relief as the Court deems proper, for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and any such other and further relief as this Honorable Court or jury may deem just and proper in an amount to be determined at trial.

COUNT V
(Breach of Implied Warranties As to All Defendants)

141. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

142. At all times relevant herein, the Defendants are and were "merchants" with respect to the ATTUNE Device at issue in this Complaint.

143. At all times relevant herein, the Defendants manufactured and sold the subject Vehicle as "good" within the meaning of the relevant statutory provisions.

144. Consequently, at the time of its sale to Plaintiff, the Defendants impliedly warranted that the subject ATTUNE Device was merchantable, including that it was fit for its ordinary purposes as a safe and effective medical device that it could pass without objection in the trade, and that it was adequately contained, packaged, and labeled.

145. At all times relevant herein, the Defendants breached the implied warranty of merchantability as it concerns Plaintiff because the subject ATTUNE Device was not fit for the ordinary purposes for which it was anticipated to be used—

namely as an artificial knee replacement suitable for use in the real world environment.

146. Specifically, the subject ATTUNE Device's tibial baseplate system was unreasonably dangerous and defective because it was designed, manufactured and sold with components which had the propensity to loosen during use in normal and foreseeable conditions.

147. At all times relevant herein, the Defendants further breached the implied warranty of merchantability to Plaintiff as the subject ATTUNE Device they designed, manufactured and sold was equipped with a tibial baseplate system that had the propensity to loosen during use in normal and foreseeable conditions, and, therefore, it would not pass without objection in the trade.

148. At all times relevant herein, the Defendants further breached the implied warranty of merchantability to Plaintiff because the subject ATTUNE Device and tibial baseplate system was not adequately contained, packaged, and labeled in that the directions and warnings that accompanied the subject device did not adequately instruct the implanting physician or Plaintiff on the proper use of the device in light of the fact that the tibial baseplate system had the propensity to loosen during use in normal and foreseeable conditions.

149. As a direct and proximate result of the Defendants' collective and respective breaches of the implied warranty of merchantability, as alleged herein, Plaintiff suffered injuries including, but not limited to, excruciating pain and suffering, mental anguish, and emotional distress.

150. WHEREFORE, Defendants are liable, and Plaintiff demands judgment for a sum in excess of $75,000.00, together with interest, costs of suit, and all such other and further relief as the Court deems proper, for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and any such other and further relief as this Honorable Court or jury may deem just and proper in an amount to be determined at trial.

COUNT VI
(Damages As to All Defendants)

151. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

152. Because of Plaintiff's bodily injuries directly and/or proximately caused by Defendants' conduct, Plaintiff is entitled to reasonable and proper compensation for the following legal damages, including but not limited to:

a. Past and future medical expenses and charges;

b. Past and future physical pain and mental anguish;

c. Past and future physical impairment;

d. Past and future disfigurement; and

e. Past lost wages and future lost wage-earning capacity.

153. WHEREFORE, Defendants are liable, and Plaintiff demands judgment for a sum in excess of $75,000.00, together with interest, costs of suit, and all such other and further relief as the Court deems proper, for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and

any such other and further relief as this Honorable Court or jury may deem just and proper in an amount to be determined at trial.

COUNT VII
(Punitive Damages As to All Defendants)

154. Plaintiff adopts and re-alleges each prior paragraph as if set forth fully herein.

155. In addition to the general and special damages suffered by Plaintiff and proximately caused by the Defendant manufacturers' bad actions and inactions, as it concerns the defective operations and performance of the subject ATTUNE Device, and as previously alleged and set forth in this Complaint, Plaintiff also, as a further result of Defendants' reckless, willful, negligent and grossly negligent conduct, is entitled to recover punitive damages in accordance with the law and evidence in this case in an amount to be determined at trial.

156. More specifically, the actions and inactions of Defendants were of such a character as to constitute a pattern or practice of willful, wanton and reckless misconduct and caused serious and substantial harm to the Plaintiff, resulting in significant and ongoing damages arising from the Incident at issue in this Complaint.

157. Furthermore, Defendants have acted with such a conscious and flagrant disregard for the rights and safety of Plaintiff, and/or have deliberately engaged in willful, wanton and reckless disregard for the life and safety of the Plaintiff so as to entitle him to punitive and exemplary damages in an amount sufficient to keep such wrongful conduct from being repeated.

158. WHEREFORE, Defendants are liable, and Plaintiff demands judgment for a sum in excess of $75,000.00, together with interest, costs of suit, and all such other and further relief as the Court deems proper, for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and any such other and further relief as this Honorable Court or jury may deem just and proper in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

a. For a trial by jury and judgment against Defendants for such sums as actual and other compensatory damages, including pain and suffering and permanent impairment, in an amount as a jury may determine and in excess of the minimum jurisdictional limit of this Honorable Court, a sum in excess of $75,000.00, together with interest, costs of suit, and all such other and further relief as the Court deems proper;

b. For exemplary and punitive damages against Defendants in an amount as a jury may determine to halt such conduct;

c. For the costs of this suit, including attorney's fees; and

d. For such other and further relief to which they may be entitled and as this Honorable Court may deem just and proper.

REQUEST FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury as to all issues triable by jury, as enumerated and set forth in more detail in this Complaint.

Dated: May 31, 2018

Respectfully submitted,

By: _____
Attorneys for Plaintiff

Christina M. Flores, Esq. (FL Bar # 125966)
HART MCLAUGHLIN & ELDRIDGE, LLC
121 West Wacker Drive, Suite 1050
Chicago, Illinois 60601
312.955.0545
cflores@hmelegal.com

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

DONALD SIZEMORE

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Hart McLaughlin & Eldridge, LLC
121 W. Wacker Drive, Suite 1050
Chicago, Illinois 60601 (312) 955-0545

DEFENDANTS

DEPUY SYNTHES SALES, INC. d/b/a/ DEPUY SYNTHES JOINT RECONSTRUCTION, et al.

County of Residence of First Listed Defendant Bristol
(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

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

TORTS

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

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

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

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

PRISONER PETITIONS

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

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

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

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

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

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

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

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

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 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

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:
Personal injury caused by Defendants defective medical device

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
05/30/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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