

Daniel P. Massey #006089
The Massey Law Firm, P.C.
14300 N Northsight Blvd, Ste 208
Scottsdale, Arizona 85260
(602) 955-0055
dan@dmasseylaw.com
Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

JANET SMITH,

Plaintiffs,

v.

Case No. _____

JOHNSON & JOHNSON SERVICES,
INC., a foreign for-profit Corporation;
JOHNSON & JOHNSON, INC., a foreign
for-profit Corporation; JOHNSON &
JOHNSON CONSUMER COMPANIES,
INC., a foreign for-profit Corporation;
DEPUY ORTHOPEDICS, INC., a foreign
for-profit Corporation; and DOE
DEFENDANTS 1-100,

Defendants.

COMPLAINT

COMPLAINT

Plaintiff JANET SMITH, for her Complaint against Defendants JOHNSON &
JOHNSON SERVICES, INC., JOHNSON & JOHNSON, INC., JOHNSON & JOHNSON
CONSUMER COMPANIES, INC., DEPUY ORTHOPEDICS, INC., and DOE
DEFENDANTS 1 through 100, allege and aver as follows:

1. Plaintiff JANET SMITH is and was at all times relevant a resident of the County
of Maricopa, State of Arizona.

2. Upon information and belief, Defendant JOHNSON & JOHNSON SERVICES,
INC., is and was at all times relevant a foreign for-profit Corporation, incorporated in New
Jersey, and doing business in the County of Maricopa, State of Arizona.

1 3. Upon information and belief, Defendant JOHNSON & JOHNSON,
2 INCORPORATED, is and was at all times relevant a foreign for-profit Corporation,
3 incorporated in South Carolina, and doing business in the County of Maricopa, State of
4 Arizona.

5 4. Upon information and belief, Defendant JOHNSON & JOHNSON
6 CONSUMER COMPANIES, INC., is and was at all times relevant a foreign for-profit
7 Corporation, incorporated in New Jersey, and doing business in the County of Maricopa, State
8 of Arizona.

9 5. Upon information and belief, Defendant DEPUY ORTHOPEDICS, INC., is and
10 was at all times relevant a foreign for-profit Corporation, incorporated in Indiana, and doing
11 business in the County of Maricopa, State of Arizona.

12 6. Plaintiff is unaware of the true names and capacities of the Defendants sued
13 herein as Doe Defendants and therefore sue said Defendants by such fictitious names. Plaintiff
14 is informed and believes and therefore alleges such fictitiously named Defendants are or may
15 be responsible in some manner for the occurrences herein alleged, and that Plaintiffs' damages,
16 as herein alleged, were proximately caused by their conduct. Plaintiff is informed and believes
17 and therefore alleges that at all times herein mentioned, Defendants, and each of them, were the
18 agents, servants, and/or employees of each of the other Defendants herein, and were acting with
19 the permission and consent and within the course and scope of said agency and employment.

20 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1391 in that
21 the Plaintiff and Defendants are citizens of different states and the amount in controversy
22 exceeds \$75,000.

23 8. Venue is proper pursuant to 28 U.S.C. §1391 because the claims made in this
24 case arose in this District.

25 //

26 //

FACTUAL ALLEGATIONS

9. On January 31, 2013, the Plaintiff underwent a total knee arthroplasty to her right knee. Her physician, Stuart Kozinn, MD, inserted a Depuy Sigma Femoral Posterior Stabilized Cemented size 4 right, a P.F.C. Sigma Tibial Tray Rotating Platform size 3, a 10mm Tibial Insert Rotating Platform, and a 32mm Round Domed Patella. The prostheses were affixed using Depuy Cement.

10. This surgery was medically indicated because the Plaintiff suffered from right-knee osteoarthritis, bone-on-bone grinding, and varus deformity of the right knee.

11. From February 19, 2013 through March 22, 2013, Plaintiff received post-operative physical therapy to the right knee.

12. Beginning on May 8, 2013, Plaintiff began to have complaints of shooting and stabbing pain down her right knee which began two (2) weeks prior; she denied any injury. Dr. Kozinn's assessment indicating potential patella grind syndrome and conservative, watchful treatment.

13. The Plaintiff continued to suffer pain upon movement to her right knee throughout the summer of 2013.

14. In November, 2013, the Plaintiff again returned to Dr. Kozinn with complaints of dull pain and a creaking sensation to her right knee. Again, Dr. Kozinn recommended conservative treatment and watchful waiting.

15. On February 26, 2014, the Plaintiff again saw Dr. Kozinn and appeared to be doing better.

16. The Plaintiff saw Dr. Kozinn again on February 25, 2015, at which time she had only occasional episodes of swelling to the right knee but was otherwise free of complaint.

17. On September 10, 2015, Plaintiff presented to David Camarata, MD, on referral from Cory Nelson, MD, with complaints of bilateral knee pain. It was at this visit that Plaintiff stated she had developed an "infection" post-operatively to her total right knee arthroplasty and

1 required additional surgery. Dr. Camarata diagnosed failed right total knee arthroplasty
2 secondary to instability and recommended revision surgery.

3 18. On November 11, 2015, Plaintiff underwent pre-operative evaluation with
4 David Camarata, MD, in preparation for revision surgery to her right total knee arthroplasty.

5 19. On November 16, 2015, Plaintiff underwent right total knee revision using
6 constrained condylar prosthesis.

7 20. Upon post-operative clinical evaluation on December 1, 2015, Plaintiff was
8 noted to have excellent alignment of prosthesis without any evidence of loosening wear or
9 significant problems.

10 21. On or about January 6, 2015, Plaintiff was informed the Defendant's product
11 failure may be due to a defect of that product.

12 **COUNT I: PRODUCTS LIABILITY**

13 22. Plaintiff reasserts and incorporates herein by reference ¶¶ 1-20 as if set forth
14 fully herein.

15 23. Defendant and each of them are in the business of selling prosthetic knee
16 replacement components, including but not limited to Depuy Sigma Femoral Posterior
17 Stabilized Cemented size 4 right, a P.F.C. Sigma Tibial Tray Rotating Platform size 3, a 10mm
18 Tibial Insert Rotating Platform, and a 32mm Round Domed Patella for the purpose of being
19 used to replace the human knee. Defendants participated in the manufacture and sale of this
20 product.

21 24. The prosthetic knee components used in Plaintiffs' knee replacement surgery on
22 January 31, 2013 failed to perform as designed, and such failure was caused by the defect of
23 the product.

24 25. The prosthetic components were implanted into Plaintiff without a substantial
25 change in the condition in which they were sold.

26. As a direct and proximate result of the manufacture and/or sale by Defendants and each of them of the Depuy Sigma Femoral Posterior Stabilized Cemented size 4 right, a P.F.C. Sigma Tibial Tray Rotating Platform size 3, a 10mm Tibial Insert Rotating Platform, and a 32mm Round Domed Patella, Plaintiff JANET SMITH suffered general and special damages in amounts to be shown at trial.

COUNT II: BREACH OF IMPLIED WARRANTY

27. Plaintiff reasserts and incorporates herein by reference ¶¶ 1-20 as if set forth fully herein.

28. The above-stated product was sold with an implied warranty that the goods shall be merchantable and fit for ordinary consumption for which the goods are used.

29. The implied warranty of merchantability in the case of the sale of the Depuy Sigma knee prosthetic components is to provide components that can be affixed by the use of properly prepared Depuy Cement which would permit the prosthetic to operate without catastrophic failure. Defendants did not meet this warranty.

30. As a result of placing and the failure of the faulty tibial component into the stream of commerce which was ultimately sold for and implanted into Plaintiffs' right knee, Defendants and each of them breached the implied warranty of merchantability.

31. As a direct and proximate result of the breach of implied warranty of merchantability, Plaintiff JANET SMITH suffered general and special damages in amounts to be shown at trial.

COUNT III: NEGLIGENCE

32. Plaintiff reasserts and incorporates herein by reference ¶¶ 1-20 as if set forth fully herein.

33. Upon information and belief, defendants, all of them, were aware or reasonably should have been aware of the defective product.

34. Despite full knowledge of these defects and the knowledge that their failure to take any steps to fully advise physicians and patients would certainly cause injury to patients, the Defendants negligently took no action.

35. Based on the acts described above, Defendants and each of them are liable to Plaintiff for negligence.

36. As a direct and proximate result of Defendants' negligence, Plaintiff JANET SMITH suffered general and special damages in amounts to be shown at trial.

**COUNT IV: NEGLIGENT AND INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS**

37. Plaintiff reasserts and incorporates herein by reference ¶¶1-20 as if fully set forth herein.

38. In performing the acts described herein, Defendants and each of them negligently and/or intentionally inflicted pain which resulted in severe emotional distress to the Plaintiff.

39. As a direct and proximate result of Defendants' negligent and/or intentional infliction of emotional distress, Plaintiff JANET SMITH has suffered general and special damages in amounts to be shown at trial.

COUNT V: PUNITIVE DAMAGES

40. Plaintiff reasserts and incorporates herein by reference ¶¶1-20 as if fully set forth herein.


41. In performing the acts described herein, Defendants and each of them acted wantonly, oppressively, or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, and they otherwise engaged in willful misconduct with such entire want of care so as to raise a presumption of conscious indifference to the consequences, and, therefore, Defendants are liable to Plaintiff JANET SMITH for punitive damages in an amount to be shown at trial.

WHEREFORE, Plaintiff prays:

- a) For judgment in her favor and against Defendants JOHNSON & JOHNSON SERVICES, INC., JOHNSON & JOHNSON, INC., JOHNSON & JOHNSON CONSUMER COMPANIES, INC., DEPUY ORTHOPEDICS, INC., and DOE DEFENDANTS 1 through 100;
- b) For general damages in amounts to be shown at trial;
- c) For special damages in amounts to be shown at trial;
- d) For punitive damages in amounts to be shown at trial; and
- e) For attorneys' fees, costs, prejudgment and post-judgment interest and for such other and further relief, both legal and equitable, as the Court deems just and proper under the circumstances.

DATED this 8th day of January, 2018.

THE MASSEY LAW FIRM, PC

By 
Daniel P. Massey, Esq.
14300 N Northsight Blvd, Ste 208
Scottsdale, Arizona 85260
Attorneys for Plaintiff

ORIGINAL of the foregoing
filed with the Clerk of Court
this 8th day of January, 2018.

/s/ Donna L Fox

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 JANET SMITH (b) County of Residence of First Listed Plaintiff <u>Maricopa County, Arizona</u> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small> (c) Attorneys (Firm Name, Address, and Telephone Number) <u>The Massey Law Firm, PC</u> <u>Daniel P. Massey</u> <u>14300 N Northsight Blvd, Ste 208</u> <u>SCOTTSDALE AZ 85260 (480) 955-0055</u>	DEFENDANTS Johnson & Johnson Services, Inc., Johnson & Johnson, Inc., Johnson & Johnson Consumer Companies, Inc., Depuy Orthopedics, Inc., Doe Defendants 1-100 County of Residence of First Listed Defendant <u>Middlesex, New Jersey</u> <small>(IN U.S. PLAINTIFF CASES ONLY)</small> 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)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		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
	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																				

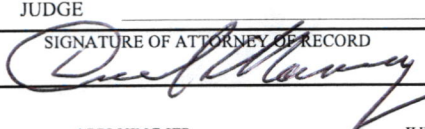
IV. NATURE OF SUIT (Place an "X" in One Box Only)			Click here for: Nature of Suit Code Descriptions.	
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 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	TORTS PERSONAL INJURY <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 PERSONAL INJURY <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 PERSONAL PROPERTY <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	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <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
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <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)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 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>28 U.S.C. 1391</u> Brief description of cause: <u>Product liability for prosthetic knee implant</u>
----------------------------	--

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
-------------------------------------	---	---

VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____ DOCKET NUMBER _____
-------------------------------------	--

DATE 01/08/2018 FOR OFFICE USE ONLY	SIGNATURE OF ATTORNEY OF RECORD 	JUDGE _____ MAG. JUDGE _____
RECEIPT # _____ AMOUNT _____	APPLYING IFP _____	JUDGE _____ MAG. JUDGE _____