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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THOMAS SPENCER **Plaintiff,** **v.** **C.R. BARD and DAVOL INC.,** **Defendants.**	**Civil Action No.:** **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff THOMAS SPENCER, by and through his undersigned counsel, brings this Complaint for damages against Defendants and in support thereof states the following:

1. This is a device tort action brought on behalf of the above-named Plaintiff arising out of the failure of Defendants' hernia mesh product, the Bard Mesh PerFix Plug ("PerFix Plug"). As a result, Plaintiff Thomas Spencer has suffered permanent injuries and significant pain and suffering, emotional distress, lost wages and earning capacity, and diminished quality of life. Plaintiff respectfully seeks all damages to which he may be legally entitled.

STATEMENT OF PARTIES

2. Plaintiff is, and was, at all relevant times, a citizen and resident of Idaho and the United States.

3. C.R. Bard, Inc. ("Bard") is incorporated and based in New Jersey. Bard is a multinational marketer, promoter, seller, producer, manufacturer, and developer of medical devices. Bard controls the largest share of the hernia mesh market. It is the corporate parent/stockholder of Davol and participates in the manufacture and distribution of the PerFix Plug. Bard also manufactures and supplies Davol with material that forms part of the Bard Mesh PerFix Plug.

4. Davol, Inc. ("Davol") is incorporated in Delaware and has its principal place of business in Rhode Island. Davol is a medical device company involved in the research, development, testing, manufacture, production, marketing, promotion and/or sale of medical devices, including an inguinal dart-shaped hernia mesh composed of polypropylene and known as the PerFix Plug.

5. Bard was at all times relevant responsible for the actions of Davol, and exercised control over Davol's functions specific to the oversight of and compliance with applicable safety standards relating to and including PerFix Plug sold in the United States. In such capacity, Bard committed or allowed to be committed tortious and wrongful acts, including the violation of numerous safety standards relating to device manufacturing, quality assurance/control, and conformance with design and manufacturing specifications. Bard's misfeasance and malfeasance caused Plaintiff to suffer injury and damages.

6. Defendants are individually, jointly and severally liable to Plaintiff for damages suffered by Plaintiff arising from their design, manufacture, marketing, labeling, distribution, sale

and placement of the defective PerFix Plug at issue in this suit. All acts were effectuated directly and indirectly through Defendant's respective agents, servants, employees and/or owners, acting within the course and scope of their representative agencies, services, employments and/or ownership.

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

VENUE AND JURISDICTION

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a), based on complete diversity of citizenship between Plaintiff and all Defendants. The amount in controversy exceeds $75,000.00.

9. Venue is proper in this Court pursuant to 28 U.S.C. §1332(a)-(c) by virtue of the facts that (a) a substantial part of the acts or omissions giving rise to Plaintiff's claims occurred in this District; and (b) Defendants' products are sold to and consumed by individuals in the State of New Jersey. Defendants are thus subject to personal jurisdiction in this action and made "residents" of this judicial District.

10. Defendants have conducted, and continue to conduct, substantial business in the State of New Jersey and in this District; distribute PerFix Plug in this District; receive substantial compensation and profits from sales of PerFix Plug in this District; and make material omissions and misrepresentations and breaches of warranties in this District, so as to subject them to personal jurisdiction in this District.

11. Davol is registered to transact business in New Jersey.

FACTS COMMON TO ALL COUNTS

12. On or about March 24, 2010, at age 19, Plaintiff Thomas Spencer underwent ring inguinal hernia repair by Dr. John M. Livingston at Treasure Valley Hospital in Boise, Idaho. A small PerFix Plug, Ref. No. 0112950, Lot No. HURE2383 was implanted in Plaintiff during this repair.

13. Defendants manufactured, sold, and/or distributed the PerFix Plug to Plaintiff, through Plaintiff's doctors, to be used for treatment of hernia repair.

14. On or about February 10, 2016, Plaintiff Thomas Spencer underwent removal of the defective Perfix Plug and ilioinguinal, iliohypogastric, and genitofemoral neurectomy by Dr. Robert Yates at NorthWest Hospital and Medical Center in Seattle, Washington. Upon visualizing the PerFix Plug, Dr. Yates noted "this was particularly challenging given the fact that this mesh plug is migrated into what appear to be actually the peritoneal cavity… There are dense inflammatory changes in the area and using combination of sharp dissection and minimal electrocautery, the mesh was completely mobilized off what appeared to be the cord structures. However this was particularly difficult to interpret anatomy mostly because of the chronic inflammatory changes and mass effect of this mesh… there may have been a very small amount of vascular supply that was still running in what appear to be the location of where the spermatic cord should be. The vas deferens was identified and also clearly had been transected at this time."

15. Plaintiff continues to suffer pain and permanent disfigurement.

16. Defendants' PerFix Plug is a three-dimensional mesh product containing layers of polypropylene with a separate pre-shaped onlay polypropylene patch. Defendants market it as a mesh to be used in repairing hernias.

17. Defendants' PerFix Plug product contains several layers of polypropylene mesh. Despite Defendants' claims that this material is inert, a substantial body of scientific evidence shows that the mesh material is biologically incompatible with human tissue and promotes an immune response in a large subset of the population receiving the product. This immune response promotes degradation and contracture of the polypropylene mesh, as well as the surrounding tissue, and can contribute to the formation of severe adverse reactions to the mesh.

18. Upon information and belief, Defendants' numerous suppliers of various forms of polypropylene cautioned all users in their United States Material Safety Data Sheet that the polypropylene was not to be used for medical applications involving permanent implantation in the human body or permanent contact with internal body fluids or tissues.

19. Defendants failed to warn or notify doctors, regulatory agencies, and consumers of the severe and life-threatening risks associated with polypropylene.

20. PerFix Plug contains the following components:

a. several layers of polypropylene constructed as a fluted outer layer with multiple inner layers; and
b. one layer of pre-shaped polypropylene mesh with the option to be implanted as an onlay over the plug once implanted.

21. Defendants' PerFix Plug can contract up to 90% post-implantation.

22. In 2015, a study compared the recurrence rates for plug-and-patch hernia repair with standard flat mesh hernia repair utilizing the "Lichtenstein technique." The plug-and-patch had a recurrence rate of 9.9% compared to 5.6% for the standard flat mesh.[1]

23. In 2018, the HerniaSurge Group published *International Guidelines for Groin Hernia Management*. The Guidelines were endorsed by the European Hernia Society, Americas

[1] Nienhuijs, S. and Rosman, C., *Long-term Outcome After Randomizing Prolene Hernia System, Mesh Plug Repair and Lichtenstein for Inguinal Hernia Repair*. Hernia, 19, pp. 77 – 81 (2015).

Hernia Society, Asia Pacific Hernia Society, Afro Middle East Hernia Society, Australasian Hernia Society, International Endo Hernia Society, and European Associated for Endoscopic Surgery and Other Interventional Techniques. The HerniaSurge Group's Guidelines note the following: "The incidence of erosion seems higher with plug versus flat mesh. It is suggested not to use plug repair techniques."

24. Defendants were responsible for the research, design, development, testing, manufacture, production, marketing, promotion, distribution and sale of PerFix Plug, including providing the warnings and instructions concerning the product.

25. Among the intended purposes for which Defendants designed, manufactured and sold PerFix Plug was use by surgeons for hernia repair surgeries. That is the purpose for which the PerFix Plug was implanted in Plaintiff.

26. Defendants represented to Plaintiff and Plaintiff's physicians that the PerFix Plug was a safe and effective product for hernia repair.

ESTOPPEL AND TOLLING OF STATUTE OF LIMITATIONS

27. Plaintiff incorporates the allegations in all prior paragraphs.

28. Plaintiff asserts all applicable state statutory and common law rights and theories related to the tolling or extension of any applicable statute of limitations, including equitable tolling, class action tolling, delayed discovery, discovery rule, and fraudulent concealment.

29. Plaintiff pleads that the discovery rule should be applied to toll the running of the statute until Plaintiff knew, or through the exercise of reasonable care and diligence should have known, of facts indicating his injury, the cause of the injury, and the tortious nature of the wrongdoing that caused the injury.

30. Despite diligent investigation by Plaintiff into the cause of his injuries, including consultations with Plaintiff's medical providers, the nature of the injuries and damages, and their relationship to the PerFix Plug was not discovered, and through reasonable care and diligence could not have been discovered, until a date within the applicable statute of limitations for filing Plaintiff's claims. Therefore, under appropriate application of the discovery rule, the action was filed well within the applicable statutory limitations period.

31. The running of the statute of limitations is tolled due to equitable tolling. Defendants are estopped from asserting a limitations defense due to their fraudulent concealment, through misrepresentations and omissions, from Plaintiff and Plaintiff's physicians of the true risks associated with the PerFix Plug. As a result of Defendants' fraudulent concealment, Plaintiff and his physicians were unaware, and could not have known or have learned through reasonable diligence, that Plaintiff had been exposed to the risks alleged in this Complaint, and that those risks were the direct and proximate result of Defendants' wrongful acts and omissions.

COUNT I: STRICT LIABILITY – MANUFACTURING DEFECT

32. Plaintiff incorporates by reference the allegations in all prior paragraphs.

33. Defendants expected and intended the PerFix Plug to reach users such as Plaintiff in the condition in which the product was sold.

34. The implantation of PerFix Plug in Plaintiff's body was medically reasonable, and was a type of use that Defendants intended and foresaw when they designed, manufactured and sold the product.

35. The PerFix Plug was defectively manufactured when it was implanted in Plaintiff's body.

36. Defendants' poor quality control and general non-compliance resulted in the non-conformance of the PerFix Plug implanted in Plaintiff. The implanted PerFix Plug did not conform to Defendants' intended manufacturing and design specifications.

37. Upon information and belief, Defendants utilized substandard and adulterated polypropylene in the PerFix Plug, which deviated from Defendants' material and supply specifications.

38. As a direct and proximate result of Defendants' defective manufacture of the PerFix Plug, Plaintiff suffered injuries and damages as summarized in this Complaint.

COUNT II: STRICT LIABILITY – DESIGN DEFECT

39. Plaintiff incorporates by reference the allegations in all prior paragraphs.

40. Defendants' PerFix Plug was defectively designed and/or manufactured and was not reasonably safe for its intended use in hernia repair. 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 PerFix Plug, there was an unreasonable risk of severe adverse reactions to the mesh or mesh components including: chronic pain; recurrence of hernia; foreign body response; rejection; infection; 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.

41. The PerFix Plug includes a tapered design, which promotes mesh migration in the direction of the taper.

42. The three-dimensional design of the PerFix Plug promotes mesh contracture or mesh "wadding," "balling," or "knuckling" up.

43. Mesh porosity impacts tissue ingrowth and the inflammatory response. Large-pore meshes have fewer complications than small-pore meshes. A pore size greater than 1.5 mm defines "large-pore-size." Complications continue to decrease as mesh pore size increases beyond 1.5 mm. A small-pore-size decreases tissue incorporation, increases inflammation, and results in a fibrotic reaction. The PerFix Plug has a mesh pore size of less than 0.5 mm.

44. Large-pore flat meshes have a lower risk of mesh-related complications compared to small-pore three-dimensional meshes like Defendants' PerFix Plug.

45. Shrinkage and stiffness of flexible meshes is affected by scar tissue. The PerFix Plug has smaller inter-filament distances and pores, which increases the risk of bridging by scar tissue.

46. Plugs, when compared with flat meshes, have a higher risk of extensive fibrosis and are more likely to stimulate an intense inflammatory reaction, thereby resulting in nonconforming biomechanical properties.

47. Hernia repair with the PerFix Plug necessitates entering both the anterior and posterior compartments, which is not necessary when repairing a hernia with a standard flat mesh. Entering both the anterior and posterior compartments increases scarring, making a subsequent repair for hernia recurrence more difficult.

48. The PerFix Plug has multiple layers of polypropylene, increasing the mesh surface area and foreign body load, which in turn increases the inflammatory and foreign body response.

49. The polypropylene weave of the PerFix Plug produces very small interstices that allow bacteria to enter and hide from the host defenses designed to eliminate them. The bacteria can secrete an encasing slime (biofilm) that further serves to protect them from destruction by white blood cells and macrophages.

50. Observation of mesh under a scanning electron microscope reveals that very small interstices exists between the PerFix Plug mesh fibrils, which are too small for a macrophage to enter to destroy incubating bacteria. Some bacteria are capable of degrading polypropylene.

51. These manufacturing and design defects associated with the PerFix Plug were directly and proximately related to the injuries Plaintiff suffered.

52. Neither Plaintiff nor Plaintiff's implanting physician was adequately warned or informed by Defendants of the defective and dangerous nature of PerFix Plug. Moreover, neither Plaintiff nor his implanting physician was adequately warned or informed by Defendants of the risks associated with the PerFix Plug.

53. The PerFix Plug implanted in Plaintiff failed to reasonably perform as intended. The PerFix Plug caused serious injury and had to be surgically removed via invasive surgery, and necessitated additional invasive surgery to repair the hernia that the PerFix Plug was initially implanted to treat.

54. As described above, there was an unreasonable risk that the PerFix Plug, which was defectively designed, would not perform safely and effectively for the purposes for which it was intended. Defendants failed to design against such dangers, and failed to provide adequate warnings and instructions concerning these risks.

55. Defendants expected and intended the PerFix Plug to reach users such as Plaintiff in the condition in which the PerFix Plug was sold.

56. The implantation of the PerFix Plug in Plaintiff's body was medically reasonable, and was a type of use that Defendants intended and foresaw when they designed, manufactured and sold the product.

57. The risks of the PerFix Plug significantly outweigh any benefits that Defendants contend could be associated with it. The dart-like design—which is not used in any other hernia mesh product sold in the United States—promotes mesh migration and incites an intense inflammatory response, leading to encapsulation, deformation, scarification and contraction, erosion, rejection and further migration.

58. The polypropylene mesh utilized to manufacture the PerFix Plug was in itself dangerous and defective, particularly when used in the manner intended by Defendants in the PerFix Plug. The particular polypropylene material used in the PerFix Plug was substandard, adulterated and non-medical grade, and was unreasonably subject to oxidative degradation within the body. When implanted as intended, adjacent internal organs, structures, nerves, arteries, and vessels, polypropylene mesh is unreasonably susceptible to adhesion formation, nerve entrapment, spermatic cord obliteration, organ perforation or erosion, fistula formation and bowel strangulation or hernia incarceration, and other injuries.

59. The appropriate treatment for complications associated with the PerFix Plug involves additional invasive surgery to remove the mesh from the body, thus eliminating any purported benefit that the mesh was intended to provide to a patient.

60. When the PerFix Plug was implanted in Plaintiff, there were safer feasible alternative designs for hernia mesh products, including but not limited to, a flat, non-coated, single-layer, porous mesh.

61. The PerFix Plug product cost significantly more than competitive products because of its unique dart shape—even though the dart shape provided no benefit to consumers, and increased the risks to patients implanted with these devices.

62. The PerFix Plug implanted in Plaintiff failed to reasonably perform as intended. It had to be surgically removed, necessitating further invasive surgery to repair the very issue that the product was intended to repair, and thus providing no benefit to him.

63. As a direct and proximate result of the defective and unreasonably dangerous condition of the product, Plaintiff suffered injuries and damages as summarized in this Complaint.

COUNT III: STRICT LIABILITY – FAILURE TO WARN

64. Plaintiff incorporates by reference the allegations in all prior paragraphs.

65. When the PerFix Plug was implanted in Plaintiff's body, the warnings and instructions Defendants provided were inadequate and defective. As described above, there was an unreasonable risk that the product would not perform safely and effectively for the purposes for which it was intended, and Defendants failed to design and/or manufacture against such dangers, and failed to provide adequate warnings and instructions concerning these risks.

66. Defendants expected and intended the PerFix Plug product to reach users such as Plaintiff in the condition in which the product was sold.

67. Plaintiff and his physicians were unaware of the defects and dangers of the PerFix Plug, and were unaware of the frequency, severity and duration of the risks associated with the product.

68. The Instructions for Use Defendants provided with the PerFix Plug are silent on the fact of the PerFix Plug's propensity to migrate post-implantation in the direction of the taper. Defendants provided no warning to physicians about the risks or increased risks specifically associated with the unique dart-like design of the PerFix Plug.

69. The Instructions for Use for the PerFix Plug also failed to adequately warn Plaintiff's physicians of numerous risks that Defendants knew or should have known were

associated with the PerFix Plug, including: risks of the product's immunologic response, pain, encapsulation, rejection, migration, scarification, contraction, adhesion to internal structures or organs, erosion and migration through adjacent tissue and viscera, bowel obstruction, or hernia incarceration or strangulation.

70. Defendants failed to adequately warn implanting surgeons of the significant risk of complications associated with mesh migration if the PerFix Plug is implanted in the abdomen to repair a ventral hernia.

71. Defendants failed as well to adequately warn Plaintiff or Plaintiff's physicians about the necessity for invasive surgical intervention in the event of complications with the PerFix Plug, or train the physicians on the proper treatment of such complications when they occurred.

72. Defendants failed to adequately warn Plaintiff or his physicians that: the surgical removal of the PerFix Plug in the event of complications would leave the hernia unrepaired; the resulting hernia would be much larger than the original; and further, more complicated medical treatment to attempt to repair the same hernia would be necessary.

73. Defendants represented to physicians, including Plaintiff's physician, that the tapered design would prevent or reduce recurrences and pain. They expressly intended for the PerFix Plug to be implanted near numerous large nerves and organs, and marketed and promoted the PerFix Plug for that purpose. Defendants failed to warn physicians that the PerFix Plug would contract over time, increasing the rates of recurrence and the ability of the PerFix Plug to migrate.

74. With respect to the complications listed in their warnings, Defendants provided no information or warning regarding the frequency, severity and duration of those complications, although the complications associated with the PerFix Plug were more frequent, more severe and longer lasting than those in safer feasible alternative hernia repair treatments.

75. If Plaintiff and/or Plaintiff's physicians had been properly warned of the defects and dangers of the PerFix Plug, and of the frequency, severity and duration of the risks associated with the product, Plaintiff would not have consented to allow the PerFix Plug to be implanted, and Plaintiff's physicians would not have implanted the product in Plaintiff.

76. As a direct and proximate result of the inadequate and defective warnings and instructions, Plaintiff suffered injuries and damages as summarized in this Complaint.

COUNT IV: NEGLIGENCE

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

78. Although Defendants had a duty to use reasonable care in designing, testing, inspecting, manufacturing, packaging, labeling, marketing, distributing, and preparing written instructions and warnings for the PerFix Plug, they failed to do so.

79. Defendants knew, or in the exercise of reasonable care should have known, that the PerFix Plug was defectively and unreasonably designed and/or manufactured, and was unreasonably dangerous and likely to injure patients in whom the product was implanted. Defendants knew or should have known that Plaintiff and Plaintiff's physicians were unaware of the dangers and defects inherent in the PerFix Plug.

80. Defendants knew or should have known that the Material Data Safety Sheet for the polypropylene used to manufacture their PerFix Plug prohibited permanently implanting the polypropylene into the human body.

81. Defendants utilized non-medical grade polypropylene.

82. Defendants knew or should have known that polypropylene is not inert and would degrade, flake, chip, and disperse throughout the body once implanted.

83. Defendants knew or should have known that polypropylene incites a severe inflammatory response once implanted, and continues to incite a severe inflammatory response indefinitely or until removed.

84. Defendants knew or should have known that every piece of polypropylene that flakes off and migrates throughout the body also incites its own chronic inflammatory response wherever it embeds.

85. Defendants knew or should have known that the tapered design of the PerFix Plug would promote mesh migration.

86. Defendants knew or should have known of the significant risk of complications if the PerFix Plug is implanted into the abdomen to repair a ventral hernia. Nonetheless, Defendants marketed the PerFix Plug off-label as being safe and effective for ventral and abdominal incisional hernia repair.

87. Defendants knew or should have known that small pore size and multiple layers of the PerFix Plug would increase mesh surface area and foreign body load, which in turn would increase the inflammatory and foreign body response.

88. As a direct and proximate result of Defendants' negligence in designing, testing, inspecting, manufacturing, packaging, labeling, marketing, distributing, and preparing written instructions and warnings for PerFix Plug, Plaintiff suffered injuries and damages as summarized in this Complaint.

COUNT V: BREACH OF EXPRESS WARRANTY

89. Plaintiff incorporates by reference the allegations in all prior paragraphs.

90. At all material times, Defendants manufactured, marketed, sold, distributed and otherwise placed in to the stream of commerce the PerFix Plug.

91. In advertising, marketing and otherwise promoting the PerFix Plug to physicians, hospitals and other healthcare providers, Defendants expressly warranted that their product was safe for use and reasonably fit for its intended purposes. In advertising, marketing and otherwise promoting the PerFix Plug, Defendants intended that physicians, hospitals and other healthcare providers rely upon their representations regarding safety and fitness, to induce them to implant the PerFix Plug in their patients.

92. With respect to Plaintiff, Defendants intended that the PerFix Plug be implanted by his treating surgeon in a reasonable and foreseeable manner, and in accordance with the instructions for use and product specifications provided by Defendants. Plaintiff was in privity with Defendants.

93. Defendants expressly warranted the following to physicians, hospitals, other healthcare providers and the general public, including Plaintiff: the PerFix Plug was safe and fit for use by consumers; it was of merchantable quality; its risks, side effects and potential complications were minimal and comparable to other hernia mesh products; it was adequately researched and tested; and it was fit for its intended use. Plaintiff and Plaintiff's physicians and healthcare providers reasonably relied upon Defendants' express representations and warranties, and consequently, Plaintiff was implanted with Defendants' product.

94. Defendants expressly warranted to physicians, hospitals, other healthcare providers and the general public, including Plaintiff, that the PerFix Plug safe and fit for use for the repair of both inguinal and abdominal hernia.

95. Defendants represented that the PerFix Plug would prevent or minimize hernia recurrence and pain, and facilitate incorporation of the mesh into the body, but it did not. Instead, the PerFix Plug caused an intense systemic inflammatory and chronic foreign body response,

resulting in an adverse tissue reaction including damage to surrounding tissue in the form of sclerotic, granulomatous and/or fibrotic tissue and improper or delayed healing.

96. Defendants breached these express warranties because the PerFix Plug implanted in Plaintiff was unreasonably dangerous, defective, and not as Defendants had represented.

97. Defendants breached express representations and warranties to Plaintiff, as well as his physicians and healthcare providers, with respect to the PerFix Plug, by representing the following:

a. through labeling, advertising, marketing materials, detail persons, seminar presentations, publications, notice letters, and regulatory submissions, among other methods, that their product was safe; but they fraudulently withheld and concealed information about the substantial risks of serious injury associated with using the PerFix Plug.

b. the PerFix Plug was as safe and/or safer than other alternative procedures and devices on the market; but they fraudulently concealed information demonstrating that PerFix Plug was not safer than alternative therapies and products available on the market; and

c. the PerFix Plug was more efficacious than other alternative procedures, therapies and/or devices; but they fraudulently concealed information regarding the true efficacy of the product.

98. Defendants' breach of their express warranties resulted in the implantation of an unreasonably dangerous and defective product into Plaintiff, placing his health and safety in jeopardy.

99. When Defendants made such express warranties, they knew or should have known that their PerFix Plug does not conform to the express warranties. Defendants' acts were motivated by financial gain, while the adverse consequences of their conduct were outrageous, fraudulent, oppressive, done with malice or gross negligence and evidenced reckless indifference to Plaintiff's rights, health and safety, so as to warrant the imposition of punitive damages.

COUNT VI: VIOLATION OF FEDERAL & STATE CONSUMER PROTECTION LAWS

100. Plaintiff incorporates by reference the allegations in all prior paragraphs.

101. Plaintiff purchased and used the PerFix Plug primarily for personal use, and thereby suffered ascertainable losses as a result of Defendants' actions in violation of the consumer protection laws.

102. Had Defendants not engaged in the deceptive conduct described in this Complaint, Plaintiff would not have purchased and/or paid for the PerFix Plug, and would not have incurred related medical costs and injury.

103. Defendants engaged in wrongful conduct, while at the same time obtaining, under false pretenses, moneys from Plaintiff for the PerFix Plug, which would not have been paid had Defendants not engaged in unfair and deceptive conduct.

104. Unfair methods of competition or deceptive acts or practices that were proscribed by law, include the following:

a. representing that goods or services have characteristics, ingredients, uses, benefits or qualities that they do not have;
b. advertising goods or services with the intent not to sell them as advertised; and,
c. engaging in fraudulent or deceptive conduct that creates a likelihood of confusion or misunderstanding.

105. Plaintiff was injured by the cumulative and indivisible nature of Defendants' conduct. The cumulative effect of Defendants' conduct directed at patients, physicians and consumers was to create demand for and sell the PerFix Plug. Each aspect of Defendants' conduct combined to artificially create sales of the product.

106. Defendants have a statutory duty to refrain from unfair or deceptive acts or trade practices in the design, labeling, development, manufacture, promotion, and sale of the PerFix Plug.

107. Had Defendants not engaged in the deceptive conduct described above, Plaintiff would not have purchased and/or paid for the PerFix Plug, and would not have incurred related medical costs.

108. Defendants' deceptive, unconscionable, or fraudulent representations and material omissions to patients, physicians and consumers, including Plaintiff, constituted unfair and deceptive acts and trade practices in violation of the federal and state consumer protection statutes listed below.

109. Defendants' actions constitute unfair competition or unfair, unconscionable, deceptive or fraudulent acts, or trade practices in violation of federal and state consumer protection statutes listed below.

110. Defendants have engaged in unfair competition or unfair or deceptive acts or trade practices or false advertising, or have made false representations in violation of:

- 15 U.S.C. §§ 2301-2312 (1982)
- Ohio Rev. Code § 1345.01, et. seq.
- N.J. Stat. Ann §§ 56:8-1, et. seq.
- R.I. Gen. Laws §§ 6-13.1, et. seq.

111. Under the statutes listed above Defendants are the suppliers, manufacturers, advertisers, and sellers subject to liability under such legislation for unfair, deceptive, fraudulent and unconscionable consumer sales practices.

112. Defendants violated the statutes enacted in these states to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising,

by knowingly and falsely representing that the PerFix Plug was fit to be used for the purpose for which it was intended, when in fact it was defective and dangerous, and by other acts alleged in this Complaint. These representations were made in marketing and promotional materials.

113. Defendants' actions and omissions are uncured or incurable deceptive acts under the consumer protection laws.

114. Defendants had actual knowledge of the defective and dangerous condition of the PerFix Plug and failed to take any action to cure such defective and dangerous conditions.

115. Plaintiff and the medical community relied upon Defendants' misrepresentations and omissions in determining which product and/or procedure to undergo and/or perform (if any).

116. Defendants' deceptive, unconscionable or fraudulent representations and material omissions to patients, physicians and consumers, constituted unfair and deceptive acts and practices.

117. By reason of the unlawful acts in which Defendants engaged, and as a direct and proximate result of those acts, Plaintiff has suffered ascertainable losses and damages.

118. As a direct and proximate result of Defendants' violations of the consumer protection laws, Plaintiff has sustained economic losses and other damages and is entitled to statutory and compensatory damages in an amount to be proven at trial.

COUNT VII: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

119. Plaintiff incorporates by reference the allegations in all prior paragraphs.

120. Defendants carelessly and negligently manufactured, designed, developed, tested, labeled, marketed and sold the PerFix Plug to Plaintiff.

121. Defendants carelessly and negligently concealed the harmful effects of their product from Plaintiff, individually and/or Plaintiff's physician, on multiple occasions. They continue to do so to this day.

122. Defendants carelessly and negligently misrepresented the quality, safety and efficacy of the PerFix Plug to Plaintiff, individually and/or Plaintiff's physician, on multiple occasions. They continue to do so to this day.

123. Plaintiff was directly impacted by Defendants' carelessness and negligence, in that he has sustained and will continue to sustain emotional distress, severe physical injuries, economic losses, and other damages as a direct result of the decision to purchase the PerFix Plug sold and distributed by Defendants.

124. Defendants continued to carelessly and negligently misrepresent the quality, safety, efficacy, dangers and contraindications of the PerFix Plug to Plaintiff, individually and/or Plaintiff's physician, after Plaintiff sustained emotional distress, severe physical injuries, and economic loss.

125. Defendants continued to carelessly and negligently misrepresent the quality, safety, efficacy, dangers and contraindications of the PerFix Plug to Plaintiff, individually and/or Plaintiff's physician, knowing that doing so would cause him to suffer additional and continued emotional distress, severe physical injuries, and economic loss.

126. As a proximate result of the Defendants' acts or omissions, Plaintiff has been injured, sustained severe and permanent pain, suffering, anxiety, depression, disability, impairment, loss of enjoyment of life, loss of care, comfort, and economic damages.

COUNT VIII: FRAUDULENT CONCEALMENT

127. Plaintiff incorporates by reference the allegations in all prior paragraphs.

128. At all material times, Defendants knew or should have known that the PerFix Plug caused large numbers of complications. Moreover, they also knew or should have known the following: the surgical technique and training of implanting physicians was not the cause of the adverse events associated with these devices; the safety and efficacy of its PerFix Plug had not been proven with respect to, among other things, the product, its components, its performance, and its method of insertion; the PerFix Plug was not safe and effective. But Defendants continued to represent that the PerFix Plug was safe and effective.

129. Despite what Defendants knew or should have known about the lack of safety and efficacy of the PerFix Plug, they failed to disclose this information to Plaintiff, to Plaintiff's physicians, and to the public at large.

130. At all material times, Defendants had the duty and obligation to disclose to Plaintiff and Plaintiff's physicians the true facts concerning the PerFix Plug: that it was dangerous and defective, lacking efficacy for its purported use and lacking safety in normal use, and the likelihood of its causing serious consequences to users, including permanent and debilitating injuries. Defendants concealed these material facts before Plaintiff was implanted with their product.

131. Defendants were under a duty to Plaintiff to disclose and warn of the defective nature of the PerFix Plug because:

a. Defendants were in a superior position to know the true quality, safety, and efficacy of the PerFix Plug;

b. Defendants knowingly made false claims in documents and marketing materials about the safety and quality of the PerFix Plug; and

c. Defendants fraudulently and affirmatively concealed the defective nature of the PerFix Plug from Plaintiff.

132. The facts concealed and/or not disclosed by Defendants to Plaintiff and his physician were material facts that a reasonable person would have considered to be important in deciding whether to purchase and/or use the PerFix Plug.

133. At all material times, Defendants willfully, intentionally, and maliciously concealed facts as set forth above from Plaintiff and his physician, with the intent to defraud.

134. Defendants intentionally concealed and/or failed to disclose the true defective nature of the PerFix Plug so that Plaintiff would request and purchase the product, and his healthcare providers would dispense, prescribe, and recommend the PerFix Plug; and Plaintiff justifiably acted or relied upon the concealed and/or non-disclosed facts to his detriment.

135. At all material times, neither Plaintiff nor Plaintiff's physician was aware of the facts set forth above. Had they been aware of the facts, they would not have acted as they did, *i.e.*, would not reasonably relied upon the representations of safety and efficacy and utilized the PerFix Plug in their treatment. Defendants' failure to disclose this information was a substantial factor in Plaintiff's physicians selecting Defendants' PerFix Plug. The failure to disclose also resulted in the provision of incorrect and incomplete information to Plaintiff, as a patient.

136. As a direct and proximate result of Defendants' conduct, Plaintiff was injured.

COUNT IX: NEGLIGENT MISREPRESENTATION

137. Plaintiff incorporates by reference the allegations in all prior paragraphs.

138. Defendants had a duty to accurately and truthfully represent to the medical and healthcare community, Plaintiff, and the public, that the PerFix Plug had not been adequately tested and found to be a safe and effective treatment. Defendants' representations were in fact false.

139. Defendants failed to exercise ordinary care in the representations concerning the PerFix Plug while they were involved in its manufacture, sale, testing, quality assurance, quality

control, and distribution in interstate commerce, because Defendants negligently misrepresented or concealed the PerFix Plug's high risk of unreasonable and dangerous adverse side effects.

140. Defendants breached their duty in representing to Plaintiff, Plaintiff's physicians, and the medical community, that the PerFix Plug had no serious side effects different from those of other similar products and/or procedures.

141. As a foreseeable, direct, and proximate result of Defendants' negligent misrepresentation, they knew or should have known that the PerFix Plug had been insufficiently tested, or had not been tested at all. As well, they knew or should have known that the product lacked adequate and accurate warnings, creating a high risk—or higher than acceptable or reported and represented risk—of adverse side effects. Those included pain, graft rejection, graft migration, organ damage, complex seroma, fistula, sinus tract formation, delayed wound closure, infection, sepsis, and death.

142. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has been injured and sustained severe pain, suffering, disability, impairment, loss of enjoyment of life, loss of care, comfort, economic damages.

PUNITIVE DAMAGES

143. Plaintiff incorporates the allegations in all prior paragraphs.

144. Defendants failed to adequately test and study the PerFix Plug to determine and ensure that the product was safe and effective before releasing the product for sale for permanent human implantation; and Defendants continued to manufacture and sell the product after having obtained knowledge and information that it was defective and unreasonably unsafe.

145. Although Defendants have other hernia repair mesh devices that do not present the same risks as the PerFix Plug, they developed, designed and sold the PerFix Plug, and continue to

do so, because the PerFix Plug has a significantly higher profit margin than other hernia repair products. Defendants were aware of the probable consequences of implantation of the dangerous and defective PerFix Plug, including the risk of failure and serious injury, such as suffered by Plaintiff.

146. At all material times, Defendants knew or should have known that the PerFix Plug was inherently more dangerous with respect to the following risks: migration, foreign body response, allergic reactions, rejection, infection, failure, erosion, pain and suffering, organ perforation, dense adhesions, loss of life's enjoyment, remedial surgeries and treatments in an effort to cure the conditions proximately related to the product's use, as well as other permanent and lasting severe and personal injuries.

147. Defendants' misrepresentations included knowingly withholding material information from the medical community and the public, including Plaintiff, concerning the safety and efficacy of the PerFix Plug, thus depriving Plaintiff and his implanting physicians of vitally necessary information necessary to make a fully informed decision about whether to use the product.

148. At all material times, Defendants knew and recklessly and/or intentionally disregarded the fact that the PerFix Plug can cause debilitating and potentially life-threatening side effects with greater frequency than safer alternative methods, products, procedures, and/or treatment. But they recklessly failed to advise the medical community and the general public, including Plaintiff, of the risks and side effects.

149. At all material times, Defendants intentionally misstated and misrepresented data, and continue to misrepresent data, so as to minimize the perceived risk of injuries and the rate of complications associated with PerFix Plug.

150. Notwithstanding the foregoing and the growing body of knowledge and information regarding the true and defective nature of the PerFix Plug's increased risk of side effects and serious complications, Defendants continue to aggressively market the product to the medical community and to consumers without disclosing the true risk of such complications.

151. When Plaintiff was implanted with the PerFix Plug and since then, Defendants have known that the PerFix Plug was defective and unreasonably dangerous. Nonetheless, they have continued to manufacture, produce, assemble, market, distribute, and sell the product so as to maximize sales and profits at the expense of the health and safety of the public, in a conscious, reckless and/or intentional disregard of the likely and foreseeable harm caused by the PerFix Plug to the public, including Plaintiff.

152. At all material times, Defendants have concealed and/or failed to disclose to the public the serious risks and the potential complications associated with the PerFix Plug, to ensure continued and increased sales and profits, to the detriment of the public, including Plaintiff.

153. Defendants' acts and omissions are of such character and nature so as to entitle Plaintiff to an award of punitive damages in accordance with applicable statutory and common law. Defendants' conduct shows willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care, which raise the presumption of conscious indifference to consequences, thereby justifying an award of punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants, individually, jointly, and severally; and requests compensatory damages, punitive damages or enhanced compensatory damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

PRAYER FOR RELIEF

Plaintiff demands judgment against Defendants, individually, jointly and severally, and prays for the following relief in accordance with applicable law and equity:

i. Compensatory damages to Plaintiff for past, present, and future damages, including but not limited to, pain and suffering for severe and permanent personal injuries sustained by Plaintiff, permanent impairment, mental pain and suffering, loss of enjoyment of life, health and medical care costs, economic damages, together with interest and costs as provided by law;
ii. restitution and disgorgement of profits;
iii. punitive or enhanced compensatory damages;
iv. reasonable attorneys' fees as provided by law;
v. costs of these proceedings, including past and future costs of suit;
vi. all ascertainable economic damages;
vii. prejudgment interest on all damages as allowed by law; and
viii. such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Thomas Spencer hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

LOMURRO, MUNSON, COMER, BROWN & SCHOTTLAND, LLC
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Freehold, New Jersey 07728
Phone: (732) 414-0300
Fax: (732) 431-4043
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Attorneys for Plaintiffs

/s JOSHUA S. KINCANNON
JOSHUA S. KINCANNON, ESQ.

Dated: February 7, 2018

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

THOMAS SPENCER

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

JOSHUA S. KINCANNON, ESQ.
LOMURRO, MUNSON, COMER, BROWN & SCHOTTLAND, LLC
4 PARAGON WAY, SUITE 100
FREEHOLD, NJ 07728
(732) 414-0300

DEFENDANTS

C.R. BARD and DAVOL, INC.

County of Residence of First Listed Defendant UNION
(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	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☒ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	SOCIAL SECURITY	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	☐ 861 HIA (1395ff)	☐ 480 Consumer Credit
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
☐ 196 Franchise				☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
				☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
					☐ 893 Environmental Matters
					☐ 895 Freedom of Information Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	FEDERAL TAX SUITS	☐ 896 Arbitration
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:	☐ 462 Naturalization Application	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	☐ 465 Other Immigration Actions	☐ 871 IRS—Third Party 26 USC 7609	☐ 950 Constitutionality of State Statutes
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence			
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General			
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

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

Brief description of cause:
PRODUCT LIABILITY MATTER AS A RESULT OF A DEFECTIVE HERNIA MESH

VII. REQUESTED IN COMPLAINT:

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

DEMAND $ 75,001.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 02/07/2018

SIGNATURE OF ATTORNEY OF RECORD /s JOSHUA S. KINCANNON, ESQ.

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.