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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STEVEN R. ERGLER, an individual,

Plaintiff,

v.

JOHNSON & JOHNSON, a New Jersey corporation; ETHICON, INC., a New Jersey corporation; ETHICON ENDO-SURGERY, an Ohio corporation; ETHICON US, LLC, a Texas limited liability company, and DOES 1-10,

Defendants.

No.

COMPLAINT FOR DAMAGES

DEMAND FOR JURY

Plaintiff Alleges as follows:

INTRODUCTION

1. On March 18, 2019, the US Food and Drug Administration (the “FDA”) sent a “Letter to Health Care Providers” regarding “Safe Use of Surgical Staplers and Staples” (“FDA Letter”). See <https://www.fda.gov/medical-devices/letters-health-care-providers/safe-use-surgical-staplers-and-staples-letter-health-care-providers> (accessed 7/2/2019).

2. The FDA Letter states that the FDA, between January 1, 2011, and March 31, 2018, received “over 41,000 individual medical device reports for surgical staplers and staples for internal use,” which showed 366 deaths, over 9,000 serious injuries, and over 32,000 malfunctions.

1 3. The FDA Letter states that some of the “most commonly reported problems in
2 these adverse event reports” included “opening of the staple line or malformation of staples” and
3 “misfiring.”

4 4. Plaintiff Steven Ergler (“Plaintiff”) underwent a laparoscopic sigmoid colectomy
5 surgery on July 3, 2016, at a hospital in Vancouver, Washington. An Ethicon Endo-Surgery
6 surgical stapler was used to perform the “anastomosis” portion of the surgery.

7 5. On the second post-operative day (July 5, 2016), Plaintiff had become
8 progressively tachycardic, his hemoglobin had dropped, and a CT scan showed he had a
9 significant amount of free air and fluid in the abdomen, significant for some sort of perforation.

10 6. During an exploratory laparotomy conducted on the second post-operative day
11 (July 5, 2016), Plaintiff’s surgeons did an “air test” showing that “there was a huge air leak and
12 in fact the entirety of the back wall was completely blown out.” The surgeons then “picked out
13 several staples which were uncrimped to completely open, indicating that the stapler had
14 completely misfired.” The misfire had caused the failed anastomosis.

15 7. After repairing the anastomosis, the surgeon performed a diverting loop
16 ileostomy. Since that time, Mr. Ergler’s quality of life has been reduced. He has suffered several
17 hernias, caused by the failed anastomosis, as well as daily pain, dysfunction, and humiliation.

18 **PARTIES**

19 8. Plaintiff is a Washington state resident. At the time of the injury that is the subject
20 of this lawsuit, which occurred in Clark County, Washington, he resided in Lewis County,
21 Washington.

22 9. Defendant Johnson & Johnson (“J&J”) is a New Jersey corporation headquartered
23 in New Jersey. In 1947, it acquired a company that it renamed Ethicon Suture Laboratories. In
24 1953, this became Defendant Ethicon, Inc. (“Ethicon”). Defendant Ethicon, Inc., is a New Jersey
25 Corporation headquartered in New Jersey. In 1992, Ethicon was restructured, and Defendant
26 Ethicon Endo-Surgery, Inc. (“Ethicon Endo-Surgery”), became a separate Ohio Corporation
27 headquartered in Cincinnati, Ohio. In 2013, J&J merged Ethicon Endo-Surgery back into
28 Ethicon. Ethicon Endo-Surgery is now a subsidiary of Ethicon, Inc., which is a subsidiary of

1 J&J, which has no parent company. Ethicon, US LLC is a business organized under the laws of
2 the State of Texas and a wholly owned subsidiary of Johnson & Johnson. These defendants are
3 collectively referred to as the “Ethicon Defendants.”

4 10. At all relevant times, the Ethicon Defendants manufactured, marketed, and sold a
5 product called the Ethicon Surgical Stapler, including Product No. ECS29A, which they labeled
6 as a “29mm Endoscopic Curved Intraluminal Stapler.” This product is hereafter referred to as
7 “the Ethicon Stapler.” It was the stapler that malfunctioned during Plaintiff’s July 3, 2016,
8 surgery.

9 11. On information and belief, the Ethicon Defendants are, and, at all relevant times,
10 were, engaged in the business of researching, developing, designing, licensing, manufacturing,
11 distributing, supplying, selling, marketing and/or introducing in interstate commerce, including
12 in the State of Washington, either directly or indirectly through third parties or related entities, its
13 products, including the Ethicon Stapler that was used to perform the anastomosis in Plaintiff’s
14 surgery.

15 12. On information and belief, J&J participated in, controlled, knew about, and
16 approved of the other Ethicon Defendants’ conduct in the development, design, sales, and
17 marketing of the Ethicon Stapler. Defendant Ethicon and Ethicon US, LLC, controlled, knew
18 about, and approved of, Ethicon Endo-Surgery’s conduct in the development, design, sales, and
19 marketing of the Ethicon Stapler. Defendants Ethicon and Ethicon US, LLC, are liable for the
20 tortious conduct of Defendant Ethicon Endo-Surgery. Defendant J&J is liable for the tortious
21 conduct of all other Ethicon Defendants.

22 13. The Court has personal jurisdiction over the Ethicon Defendants because the
23 Ethicon Defendants, individually and/or acting in concert, presently and during the time of
24 Plaintiff’s surgery regularly did business in the state of Washington, such that they reasonably
25 could expect to have to defend themselves in a Washington court.

26 14. Unknown Defendants listed as Does 1-10 are entities engaged in the business of
27 researching, developing, designing, licensing, manufacturing, distributing, supplying, selling,
28 marketing and/or introducing in interstate commerce, including in the State of Washington,

1 either directly or indirectly through third parties or related entities, the surgical stapler used
2 perform the anastomosis in Plaintiff's surgery.

3 JURISDICTION AND VENUE

4 15. The amount in controversy exceeds \$75,000, exclusive of interest and costs.

5 16. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 (Diversity of
6 Citizenship).

7 17. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the events or
8 omissions giving rise to the claim occurred in this judicial district.

9 18. Venue is proper under 28 U.S.C. § 1391 because Defendants, one or all of them,
10 are subject to the Court's personal jurisdiction in this judicial district with respect to this civil
11 action.

12 FACTUAL BACKGROUND

13 19. As of May 2016, Plaintiff suffered from symptoms of diverticulitis.

14 20. As of July 3, 2016, Plaintiff's doctor concluded, based on review of a CT scan,
15 that he had mild sigmoid diverticulitis without perforation.

16 21. On July 3, 2016, Plaintiff's doctors performed a laparoscopic sigmoid colectomy
17 with lighted ureteral stent.

18 22. According to the July 3, 2016, procedure note, during the procedure Plaintiff's
19 doctors brought the end of his bowel up through a port site and removed the problematic portion
20 of Plaintiff's bowel. The procedure note then states:

21 The purse-stringer device was then used. We determined that a 29 EEA fit nicely.
22 The end of the anvil was placed within the proximal bowel. This was then
23 dropped back in. We reinsufflated, Allison went below. We dilated up the rectum,
24 29 fit nicely. The EEA stapler^[1] was brought up through the rectum all the way to
25 the end of the staple line. We deployed the pin through the middle of the staple
26 line. The 2 ends of the stapler [were] placed and the anastomosis created in
standard fashion. It was very nice. The stapler was removed. The donuts were
very nicely intact and thick. We then did an air test. There was no leakage noted.

27
28 ¹ As noted below, "EEA stapler" refers to the class of surgical staplers that are "end-to-end
Anastomosis" staplers. The Ethicon Stapler is an end-to-end anastomosis stapler, and the billing
records show that a size 29 Ethicon Stapler was used in the surgery.

1 Everything appeared to be within normal limits. At this point, we irrigated the
2 pelvis. There was no bleeding.

3 23. By July 5, 2016 (postop Day 2), Plaintiff had become progressively tachycardic,
4 his hemoglobin had dropped, and a CT scan showed he had “a significant amount of free air and
5 fluid in the abdomen, significant for some sort of perforation.” That day, his doctors started an
6 exploratory laparoscopic procedure, then converted to an open exploratory laparotomy “with
7 redo of the sigmoid rectal anastomosis and diverting loop ileostomy.” During this procedure his
8 doctors saw “a large amount of blood clot.” The procedure note then reports:

9 Once inside, I was able to visualize that there was a large amount of blood clot. I
10 was able to suction out most of this. I went down towards the pelvis. There was a
11 large amount of clot down there. Once I was down there, I visualized the
12 anastomosis, it looked a little bit funny. I was not sure whether this was intact. I
13 could not really tell. Therefore, my partner went below and we did an air test of
14 anastomosis to ensure that it was completely intact. When he did this, we visualized
15 that there was a huge air leak and in fact the entirety of the back wall was
16 completely blown out. I also took pictures. There appeared to be uncrimped staples
17 from the EEA stapler that had not crimped down, therefore creating a defect in the
18 staple and a breach in the anastomosis.

19 24. At this point, according to the July 5, 2016, procedure note, Plaintiff’s doctors
20 converted to an open (non-laparoscopic) surgical procedure. During this portion of the
21 procedure, Plaintiff’s doctors reported: “The anastomosis was indeed completely opened in the
22 entirety of the back wall. I picked out several staples which were uncrimped to completely open,
23 indicating that the stapler had completely misfired.”

24 25. After repairing the anastomosis, Plaintiff’s doctors performed a diverting loop
25 ileostomy.

26 26. A progress note dated July 19, 2016, states: “The patient’s postoperative recovery
27 was long and arduous. It included respiratory failure with adult respiratory distress syndrome. It
28 also involved the development of Klebsiella bacteremia.”

29 27. Since the failed anastomosis, Plaintiff’s quality of life has been reduced. He has
30 suffered several hernias and subsequent surgical and medical procedures, caused by the failed
31 anastomosis, as well as daily pain, disability, and humiliation. His mobility has been
32 significantly hampered.

1 28. Plaintiff's medical bills from the service date "7/3/16" show a charge of \$806.30
2 for one "STAPLER INTRALUMINAL CVD 29MM *ECS29A". "ECS29A" is the product code
3 for the Ethicon Stapler.

4 29. The procedure notes from the 7/3/16 procedure state that a "29 EEA fit nicely"
5 and refer to an "EEA stapler." "EEA stapler" refers to the class of staplers that are "end-to-end
6 Anastomosis" staplers, and the Ethicon Stapler is an end-to-end anastomosis stapler. The Ethicon
7 Stapler is offered in a 29 mm diameter size, and Ethicon also offers 29 mm sizers for use with
8 the Ethicon Stapler. Ethicon's primary competitor in the EEA stapler market, Covidien, does not
9 offer a size 29 EEA stapler.

10 30. The Ethicon Stapler was used to complete the anastomosis in Plaintiff's 7/3/16
11 surgery, and it malfunctioned.

12 31. As set out in the FDA Letter, in May 2019, the FDA identified an Ethicon recall
13 of circular staplers as a Class I recall, the most serious type of recall. A Class I recall means use
14 of the recalled device may cause serious injury or death. The reason for the recall given by
15 Ethicon Endo-Surgery was that the Ethicon Stapler "may have an insufficient firing stroke to
16 break the washer and completely form staples." See [https://www.accessdata.fda.gov/scripts/cdrh/
17 cfdocs/cfres/res.cfm?id=171794](https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfres/res.cfm?id=171794) (Accessed 7/2/2019).

18 32. As of July 3, 2016, and before, the Ethicon Defendants asserted in the "surgical
19 stapling" portion of their product catalog:

20 Reliable tissue repair is a critical factor for all surgery. That's why Ethicon has
21 worked with surgeons worldwide to develop and refine our surgical staplers and
22 cutters. Our surgical stapling portfolio addresses the issues of tissue thickness,
23 ***staple line security***, and tissue tension to provide you solutions that are designed to
enhance control ***and patient safety***.

24 See [http://pdf.medicalexpo.com/pdf/ethicon/2016-ethicon-product-catalog/74984-154353-
26 27.html](http://pdf.medicalexpo.com/pdf/ethicon/2016-ethicon-product-catalog/74984-154353-
25 27.html) (emphasis added, accessed 7/2/19).

27 33. As explained below, the Ethicon Stapler sold for use in Plaintiff's surgery did not
28 provide "Reliable tissue repair," "staple line security," nor "enhance ... patient safety."

1 34. As of July 3, 2016, and before, the Ethicon Defendants asserted in the “Ethicon
2 Intraluminal Circular Staplers” portion of their website that the Ethicon Stapler was “Reliable”
3 and that it would reliably deliver “audible and tactile feedback indicating the firing sequence is
4 complete[.]” See [https://web.archive.org/web/20160628121552/http://www.ethicon.com/
5 healthcare-professionals/products/staplers/circular/circular-intraluminal](https://web.archive.org/web/20160628121552/http://www.ethicon.com/healthcare-professionals/products/staplers/circular/circular-intraluminal) (Accessed 7/2/19).

6 35. As explained below, the Ethicon Stapler sold for use in Plaintiff’s surgery was not
7 “Reliable” and did not reliably complete the firing sequence, despite the audible and tactile
8 feedback given to Plaintiff’s surgeon.

9 36. According to the FDA’s Manufacturer and User Facility Database (MAUDE),
10 from January 5, 2009, to July 3, 2016, the Ethicon Defendants received over 300 reports of
11 injury and malfunction related to its curved intraluminal staplers. These included complaints that
12 the staples had not crimped/formed completely. In fact, one event, just six months before
13 Plaintiff’s surgery, and involving the precise model used on Plaintiff, was remarkably similar to
14 what happened to Plaintiff:

15 “PATIENT WAS TAKEN TO THE MAIN OR FOR A LAPAROSCOPIC LOW
16 ANTERIOR RESECTION. DURING THE RESECTION WHILE CREATING
17 THE ANASTOMOSIS, THE SURGEON FIRED THE ETHICON 29 MM
18 STAPLER. AFTER THE STAPLER WAS FIRED, THE SURGEON DID A
19 ROUTINE LEAK TEST. DURING THE LEAK TEST, THE ANASTOMOSIS
20 WAS "CRIMPED AND HAD A HOLE." THE SURGEON FELT IT WAS A
21 RESULT OF THE STAPLER MISFIRING. THEREFORE, AN OSTOMY HAD
22 TO BE CREATED.”

23 See [https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfMAUDE/Detail.CFM?MDRFOI
24 ID=5483022&pc=GDW](https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfMAUDE/Detail.CFM?MDRFOI_ID=5483022&pc=GDW) (Accessed 7/2/19).

25 37. This number of adverse events is likely only a small percentage of the actual
26 number of malfunctions of Ethicon Staplers, as it is widely recognized in the medical device
27 industry and by the FDA that the MAUDE database contains only a small fraction of the actual
28 number of adverse events reported to the FDA.

38. The following are “customs in the product seller’s industry,” within the meaning
of RCW 7.72.050(1), with respect to the medical device industry:

- 1 a. The potential hazards of a product should be identified in the design phase and
2 mitigated as much as possible.
- 3 b. A manufacturer of surgical staplers should never expose a patient to unnecessary
4 risk of harm.
- 5 c. Safe control of an identified hazard involving serious injury or death requires that
6 instructions or warnings be used only where the hazard cannot be engineered out
7 or machine guarded against.
- 8 d. If, after a product is sold to consumers, a manufacturer learns that the product is
9 capable of causing serious injuries or death, that manufacturer's engineers should
10 investigate all incidents in which injuries and deaths were caused, and all
11 incidents in which injuries or death could have been caused but were avoided by
12 good fortune.
- 13 e. Information about serious injuries and deaths in the use of similar products made
14 by others should also be investigated.
- 15 f. Once a hazard that threatens serious injury or death is identified affirmative steps
16 must be taken to control the hazard.
- 17 g. Safe design of surgical staplers requires taking into account the performance
18 characteristics of the device.
- 19 h. Safe design of surgical staplers requires taking into account the behavior of
20 operators during foreseeable use of the device.
- 21 i. Safe design of surgical staplers requires taking into account the environmental
22 factors, including foreseeable patient conditions, involved in the foreseeable use
23 of the device.
- 24 j. Any solutions to safety issues revealed by field use of a device must be tested and
25 evaluated to see if they work before they are implemented, and then monitored
26 when used in the field to make sure they are in fact a solution.
- 27 k. A device must perform as safely as an ordinary user would expect.
- 28

1 1. Documentation and retention of all hazard identification and any determination of
2 whether or not to take steps to control an identified hazard is a necessary safety
3 practice.

4 39. On information and belief, the Ethicon Defendants did not comply with one or
5 more of these industry customs. Had they done so, Plaintiff would not have been injured by a
6 defective Ethicon Stapler.

7 40. 21 CFR 820 is an “administrative regulatory standard” within the meaning of
8 RCW 7.72.050(1) applicable to the Ethicon Defendants and the Ethicon Stapler.

9 41. The requirements of 21 CFR 820 include:

- 10 a. “Each manufacturer shall establish and maintain a quality system that is
11 appropriate for the specific medical device(s) designed or manufactured, and that
12 meets the requirements of this part.” 21 CFR 820.5.
- 13 b. “Each manufacturer shall develop, conduct, control, and monitor production
14 processes to ensure that a device conforms to its specifications.” 21 CFR
15 820.70(a).
- 16 c. “Each manufacturer shall establish and maintain procedures for implementing
17 corrective and preventive action.” 21 CFR 820.100(a). These are referred to as
18 “CAPA” procedures.
- 19 d. The CAPA procedures must include requirements for: “Analyzing processes,
20 work operations, concessions, quality audit reports, quality records, service
21 records, complaints, returned product, and other sources of quality data to identify
22 existing and potential causes of nonconforming product, or other quality
23 problems. Appropriate statistical methodology shall be employed where necessary
24 to detect recurring quality problems.” 21 CFR 820.100(a)(1).
- 25 e. The CAPA procedures must include requirements for: “Investigating the cause of
26 nonconformities relating to product, processes, and the quality system[.]” 21 CFR
27 820.100(a)(2).
- 28

- 1 f. The CAPA procedures must include requirements for: “Identifying the action(s)
2 needed to correct and prevent recurrence of nonconforming product and other
3 quality problems[.]” 21 CFR 820.100(a)(3).
- 4 g. The CAPA procedures must include requirements for: “Verifying or validating
5 the corrective and preventive action to ensure that such action is effective and
6 does not adversely affect the finished device[.]” 21 CFR 820.100(a)(4).
- 7 h. The CAPA procedures must include requirements for: “Implementing and
8 recording changes in methods and procedures needed to correct and prevent
9 identified quality problems[.]” 21 CFR 820.100(a)(5).
- 10 i. The CAPA procedures must include requirements for: “Ensuring that information
11 related to quality problems or nonconforming product is disseminated to those
12 directly responsible for assuring the quality of such product or the prevention of
13 such problems[.]” 21 CFR 820.100(a)(6).
- 14 j. The CAPA procedures must include requirements for: “Submitting relevant
15 information on identified quality problems, as well as corrective and preventive
16 actions, for management review.[.]” 21 CFR 820.100(a)(7).
- 17 k. All required CAPA activities, and their results, “shall be documented[.]” 21 CFR
18 820.100(b).

19 42. On information and belief, the Ethicon Defendants did not comply with one or
20 more of the requirements of 21 CFR 820. Had they done so, Plaintiff would not have been
21 injured by a defective Ethicon Stapler.

22 **CAUSE OF ACTION**
23 **VIOLATION OF THE WASHINGTON PRODUCT LIABILITY ACT**

24 43. Plaintiff realleges and incorporates every allegation of this Complaint as if each
25 were set forth fully herein.

26 44. The Ethicon Stapler was defective within the meaning of the Washington Product
27 Liability Act, RCW 7.72.

1 45. The Ethicon Stapler was not reasonably safe in construction because it deviated in
2 a material way from the design specifications or performance standards of its manufacturer.

3 46. The Ethicon Stapler was defective in construction and/or design because it was
4 unreasonably dangerous the extent contemplated by the ordinary consumer with ordinary
5 knowledge regarding the device.

6 47. At the time of Plaintiff's injuries, the Ethicon Stapler was defective in design
7 because, at the time it was manufactured, the likelihood that the product would cause injury or
8 damage similar to that claimed by the plaintiff, and the seriousness of such injury or damage,
9 outweighed the burden on the manufacturer to design a product that would have prevented the
10 injury or damage, and the adverse effect that a practical and feasible alternative design would
11 have on the usefulness of the product.

12 48. The Ethicon Stapler was not reasonably safe because adequate warnings or
13 instructions were not provided with the product.

14 49. The Ethicon Defendants failed to properly and adequately warn and instruct the
15 Plaintiff and his health care providers as to the safest and most effective methods of use of the
16 stapler used to perform Plaintiff's anastomosis on July 3, 2016.

17 50. The Ethicon Defendants failed to properly and adequately warn and instruct the
18 Plaintiff and his health care providers, including Legacy Salmon Creek Medical Center, as to the
19 risks and benefits of the Ethicon Stapler, given the Plaintiff's conditions and need for
20 information.

21 51. To the extent the Ethicon Defendants were obligated to, or undertook to, train
22 Plaintiff's health care providers in the use of the Ethicon Stapler the training was inadequate.

23 52. Pursuant to *Taylor v. Intuitive Surgical, Inc.*, 187 Wash.2d 743, 389 P. 3d 517
24 (2017), Comment K to Restatement (Second) § 402(a) does not apply to defective construction,
25 marketing, or warning claims. Rather, "proper preparation, marketing, and warnings are
26 prerequisites to a manufacturer being able to qualify for this exception to strict liability To
27 apply the standard of the exception before its prerequisites have been met would allow the
28 exception to swallow the rule." *Id.* at 762.

1 53. To the extent Comment K to Restatement (Second) § 402(a) applies to the
2 defective design claim, the Ethicon Defendants failed to use reasonable care to design a medical
3 product that was reasonably safe.

4 **COMPENSATORY DAMAGES**

5 54. Plaintiff realleges and incorporates every allegation of this Complaint as if each
6 were set forth fully herein.

7 55. Plaintiff intends to claim every category of compensatory damages available to
8 him, as set out in WPI Chapters 30, 32 and 34. The conduct that makes the Ethicon Defendants
9 liable to Plaintiff also was a proximate cause and/or substantial factor in causing the following:

- 10 a. Plaintiff was injured, badly and permanently, and has sustained past and future
11 pain; suffering; mental, physical, and emotional distress; disability; disfigurement;
12 impairment; humiliation; fear; and loss of enjoyment of life.
13 b. Plaintiff has incurred economic damages, including past and future medical and
14 other expenses.

15 56. The amount of these damages will be proven at trial.

16 **PUNITIVE DAMAGES**

17 57. Plaintiff realleges and incorporates every allegation of this Complaint as if each
18 were set forth fully herein.

19 58. While Washington law should apply to the compensatory damages claims,
20 another State's law on punitive damages may apply in this case under the principles explained in
21 *Singh v. Edwards Lifesciences Corp.*, 151 Wn. App. 137, 144, 210 P.3d 337 (2009) and *Taylor v.*
22 *Intuitive Surgical, Inc.*, Kitsap County Superior Court No. 09-2-03136-5, Order and
23 Memorandum Opinion on Defendant ISI's (1) Motion for Summary Judgment on All Claims and
24 (2) Motion for Summary Judgment on the Issue of Punitive Damages (March 25, 2013) (Roof,
25 J.) ("it is apparent that California has an interest in deterring activities that illustrate a 'conscious
26 disregard of safety' of others, originating from corporations that have a 'substantial business
27

1 presence within its borders.’ Washington has no interest in shielding from liability individuals
2 who partake in such activities.”).

3 59. If, after adequate discovery, Plaintiff learns of facts showing that any Defendant’s
4 conduct justifies an award of punitive damages, Plaintiff will seek to amend this Complaint to
5 add a claim for punitive damages under the law of the state wherein the conduct that justifies
6 punitive damages occurred.

7 **LIMITED WAIVER OF PHYSICIAN/PATIENT PRIVILEGE**

8 60. Pursuant to RCW 5.60.060(4)(b), Plaintiff hereby waives the physician/patient
9 privilege only insofar as necessary to place any and all alleged damages at issue at the time of
10 trial, as might be required by statute or amended statute or case law interpreting the statutes of
11 the State of Washington. It should be understood that Plaintiff’s actions do not constitute a
12 waiver of any of his constitutional rights and that the Defendants are not to contact any treating
13 physicians without first notifying counsel for the Plaintiff so that they might bring the matter to
14 the attention of the Court and seek appropriate relief, including imposing limitations and
15 restrictions upon any desire or intent by the Defendants to contact past or subsequent treating
16 physicians *ex parte*, pursuant to the rule announced in *Loudon v. Mhyre*, 110 Wn.2d 675, 756
17 P.2d 138 (1988) and *Smith v. Orthopedics International, Ltd., P.S.*, 170 Wn.2d 659, 244 P.3d
18 939 (2010).

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff demands judgment against Defendants, and each of them,
21 individually, jointly and severally, and requests compensatory damages, together with interest,
22 cost of suit, attorneys’ fees, and all such other relief as the Court deems just and proper, as well
23 as:

- 24 1. Compensatory damages to the Plaintiff for past, present, and future damages,
25 including, but not limited to, pain and suffering for severe and permanent personal
26 injuries sustained by Plaintiff;
27 2. Health and medical care costs, together with interest and costs as provided by law;
28 3. Reasonable attorneys’ fees;

- 1 4. The costs of these proceedings; and
- 2 5. All ascertainable economic damages.

3
4 DATED this 2nd day of July 2019.

6 FRIEDMAN | RUBIN® PLLP

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