UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SHERIDAN R. ALLO,	*	**CIVIL ACTION**
Plaintiff,	*	
	*	**No.**
versus	*	
ALLERGAN USA, INC.,	*	**SECTION:**
	*	
Defendant	*	**MAGISTRATE JUDGE:**

****

COMPLAINT FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes Sheridan R. Allo, and for her Complaint for Damages represents as follows:

I. PARTIES

1. Sheridan R. Allo ("Plaintiff"), at all times relevant, was/is a person of the full age of majority and a resident citizen of the State of Louisiana.

2. Allergan USA, Inc. ("Defendant") is a foreign corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Madison, New Jersey. At all times relevant, Allergan USA, Inc. was licensed to "do business," in the State of Louisiana.

II. SUBJECT MATTER JURISDICTION

3. This Honorable Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different States.

III. PERSONAL JURISDICTION

4. Allergan USA, Inc. marketed, advertised, and sold medical devices, including its "Natrelle Style 410 FX" macrotextured breast implant product within the Eastern District of Louisiana. Because of these "minimum contacts," the assumption of jurisdiction over Allergan USA, Inc. will not offend traditional notions of fair play and substantial justice, and is fully consistent with the constitutional requirements of due process set forth in *International Shoe v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed.2d 95 (1945).

IV. VENUE

5. Venue is appropriate in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1391(b)(2) because this is the District where a substantial part of the events or omissions giving rise to the claim occurred, as well as where a substantial number of the events, actions, or omissions giving rise to the Plaintiff's claims occurred, and the cause of action arose.

V. FACTS

6. On January 28, 2016, Plaintiff underwent a cancer-related bilateral mastectomy procedure by Richard Celentano, MD at St. Tammany Parish Hospital in Covington, Louisiana.

7. Following the mastectomy, immediate reconstruction of Plaintiff's left and right breasts was performed by Dr. Celentano who implanted two of Defendant's "Natrelle Style 410 FX" 450 mL silicone implants (the "product") into Plaintiff's body.

8. On March 18, 2019, Plaintiff consulted Marie Lagarde, MD for complaints of right breast pain. MRI testing found that the *right* implant demonstrated a "keyhole sign consistent with intracapsular implant rupture".

9. On April 29, 2019, Plaintiff underwent bilateral removal of her two "Natrelle Style 410 FX"

breast implants by Christopher Babyos, MD at Ochsner Medical Center in New Orleans, Louisiana.

10. On April 29, 2019, the two explanted "Natrelle Style 410 FX" breast implants were examined by pathologist Rebecca Phillips, MD.

11. Dr. Phillips' May 2, 2019 report indicated that Plaintiff's *left* implant bore the inscription: "Allergan style 410FX, Lot@# 2830309, 450 cc", and her *right* implant bore the inscription: "Allergan style 410FX, Lot@# 2704698, 450 cc".

12. Dr. Phillips' report stated with regard to the *right* breast implant:

> "Container Label: Clinic Number/AP Number 286562/286562, and ***right implant***. Received in container without fixative is a 450 g, 14.5 x 14.5 x 5.5 cm ***partially collapsed breast implant***. The outer surface is tan, translucent, and textured. There is a minimal amount of attached thin tan-pink transparent membranes on the outer surface. ***There is a 15.5 cm curvilinear open defect with spillage of a tan-yellow sticky gelatinous material***. The device bears the following inscription: Allergan style 410FX, Lot@# 2704698, 450 cc. Gross description only."
>
> (Bold italic emphasis by undersigned counsel.)

13. At all times relevant to this matter, Allergan USA, Inc. conducted substantial business in the State of Louisiana, and had numerous contacts in the Eastern District of Louisiana related to the subject matter of this action.

14. Allergan USA, Inc. either directly or through its agents, apparent agents, servants or

employees, designed, manufactured, marketed, advertised, distributed and sold "Natrelle Style 410 FX" breast implants (the "product") within the State of Louisiana and within the Eastern District of Louisiana.

VI. CLAIMS UNDER THE LOUISIANA PRODUCTS LIABILITY ACT

15. Allergan USA, Inc., the manufacturer of the breast implant products implanted into Plaintiff's body on January 28, 2016, is liable to Plaintiff for damages proximately caused by a characteristic of these products that rendered them unreasonably dangerous when such danger arose from a reasonable anticipated use of the products by the Plaintiff or another person or entity.

A. FIRST CAUSE OF ACTION UNDER LA. R.S. 9:2800.55: UNREASONABLY DANGEROUS IN CONSTRUCTION OR COMPOSITION

16. Plaintiff repeats and re-alleges all of the above paragraphs as if each were set forth again *in extenso*.

17. The *right* breast implant product ("Allergan style 410FX, Lot@# 2704698, 450 cc.") implanted into Plaintiff's body on January 28, 2016 was unreasonably dangerous in construction or composition because, at the time it left Allergan USA, Inc.'s control it deviated in a material way from Allergan USA, Inc.'s specifications or performance standards for the product or otherwise identical products manufactured by Allergan USA, Inc.

18. The characteristic which rendered the breast implant product defective under La. R.S. 9:2800.55 existed at the time this product left Allergan USA, Inc.'s control.

B. SECOND CAUSE OF ACTION UNDER LA. R.S. 9:2800.57: INADEQUATE WARNING

19. Plaintiff repeats and re-alleges all of the above paragraphs as if each were set forth again *in extenso*.

20. The *right* "Natrelle Style 410 FX" breast implant product implanted into Plaintiff on January 28, 2016 was unreasonably dangerous because an adequate warning about the product was not provided at the time it left Allergan USA, Inc.'s control, the breast implant product contained a characteristic which may cause damage, and Allergan USA, Inc. failed to use reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the product.

21. The characteristic which rendered the *right* breast implant product defective under La. R.S. 9:2800.57 existed at the time this product left Allergan USA, Inc.'s control.

C. THIRD CAUSE OF ACTION: BREACH OF EXPRESS WARRANTY UNDER LA. R.S. §9:2800.58

22. Plaintiff repeats and re-alleges all of the above paragraphs as if each were set forth again *in extenso*.

23. The *right* "Natrelle Style 410 FX" breast implant product implanted into Plaintiff on January 28, 2016 were unreasonably dangerous because it did not conform to an express warranty made at the time by Allergan USA, Inc about the product and the express warranty induced Plaintiff and Plaintiff's physician to use the product.

24. Plaintiff's damage was expressly caused because the express warranty was untrue.

D. FOURTH CAUSE OF ACTION:
BREACH OF WARRANTY IN REDHIBITION

25. Plaintiff repeats and re-alleges all of the above paragraphs as if each were set forth again *in extenso*.

26. Allergan USA, Inc**.** designed, manufactured, distributed, advertised, promoted and sold the implanted into Plaintiff on January 28, 2016.

27. This product contained vices or defects which renders it useless or its use so inconvenient that consumers would not have purchased it had they known about the vice or defect.

28. Pursuant to La. C.C. art. 2520, a seller warrants the buyer against redhibitory defects, or vices, in the thing sold.

29. The "Natrelle Style 410 FX" breast implant product which was sold and promoted by Allergan USA, Inc**.** and implanted into Plaintiff, possesses a redhibitory defect because it was not manufactured and marketed in accordance with industry standards and/or was unreasonably dangerous, as described above, which renders the device useless or so inconvenient that is must be presumed that neither Plaintiff, nor Plaintiff's treating medical professional(s), would have utilized the device during the course of Plaintiff's implant surgery had they known of the defects.

30. In accordance with La. C.C. art. 2545, Allergan USA, Inc**.**, as the manufacturer, distributors, and seller of the "Natrelle Style 410 FX" breast implant product, is deemed aware of its redhibitory defects.

31. Plaintiff is entitled to the return of the purchase price paid for the "Natrelle Style 410 FX" breast implant product implanted during the January 28, 2016 mastectomy surgery and the

cost of the April 29, 2019 explant surgery, including but not limited to, insurance co-payments, interest on these amounts from the date of purchase or hospital billing, attorneys' fees and costs, pecuniary and non-pecuniary damages, as well as any other legal and equitable relief which Plaintiff may be entitled to under law.

VII. DAMAGES

32. As a result of the aforementioned breaches of obligation by Allergan USA, Inc., Plaintiff suffered the following items of damages, past, present, and future, for which she is entitled to be fully compensated by Defendant, in an amount which is just and reasonable:

A. Past and future medical and related expenses;

B. Past and future physical injury and disability;

C. Past and future physical pain and suffering;

D. Past and future mental anguish and distress; and

E. Loss enjoyment of life.

VIII. JURY TRIAL DEMAND

33. Pursuant to Fed. R. Civ. P. 38(b) and ©, Plaintiff demands trial by Jury on all issues**.**

IX. PRAYER FOR RELIEF

34. **WHEREFORE**, Plaintiff, Sheridan R. Allo, prays that Defendant, Allergan USA, Inc., be served with Summons and a copy of the Complaint for Damages, that it serve its answer thereto, and that after due proceedings had and the expiration of all legal delays there be a Judgment entered holding it liable unto Plaintiff for:

A. All money damages that are allowed by law, which are reasonable under these premises, and exceeding the sum or value of $75,000.00 exclusive of interest and

costs;

B. An award of legal interest from date of judicial demand until all money awarded in Judgment is fully paid;

C. An award of all costs allowed by law;

D. Trial by jury; and

E. Such other and further relief as the interests of justice may require.

Respectfully submitted,

/s/ Richard M. Martin, Jr.

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