UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL HAMBY **v.** **COVIDIEN LP AND MEDTRONIC, INC.**	**Civil Action No.** **Jury Demand**

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Plaintiff, **MICHAEL HAMBY** ("Plaintiff"), to file this Complaint against Defendants, **COVIDIEN LP AND MEDTRONIC, INC.** ("Defendants").

PARTIES

1. Plaintiff is an individual of the full age of majority domiciled in Murrells Inlet, South Carolina, who was injured as a result of receiving defective hernia mesh researched, designed, developed, tested, manufactured, labeled, packaged, promoted, advertised, marketed, supplied, sold, and/or distributed by Defendants.

2. The following parties are made Defendants:

   A. COVIDIEN LP ("Covidien") is a for-profit limited partnership organized under the laws of Delaware with its principal place of business in New Jersey at480 Washington Blvd, Jersey City, NJ 07310. At all relevant times, Covidien conducted business in New Jersey including, but not limited to, business related to surgical products and medical devices involved in hernia repair such as Parietex TET Mesh. All acts and omissions of Covidien were done on behalf of Covidien

by its owners, employees, agents, representatives, and servants in the course and scope of their ownership, employment, agency, representation, and service. The general partner of Covidien is Covidien Holding Inc., a for-profit corporation organized under the laws of Delaware with its principal place of business in Massachusetts at 15 Hampshire Street, Mansfield, Massachusetts 02048.

B. MEDTRONIC, INC. ("Medtronic") is a for-profit corporation organized under the laws of Minnesota with its principal place of business in Minnesota at 710 Medtronic Parkway Northeast, Minneapolis, Minnesota 55432. At all relevant times, Medtronic conducted business in New Jersey including, but not limited to, business related to surgical products and medical devices involved in hernia repair such as Parietex TET Mesh. All acts and omissions of Medtronic were done on behalf of Medtronic by its owners, employees, agents, representatives, and servants in the course and scope of their ownership, employment, agency, representation, and service.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds $75,000.00, exclusive of interest and costs, and Plaintiff and Defendants are citizens of different states.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendants conducted substantial business through the distribution of surgical mesh products as well as received significant compensation and profits from sales of surgical mesh products in New Jersey. While conducting substantial business in New Jersey, Defendants also made material misrepresentations and omissions of fact with regard to the effectiveness, safety, risks,

side effects, contraindications, and complications related to surgical mesh products. In addition, Defendants directly or indirectly promoted, advertised, marketed, supplied, sold, and/or distributed surgical mesh products in New Jersey.

GENERAL ALLEGATIONS

5. In approximately July of 2013, Plaintiff underwent surgery to repair a hernia and Parietex Mesh, REF NO. TET3030, (hereinafter "Product" or "Parietex TET Mesh") was implanted during the surgery.

6. As a result of the implantation of the unreasonably dangerous and defective Parietex TET Mesh, Plaintiff suffered injuries including, but not limited to, scarring, pain, recurrence, and additional surgery.

7. Covidien and Medtronic researched, designed, developed, tested, manufactured, labeled, packaged, promoted, advertised, marketed, supplied, sold, and/or distributed Parietex TET Mesh.

8. Parietex TET Mesh is a monofilament mesh with a three dimensional knitted mesh-honeycomb weave.

9. Parietex TET Mesh fails to protect the body from the hydrophilic three-dimensional polyester textile. The composition of polyester is weak and Parietex TET Mesh is known to unravel causing the polyester fiber to detach and travel to other parts of the body inciting an inflammatory response. Parietex TET Mesh further contracts over time causing tension to increase where secured by tacks and sutures resulting in tearing.

10. Covidien and Medtronic applied for clearance from the United States Food and Drug Administration ("FDA") to market Parietex TET Mesh pursuant to Section 510(k) of the Food, Drug, and Cosmetic Act. The Section 510(k) process allowed Covidien and

Medtronic to skip pre-market clinical studies and research intended to ensure the safety of Parietex TET Mesh. The approval of Parietex TET Mesh was based on a substantial equivalence to legally marketed predicate devices.

11. The FDA maintains a database of adverse incidents related to medical implants and devices and there are numerous reports documenting serious adverse events associated with Parietex TET Mesh.

12. Covidien and Medtronic misrepresented Parietex TET Mesh as a safe and effective treatment for hernias; wrongly marketed Parietex TET Mesh as safer and more effective than other meshes or methods for hernia repair; and improperly minimized the adverse effects of Parietex TET Mesh.

13. Covidien and Medtronic knew or should have known that Parietex TET Mesh was not a safe and effective treatment for hernias. Covidien and Medtronic also knew or should have known that Parietex TET Mesh was considerably more harmful and inadequate than other meshes or methods for hernia repair. Additionally, Covidien and Medtronic knew or should have known that Parietex TET Mesh was unreasonably dangerous as well as defective and likely to cause severe complications.

14. Covidien and Medtronic knew or should have known of the defective nature of Parietex TET Mesh but continued to research, design, develop, test, manufacture, label, package, promote, advertise, market, supply, sell, and/or distribute Parietex TET Mesh so as to maximize sales and profits at the expense of the health and safety of the general public and Plaintiff. Covidien and Medtronic acted in conscious disregard for the foreseeable harm caused by Parietex TET Mesh in not adequately warning the FDA, the general public, the medical community, or Plaintiff of the numerous side effects,

complications, and contraindications of Parietex TET Mesh.

15. Contrary to the representations of Covidien and Medtronic, Parietex TET Mesh has a high rate of failure, injury, and complication; fails to perform as intended; and causes severe and irreversible injuries like those suffered by Plaintiff.

16. Parietex TET Mesh is unreasonably dangerous and defective including, but not limited to, as follows:

A. The design of the Parietex TET Mesh fails to protect the body from the hydrophilic three-dimensional polyester textile.

B. Parietex TET Mesh unravels causing the polyester fiber to detach and travel to other parts of the body inciting an inflammatory response.

C. The propensity of the Product to disintegrate after implantation in the abdomen, causing pain and other adverse reactions;

D. Parietex TET Mesh contracts over time causing tension to increase where secured by tacks and sutures resulting in tearing.

E. The propensity of the Product to deform when subject to prolonged tension inside the body;

F. Parietex TET Mesh is defective in shape, composition, weight, chemical, material, physical properties, pore size, mechanical properties, biomechanical properties, elasticity, and engineering.

G. The design of Parietex TET Mesh is more dangerous and less effective than other meshes or methods for hernia repair and causes injury.

H. Covidien and Medtronic failed to provide adequate warning of the numerous side effects, complications, and contraindications of Parietex TET Mesh.

I. Parietex TET Mesh is not a safe and effective treatment for hernias as represented by Covidien and Medtronic.

J. The use of the material in the Product which caused adverse reactions and injuries;

K. The adverse tissue reactions caused by the Product, which are causally related to infection, as the materials used to construct the Product are foreign;

L. The design of the Product to be inserted into and through an area of the body with high levels of bacteria that adhere to the mesh causing immune reactions and subsequent tissue breakdown and adverse reactions and injuries;

M. Biomechanical issues with the design of the Product, including, but not limited to, the propensity of the Product to disintegrate inside the body, that in turn cause injuries to the surrounding;

N. The creation of a non-anatomic condition in the abdomen leading to chronic pain and functional disabilities when the mesh is implanting according to the manufacturers' instructions.

CAUSES OF ACTION

NEGLIGENCE

17. Plaintiff reavers and realleges each and every allegation of this Complaint.

18. Defendant had a duty to individuals, including the Plaintiff named in the Complaint, to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling the Product.

19. Defendant was negligent in failing to use reasonable care, and breached its duty to the Plaintiff, as described herein, in designing, manufacturing, marketing, labeling,

packaging and selling the Product. But for the Defendant's breaches the Plaintiff would not have sustained such injury. Defendant breached its aforementioned duty by, among other things:

A. Failing to design the Product so as to avoid an unreasonable risk of harm to patients in whom the Product was implanted, including the Plaintiff. The design did not provide for sufficient resiliency which caused the Product to disintegrate in the Plaintiff, which caused trauma to the Plaintiff;

B. Failing to manufacture the Product so as to avoid an unreasonable risk of harm to women in whom the Product was implanted, including the Plaintiff;

C. Failing to use reasonable care in the testing of the Product so as to avoid an unreasonable risk of harm to patients in whom the Product was implanted, including the Plaintiff;

D. Failing to use reasonable care in inspecting the Product so as to avoid an unreasonable risk of harm to patients in whom the Product was implanted, including the Plaintiff;

E. Failing to use reasonable care in the training and instruction to physicians for the safe use of the Product;

F. Failing to use reasonable care in studying the Product to evaluate its safety and to determine the nature, magnitude, and frequency of serious, life threatening complications that were known or knowable; and

G. Otherwise negligently or carelessly designing, manufacturing, marketing, labeling, packaging and/or selling the Product.

20. The reasons that Defendant's negligence caused the Product to be unreasonably

dangerous and defective include, but are not limited to:

A. The use of the material in the Product which caused adverse reactions and injuries;

B. The design of the Product to be inserted into and through an area of the body with high levels of bacteria that adhere to the mesh causing immune reactions and subsequent tissue breakdown and adverse reactions and injuries;

C. Biomechanical issues with the design of the Product, including, but not limited to, the propensity of the Product to disintegrate inside the body, that in turn cause injuries to the surrounding;

D. The propensity of the Product to deform when subject to prolonged tension inside the body;

E. The propensity of the Product to disintegrate after implantation in the abdomen, causing pain and other adverse reactions;

F. The adverse tissue reactions caused by the Product, which are causally related to infection, as the materials used to construct the Product are foreign;

G. The creation of a non-anatomic condition in the abdomen leading to chronic pain and functional disabilities when the mesh is implanting according to the manufacturers' instructions.

21. Defendants also negligently failed to warn or instruct the Plaintiff and/or her health care providers of subjects including, but not limited to, the following, all of which were experienced by the Plaintiff due to the Product:

A. The Product's propensities to deform inside the body;

B. The Product's propensities for degradation, fragmentation and/or creep;

C. The rate and manner of mesh erosion or extrusion;

D. The risk of chronic infections resulting from the Product;

E. The risk of recurrent, intractable abdominal pain and other pain resulting from the Product;

F. The need for corrective or revision surgery to adjust or remove the Product;

G. The severity of complications that could arise as a result of implantation of the Product;

H. The hazards associated with the Product;

I. The Product's defects described herein;

J. Treatment of abdominal hernia with the Product is no more effective than feasible available alternatives;

K. Treatment of abdominal hernia with the Product exposes patients to greater risk than feasible available alternatives;

L. Treatment of abdominal hernia with the Product makes future surgical repair more difficult than feasible available alternatives;

M. Use of the Product puts the patient at greater risk of requiring additional surgery than feasible available alternatives;

N. Removal of the Products due to complications may involve multiple surgeries and may significantly impair the patient’s quality of life; and

22. As a direct and proximate result of Defendant's negligence, the Plaintiff has experienced significant mental and physical pain and suffering, has sustained permanent injury, has undergone medical treatment and will likely undergo further medical treatment and procedures, has suffered financial or economic loss, including, but not limited to,

obligations for medical services and expenses, lost income, and other damages.

23. Defendants at all times mentioned had a duty to properly manufacture, test, inspect, package, label, distribute, market, examine, maintain, supply, provide proper warnings and prepare for use the Product.

24. Defendant at all times mentioned knew or in the exercise of reasonable care should have known, that the Product was of such a nature that it was not properly manufactured, tested, inspected, packaged, labeled, distributed, marketed, examined, sold supplied, prepared and/or provided with the proper warnings, and were unreasonably likely to injure the Product's users.

25. Defendant so negligently and carelessly designed, manufactured, tested, failed to test, inspected, failed to inspect, packaged, labeled, distributed, recommended, displayed, sold, examined, failed to examine and supplied the Product, that they were dangerous and unsafe for the use and purpose for which it was intended.

26. Defendant were aware of the probable consequences of the Product.

27. Defendant knew or should have known the Product would cause serious injury; they failed to disclose the known or knowable risks associated with the Product.

28. Defendant willfully and deliberately failed to avoid those consequences, and in doing so, Defendant acted in conscious disregard of the safety of Plaintiff.

29. Defendants owed a duty to Plaintiff to adequately warn her and her treating physicians, of the risks of breakage, separation, tearing and splitting associated with the Product and the resulting harm and risk it would cause patients.

30. Defendant breached their duty by failing to comply with state and federal regulations concerning the study, testing, design, development, manufacture, inspection, production,

advertisement, marketing, promotion, distribution, and/or sale of the Product.

31. As a direct and proximate result of the duties breached, the Product used in Plaintiff's hernia repair surgery failed, resulting in Plaintiff suffering pain, harm and trauma such as those described in her own words in this complaint.

32. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered injuries and damages.

33. Defendant's conduct in continuing to market, sell and distribute the Product after obtaining knowledge they were failing and not performing as represented and intended, showed complete indifference to or a conscious disregard for the safety of others justifying an award of additional damages for aggravating circumstances in such a sum which will serve to deter Defendant and others from similar conduct in the future.

STRICT LIABILITY – DESIGN DEFECT

34. Plaintiff reavers and realleges each and every allegation of this Complaint.

35. The Product implanted in the Plaintiff was not reasonably safe for its intended use and was defective as described herein with respect to its design. But for the Product's design defects, the Plaintiff would not have sustained such injuries. The Product failed to perform as safely as an ordinary consumer would have expected when used in an intended or reasonably foreseeable manner. The Product's memory recoil ring was designed improperly which results in the compromising of the weld process which lead to disintegration and misshapening. This disintegration and mishappening resulted in trauma to the Plaintiff.

36. As previously stated, the Product's design defects include, but are not limited to:

A. The material in the Product and the immune reaction that results from such

material, causing adverse reactions and injuries;

B. The design of the Product to be inserted into and through an area of the body with high levels of bacteria that adhere to the mesh causing immune reactions and subsequent tissue breakdown and adverse reactions and injuries;

C. Biomechanical issues with the design of the Product, including, but not limited to, the propensity of the Product to disintegrate inside the body, that in turn cause surrounding tissue to be inflamed, become fibrotic, and contract, resulting in injury;

D. The propensity of the Product for disintegration when subject to prolonged tension inside the body;

E. The inelasticity of the Product, causing them to be improperly mated to the delicate and sensitive areas of the abdomen where they are implanted, and causing pain upon normal daily activities that involve movement in the abdomen;

F. The propensity of the Product for degradation or fragmentation over time;

G. The propensity of the Product to disintegrate after implantation in the abdomen, causing pain and other adverse reactions;

H. The adverse tissue reactions caused by the Product which are causally related to infection, as the material used to construct the Product is foreign;

I. The creation of a non-anatomic condition in the abdomen leading to chronic pain and functional disabilities when the mesh is implanting according to the manufacturers' instructions.

37. As a direct and proximate result of the Product's aforementioned defects as described herein, the Plaintiff has experienced significant mental and physical pain and suffering,

has sustained permanent injury, has undergone medical treatment and will likely undergo future medical treatment and procedures, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, lost income, and other damages.

38. Defendants are strictly liable to the Plaintiff for designing, manufacturing, marketing, labeling, packaging and selling a defective products. The Product was inherently defective because it was not sturdy enough to prevent disintegration and malformation. This resulted in the Product breaking apart while in the Plaintiff's body. This in turn caused trauma to the Plaintiff's abdominal region which resulted in internal bleeding, infection and other serious injuries. The Defendants sold the Product to the Plaintiff in this defective and unreasonably dangerous condition. The Defendants are engaged in the business of selling this Product and the Product reached the Plaintiff without substantial change in the condition in which it was sold.

STRICT LIABILITY – MANUFACTURING DEFECT

39. Plaintiff reavers and realleges each and every allegation of this Complaint.

40. The Product implanted in the Plaintiff was not reasonably safe for its intended use and was defective as described herein as a matter of law with respect to its manufacture, in that it deviated materially from Defendants' design and manufacturing specifications in such a manner as to pose unreasonable risks of serious bodily harm to the Plaintiff.

41. As a direct and proximate result of the Product's aforementioned defects as described herein, the Plaintiff has experienced significant mental and physical pain and suffering, has sustained permanent injury, has undergone medical treatment and/or corrective surgery and hospitalization, has suffered financial or economic loss, including, but not

limited to, obligations for medical services and expenses, and/or lost income, and other damages.

42. Defendants are strictly liable to the female Plaintiff for designing, manufacturing, marketing, labeling, packaging and selling defective products.

STRICT LIABILITY – FAILURE TO WARN

43. Plaintiff reavers and realleges each and every allegation of this Complaint.

44. The Product implanted in the Plaintiff was not reasonably safe for its intended uses and was defective as described herein as a matter of law due to its lack of appropriate and necessary warnings. The Defendants did not adequately warn the Plaintiff of the dangers of the Product. This danger was reasonably foreseeable to the Defendants because of their knowledge of such defective products and would have been discoverable through reasonable inspection and analysis. This failure to warn caused the Plaintiff not to be aware of the defects which caused her injury. Specifically, Defendants did not provide sufficient or adequate warnings regarding, among other subjects:

A. The Product's propensities to disintegrate inside the body;

B. The Product's propensities for degradation, fragmentation, disintegration and/or creep;

C. The Product's inelasticity preventing proper mating with the abdominal region;

D. The rate and manner of mesh erosion or extrusion;

E. The risk of chronic inflammation resulting from the Product;

F. The risk of chronic infections resulting from the Product;

G. The risk of scarring as a result of the Product;

H. The risk of recurrent, intractable pain and other pain resulting from the Product;

I. The need for corrective or revision surgery to adjust or remove the Product;

J. The severity of complications that could arise as a result of implantation of the Product;

K. The hazards associated with the Product;

L. The Product's defects described herein;

M. Treatment of abdominal hernia with the Product is no more effective than feasible available alternatives;

N. Treatment of abdominal hernia with the Product exposes patients to greater risk than feasible available alternatives;

O. Treatment of abdominal hernia with the Product makes future surgical repair more difficult than feasible available alternatives;

P. Use of the Product puts the patient at greater risk of requiring additional surgery than feasible available alternatives;

Q. Removal of the Product due to complications may involve multiple surgeries and may significantly impair the patient’s quality of life;

R. Complete removal of the Product may not be possible and may not result in complete resolution of the complications, including pain; and

S. The nature, magnitude and frequency of complications that could arise as a result of implantation of the Product.

45. As a direct and proximate result of the Product's aforementioned defects as described herein, the Plaintiff has experienced significant mental and physical pain and suffering, has sustained permanent injury, has undergone medical treatment and will likely undergo further medical treatment and procedures, has suffered financial or economic loss,

including, but not limited to, obligations for medical services and expenses, and/or lost income, and other damages.

46. Defendants are strictly liable to the female Plaintiff for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

47. At the time of the design, manufacture and sale of the Product, and more specifically at the time Plaintiff received the Product it was defective and unreasonably dangerous when put to its intended and reasonably anticipated use.

48. Further the Product was not accompanied by proper warnings regarding significant adverse consequences associated with the Product.

49. Defendant failed to provide any warnings, labels or instructions of its dangerous propensities that were known or reasonably scientifically knowable at the time of distribution.

50. The reasonably foreseeable use of the Product involved significant dangers not readily obvious to the ordinary user of the Product. Defendant failed to warn of the known or knowable injuries associated with malfunction of the Product, including but not limited to the disintegration of the Product and infection which would require subsequent surgical procedures and could result in severe injuries.

51. The dangerous and defective conditions in the Product existed at the time it was delivered by the manufacturer to the distributor. At the time the Defendant had her hernia repair surgery the Product was in the same condition as when manufactured, distributed and sold.

52. Plaintiff did not know at the time of use of the Product, nor at any time prior thereto, of the existence of the defects in the Product.

53. Plaintiff suffered the aforementioned injuries and damages as a direct result of Defendant's failure to warn. The Plaintiff's use of the Product in a manner reasonably foreseeable to the Defendant involved a substantial danger that would not be readily recognized by the ordinary user of the Product. The Defendant knew, or should have known, of the danger given the generally recognized and prevailing scientific knowledge available at the time of the manufacture and distribution. The Defendant failed to provide an adequate warning against the danger created by the reasonably foreseeable use of the Product. The Defendant failed to adequately warn against the specific risk of harm created by the danger. The Defendant failed to provide adequate instruction to avoid the danger. The injuries sustained by the Plaintiff would not have occurred if adequate warning and instruction had been provided. The injury resulted from a use of the product that was reasonably foreseeable to the Defendant.

54. The conduct of Defendant in continuing to market, promote, sell and distribute the Product after obtaining knowledge that the Product was failing and not performing as represented and intended, showed a complete indifference to or conscious disregard for the safety of others justifying an award in such sum which will serve to deter Defendant and others from similar conduct. But for the Defendant's failure to warn, the Plaintiff would not have sustained such injuries.

BREACH OF EXPRESS WARRANTY

55. Plaintiff reavers and realleges each and every allegation of this Complaint.

56. Defendant made assurances as described herein to the general public, hospitals and health care professionals that the Product was safe and reasonably fit for its intended purposes.

57. The Plaintiff and/or her healthcare provider chose the Product based upon Defendant's

warranties and representations as described herein regarding the safety and fitness of the Product.

58. The Plaintiff, individually and/or by and through her physician, reasonably relied upon Defendant's express warranties and guarantees that the Product was safe, merchantable, and reasonably fit for their intended purposes.

59. Defendant breached these express warranties because the Product implanted in the female Plaintiff was unreasonably dangerous and defective as described herein and not as Defendant had represented.

60. Defendant's breach of their express warranties resulted in the implantation of an unreasonably dangerous and defective product in the body of the Plaintiff, placing said Plaintiff's health and safety in jeopardy and causing the injuries mentioned herein.

61. As a direct and proximate result of Defendant's breach of the aforementioned express warranties, the Plaintiff has experienced significant mental and physical pain and suffering, has sustained permanent injury, as described herein, has undergone medical treatment and will likely undergo further medical treatment and procedures, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, and/or lost income, and other damages.

62. In the manufacturing, design, distribution, advertising, marketing, labeling and promotion of the Product, Defendant expressly warranted them to be safe and effective for consumers like Plaintiff.

63. At the time of making these express warranties, Defendant had knowledge of the purpose for which the product was to be used and warranted same in all respects to be safe and proper for such purpose.

64. The Product did not conform to these express warranties and representations because they are not safe and pose severe and serious risks of injury.

65. The implantation and use of the Product in Plaintiffs case was proper and pursuant to the intended and foreseeable use.

66. Plaintiff, by use of reasonable care, would not and could not have discovered the breach and realized its danger.

BREACH OF IMPLIED WARRANTY

67. Plaintiff reavers and realleges each and every allegation of this Complaint.

68. Defendant impliedly warranted that the Product was merchantable and was fit for the ordinary purposes for which it was intended.

69. When the Product was implanted in the Plaintiff to treat her abdominal hernia, the Product was being used for the ordinary purposes for which it was intended.

70. The Plaintiff, individually and/or by and through her physician, relied upon Defendant's implied warranties of merchantability in consenting to have the Product implanted in her.

71. Defendant breached these implied warranties of merchantability because the Product implanted in the female Plaintiff was neither merchantable nor suited for its intended uses as warranted. It was not suited for its intended purpose because it disintegrated and misshappened inside the Plaintiff's body, causing injuries.

72. Defendant's breach of their implied warranties resulted in the implantation of an unreasonably dangerous and defective product in the body of the Plaintiff, placing said Plaintiff’s health and safety in jeopardy.

73. As a direct and proximate result of Defendant's breach of the aforementioned implied warranties, the Plaintiff has experienced significant mental and physical pain and

suffering, has sustained permanent injury, has undergone medical treatment and will likely undergo further medical treatment and procedures, has suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, and/or lost income, and other damages.

74. Defendant sold the Product which was implanted in the Plaintiff.

75. Defendant impliedly warranted to the Plaintiff, her physicians and health care providers, that the Product was of merchantable quality and safe for the use for which they were intended. The Product sold to the Plaintiff would be rejected by someone with knowledge in the trade or failure to meet the contract description. The Product was not fit for the ordinary purpose for which it was sold, namely to safely repair hernias.

76. Defendant knew or should have known that the Product at the time of sale was intended to be used for the purpose of surgically implanting them into the body for hernia repair.

77. The Plaintiff, her physicians and health care providers reasonably relied on Defendant's judgment, indications and statements that the Product was fit for such use.

78. When the Product was distributed into the stream of commerce and sold by Defendant, it was unsafe for their intended use, and not of merchantable quality, as warranted by Defendant in that they had very dangerous propensities due to problems with the memory recall ring, the weld process, and other defects, when used as intended and implanted into a patient's body where they could cause serious injury of harm or death to the end user. Plaintiff suffered such injuries and damages and death as a result of Defendant's conduct and actions related to the tolling or extension of any applicable statute of limitations, including equitable tolling, delayed discovery, discovery rule, and fraudulent concealment.

DAMAGES

79. Plaintiff reavers and realleges each and every allegation of this Complaint.

80. Plaintiff alleges entitlement to such damages as are reasonable including, but not limited to, the following:

A. Past, present, and future medical expenses;

B. Past, present, and future physical pain and suffering;

C. Past, present, and future mental anxiety and anguish;

D. Past, present, and future lost wages and earnings;

E. Past, present, and future loss of earning capacity;

F. Past, present, and future loss of enjoyment of life; and

G. All reasonable damages as will be more fully shown at trial.

JURY DEMAND

81. Plaintiff reavers and realleges each and every allegation of this Complaint.

82. Plaintiff is entitled to and demands a trial by jury.

WHEREFORE, Plaintiff, MICHAEL HAMBY, prays that there be a judgment against Defendants, COVIDIEN LP AND MEDTRONIC, INC., for all reasonable damages, legal interest, attorney's fees, and costs.

DATED: March 15, 2019

Respectfully Submitted,

/s/ Morris Dweck
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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

MICHAEL HAMBY

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

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

Morris Dweck, Esq., Bernstein Liebhard LLP, 10 East 40th Street, 28th Floor, New York, NY 10016. (212)-779-1414, dweck@bernlieb.com

DEFENDANTS

COVIDIEN LP and MEDTRONIC, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	☒ 4
Citizen of Another State	☒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

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

TORTS

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

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

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

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

PRISONER PETITIONS

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

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

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

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

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

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

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

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

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:
Personal Injury from Plaintiff's use of a medical device

VII. REQUESTED IN COMPLAINT:

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

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
03/15/2019

SIGNATURE OF ATTORNEY OF RECORD
/s/ Morris Dweck

FOR OFFICE USE ONLY

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

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.