UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EVA C. GALAMBOS and JOHN T. GALAMBOS,

Plaintiffs,

v.

ETHICON, INC.; ETHICON ENDO-SURGERY, INC.; JOHNSON & JOHNSON SERVICES; JOHNSON & JOHNSON; VENTION MEDICAL, INC. (f/k/a THE MEDTECH GROUP INC.); VENTION MEDICAL ACQUISITION CO.; and VENTION MEDICAL HOLDINGS, INC.,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Civil Action No.:

Plaintiffs, EVA C. GALAMBOS and JOHN T. GALAMBOS, by and through the undersigned counsel, upon information and belief, at all times hereinafter mentioned, allege as follows:

I. INTRODUCTION

1. This lawsuit is a personal injury action against Defendants who were responsible for researching, designing, developing, testing, manufacturing, packaging, labeling, marketing, advertising, promoting, distributing, selling and/or

making available Laparoscopic Power Morcellators, including the Gynecare Morcellex Tissue Morcellator, Morcellex Sigma Tissue Morcellator System and the Gynecare X-tract Tissue Morcellator (referred to herein as "Gynecare Tissue Morcellator"), which are medical devices used during laparoscopic uterine surgery.

2. The Plaintiff in this case, EVA C. GALAMBOS, underwent a surgical procedure with a Gynecare Tissue Morcellator, which caused the spread and upstaging[1] of occult (i.e., hidden) cancer.

II. PARTIES

3. Plaintiff EVA C. GALAMBOS (referred to herein as "Plaintiff") is an adult citizen of the State of Georgia and resides in Sandy Springs, Fulton County, Georgia.

4. Plaintiff JOHN T. GALAMBOS (referred to herein as "Plaintiff-Spouse") is an adult citizen of the State of Georgia and resides in Sandy Springs, Fulton County, Georgia.

5. Defendant ETHICON, INC. is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Route 22 West,

[1] A cancer's stage is a reflection of the extent and/or severity of the disease and helps in determining the prognosis and appropriate treatment options. "Upstaging" refers to an increase in the extent or severity of the disease in a given patient, in this case due to the spread and growth of a tumor within the peritoneal cavity caused by the Laparoscopic Power Morcellator.

Somerville, New Jersey 08876.

6. Defendant ETHICON ENDO SURGERY, INC. is an Ohio corporation with its principal place of business at 4545 Creek Road, Blue Ash, Ohio, 45242.

7. Defendant JOHNSON & JOHNSON SERVICES, INC. is a New Jersey corporation with its principal place of business at 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

8. Defendant JOHNSON & JOHNSON is a New Jersey corporation with its principal place of business at 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

9. On information and belief, Defendant JOHNSON & JOHNSON owns all of the common stock and other ownership interests of Defendants ETHICON, INC., ETHICON ENDO-SURGERY, INC., and JOHNSON & JOHNSON SERVICES, INC.

10. On information and belief, JOHNSON & JOHNSON is either the direct or indirect owner of substantially all the stock or other ownership interests of ETHICON, INC., ETHICON ENDO-SURGERY, INC., and JOHNSON & JOHNSON SERVICES.

11. In doing the acts alleged herein, said Defendants were acting in the

course and scope of such agency, representation, joint venture, conspiracy, consultancy, predecessor agreement, successor agreement, service and employment, with knowledge, acquiescence and ratification of each other (hereinafter JOHNSON & JOHNSON, ETHICON, INC., ETHICON ENDO-SURGERY, INC., and JOHNSON & JOHNSON SERVICES are collectively referred to as "JOHNSON & JOHNSON").

12. Defendant VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.) is a corporation organized and/or existing under the laws of the State of New Jersey with its principal place of business at 6 Century Road, South Plainfield, NJ 07080.

13. Defendant VENTION MEDICAL ACQUISITION CO. is a corporation organized and/or existing under the laws of the State of Delaware with its principal place of business at 1800 Larimer Street, Suite 2200, Denver, Colorado 80202.

14. Defendant VENTION MEDICAL HOLDINGS, INC. is a corporation organized and/or existing under the laws of the State of Delaware with its principal place of business at 1800 Larimer Street, Suite 2200, Denver, Colorado 80202.

15. On information and belief, Defendant VENTION MEDICAL ACQUISITION CO. owns all of the common stock and other ownership interests

of Defendant VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.).

16. On information and belief, Defendant VENTION MEDICAL HOLDINGS, INC. owns all of the common stock and other ownership interests of Defendant VENTION MEDICAL ACQUISITION CO.

17. On information and belief, VENTION MEDICAL HOLDINGS, INC., VENTION MEDICAL ACQUISITION CO., and VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.) were the agents, representatives, joint venturers, alter egos, co-conspirators, consultants, predecessors, successors, servants or employees of each other.

18. In doing the acts alleged herein, said Defendants were acting in the course and scope of such agency, representation, joint venture, conspiracy, consultancy, predecessor agreement, successor agreement, service and employment, with knowledge, acquiescence and ratification of each other (hereinafter VENTION MEDICAL HOLDINGS, INC., VENTION MEDICAL ACQUISITION CO., and VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.) are collectively referred to as "VENTION MEDICAL").

19. On information and belief, JOHNSON & JOHNSON and VENTION MEDICAL were the agents, representatives, joint venturers, alter egos, co-

conspirators, consultants, predecessors, successors, servants or employees of each other.

20. In doing the acts alleged herein, said Defendants were acting in the course and scope of such agency, representation, joint venture, conspiracy, consultancy, predecessor agreement, successor agreement, service and employment, with knowledge, acquiescence and ratification of each other.

21. On information and belief, at all relevant times, Defendants expected or should have expected that their acts would have consequences within the United States of America and the State of Georgia, and derived and derive substantial revenue from interstate commerce.

22. On information and belief, at all relevant times, Defendants have transacted and conducted business in the State of Georgia, and/or contracted to supply goods and services within the State of Georgia, and these causes of action have arisen from same.

23. On information and belief, at all relevant times, Defendants committed tortious acts without the States of Georgia causing injury within the State of Georgia out of which act(s) these causes of action arise.

III. VENUE AND JURISDICTION

24. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because complete diversity exists between Plaintiffs, who are citizens of the State of Georgia, which is different from the States where the Defendants are incorporated and have their principal places of business, and the amount in controversy for the Plaintiffs exceeds $75,000, exclusive of interest and costs.

25. Venue is proper within this District pursuant to 28 U.S.C. § 1391 and it is a judicial district where Defendants are subject to personal jurisdiction in accordance with 28 U.S.C. §§ 1391(a) and (c).

IV. BACKGROUND AND FACTS

A. Plaintiff's Surgery and the Resultant Spread of Life-threatening Cancer

26. Plaintiff EVA C. GALAMBOS is an eighty-six (86) year-old wife of Plaintiff-Spouse JOHN T. GALAMBOS.

27. Plaintiff was employed by the city of Sandy Springs, Georgia for approximately eight (8) years as the first ever mayor from the years 2005 through 2013.

28. On January 20, 2011, Plaintiff EVA C. GALAMBOS underwent a laparoscopic surgery known as a total laparoscopic hysterectomy at Piedmont Hospital in Atlanta, Georgia for the removal of uterine fibroids, at which time her surgeon, Dr. Margaret C. Ellison, used Defendants' Gynecare Tissue Morcellator for tissue removal.

29. Prior to undergoing surgery, Plaintiff underwent testing and evaluation which showed no evidence of disseminated or metastatic cancer.

30. Prior to undergoing surgery, Plaintiff was not warned of the high-risk that use of a Laparoscopic Power Morcellator could disseminate and upstage occult cancer.

31. During the surgery, a biopsy of the tissue was taken and the results of the biopsy revealed endometrial stromal sarcoma/leiomyosarcoma which she was diagnosed with after the surgery.

32. Upon information and belief, Plaintiff was treated for her endometrial stromal sarcoma/leiomyosarcoma and it was her understanding that she was cancer free until April 23, 2013 when she was diagnosed with a recurrence of her endometrial stromal sarcoma/leiomyosarcoma.

33. On April 10, 2013, Plaintiff presented to Buckhead Surgical Associates in Atlanta, Georgia due to an abdominal wall mass, where she underwent a CT scan of her abdomen and pelvis.

34. Thereafter, on April 15, 2013, Plaintiff underwent a biopsy of the mass at Buckhead Surgical Associates by Dr. Lee Skandalakis.

35. As a result of the findings, on April 23, 2013, Plaintff underwent an exploratory laparotomy and debulking of the pelvic sarcoma at Piedmont Hospital.

36. Based on the surgical pathology obtained during Plaintiff's surgery, she was diagnosed with a recurrence of metastatic endometrial sarcoma, involving the pelvis and left anterior abdominal wall through the peritoneum.

37. Had the Laparoscopic Power Morcellator used on Plaintiff not disseminated fulminated cancerous cells and tissue, she would not have suffered and been diagnosed with a recurrence of her endometrial stromal sarcoma.

38. The Laparoscopic Power Morcellator used on Plaintiff during her 2011 surgery caused this specific cancerous condition, profoundly and gravely injuring Plaintiff.

39. As a result of the conduct alleged herein by Defendants, Plaintiff has suffered, and continues to suffer, serious bodily injury and has incurred, and

continues to incur, medical expenses to treat her injuries and condition, and has lost wages.

B. Background on Laparoscopic Power Morcellators

40. In the United States, it is estimated that 650,000 women a year will undergo a surgical myomectomy or hysterectomy for the management of symptomatic uterine fibroids.

41. In conventional **non**-Power Morcellator hysterectomies, the women's entire uterus is removed essentially intact and in conventional myomectomies the uterine fibroids are removed essentially intact and the women's uterus is left intact.

42. In the last few decades, laparoscopic procedures with electric Laparoscopic Power Morcellator devices to remove uterine fibroids or other tissue, have increasingly replaced traditional open abdominal surgical hysterectomies, myomectomies, and laparotomies.

43. Laparoscopic Power Morcellators are electrically powered medical tools with spinning blades that shred, grind, and core tissue into smaller pieces or fragments so the tissue can be removed through small incisions or extraction "ports" in the abdomen.

44. Laparoscopic Power Morcellators are designed with a grasper that pulls the tissue up against the sharp, rotating blades, severing the shredded tissue

from the rest of the large mass and continuously pulling cut portions of tissue up through the tube.

45. The morcellator's spinning blade shreds the tissue masses at a high velocity and can disperse cellular particles from the shredded tissue throughout the abdomen during surgery.

46. During tissue morcellation, morcellated fragments can be left in the abdomino-pelvic cavity, or attach to surrounding organs (such as the loops of the bowel), and cancerous cells can travel to remote areas of the body through the vasculature or lymphatic system.

47. Once disseminated in the body, morcellated fragments can become implanted in surrounding tissue or organs, and begin to grow.

48. When tissue fragments escape into the abdomino-pelvic cavity and seed in other tissue or organs, complications can arise months or years after the surgery.

49. As a result, Laparoscopic Power Morcellator can spread and upstage or worsen a women's occult cancer, changing the stage of the cancer from an early stage cancer into a much higher stage cancer and, as discussed below, significantly worsening a women's prognosis.

50. Defendants were responsible for researching, designing, developing, testing, manufacturing, packaging, labeling, marketing, advertising, promoting, distributing, selling and/or making available Laparoscopic Power Morcellators under the following trade names: the Gynecare Morcellex Tissue Morcellator, Morcellex Sigma Tissue Morcellator System and the Gynecare X-tract Tissue Morcellator.

C. The Laparoscopic Power Morcellators Used In Plaintiff's Surgery Was Defective In Design And Created An Avoidable Risk Of Harm To Plaintiff Which Significantly Worsened Her Chance Of Survival

51. Long before Plaintiff underwent surgery in 2011, Defendants knew or should have known that their Laparoscopic Power Morcellators could cause occult malignant tissue fragments to be disseminated and implanted in the body, which, in turn, upstages any cancer present and significantly worsens a woman's chance of survival.

52. Although evidence was available to Defendants for years before Plaintiff's surgery, Defendants failed to respond to multiple published studies and reports describing the risk of disseminated and upstaging or worsening occult cancer with morcellator use, and failed to design their Laparoscopic Power Morcellators, including the Gynecare Tissue Morcellator, in a manner to reduce this life-threatening risk.

53. On information and belief, Defendants, as is industry practice, daily monitor the medical and lay media for articles on issues concerning their products, Laparoscopic Power Morcellators.

54. On information and belief, many, if not all, of the literature cited below was collected by and known to the Defendants (or should have been known to the Defendants) at or before the time the literature was published.

55. ***First***, Defendants knew or should have known that their Laparoscopic Power Morcellators could cause occult malignant tissue fragments to be disseminated and implanted in the body.

(a) Indeed, on August 6, 1991, a patent for a Surgical Tissue Bag and Method for Percutaneously Debulking Tissue was issued that describes the potential for Laparoscopic Power Morcellators to disseminate and implant malignant tissue fragments in the body.

(b) The patent for the surgical tissue bag stated:

> Another problem associated with the debulking, removal or morcellation of large tissue volume is the concern for containing malignant or pathogenic tissue. ***The morbidity of patients significantly increases when malignant cells of such large volume tissue are permitted to come in contact with surrounding healthy tissue***. A malignancy would typically indicate a more invasive procedure in which the cavity is opened and the affected tissue is removed. These invasive open cavity

> procedures increase the recovery period of the patient and subject the patient to additional discomfort and complications.
>
> As a result, ***the debulking of large malignant tissue volumes percutaneously through an access sheath presents significant morbidity risks to the patient***. (emphasis added).

(c) The patent Summary of the invention further stated that "containment of the tissue within the bag also prevents the spread of malignant cells to healthy tissue in the body cavity."

(d) The Surgical Tissue Bag patent was publically available and was available to the Defendants, and/or known to Defendants, before they first sought approval of their Laparoscopic Power Morcellators.

(e) Also, prominent medical journals reporting on Laparoscopic Power Morcellators and the risk of spreading undetected cancer also began to accumulate in the 1990s, and continued thereafter.

(f) In 1997, Schneider published a case report in a medical journal, known to the Defendants as THE AMERICAN JOURNAL OF OBSTETRICS AND GYNECOLOGY, titled "Recurrence of unclassifiable uterine cancer after modified laparoscopic hysterectomy with morcellation," which reported a patient who underwent a laparoscopic supracervical hysterectomy by manual morcellation. Schneider, Recurrence of

unclassifiable uterine cancer after modified laparoscopic hysterectomy with morcellation, J. AM. OBSTET. GYNECOL., 177(1):478-9 (1997).

(g) The following year the patient died due to the rapid progression of uterine adenocarcinoma that had been undetected prior to surgery. *Id*. at 478.

(h) Schneider cautioned that evaluation for malignancy prior to surgery "grows even more important and should be mandatory when uteri are increasingly morcellated by introduction of laparoscopic techniques." *Id*. at 479.

(i) In 1998, Hutchins and Reinoehl published a case report in THE JOURNAL OF THE AMERICAN ASSOCIATION OF GYNECOLOGIC LAPAROSCOPISTS, which was known to the Defendants, in which the authors explained that "[b]ecause of the large quantity of tissue of such a uterus, it would be anticipated that numerous fragments would be generated during morcellation." Hutchins and Reinoehl, Retained Myoma after Laparoscopic Supracervical Hysterectomy with Morcellation, J. AM. ASSOC. GYNECOL. LAPAROSC., 5(3):293-295 (1998).

(j) The authors cautioned that the morcellated fragments could become concealed in surrounding organs making it difficult for the surgeon to identify and remove all tissue fragments. *Id*. at 294.

(k) In 2005, LaCoursiere et al. published a case report in THE JOURNAL OF MINIMALLY INVASIVE GYNECOLOGY which reported that "[t]he use of a power morcellator may produce smaller fragments than other techniques." LaCoursiere et al., Retained fragments after total laparoscopic hysterectomy, J. MINIM. INVAS. GYNCOL., 12:67-69, 68 (2005).

(l) According to the authors, "implantation, rather than resorption of residual fragments of cervix and myometrium can occur," a problem which they reported "ha[d] implications for possible benign and malignant sequelae." *Id*.

(m) In 2010, in THE JOURNAL OF MINIMALLY INVASIVE GYNECOLOGY, Larraín et al. explained that, "[i]f retained fragments [from morcellation] can establish a blood supply and grow with benign disease, it is of concern that in situations in which an unsuspected malignant lesion is inadvertently morcellated, aberrant fragments will grow and metastasize." Larraín et al., "Iatrogenic" Parasitic Myomas:

Unusual Late Complications of Laparoscopic Morcellation Procedures, MINIM. INVAS. GYNCOL., 17:719-724, 722 (2010) ("Larraín et al. paper").

(n) Based on this evidence, Defendants were on notice that their Laparoscopic Power Morcellators exposed patients to a significant risk of disseminating and worsening occult cancer.

56. ***Second***, Defendants knew or should have known that, for women undergoing laparoscopic hysterectomies or myomectomies for presumed fibroids, the risk of having a hidden deadly sarcoma was much higher than 1 in 10,000.

(a) In 1990, Leibsohn et al. published a study titled "Leiomyosarcoma in a series of hysterectomies performed for presumed uterine leiomyomas" in the AMERICAN JOURNAL OF OBSTETRICS & GYNECOLOGY in which the authors found that "…women with signs and symptoms of [benign] uterine leiomyomas [fibroids] that warrant hysterectomy have about a 1 in 140 chance of having a uterine leiomyosarcoma." Leibsohn et al., Leiomyosarcoma in a series of hysterectomies performed for presumed uterine leiomyomas, Am. J. Obstet. Gynecol. 162:968-76, 972 (1990) ("Leibsohn et al. paper") (emphasis added).

(b) In 1999, Takamizawa et al. published another study titled "Risk of Complications and Uterine Malignancies in Women Undergoing Hysterectomy for Presumed Benign Leiomyomas" in GYNECOLOGIC AND OBSTETRIC INVESTIGATION, which found that 2/923 women who underwent hysterectomies for presumed benign fibroids had undiagnosable hidden sarcomas before their hysterectomies. Takamizawa et al., Risk of Complications and Uterine Malignancies in Women Undergoing Hysterectomy for Presumed Benign Leiomyomas, GYNECOL. OBSTET. INVEST., 48:193-196, 196 (1999).

(c) Takamizawa et al. reported that their study results were consistent with the findings of other studies which suggested that 2–5 patients per 1,000 who undergo surgery for presumed fibroids have uterine sarcomas. *Id*.

(d) This evidence was available to Defendants.

(e) However, on information and belief, in seeking for approval for their Laparoscopic Power Morcellators decades before Plaintiff underwent surgery, and, later, in promoting their devices to the medical community, Plaintiff and Plaintiff's surgeon, Defendants ignored this data and touted a much lower 1 in 10,000 risk.

57. ***Third***, Defendants knew or should have known that women could not be adequately screened for malignancy prior to undergoing Laparoscopic Power Morcellation surgery because certain types of cancers, including sarcomas, can mimic the radiographic appearance of benign uterine fibroids.

(a) In the 1990 Leibsohn et al. study, discussed *supra*, the authors described the difficulties in diagnosing leiomyosarcoma (a particularly aggressive form of cancer) preoperatively, noting that "abdominal ultrasonography of the pelvis and cervical cytology are not helpful preoperative tests for the diagnosis [of] leiomyosarcoma of the uterus." See Leibsohn et al. paper, at 192.

(b) Additional evidence became available to Defendants in 2001, when Stewart published an article in THE LANCET, which explained that malignant leiomyosarcoma and benign fibroids may share histological features; thereby, making it more difficult for clinicians to identify the malignant potential of smooth muscle uterine tumors. Stewart, Uterine Fibroids, THE LANCET, 357:293-98 (2001).

(c) The difficulty in diagnosing uterine sarcoma preoperatively was not limited to leiomyosarcoma.

(d) On information and belief, in 2006, Robert Lamparter, M.D., a pathologist at Evangelical Community Hospital in Lewisburg, Georgia, wrote to the former medical director of Ethicon Women's Health and Urology, a JOHNSON AND JOHNSON subsidiary, imploring the company to "reconsider the risk [of power morcellators] to the patient."

See http://www.bizjournals.com/pittsburgh/news/2014/05/30/j-j-alerted-in-2006-to-devices-surgical-risks.html (last checked 8/1/2014).

(e) Dr. Lamparter advised Ethicon that, "[v]irtually all uteruses have some sort of pre-op screening, whether it be an endometrial biopsy or an ultrasound, so whatever screening is being done misses a certain number of malignancies." *Id.*

(f) **However, "[w]hen the operative procedure is a standard hysterectomy, no damage is done. If a morcellation is done, the patient's survival is jeopardized."** *Id.*

(g) In 2008, Bansal et al. published a study in GYNECOLOGIC ONCOLOGY, in which the authors found that the predictive value of endometrial biopsy or curettage for diagnosing uterine sarcoma was very poor and,

thus, "novel diagnostic techniques are needed to accurately identify uterine sarcomas preoperatively." Bansal et al., The utility of preoperative endometrial sampling for the detection of uterine sarcoma, GNECOL. ONCOL., 110:43-48, 47 (2008).

(h) Similarly, in 2010, Della Badia and Karini published a case report in THE JOURNAL OF MINIMALLY INVASIVE GYNECOLOGY, in which they warned that there was "no reliable method for preoperative diagnosis of endometrial sarcoma" and "[s]ensitivity of preoperative endometrial sampling is only 64% for enabling a diagnosis of this tumor." Della Badia and Karini, Endometrial Stromal Sarcoma Diagnosed after Uterine Morcellation in Laparoscopic Supracervical Hysterectomy, J. MINIM. INVAS. GYNCOL., 17:791-93, 791 (2010).

(i) According to the authors, where malignancy is found before surgery, the standard treatment for uterine sarcoma is a total hysterectomy with staging of the cancer, not tissue morcellation. *Id*.

58. ***Fourth***, Defendants knew or should have known that women undergoing surgery with Laparoscopic Power Morcellators suffer worse long-term medical outcomes than women undergoing other available treatment options because of the cancer risks associated with the use of their devices.

(a) For example, in 2002, Goto et al. published a study in the INTERNATIONAL JOURNAL OF GYNECOLOGIC CANCER, which reported:

> Leiomyosarcoma of the uterus is one of the most difficult neoplasms to cure in gynecologic oncology. Its malignant behaviors such as rapid growth and high rate of metastasis are notorious. ***The 5-year survival in patients with advanced stages (stage III or higher) is less than 10%***, although leiomyosarcoma resembles leiomyoma in clinical features. Until now LMS was diagnosed only in advanced stages or accidentally at total abdominal hysterectomy.
>
> […]
>
> Therefore it seems that the effective treatment of LMS is surgical removal of the tumor in the earlier stages. The problem regarding treatment of LMS is the difficult preoperative differential diagnosis of LMS in the early stages from leiomyoma, which is the most common tumor of the uterus.

Goto. et al., Usefulness of Gd-DTPA contrast-enhanced dynamic MRI and serum determination of LDH and its isozymes in the differential diagnosis of leiomyosarcoma from degenerated leiomyoma of the uterus, INT. J. GYNECOL. CANCER, 12:354-361, 358 (2002) (emphasis added).

(b) Likewise, in 2003, Morice et al. published an article in the EUROPEAN JOURNAL OF GYNECOLOGIC ONCOLOGY, in which they found a

substantial increase in pelvic recurrence of uterine sarcoma at three (3) months in 34 patients with uterine sarcoma who had morcellation during their initial surgery compared with 89 patients without morcellation. Morice et al., Prognostic value of initial surgical procedure for patients with uterine sarcoma: analysis of 123 patients, EUR. J. GYNAECOL. ONCOL., 24(3-4);237-40, 238-39 (2003).

(c) The authors concluded that, when the diagnosis of uterine sarcoma is known preoperatively, the optimal treatment for uterine sarcoma is a "monobloc" total abdominal hysterectomy and bilateral salpingo-oophorectomy without morcellation. *Id*. at 239.

(d) In 2008, Einstein et al. presented a prospective study in the INTERNATIONAL JOURNAL OF GYNECOLOGIC CANCER involving all patients who had undergone any type of hysterectomy for presumed benign disease and were, subsequently, referred to Memorial Sloan-Kettering between January, 2000 and March, 2006 with diagnosed malignancy based on the final surgical pathology. Einstein et al., Management of uterine malignancy found incidentally after supracervical hysterectomy or uterine morcellation for presumed benign disease, INT. J. GYNECOL. CANCER, 18: 1065-70, 1066 (2008).

(e) According to their review, an astounding 40% percent of patients who underwent morcellation were found to have upstaged cancer compared with only 8% who had a supracervical hysterectomy. *Id*. at 1069.

(f) According to the authors, "[***this*] *data support this trend toward worse outcomes in patients who had morcellation procedures***." *Id*.

(g) In 2009, Perri et al. published an article in the INTERNATIONAL JOURNAL OF GYNECOLOGICAL CANCER, in which they explained:

> [u]nfortunately, however, it is not unusual to diagnose LMS [leiomyosarcoma] only postoperatively because its symptoms and signs resemble those of benign leiomyomas (LMs), and there are no imaging techniques for differentiation between the two. Consequently, on the assumption that they have LM, some patients with LMS are treated initially with hysteroscopic or abdominal myomectomy, subtotal hysterectomy, or laparoscopic hysterectomy or myomectomy with a morcellator knife. Those surgical techniques, unlike total abdominal hysterectomy (TAH), are likely to involve tumor injury or cut-through.

Perri et al., Uterine Leiomyosarcoma: Does the Primary Surgical Procedure Matter?, INT. J. GYNECOL. CANCER, 19(2): 257-260, 257 (2009).

(h) According to the authors, "[their] data demonstrate[d] a significant disadvantage for patients in whom the primary surgery had involved tumor cut-through." *Id*. at 260.

(i) In the 2010 Larraín et al. study, discussed *supra*, they commented that "[i]f malignancy is suspected or known preoperatively, morcellation is formally proscribed. However, this situation [spread of malignant tissue] may occur, even if an appropriate preoperative workup including cervical cytologic analysis and endometrial sample are routinely performed." Larraín et al. paper at 722-23.

(j) Consistent with Perri et al.'s findings, in a paper published in 2011 in THE ANNALS OF SURGICAL ONCOLOGY, Park et al. found that women undergoing morcellation suffered worse outcome than women in the non-morcellated treatment group. Park et al., The Impact of Tumor Morcellation During Surgery on the Outcomes of Patients with apparently Early Low-Grade Endometrial Stromal Sarcoma of the Uterus, Ann. Surg. Oncol., 18:3452-61 (2011) ("Park et al. paper").

(k) The authors compared outcomes between patients diagnosed post-operatively with low-grade endometrial stromal sarcoma who had undergone tumor morcellation and those who had not. *Id*. at 3454.

(l) They found a statistically significant difference in five-year disease-free survival rates between non-morcellated patients (85%) and morcellation patients (55%). *Id*. at 3455.

(m) In the 2011 Park et al. paper, the authors also found that five-year abdomino-pelvic disease-free survival was statistically significantly lower in morcellated patients, with 89% disease-free survival rate in the non-morcellated patients and only 58% in the morcellated group. *Id*. at 3456.

(n) The authors noted that "[a]s with other soft tissue sarcomas, iatrogenic rupture and intraperitoneal spillage of tumor may adversely affect the outcomes of patients with apparently early LGESS [low-grade endometrial stromal sarcoma], for whom complete surgical excision is the only established curative treatment modality." *Id*. at 3457.

59. ***Fifth***, Defendants knew or should have known that when malignant tissue undergoes Laparoscopic Power Morcellation, the resultant tissue specimens can delay diagnosis because their condition can prevent the pathologist from properly identifying and staging cancer, which can further worsen a patient's prognosis and treatment outcomes.

(a) For example, in 2005, Rekha et al. discuss in their paper published in the AUSTRALIAN AND NEW ZEALAND JOURNAL OF OBSTETRICS AND GYNAECOLOGY, "[o]ne of the disadvantages of tissue morcellation is loss of the gross appearance of the specimen and the possibility of missing the most suspicious area for the microscopic evaluation." Rekha et al., Unexpected complications of uterine myoma morcellation, Aust. N.Z. J. Obstet. Gynecol., 45: 248-49, 248 (2005).

(b) Rekha et al.'s case report involved a 40-year-old woman who underwent total laparoscopic hysterectomy for presumed benign uterine fibroids died several months after her initial surgery from dissemination of occult leiomyosarcoma. *Id.*

(c) According to the authors, the patient's "malignant component was missed at the time of initial histological evaluation due to evaluation of limited tissue." *Id.*

(d) Published in 2011, Hagemann et al. also discuss the difficulty of analyzing morcellated specimens in their case series "Risk of Occult Malignancy in Morcellated Hysterectomy: A Case Series" that appeared in the INTERNATIONAL JOURNAL OF GYNECOLOGICAL PATHOLOGY. Hagemann et al., Risk of Occult Malignancy in

Morcellated Hysterectomy: A Case Series, INT. J. GYNECOL. CANCER, 30:478-83 (2011).

(e) In their article, Hagemann et al. explained that "[t]hese [morcellated] specimens are examined in the surgical pathology laboratory where, by their fragmented and unoriented nature, they present a special challenge to the pathologist. There is little evidence to guide the pathologic examination of these specimens." *Id.* at 481-82.

60. As set forth herein, over the years numerous journal articles and published studies have examined Laparoscopic Power Morcellators' potential to spread and worsen a women's occult cancer.

61. This evidence should have placed Defendants on notice that their Laparoscopic Power Morcellators were associated with and/or could cause the dissemination and upstaging or worsening of a women's occult cancer.

62. Yet, as designed and marketed, the Laparoscopic Power Morcellator used on Plaintiff during her 2011 surgery was unsafe for its intended purpose and defective in design in that it subjected the Plaintiff to the avoidable risks of harm, including, *inter alia*: (a) dissemination and implantation of occult malignant or cancerous tissue; (b) increasing Plaintiff's probability to develop metastatic cancer; (c) upstaging or worsening a patient's occult malignancy; (d) causing earlier

recurrence of cancer; and (e) significantly lowering the Plaintiff's likelihood of long-term survival.

63. Knowing their Laparoscopic Power Morcellators had the potential to spread and upstage or worsen a woman's occult cancer, Defendants should have designed, marketed and sold their Laparoscopic Power Morcellators, including the Gynecare Tissue Morcellator, with a containment bag or system specifically designed to minimize or prevent the risk of disseminating cancerous tissue.

64. On information and belief, said containment bag or system should have been designed to accommodate and withstand the morcellator blade and the large tissues that are often encountered in gynecologic surgery.

65. Defendants' failure to research, design, develop, test, manufacture, package, label, market, advertise, promote, distribute, sell and/or make available the Laparoscopic Power Morcellator used in Plaintiff's surgery with a containment bag or system to minimize or prevent the risk of disseminating cancerous tissue was negligent and fell below the standard of care expected of a reasonable medical device manufacturer.

66. Additionally, at the time of Plaintiff's surgery, numerous other treatment options for fibroids were available, which had more established safety profiles and considerably lower risk profiles than Laparoscopic Power

Morcellators including, but not limited to, total abdominal hysterectomies ("TAH"), minimally-invasive hysterectomies and myomectomies, including those using manual morcellation, and embolization and ablation treatments.

67. Accordingly, for this and the other reasons set forth here and below, the Laparoscopic Power Morcellator used in Plaintiff's surgery was defective in design.

68. As set forth here and below, the defective design of the Laparoscopic Power Morcellator used on Plaintiff during her 2011 surgery, was the proximate cause of Plaintiff's injuries.

D. The Laparoscopic Power Morcellator Used In Plaintiff's Surgery Contained An Inadequate Warning

69. The Defendants failed to provide a reasonable sufficient or adequate warning about the true risks of disseminating and upstaging occult cancer from the use of their Laparoscopic Power Morcellators, including the Gynecare Tissue Morcellator.

70. In 1995, the first Power Morcellator reached the market with an indication for gynecologic laparoscopic procedures based on literature involving the device's use in merely 11 patients.

71. Power Morcellators are Class II medical devices.

72. Class II devices are regulated by the Food and Drug Administration Center for Medical Devices and Radiological Health.

73. Such devices are required to undergo a "510(k)" process prior to being distributed, which simply requires the manufacturer to notify the FDA under section 510(k) of the Medical Device Amendments to the Food, Drug, and Cosmetics Act of 1938 ("MDA"), of its intent to market a device at least ninety (90) days prior to the device's introduction on the market, and to explain the device's "substantial equivalence" to a pre-MDA predicate device.

74. Each time the Defendants sought to market a new Laparoscopic Power Morcellator device they did so without submitting premarket approval-testing (required under FDA regulations for Class III devices) and merely based on the Defendants' assertions that the subject device was "substantially similar" to another legally marketed device.

75. Based on the Defendants' assertions that their device was "substantially similar" to a marketed device, the FDA cleared the device for sale in the United States.

76. FDA approval or clearance actions do not guarantee that a product will be found to be compliant or safe and effective for its intended uses for all times and for all purposes.

77. After the FDA cleared the Laparoscopic Power Morcellator used in Plaintiff's surgery for sale in the U.S., the Defendants were under an obligation to ensure the quality and safety of their marketed product.

78. Defendants have an ongoing duty of medical device surveillance and vigilance and were under a continuing duty to inform surgeons, regulatory agencies, and the public of new safety and efficacy information they learn, or should have learned, about their marketed devices once that information becomes available to Defendants.

79. According to the FDA guidance to medical device manufactures, an appropriate Warning should be included if there is reasonable evidence of an association of a serious hazard with the use of the device. A causal relationship need not have been proved. See Device Labeling Guidance #G91-1 - blue book memo, March 8, 1991.

80. However, Defendants ignored mounting evidence about the cancer risk, and exposed Plaintiff to an avoidable risk of harm by failing to disclose:

(a) The difficulty of effectively diagnosing cancer prior to (or during) surgery with available diagnostic tools;

(b) The actual prevalence of undiagnosed uterine sarcomas in women undergoing morcellation;

(c) The actual rates at which Laparoscopic Power Morcellators disseminated and/or upstaged occult cancer;

(d) Laparoscopic Power Morcellators are associated with worse long-term medical outcomes than other fibroid treatments because of the risk of occult cancer being spread and implanted by the use of the device; and

(e) If cancer is discovered after morcellation, staging and pathological diagnosis could be impeded, thus yielding worse prognosis and outcomes for the patient, including Plaintiff.

81. On information and belief, at the time of Plaintiff's 2011 surgery, the Defendants' instructions for use that accompanied their Laparoscopic Power Morcellators contained a "**CAUTION" which merely provided:** "[a] tissue extraction bag is recommended for the morcellation of malignant tissue or tissue suspected of being malignant and for tissue that the physician considers to be potentially harmful when disseminated in a body cavity."

82. The device used on Plaintiff, however, failed to contain a Warning or an adequate warning regarding the potential of the Laparoscopic Power Morcellator to spread occult cancer.

83. Likewise, the Laparoscopic Power Morcellator used on Plaintiff failed to contain a recommendation to use a tissue extraction bag to minimize the risk of spreading occult cancer.

84. Defendants' statements were insufficient and negligent in that they wrongly conveyed that detection of cancerous tissue prior to morcellation is feasible and likely.

85. Evidence available to the Defendants, however, showed that the risk of undetected leiomyosarcoma was one in 140 and, therefore, detection of leiomyosarcoma prior to surgery is not feasible or likely.

86. Thus, Defendants' statement about use of a tissue extraction bag only when cancer is detected and suspected did not and could not eliminate the risk of dissemination of uterine cancer in those cases of hidden cancer.

87. Defendants' statement, in fact, ensured harm to patients, Plaintiff included, by providing a false and inadequate warning.

88. Neither the 510(k) submissions, nor Defendants' inadequate warnings concerning their Laparoscopic Power Morcellators, adequately instructed Plaintiff or her surgeon that an appropriate tissue bag to contain shredded tissue fragments should be used to prevent or minimize the risk of disseminating and worsening occult uterine cancer.

89. Defendants' also failed to adequately warn of the risks associated with their Laparoscopic Power Morcellators including, but not limited to:

(a) The failure to adequately warn because any Warnings given were not commensurate with the risks involved;

(b) The failure to adequately warn because the Warnings contained no information about the risk of disseminating and upstaging a patient's occult cancer;

(c) The failure to timely include a Black Box Warning regarding the risks of disseminating and upstaging a patient's occult cancer; and

(d) The failure to timely include a Contraindication regarding the risks of disseminating and upstaging a patient's occult or unknown cancer.

90. Defendants' failure to timely or appropriately warn of the foregoing risks prevented Plaintiff and Plaintiff's surgeon from fully or correctly evaluating the risks and benefits of undergoing surgery with the Defendants' Laparoscopic Power Morcellators.

91. Because of Defendants failure to adequately warn Plaintiff and Plaintiff's surgeons of the risks associated with morcellator use and the device's propensity to disseminate and upstage or worsen cancer, Plaintiff was caused severe and permanent injures and lost a significant chance of survival.

E. FDA Action and the "World Wide Withdrawal" of Johnson & Johnson Laparoscopic Power Morcellators in 2014

92. On April 17, 2014, approximately three years after Plaintiff underwent surgery with Defendants' Laparoscopic Power Morcellator, the FDA released a Safety Communication Notice and Quantitative Assessment to inform health care providers and the public that "based on currently available information, ***the FDA discourages the use of laparoscopic power morcellation during hysterectomy or myomectomy for the treatment of women with uterine fibroids***." 4/17/2014 FDA Safety Communication (emphasis added).

93. The FDA further warned the medical community that:

> Importantly, based on an FDA analysis of currently available data, it is estimated that ***1 in 350 women undergoing hysterectomy or myomectomy for the treatment of fibroids is found to have an unsuspected uterine sarcoma***, a type of uterine cancer that includes leiomyosarcoma. If laparoscopic power morcellation is performed in women with unsuspected uterine sarcoma, there is a risk that the procedure will spread the cancerous tissue within the abdomen and pelvis, significantly worsening the patient's likelihood of long-term survival.

Id. (emphasis added).

94. Significantly, in the FDA's "Quantitative Assessment of the Prevalence of Unsuspected Uterine Sarcoma in Women Undergoing Treatment of

Uterine Fibroids," the FDA listed the studies it relied on in reaching its conclusions on the prevalence of unsuspected uterine sarcoma and uterine leiomyosarcoma.

95. The studies cited by the FDA were published in prominent medical journals, ranging in publication dates from 1980 to 2014. Significantly, sixteen (16) of the eighteen (18) studies cited by the FDA in Table 1, were available to Defendants prior to the date on which Plaintiff underwent surgery.

96. Shortly after the FDA released its prevalence data, the JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION published the results of Wright et al.'s findings on how many women might have undetected cancer that a Laparoscopic Power Morcellator could unintentionally spread.

97. Wright et al. examined the Perspective Insurance Database, which collects data from over 500 hospitals, to identify women who had a minimally invasive hysterectomy from 2006-2012 with the use of a power morcellator being captured by charge codes.

98. Of the 232,882 women who had minimally invasive surgery during the study period, power morcellation was used in 36,470 surgeries (15.7%).

99. Of these, 99 women were identified as having uterine cancer, for a prevalence of 27/10,000 (95% CI, 22-32/10,000), a prevalence that was positively correlated with patient age, and translates into a 1 in 368 risk of occult malignancy,

in keeping with the FDA's Quantitative Assessment, which found a 1 in 352 risk of unsuspected uterine sarcoma.

100. In July 2014, FDA convened an Advisory Committee ("AdCom") meeting of the Obstetrics and Gynecological Medical Device Advisory Committee on Laparoscopic Power Morcellators to discuss, among other topics, "whether a 'boxed warning' related to the risk of cancer spread should be required for laparoscopic power morcellators." *Id.*

101. In preparation for the AdCom meeting, the FDA prepared an Executive Summary, which detailed the results of the FDA's safety review and stated:

> (1) The risk of having an unsuspected sarcoma in the population of women undergoing hysterectomy or myomectomy for presumed fibroids may be as high as approximately 1 in 350 for all types of uterine sarcomas, and 1 in 500 for LMS [leiomyosarcoma] specifically.
>
> (2) Peritoneal dissemination and/or cancer upstaging (to FIGO Stage III or IV) following morcellation of an unsuspected sarcoma may occur in approximately 25-65% of cases.
>
> (3) Patients with unsuspected uterine sarcoma who undergo morcellation may be at significantly higher risk for local (pelvic/abdominal) and overall cancer recurrence compared to those who do not undergo morcellation.
>
> (4) Patients with unsuspected sarcoma who undergo morcellation may have poorer disease-free survival and overall survival compared to patients who do not receive morcellation.

See Food and Drug Administration Executive Summary, prepared for the July 10-11, 2014 meeting of the Obstetrics and Gynecology Devices Advisory Committee, *Laparoscopic Power Morcellation during Uterine Surgery for Fibroids* ("FDA Executive Summary"), p. 23.

102. On July 10 and 11, 2014, FDA's Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee convened the AdCom meeting on Laparoscopic Power Morcellators. The two-day meeting consisted of presentations from FDA scientists, FDA invited speakers, Laparoscopic Power Morcellator manufacturers, and members of the public.

103. Based on the data and literature reviewed, the panel made a number of recommendations on Laparoscopic Power Morcellation labeling, including:

(a) Laparoscopic Power Morcellators should not be used in patients with known or suspected malignancy. See FDA Brief Summary of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee Meeting – July 10-11, 2014 ("FDA AdCom Summary Panel Findings") p. 3.

(b) A black boxed warning related to the risk of disseminating unsuspected malignancy during surgeries for presumed benign

fibroids would be useful *but not enough* to address the issue alone. *Id*. (emphasis added).

(c) The panel also expressed interest in exploring other ways to ensure that patients have the appropriate information related to the risk, including a mandatory patient consent form to be signed by the patient and physician. *Id.*

104. The AdCom panel also found that the patient populations for which the risks of Laparoscopic Power Morcellation may outweigh the benefits were quite limited, noting that several panel members identified peri- or post-menopausal women with symptomatic uterine fibroids. *Id*. at 2-3.

105. Facing mounting negative publicity about its devices spreading cancer, on April 30, 2014, the JOHNSON & JOHNSON Defendants suspended worldwide sales of their Laparoscopic Power Morcellators.

106. In a "Dear Healthcare Provider" letter, JOHNSON & JOHNSON explained:

> Based on this Safety Communication, in order to align with the FDA's recommendation and Ethicon's internal investigations, Ethicon has decided to suspend global commercialization (sales, distribution, and promotion) of its Morcellation Devices until the role of morcellation for patients with symptomatic fibroid disease is

> further redefined by FDA and the medical community.

107. In that same letter, the JOHNSON & JOHNSON Defendants emphasized that the decision to suspend global commercialization was "not a product removal." *Id.*

108. On July 30, 2014, the JOHNSON & JOHNSON Defendants issued an urgent worldwide withdrawal of the Ethicon Morcellators.

109. The JOHNSON & JOHNSON Defendants continued to defend their Laparoscopic Power Morcellator devices, stating that "Ethicon Morcellation Devices perform as intended and there are patients who can benefit from procedures using laparoscopic power morcellators, but the risk-benefit assessment associated with the use of these devices in hysterectomy and myomectomy procedures for removing fibroids remains uncertain."

110. On November 24, 2014, the FDA issued and updated FDA Safety Communication regarding Laparoscopic Uterine Power Morcellation in Hysterectomy and Myomectomy.

111. According to the Safety Communication, the FDA was issuing an Immediately In Effect (IIE) guidance that asked manufacturers of Laparoscopic Power Morcellators to include two contraindications and a boxed warning in their product labeling, which warned the medical community against using laparoscopic

power morcellators in the majority of women undergoing myomectomy or hysterectomy, and recommends doctors share this information with their patients.

112. The boxed warning informs health care providers and patients that:

> Uterine tissue may contain unsuspected cancer. The use of laparoscopic power morcellators during fibroid surgery may spread cancer and decrease the long-term survival of patients. This information should be shared with patients when considering surgery with the use of these devices.

113. The two contraindications advise of the following:

> Laparoscopic power morcellators are contraindicated (should not be used) for removal of uterine tissue containing suspected fibroids in patients who are: peri- or post-menopausal, or candidates for *en bloc* tissue removal (removing tissue intact) through the vagina or minilaparotomy incision. (These groups of women represent the majority of women with fibroids who undergo hysterectomy and myomectomy.)
>
> Laparoscopic power morcellators are contraindicated (should not be used) in gynecologic surgery in which the tissue to be morcellated is known or suspected to be cancerous.

IV. EQUITABLE TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

114. 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 discovery rule and/or fraudulent concealment.

115. Plaintiff pleads that the discovery rule should be applied to toll the running of the statute of limitations until the Plaintiff knew, or through the exercise of reasonable care and diligence should have known, of facts indicating that Plaintiff had been injured, the cause of action, and the tortuous nature of the wrongdoing that caused the injury.

116. Despite diligent investigation by Plaintiff into the cause of her injuries, the nature of Plaintiff's injuries and damages, and their relationship to the Gynecare Tissue Morcellator was not discovered, until a date within the applicable statute of limitations for filing Plaintiff's claims. Therefore, under the appropriate application of the discovery rule, Plaintiff's suit was filed well within the applicable statutory limitations period.

117. Defendants are estopped from asserting a statute of limitations defense because all Defendants fraudulently concealed from Plaintiff the truth, quality and nature of Plaintiff's injuries and the connection between the injuries and Defendants' tortuous conduct. Defendants, through their affirmative

misrepresentations and omissions, actively concealed from Plaintiff and Plaintiff's prescribing physicians the true risks associated with the Gynecare Tissue Morcellator.

118. Defendants were under a duty to disclose the true character, quality and nature of the risks associated with the use of a Gynecare Tissue Morcellator in laparoscopic uterine surgeries as this was a non-public information over which Defendants had and continue to have exclusive control and because Defendants knew that this information was not available to Plaintiff, Plaintiff's medical providers and/or to Plaintiff's health facilities. In addition, Defendants are estopped from relying on any statute of limitation because of their intentional concealment of these facts.

119. Plaintiff had no knowledge that Defendants were engaged in the wrongdoing alleged herein. Because of the fraudulent acts of concealment of wrongdoing by Defendants, Plaintiff could not have reasonably discovered the wrongdoing at any time prior.

FIRST CAUSE OF ACTION
AS AGAINST THE DEFENDANTS:

(NEGLIGENCE)

120. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

121. Defendants were regularly engaged in the business of researching, designing, developing, testing, manufacturing, packaging, labeling, marketing, advertising, promoting, distributing, selling and/or making available medical devices known as Laparoscopic Power Morcellators, including the Gynecare Tissue Morcellator, for use in gynecological surgery to remove the uterus (hysterectomy) and/or to remove uterine fibroids (myomectomy) in women.

122. Defendants owed a duty to exercise reasonable care in the researching, designing, developing, testing, manufacturing, packaging, labeling, marketing, advertising, promoting, distributing, selling and/or making available of their products, including gynecologic products used for uterine morcellation, in such a way as to avoid harm to persons upon whom they were used by adequately warning of the hazards and dangers associated with the use of said products.

123. Defendants, acting by and through their authorized divisions, subsidiaries, agents, servants, and employees, were careless, reckless, negligent,

grossly negligent and exhibited willful, wanton, outrageous and reckless disregard for human life and safety in researching, designing, developing, testing, manufacturing, packaging, labeling, marketing, advertising, promoting, distributing, selling, making available and/or placing into the stream of commerce, gynecologic products, including Laparoscopic Power Morcellators used for uterine morcellation, by:

(a) failing to design their Laparoscopic Power Morcellators for safe use in fibroid removal surgery;

(b) failing to conduct adequate and appropriate testing of their gynecologic products;

(c) marketing their Laparoscopic Power Morcellators without first conducting adequate research to determine possible side effects on humans or selectively and misleadingly revealing or analyzing testing and research data;

(d) failing to monitor registry data regarding their marketed devices and promptly report any safety concerns that arise through registry study or data;

(e) failing to keeping abreast of scientific literature and studies which provided Defendants notice of the risks associated with the use of Laparoscopic Power Morcellators;

(f) failing to appropriately respond to their own and others testing of, and information available regarding Laparoscopic Power Morcellators, which indicated such products' potential harm to humans;

(g) failing to appropriately monitor the post-market performance, adverse events, and complications reported about their Laparoscopic Power Morcellators and their products' effects on patients;

(h) failing to promptly disseminate new safety information and data regarding their products after their Laparoscopic Power Morcellators reached the market;

(i) failing to adequately warn of the actual potential of their Laparoscopic Power Morcellators to be harmful to humans;

(j) failing to adequately warn of the actual potential for the dissemination and/or upstaging of metastases of cancer when using Laparoscopic Power Morcellators for uterine morcellation;

(k) concealing their full knowledge and experience regarding the potential that Laparoscopic Power Morcellators were harmful to humans

because there was a substantial risk their products would spread cancer;

(l) failing to adequately define the patients populations, if any, for which Laparoscopic Power Morcellator could be safely used;

(m) researching, designing, developing, testing, manufacturing, packaging, labeling, marketing, advertising, promoting, distributing, selling and/or making available their Laparoscopic Power Morcellators for use in uterine morcellation given their knowledge and experience of such products' potential harmful effects;

(n) failing to timely withdraw products used for uterine morcellation from the market, restrict their uses and adequately warn of such products' potential dangers, given their knowledge of the potential for its harm to humans;

(o) failing to fulfill the standard of care required of a reasonably prudent medical device manufacturer;

(p) disregarding publicity, government and/or industry studies, information, documentation and recommendations, consumer complaints and reports and/or other information regarding the hazards of uterine morcellation and its potential harm to humans;

(q) failing to provide updated information in the form of reports, statistics and outcomes of studies to physicians, hospitals and other healthcare entities concerning the increased likelihood of cancer dissemination when such data became available;

(r) promoting the products used for uterine morcellation on websites aimed at creating user and consumer demand;

(s) advertising and promoting their products used for uterine morcellation as safe and/or safer than other methods of uterine fibroid removal; and

(t) such other acts or omissions constituting negligence and carelessness as may appear during the course of discovery or at the trial of this case.

124. Despite the fact that Defendants knew or should have known that their Laparoscopic Power Morcellators were associated with and/or caused the dissemination and/or upstaging of unsuspected malignant tissue, Defendants continued to research, design, develop, test, manufacture, package, label, market, advertise, promote, distribute, sell and/or make available their Laparoscopic Power Morcellators to patients through their surgeons and/or health care facilities, including the Plaintiff and her surgeon.

125. Defendants, directly or through their sales staff and/or agents, paid consultants, and/or licensed distributors, among others, made false material representations and/or material omissions through the course of aggressive sales and marketing operations that implemented false and misleading statements by sales representatives, Defendant-sponsored literature, Defendant-sponsored events and conferences, online and/or video marketing, or other promotional material in order to research, design, develop, test, manufacture, package, label, market, advertise, promote, distribute, sell and/or make available their Laparoscopic Power Morcellators while omitting material facts regarding said devices' dangerous side effects and adverse events.

126. Defendants knew or should have known that consumers, such as the Plaintiff, would foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care, as set forth above.

127. Defendants' negligence (and/or recklessness) was the cause of and a substantial factor in bringing about Plaintiff's injuries, harm and economic loss which she suffered and will continue to suffer.

128. Defendants acted in conscious disregard of, or indifference to, the high degree of risk of physical harm to women undergoing surgery with their

Laparoscopic Power Morcellators, including Plaintiff herein, of which Defendants knew or has reason to know, giving rise to punitive damages.

129. Defendants knew or should have known of the danger associated with the use of their Laparoscopic Power Morcellator as well as the defective nature of said products, but continued to research, design, develop, test, manufacture, package, label, market, advertise, promote, distribute, sell and/or make available their Laparoscopic Power Morcellators so as to maximize sales and profits at the expense of the public health and safety.

130. Defendants are doing business in Georgia.

131. Defendants carried on solicitation or service actives in Georgia.

132. The Defendants' Laparoscopic Power Morcellators were used within Georgia in the ordinary course of trade.

133. Defendants' Laparoscopic Power Morcellators were sold within the state of Georgia.

134. Defendants derived and derive substantial revenue from interstate commerce.

135. As a result of Defendants' negligence and/or recklessness, Plaintiff was caused to suffer serious and dangerous side effects including the dissemination and/or upstaging of unsuspected malignant tissue, as well as other severe and

personal injuries that are permanent and lasting in nature, physical pain and mental anguish, diminished enjoyment of life, a risk of future cancer(s), reasonable fear of future cancer, any and all life complications caused by Plaintiff's cancer, as well as the need for lifelong medical treatment, monitoring and/or medications, and fear of developing any of the above.

136. By reason of the foregoing, Plaintiffs demands judgment against each Defendant, individually, jointly and severally for compensatory damages and punitive damages, together with interest, costs of suit, attorneys' fees and all such other and further relief as the Court deems proper.

SECOND CAUSE OF ACTION
AS AGAINST THE DEFENDANTS:

(STRICT PRODUCTS LIABILITY - DEFECTIVE DESIGN)

137. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

138. Defendants' Laparoscopic Power Morcellators were expected to, and did, reach the intended consumers, handlers, and persons coming into contact with the product without substantial change in the condition in which they were researched, designed developed, tested, manufactured, packaged, labeled,

marketed, advertised, promoted, distributed, sold and/or made available by Defendants.

139. Defendants' Laparoscopic Power Morcellators, including the Gynecare Tissue Morcellator, were defective in design or formulation in that they were not reasonably fit, suitable or safe for their intended purpose and/or their foreseeable risks exceed the benefits associated with their design.

140. Defendants' Laparoscopic Power Morcellators were defective in design or formulation in that they lacked efficacy, posed a greater likelihood of injury and were more dangerous than other available surgical treatment options indicated for the same conditions and uses, including those discussed above.

141. Defendants' Power Morcellators were defective in design or formulation in that when they left the hands of the manufacturers and/or suppliers, the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design, including those discussed above, which had more established safety profiles and a considerably lower risks, or by the provision of reasonable instructions or warnings.

142. Defendants' Laparoscopic Power Morcellators, as designed, posed a substantial and avoidable likelihood of harm and it was feasible to design said products in a safer manner.

143. Defendants' Laparoscopic Power Morcellators, including the Gynecare Tissue Morcellator, were defective in design or formulation in that the dangers associated with their use were unknowable and unacceptable to the average or ordinary consumer.

144. Defendants' Laparoscopic Power Morcellators failed to comply with state and federal standards when sold.

145. At the time of Plaintiff's surgery, the Laparoscopic Power Morcellator was being used for its advertised and intended purpose, and in the manner Defendants intended.

146. As a foreseeable, direct, and proximate result of the aforementioned wrongful acts and omissions of Defendants, Plaintiffs were caused to suffer from the aforementioned injuries and damages.

147. Due to the aforesaid condition of the Laparoscopic Power Morcellator used on Plaintiff during her surgery, Defendants are strictly liable to Plaintiffs.

148. By reason of the foregoing, Plaintiffs demand judgment against each Defendant, individually, jointly and severally for compensatory damages as well as for punitive damages, attorneys' fees and all such other and further relief as the Court deem proper.

THIRD CAUSE OF ACTION
AS AGAINST THE DEFENDANTS:

(STRICT PRODUCTS LIABILITY – FAILURE TO WARN)

149. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

150. Defendants were under an ongoing duty to keep abreast of medically known or knowable information related to their products and to advise clinicians of these risks in a timely manner to ensure the safe use of their product.

151. Defendants failed to adequately warn health care professionals and the public, including Plaintiff and her surgeon, of the following risks associated with the use of their Laparoscopic Power Morcellators, all of which were known or scientifically knowable to Defendants prior to the date on which the Plaintiff underwent surgery in 2011, including, but not limited to:

(a) the risk of aggressively disseminating unsuspected malignant tissue beyond the uterus;

(b) the device's risk of upstaging a patient's undetected or occult cancer;

(c) failing to provide accurate warnings regarding the inadequacy of pre-operative screening for the presence of unsuspected malignant uterine tissue in women;

(d) failing to provide accurate rates of the prevalence of unsuspected malignant tissue in women undergoing uterine morcellation; and

(e) failing to advise doctors to carefully monitor patients following Laparoscopic Power Morcellator surgery to evaluate for the presence of uterine cancer at an earlier date and to allow for appropriate treatment in the event of such a finding.

152. Defendants' failure to adequately warn Plaintiff and Plaintiff's surgeon of the risks associated with Laparoscopic Power Morcellators prevented Plaintiff and Plaintiff's surgeon from correctly and fully evaluating the risks and benefits of undergoing surgery with the Defendants' devices.

153. Defendants also have known or should have known of the risks associated with the use of specimen containment bags that were not designed for use with a Laparoscopic Power Morcellator, including their potential to perforate or tear during laparoscopic surgery, thereby, creating a risk of tumor spillage and site seeding. See e.g. Cai, et al., Electrical Prostate Morcellator: An Alternative to Manual Morcellation for Laparoscopic Nephrectomy Specimens? An In Vitro Study, ADULT UROLOGY, 61(6):1113-17, 1113 (2003) (finding a 90% perforation rate with mechanical morcellation without direct visualization).

154. Defendants failed to timely include a Black Box Warning regarding the risks of dissemination of occult malignancy and the upstaging of a patient's occult cancer.

155. Defendants failed to timely include a Contraindication that Power Morcellators should not be used in women with tissue of unsuspected, occult, or unknown malignancy.

156. Had Defendants timely and adequately warned of the risks of the Laparoscopic Power Morcellator used during Plaintiff's surgery, such warnings would have been heeded by Plaintiff's surgeon, in that Plaintiff's surgeon would have changed the manner in which he prescribed or selected the Power Morcellator for Plaintiff's surgery, including but not limited to, communicating the risks to the Plaintiff prior to surgery, not using the Power Morcellator, and/or selecting an alternative and safer treatment option for the Plaintiff.

157. If Plaintiff had been adequately warned of the life-threatening risks of the use of the Laparoscopic Power Morcellator, as stated herein, she would have chosen an alternative treatment, one that did not carry the avoidable risks of disseminating and/or upstaging occult cancer and, therefore, would have avoided the injuries described herein.

158. Defendants' failure to adequately warn about the risk of their Power Morcellators was a substantial and contributing factor in causing Plaintiff's injuries.

159. As a foreseeable, direct, and proximate result of the aforementioned wrongful acts and omissions of Defendants, Plaintiff was caused to suffer from the aforementioned injuries and damages.

160. By reason of the foregoing, Plaintiffs demand judgment against each Defendant, individually, jointly and severally for compensatory damages and punitive damages, together with interest, costs of suit, attorneys' fees and all such other and further relief as the Court deem proper.

FOURTH CAUSE OF ACTION AS AGAINST THE DEFENDANTS:

(VIOLATION OF GEORGIA FAIR BUSINESS PRACTICES ACT (O.C.G.A. § 10-1-390, *et seq.*)

161. Plaintiffs repeat, reiterate, and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

162. Plaintiffs are informed and believe, and thereon allege, that Defendants, by the acts and misconduct alleged, violated the Georgia Fair Business Practices Act, § 10-1-390, *et seq.* ("FBPA").

163. The FBPA applies to Defendants' actions and conduct described herein because it extends to transactions which are intended to result, of which have resulted, in the sale of goods to consumers.

164. Plaintiff was a "consumer" within the meaning of the FBPA.

165. Plaintiff purchased (directly, or through her surgeon, and/or the heath care facility at which her surgery was performed) primarily for personal use the Laparoscopic Power Morcellator used on her during surgery and, thereby, suffered ascertainable losses as a result of Defendants' actions in violation of the consumer protection laws.

166. On information and belief, said purchase occurred in the State of Georgia.

167. Defendants have violated and continue to violate the FBPA in representing that goods have characteristics and benefits which they do not have.

168. Had Defendants not engaged in the deceptive conduct described herein, Plaintiff would not have purchased and/or paid for the Laparoscopic Power Morcellator that was used on her during her surgery (directly, or through her surgeon, and/or the heath care facility at which her surgery was performed), and would not have incurred related medical costs and injury.

169. Defendants engaged in knowingly wrongful conduct while at the same time obtaining, under false pretenses, moneys from Plaintiff for the Laparoscopic Power Morcellator that was used on her during her surgery, that would not have been paid had Defendants not engaged in such unfair and deceptive conduct.

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

(a) making untrue, misleading, and/or deceptive assertions, representations or statements of fact that goods or services have characteristics, components, uses benefits or quantities 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.

171. The untrue, misleading, and/or deceptive assertions, representations or statement of fact regarding Laparoscopic Power Morcellators were made by Defendants to the public in promotional materials, Defendant-sponsored medical literature, videos, Defendant-sponsored presentations, and/or face-to-face sales

calls with Defendants' sales representatives and/or agents, with the intent to induce an obligation.

172. Plaintiff and her surgeon justifiably relied on the untrue, misleading, and/or deceptive assertions, representations or statement of fact made by Defendants to the public in promotional materials, Defendant-sponsored medical literature, videos, Defendant-sponsored presentations, and/or face-to-face sales calls regarding Laparoscopic Power Morcellators, in selecting the Gynecare Tissue Morcellator for use in Plaintiff's 2011 surgery.

173. Under the FBPA, Defendants are the suppliers, manufacturers, advertisers, and sellers, who are subject to liability under such legislation for unfair, deceptive, fraudulent and unconscionable consumer sales practices.

174. Defendants violated the statutes that were enacted to protect consumers against unfair, deceptive, and misleading business practices and false advertising, by knowingly and falsely representing that their Laparoscopic Power Morcellators were fit to be used for the purpose for which they were intended, when in fact said devices were defective and dangerous, and by other acts alleged herein.

175. 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 their Laparoscopic Power Morcellator devices. Each aspect of Defendants' conduct combined to artificially create sales of said products.

176. The actions and omissions of Defendants alleged herein are uncured or incurable deceptive acts under the statutes enacted in the states to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising.

177. The acts of untrue and misleading statements by Defendants described hereinabove present a continuing threat to members of the public and individual consumers in that the acts alleged herein are continuous and ongoing, and the public and individual consumers will continue to suffer harm.

178. Defendants had actual knowledge of the defective and dangerous condition of the products and failed to take any action to cure such defective and dangerous conditions.

179. Plaintiff and the medical community relied upon Defendants' misrepresentations and omissions in determining which treatment to prescribe.

180. Reasonable consumers, including Plaintiff, were injured by Defendants' unfair and deceptive acts.

181. As a direct and proximate result of the false representations described herein, Plaintiffs were injured as described above.

182. As a direct and proximate result of Defendants' violations of FBPA, Plaintiffs have sustained economic losses, mental anguish, and other damages, and are entitled to statutory and compensatory damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION AS AGAINST THE DEFENDANTS:

LOSS OF CONSORTIUM

183. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein

184. Plaintiffs are legally married, and as such, are entitled to the comfort, enjoyment, society and services of one another.

185. As a direct and proximate result of the foregoing, Plaintiffs were deprived of the comfort and enjoyment of the services and society of their spouses and have suffered and will continue to suffer economic loss, and have otherwise been emotionally and economically injured.

186. The Plaintiff's injuries and damages are permanent and will continue into the future.

187. The Plaintiffs seek compensatory and punitive damages from the Defendant as alleged herein.

SIXTTH CAUSE OF ACTION AS AGAINST THE DEFENDANTS:

PUNITIVE DAMAGES

188. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

189. The conduct of Defendants, as set forth herein, above was intentional, willful, wanton, oppressive, malicious, and reckless, evidencing such an entire want of care as to raise the presumption of a conscious indifference to the consequences in that Defendants acted only out of self-interest and personal gain. Such conduct evidences a specific intent to cause harm to Plaintiff as provided under O.C.G.A. § 51-12-5.1. Accordingly, punitive damages should be imposed against Defendants pursuant to O.C.G.A. § 51-12-5.1 and other applicable laws, to punish and deter each Defendant from repeating or continuing such unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against the Defendants on each of the above-referenced claims and Causes of Action and as follows:

(1) Awarding compensatory damages to Plaintiff for past and future damages including, but not limited to, pain and suffering for severe and permanent personal injuries sustained by the Plaintiff, past and future health care costs, medical monitoring, past and future loss of earnings and/or earning capacity, according to proof, together with interest and costs as provided by law;

(2) Awarding compensatory damages to Plaintiff Spouse for past and future damages for loss of consortium, according to proof;

(3) Punitive and/or exemplary damages for the malicious, wanton, willful, oppressive, and reckless acts of the Defendants who demonstrated a reckless indifference to the rights and safety of the general public and to the Plaintiffs in an amount sufficient to punish Defendants and deter future similar conduct;

(4) Awarding Plaintiffs' attorney's fees;

(5) Awarding Plaintiffs the costs of these proceedings; and

(6) Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all issues.

Dated this 7th day of April, 2015.

By: /s/ C. Andrew Childers
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Attorneys for Plaintiffs

JS44 (Rev. 1/13 NDGA)

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

EVA C. GALAMBOS and JOHN T. GALAMBOS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Fulton County
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT(S)

ETHICON, INC.; ETHICON ENDO-SURGERY, INC.; JOHNSON & JOHNSON SERVICES; JOHNSON & JOHNSON; VENTION MEDICAL, INC. (f/k/a THE MEDTECH GROUP INC.); VENTION MEDICAL ACQUISITION CO.; and VENTION MEDICAL HOLDINGS, 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

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

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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)

PLF	DEF		PLF	DEF	
■ 1	☐ 1	CITIZEN OF THIS STATE	☐ 4	☐ 4	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
☐ 2	☐ 2	CITIZEN OF ANOTHER STATE	☐ 5	■ 5	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
☐ 3	☐ 3	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	☐ 6	☐ 6	FOREIGN NATION

IV. 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 District) ☐ 6 MULTIDISTRICT LITIGATION ☐ 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Product Liability lawsuit including claims for: negligence; strict products liability; breach of express warranty; breach of implied warranties; fraudulent misrepresentation; fraudulent concealment; negligent misrepresentation; fraud and deceit; and violation of O.C.G.A. Sec. 10-1-390 et seq.

(IF COMPLEX, CHECK REASON BELOW)

- ☐ 1. Unusually large number of parties.
- ☐ 2. Unusually large number of claims or defenses.
- ■ 3. Factual issues are exceptionally complex
- ■ 4. Greater than normal volume of evidence.
- ■ 5. Extended discovery period is needed.
- ☐ 6. Problems locating or preserving evidence
- ☐ 7. Pending parallel investigations or actions by government.
- ■ 8. Multiple use of experts.
- ■ 9. Need for discovery outside United States boundaries.
- ■ 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT $_____ APPLYING IFP _____ MAG. JUDGE (IFP)_____

JUDGE_____ MAG. JUDGE_____ NATURE OF SUIT _____ CAUSE OF ACTION_____
(Referral)

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK
- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK
- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 151 MEDICARE ACT
- ☐ 160 STOCKHOLDERS' SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK
- ☐ 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 - "4" MONTHS DISCOVERY TRACK
- ☐ 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
- ☐ 365 PERSONAL INJURY - PRODUCT LIABILITY
- ☐ 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK
- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK
- ☐ 422 APPEAL 28 USC 158
- ☐ 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK
- ☐ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ ACCOMMODATIONS
- ☐ 444 WELFARE
- ☐ 440 OTHER CIVIL RIGHTS
- ☐ 445 AMERICANS with DISABILITIES - Employment
- ☐ 446 AMERICANS with DISABILITIES - Other
- ☐ 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK
- ☐ 462 NATURALIZATION APPLICATION
- ☐ 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK
- ☐ 463 HABEAS CORPUS- Alien Detainee
- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 HABEAS CORPUS DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER
- ☐ 550 CIVIL RIGHTS - Filed Pro se
- ☐ 555 PRISON CONDITION(S) - Filed Pro se
- ☐ 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK
- ☐ 550 CIVIL RIGHTS - Filed by Counsel
- ☐ 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK
- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- ☐ 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK
- ☐ 710 FAIR LABOR STANDARDS ACT
- ☐ 720 LABOR/MGMT. RELATIONS
- ☐ 740 RAILWAY LABOR ACT
- ☐ 751 FAMILY and MEDICAL LEAVE ACT
- ☐ 790 OTHER LABOR LITIGATION
- ☐ 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK
- ☐ 820 COPYRIGHTS
- ☐ 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK
- ☐ 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK
- ☐ 861 HIA (1395ff)
- ☐ 862 BLACK LUNG (923)
- ☐ 863 DIWC (405(g))
- ☐ 863 DIWW (405(g))
- ☐ 864 SSID TITLE XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK
- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK
- ☐ 375 FALSE CLAIMS ACT
- ☐ 400 STATE REAPPORTIONMENT
- ☐ 430 BANKS AND BANKING
- ☐ 450 COMMERCE/ICC RATES/ETC.
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- ☐ 480 CONSUMER CREDIT
- ☐ 490 CABLE/SATELLITE TV
- ☐ 891 AGRICULTURAL ACTS
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 895 FREEDOM OF INFORMATION ACT
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES
- ☐ 890 OTHER STATUTORY ACTIONS
- ☐ 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK
- ☐ 410 ANTITRUST
- ☐ 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK
- ☐ 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

☐ **CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23** **DEMAND $**_____

JURY DEMAND ■ **YES** ☐ **NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)**

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE_____ **DOCKET NO.**_____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- ☐ **1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.**
- ☐ **2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.**
- ☐ **3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.**
- ☐ **4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.**
- ☐ **5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.**
- ☐ **6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):**
- ☐ **7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO.** **, WHICH WAS DISMISSED. This case** ☐ **IS** ☐ **IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.**

/s/ C. Andrew Childers 04/07/2015

SIGNATURE OF ATTORNEY OF RECORD **DATE**