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Attorneys for Plaintiff
MANUEL A. SANCHEZ

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MANUEL A. SANCHEZ,)	CIVIL NO. _____
)	
Plaintiff,)	COMPLAINT; DEMAND FOR
vs.)	JURY TRIAL; SUMMONS
)	
JOHNSON & JOHNSON SERVICES,)	
INC., a foreign for-profit Corporation;)	
JOHNSON & JOHNSON)	
INCORPORATED, a foreign for-profit)	
Corporation; JOHNSON & JOHNSON)	
CONSUMER COMPANIES, INC, a)	
foreign for-profit Corporation; DEPUY)	
ORTHOPEDECS, INC. a foreign for-)	
profit Corporation,)	
AND DOE DEFENDANTS 1-100,)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiff MANUEL A. SANCHEZ, for his Complaint against Defendants JOHNSON & JOHNSON SERVICES, INC. , JOHNSON & JOHNSON INCORPORATED, JOHNSON & JOHNSON CONSUMER COMPANIES, INC, DEPUY ORTHOPEDICS, INC. and Doe Defendants 1 through 100, allege and aver as follows:

1. Plaintiff MANUEL A. SANCHEZ is and was at all times relevant a resident of the City and County of Honolulu, State of Hawaii.

2. Defendant JOHNSON & JOHNSON SERVICES, INC. is and was at all times relevant a foreign for-profit Corporation, incorporated in New Jersey, and doing business in the City and County of Honolulu, State of Hawaii.

3. Defendant JOHNSON & JOHNSON INCORPORATED is and was at all times relevant a foreign for-profit Corporation, incorporated in South Carolina, and doing business in the City and County of Honolulu, State of Hawaii.

4. Defendant JOHNSON & JOHNSON CONSUMER COMPANIES, INC. is and was at all times relevant a foreign for-profit Corporation, incorporated in New Jersey, and doing business in the City and County of Honolulu, State of Hawaii.

5. Defendant DEPUY ORTHOPEDICS, INC. is and was at all times

relevant a foreign for-profit Corporation, incorporated in Indiana, and doing business in the City and County of Honolulu, State of Hawaii.

6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Doe Defendants and therefore sue said Defendants by such fictitious names. Plaintiff will amend his Complaint to allege their true names and thereon allege that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages, as herein alleged, were proximately caused by their conduct. Plaintiff has made good faith and diligent efforts to identify said Defendants, including interviewing individuals with knowledge of the claims herein. Plaintiff is informed and believes and therefore alleges that at all times herein mentioned, Defendants, and each of them, were the agents, servants and employees of each of the other Defendants herein, and were acting with the permission and consent and within the course and scope of said agency and employment.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1391 in that the Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds \$75,000.00.

8. Venue is proper pursuant to 28 U.S.C. § 1391 because the claims made in this case arose in this district.

UNDERLYING FACTS

9. On March 29, 2011, Plaintiff underwent a knee-replacement surgical procedure on his left knee. His physician, Jay M. Marumoto, M.D. inserted a DePuy Sigma Femoral Posterior Stabilized Cemented size 5 left, P.F.C. Sigma Tibial Tray Fixed Bearing Modular COCR 5, a Sigma 10mm Stabilized Insert, size 5 and a 41 mm Oval Domed Patella 3-Peg. The prostheses were affixed by using Palacos Cement.

10. This surgery was medically indicated because Mr. Sanchez suffered from end-stage arthritis in “all three compartments”.

11. On May 17, 2011, Plaintiff was admitted to the hospital with the diagnosis “Left knee arthrofibrosis status post total knee replacement.” His treating physician performed “Left knee manipulation under anesthesia and injection.”

12. On October 14, 2011, Plaintiff was again admitted to the hospital for a surgical procedure on his left knee. He was diagnosed with “Left knee chronic recurrent synovitis status post total knee replacement, questionable occult infection.” Dr. Marumoto performed a left knee arthroscopy and complete synovectomy.

13. Plaintiff’s left knee underwent aspirations on April 11, 2011,

August 22, 2011, October 6, 2011, October 25, 2011, November 30, 2011, February 26, 2012 and March 6, 2012.

14. On April 5, 2012, Plaintiff was again admitted to the hospital with the diagnosis "Left knee replacement, chronic recurrent effusions and synovitis, questionable infection." Dr. Marumoto performed a left knee diagnostic arthroscopy and complete synovectomy.

15. On June 6, 2012, Plaintiff changed doctors and to this date, he is treated by Thomas Kane, III, M.D.

16. On June 14, 2012, a CT scan was performed on Plaintiff which shows femoral hardware component externally rotated by 1.9 degrees with respect to the transepicondylar line and tibial hardware component internally rotated 19.9 degrees.

17. On July 2, 2012, Plaintiff is again admitted to the hospital where he underwent a revision left knee total knee replacement.

18. Dr. Kane's Operative Report states: "At one point we even considered stopping the revision at this point due to the acceptable visual nature of these components; however on tapping the tibial components lightly, it was clear that the component was loose, most likely at the bone-cement interface. We therefore removed the femoral component with a combination of the power saw

and osteotomes with minimal bone loss. This was a posterior stable component. We then removed the tibial component, which lifted up quite easily out of a well-fixed cement mantle and then we removed the residual cement with osteotomes and a high-speed bur.”

19. The Palacos cement had not affixed to the tibial component. However, the cement did properly affix to the tibia, the femur and the femoral component.

20. There is no reason, other than a product defect that the Palacos cement would fail to affix to the tibial component when it properly affixed to everything else.

COUNT I: PRODUCTS LIABILITY

21. Plaintiff realleges and incorporates by reference ¶¶ 1 through 20 as if said paragraphs were fully set forth herein.

22. Defendant and each of them are in the business of selling prosthetic knee replacement components, including but not limited to DePuy Sigma Femoral Posterior Stabilized Cemented size 5 left, P.F.C. Sigma Tibial Tray Fixed Bearing Modular COCR 5, a Sigma 10mm Stabilized Insert, size 5 and a 41 mm Oval Domed Patella 3-Peg for the purpose of being used to replace a human knee.

23. The prosthetic knee components used in Plaintiff's knee

replacement surgery on March 29, 2011 failed to perform as designed and/or were not properly cleaned and/or shipped with a coating that prevented the Palacos cement from affixing to the tibial component which resulted in catastrophic knee failure suffered by Plaintiff.

24. The prosthetic components were implanted into Plaintiff without a substantial change in the condition in which they were sold.

25. As a direct and proximate result of the sale by Defendants and each of them of the DePuy Sigma Femoral Posterior Stabilized Cemented size 5 left, P.F.C. Sigma Tibial Tray Fixed Bearing Modular COCR 5, a Sigma 10mm Stabilized Insert, size 5 and a 41 mm Oval Domed Patella 3-Peg , Plaintiff MANUEL A. SANCHEZ suffered general and special damages in amounts to be shown at trial.

COUNT II: BREACH OF IMPLIED WARRANTY

26. Plaintiff realleges and incorporates by reference ¶¶ 1 through 25 as if said paragraphs were fully set forth herein.

27. Pursuant to Hawaii Revised Statutes §490: 2-314 goods sold contain an implied warranty that the goods shall be merchantable and fit for the ordinary purposes for which such goods are used.

28. The implied warranty of merchantability in the case of the sale of

the DePuy Sigma knee prosthetic components is to provide components that can be affixed by the use of properly prepared Palacos cement which would permit the prosthetic to operate without catastrophic failure in a period of fifteen (15) months.

29. As a result of placing the faulty tibial component into the stream of commerce which was ultimately sold for and implantated into Plaintiff's knee, Defendants and each of them breached the implied warranty of merchantability that the DePuy Sigma knee prosthetic components would be able to be affixed by the use of properly prepared Palacos cement and would not fail in fifteen (15) months.

30. As a direct and proximate result of the breach of the implied warranty of merchantability, Plaintiff MANUEL A. SANCHEZ suffered general and special damages in amounts to be shown at trial.

COUNT III. NEGLIGENCE

31. Plaintiff realleges and incorporates by reference ¶¶ 1 through 30 as if said paragraphs were fully set forth herein.

32. Based on the acts described above, Defendants and each of them are liable to Plaintiff for negligence by failing to ensure that the DePuy Sigma

knee prosthetic components would be in a condition such that it would be able to be affixed by the use of properly prepared Palacos cement and would not fail in fifteen (15) months.

33. As a direct and proximate result of Defendant's negligence, Plaintiff MANUEL A. SANCHEZ suffered general and special damages in amounts to be shown at trial.

COUNT IV. NEGLIGENT AND INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS

34. Plaintiff realleges and incorporates by reference ¶¶ 1 through 33 as if said paragraphs were fully set forth herein

35. In performing the acts described herein, Defendants and each of them negligently and/or intentionally inflicted pain which resulted in severe emotional distress to the Plaintiff.

36. As a direct and proximate result of Defendants' negligent and/or intentional infliction of severe emotional distress, Plaintiff MANUEL A. SANCHEZ has suffered general and special damages in amounts to be shown at trial.

COUNT V. PUNITIVE DAMAGES

37. Plaintiff realleges and incorporates by reference ¶¶ 1 through 36 as if said paragraphs were fully set forth herein.

38. In performing the acts described herein, Defendants and each of them acted wantonly, oppressively, or with such malice as implies a spirit of mischief or criminal indifference to civil obligations, and they otherwise engaged in willful misconduct with such entire want of care so as to raise a presumption of a conscious indifference to the consequences, and, therefore, Defendant is liable to Plaintiff MANUEL A. SANCHEZ for punitive damages in an amount to be shown at trial.

WHEREFORE, Plaintiff prays:

- A. For judgment in his favor and against Defendants JOHNSON & JOHNSON SERVICES, INC. , JOHNSON & JOHNSON INCORPORATED, JOHNSON & JOHNSON CONSUMER COMPANIES, INC, DEPUY ORTHOPEDICS, INC. and Doe Defendants 1 through 100;
- B. For general damages in amounts to be shown at trial;
- C. For special damages in amounts to be shown at trial;
- D. For punitive damages in amounts to be shown at trial; and
- E. For attorneys' fees, costs, prejudgment and post-judgment interest

and for such other and further relief, both legal and equitable, as the Court deems just and proper under the circumstances.

DATED: Honolulu, Hawaii, July 1, 2014.

/s/ Denise M. Hevicon
MICHAEL JAY GREEN
DENISE M. HEVICON

Attorneys for Plaintiff
MANUEL A. SANCHEZ

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)	
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues triable of right
by jury in this case, pursuant to Rule 38, Federal Rules of Civil Procedure.

DATED: Honolulu, Hawaii, July 1, 2014.

/s/ Denise M. Hevicon
MICHAEL JAY GREEN
DENISE M. HEVICON

Attorneys for Plaintiff
MANUEL A. SANCHEZ

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SUMMONS

STATE OF HAWAII

To the above-named Defendants:

You are hereby summoned and required to file with the court and serve upon Michael Jay Green and Denise M. Hevicon, Plaintiff's attorneys, whose service address is Davies Pacific Center, 841 Bishop St., Suite 2201, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within 21 days after service of this summons upon you, exclusive of the day of service. If

you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

WARNING TO DEFENDANT(S): Failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

PROCESS SERVER: You are prohibited from making personal delivery of this summons between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits, in writing on the summons, personal delivery during those hours.

DATED: Honolulu, Hawaii, _____.

CLERK OF THE ABOVE-ENTITLED COURT