SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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SUSAN SIMON,

Plaintiff,

-against-

SMITH & NEPHEW, INC.,

Defendants.

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Index No.:
Date Purchased:

SUMMONS

Plaintiff designates New York County as the place of trial.

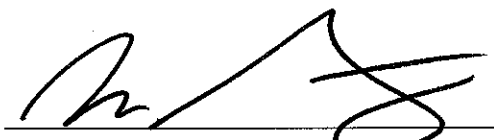
The basis of venue is:
Defendant's Place of Business

Plaintiff resides at:
327 Bay Drive
Massapequa, NY 11758
County of Nassau

To the above named Defendant(s):

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
February 15, 2013



MICHELLE L. POMERANTZ
Julien & Schlesinger, P.C.
Attorneys for Plaintiff
SUSAN SIMON
One Whitehall Street
17th Floor
New York, New York 10004
212-962-8020

TO:
SMITH & NEPHEW, INC.
c/o CT CORPORATION
111 8th Avenue
New York, New York 10011

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VERIFIED COMPLAINT

Plaintiff, by her attorneys, **JULIEN & SCHLESINGER, P.C.**, complaining of the Defendant, respectfully alleges, upon information and belief:

THE PARTIES

1. Plaintiff resides at 327 Bay Drive, Massapequa, New York 11758.

2. Defendant SMITH & NEPHEW, INC. is a foreign business corporation duly organized under the laws of the State of Delaware and authorized to do business in the State of New York.

3. Defendant SMITH & NEPHEW, INC. regularly transacts and conducts business in the State of New York and derives substantial revenue therefrom.

4. Defendant SMITH & NEPHEW, INC. is engaged in the business of designing, manufacturing, selling and otherwise introducing into the stream of commerce, medical devices, including the Smith & Nephew R3 three-hole hemispherical acetabular shell and the Smith & Nephew anthology femoral component.

GENERAL ALLEGATIONS

5. Plaintiff underwent left total hip replacement on or about February 16, 2010.

6. On or about February 16, 2010 plaintiff had a left total hip replacement at NYU Hospital for Joint Diseases, utilizing the Smith & Nephew R3 three-hole hemispherical acetabular shell and the Smith & Nephew anthology femoral component.

7. Defendant SMITH & NEPHEW, INC. specifically designed, manufactured, distributed, sold, labeled, created and marketed the R3 three-hole hemispherical acetabular shell and the anthology femoral component for patients such as plaintiff, and it was recommended to plaintiff by her surgeon, and accepted by plaintiff, based upon this representation.

8. After the prosthesis was fully implanted, x-rays were taken and the surgeon noted that the plaintiff's x-rays were adequate.

9. Approximately three (3) months following the left hip replacement, plaintiff developed pain in her groin, clicking, locking, and radiating pain down her groin area.

10. Defendant SMITH & NEPHEW issued a voluntary recall of the R3 three-hole hemispherical acetabular shell and the anthology femoral component.

AS AND FOR A FIRST CAUSE OF ACTION MANUFACTURER'S NEGLIGENCE

11. The plaintiff adopts and incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

12. The aforesaid occurrence and injuries sustained by plaintiff, SUSAN SIMON, was caused by the carelessness and negligence of the defendant in the design, manufacture, distribution, sale, labeling, creation and marketing of the aforesaid R3 three-hole hemispherical acetabular shell

and the anthology femoral component , its appurtenances and component parts, including, among other things: in failing to insure that said R3 three-hole hemispherical acetabular shell and the anthology femoral component, including its appurtenances and component parts, was safe for use by the general public and, more particularly plaintiff SUSAN SIMON; in failing to manufacture said R3 three-hole hemispherical acetabular shell and the anthology femoral component, including its appurtenances and component parts, to its own specifications and its distributors' specifications; in failing to adequately test said R3 three-hole hemispherical acetabular shell and the anthology femoral component, its appurtenances and component parts; in failing to warn that said R3 three-hole hemispherical acetabular shell and the anthology femoral component, including its appurtenances and component parts was unsafe and unfit for its intended use; in failing to detect the design defect(s) in its product; in failing to adequately warn of the dangers and hazards of using said R3 three-hole hemispherical acetabular shell and the anthology femoral component, its appurtenances and component parts; in failing to provide warnings or information despite knowledge of the dangers and hazards; in inadequately warning of known safety hazards; in failing to timely recognize the design defect of the aforesaid R3 three-hole hemispherical acetabular shell and the anthology femoral component, including its appurtenances and component parts; in failing to timely recall/repair the aforesaid R3 three-hole hemispherical acetabular shell and the anthology femoral component, including its appurtenances and component parts; in failing to conform with industry regulations and standards; in selling and distributing for use by the general public and placing into the stream of commerce an unsafe and unreasonably dangerous product; in causing the occurrence complained of herein and the defendant was otherwise careless and negligent.

13. As a result of the carelessness and negligence of the defendant, plaintiff, SUSAN SIMON, sustained multiple personal injuries, including, among other things: was caused to suffer severe pain and suffering; radiating pain in her groin; constant clicking and locking of the device; difficulty sitting; may be required to undergo revision surgery; was caused to suffer mental anguish, emotional distress and anxiety; was caused to be confined to hospital, home and bed for a lengthy period of time; was caused to become sick, sore, lame and disabled; was caused to seek extensive medical care, surgery and treatment; was caused to undergo extensive diagnostic tests and procedures; was caused to be incapacitated from attending to her usual duties and activities of daily living; was caused to expend substantial sums of money for medical care and treatment; and this plaintiff was otherwise damaged, all of which damages and injuries are permanent and continuing into the future.

14. By reason of the foregoing, plaintiff is entitled to recover all her damages from the defendant pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A SECOND CAUSE OF ACTION
STRICT PRODUCTS LIABILITY

15. The plaintiff adopts and incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

16. At all times relevant hereto, defendant SMITH & NEPHEW, INC. was engaged in designing, manufacturing, testing, packaging, promoting, advertising, marketing, distributing, labeling and selling orthopedic devices including the R3 three-hole hemispherical acetabular shell and the anthology femoral component.

17. Defendant SMITH & NEPHEW, INC. designed, manufactured, marketed and sold the R3 three-hole hemispherical acetabular shell and the anthology femoral component to hospitals, medical processions, and their patients, knowing that they would be implanted for hip replacements.

18. The R3 three-hole hemispherical acetabular shell and the anthology femoral component were designed, manufactured, marketed and sold by defendant SMITH & NEPHEW, INC., reached plaintiff without substantial change in its condition, and was used by plaintiff in a reasonably foreseeable and intended manner.

19. The R3 three-hole hemispherical acetabular shell and the anthology femoral component were defective and unreasonably dangerous when it entered the stream of commerce and was received by plaintiff because they were dangerous to an extent beyond that which would be contemplated by the ordinary consumer.

20. At no time did plaintiff have reason to believe that the R3 three-hole hemispherical acetabular shell and the anthology femoral component were in a condition not suitable for its proper and intended use among patients.

21. The R3 three-hole hemispherical acetabular shell and the anthology femoral component were used in the manner for which it was intended, that is, in an artificial hip replacement for patients, such as plaintiff herein.

22. The R3 three-hole hemispherical acetabular shell and the anthology femoral component were defective, due to its defective design and/or manufacture, which made the device unsafe.

23. The R3 three-hole hemispherical acetabular shell and the anthology femoral component were not reasonable safe due to the defective design and/or manufacture, because the foreseeable risk of harm posed by the device was sufficiently greater than its foreseeable therapeutic benefits, such that reasonable healthcare providers, knowing of such risks and lack of benefits, would not prescribe the device for any patient.

24. Plaintiff, despite exercising reasonable care, was not able to discover the defective nature of the device.

25. The R3 three-hole hemispherical acetabular shell and the anthology femoral component are defective in design and/or manufacture because of the propensity to dislocate and/or cause unnecessary pain and/or require potential revision surgery.

26. The R3 three-hole hemispherical acetabular shell and the anthology femoral component are defective in design and/or manufacture because of the increased risk of dislocation and/or unnecessary pain and/or the need for potential revision surgery is greater than other similar products.

27. The R3 three-hole hemispherical acetabular shell and the anthology femoral component are defective in design and/or manufacture because of the lack of adequate warnings regarding the propensity of the device to dislocate and/or cause patients unnecessary pain and/or require potential revision surgery.

28. As a direct and proximate result of plaintiff's use of said R3 three-hole hemispherical acetabular shell and the anthology femoral component, as manufactured, designed, sold, supplied, marketed, and introduced into the stream of commerce by defendant, plaintiff has suffered serious physical injury, harm, damages, and economic loss and will continue to suffer such harm, damages, and economic loss in the future.

29. By reason of the foregoing, plaintiff is entitled to recover all her damages from the defendants pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A THIRD CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY

30. Plaintiff hereby adopts and incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

31. At the time defendant designed, manufactured, marketed, sold and distributed the R3 three-hole hemispherical acetabular shell and the anthology femoral component for use by the plaintiff, defendant knew of the use for which said device was intended and impliedly warranted the device to be of merchantable quality and safe for such use as required by law.

32. The R3 three-hole hemispherical acetabular shell and the anthology femoral component that were implanted into the plaintiff were unfit, unsafe, unmerchantable and unreasonably dangerous for its foreseeable and intended uses and were not in compliance with state or federal law.

33. Defendant's breach of warranty was a direct and proximate cause of the plaintiff's injuries, as set forth above in paragraph numbered "13."

34. By reason of the foregoing, plaintiff is entitled to recover all her damages from the defendant pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A FOURTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY

35. Plaintiff hereby adopts and incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

36. Defendant expressly warranted that the R3 three-hole hemispherical acetabular shell and the anthology femoral component were safe and effective orthopedic devices for those patients, such as plaintiff, requiring a hip replacement.

37. The R3 three-hole hemispherical acetabular shell and the anthology femoral component that were manufactured and sold by defendant did not conform to those express representations because they caused serious injury to the plaintiff herein when used as recommended and directed.

38. Defendant's breach of warranty was a direct and proximate cause of the plaintiff's injuries, as set forth above in paragraphs numbered "13."

39. By reason of the foregoing, plaintiff is entitled to recover all her damages from the defendant pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A FIFTH CAUSE OF ACTION
VIOLATION OF CONSUMER PROTECTION STATUTE

40. Plaintiff hereby adopts and incorporates by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs and further alleges as follows.

41. Defendant engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection statute listed below when it failed to adequately warn consumers and the medical community of the safety risks associated with the R3 three-hole hemispherical acetabular shell and the anthology femoral component.

42. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law §349 *et seq.* and 350-e *et seq.*

43. The actions and failure of defendant, including the false and misleading representations and omissions of material facts regarding the safety and potential risks of the R3 three-hole hemispherical acetabular shell and the anthology femoral component and the described course of fraudulent conduct and fraudulent concealment constitute acts, uses or employment by defendant of unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and the knowing concealment, suppression or omission of material facts with the intent that others rely upon such concealment, suppression or omission of material facts in connection with the sale of merchandise of defendant in violation of the consumer protection statute listed above.

44. Plaintiff and plaintiff's medical providers relied upon defendant's misrepresentation and omissions in selecting the R3 three-hole hemispherical acetabular shell and the anthology femoral component for plaintiff's use.

45. Defendant's violation of the consumer protection statute was a direct and proximate cause of the plaintiff's injuries, as set forth above in paragraphs numbered "13."

46. By reason of the foregoing, plaintiff is entitled to recover all her damages from the defendant pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

WHEREFORE, Plaintiff demands judgment against the Defendant herein on all causes of action, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: New York, New York
February 15, 2013

Yours, etc.

MICHELLE L. POMERANTZ
Julien & Schlesinger, P.C.
Attorneys for Plaintiff
SUSAN SIMON
One Whitehall Street
17th Floor
New York, New York 10004
212-962-8020

ATTORNEY'S VERIFICATION

MICHELLE L. POMERANTZ, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am associated with the firm of Julien & Schlesinger, P.C. attorneys of record for Plaintiff SUSAN SIMON. I have read the annexed **COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

This verification is made by me because plaintiff does not reside in the county wherein I maintain my offices.

DATED: New York, New York
February 15, 2013

MICHELLE L. POMERANTZ