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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

DAVID CAMPBELL and GLENDA CAMPBELL,	)	
Plaintiffs,	)	**CIVIL ACTION NO.:**
v.	)	**_____**
HOWMEDICA OSTEONICS CORP. d/b/a STRYKER ORTHOPAEDICS, STRYKER CORPORATION, and STRYKER SALES CORPORATION,	)	**JURY TRIAL DEMANDED**
Defendants.	)	

COMPLAINT

COME NOW Plaintiffs, David Campbell and Glenda Campbell, by and through their undersigned counsel, and bring this Complaint against Howmedica Osteonics Corporation, d/b/a Stryker Orthopaedics, Stryker Corporation, and Stryker Sales Corporation (hereinafter referred to collectively as "Defendants"), and allege as follows:

1. This is an action for damages relating to Defendants' design, development, testing, assembling, manufacture, packaging, labeling, preparing, distribution, marketing, supplying and/or selling the defective product(s) under the names "The Accolade TMZF® Hip Stem and the LFIT Anatomic V40 Femoral Head" (hereinafter "Accolade" or "Defective Devices").

PARTIES

2. Plaintiff, David Campbell, is an adult resident of Lauderdale County, Alabama and claims damages as set forth below. Plaintiff's Spouse, Glenda Campbell, is an adult resident of Lauderdale County, Alabama and claims damages as a result of loss of consortium.

3. Defendant Howmedica Osteonics Corporation, d/b/a Stryker Orthopaedics, is a corporation organized and existing under the laws of New Jersey having its principal place of business located at 325 Corporate Drive, Mahwah, New Jersey 07430 and conducts business throughout the United States. Defendant Howmedica Osteonics d/b/a Stryker Orthopaedics is a wholly owned subsidiary of parent corporation, Stryker Corporation.

4. Defendant Stryker Corporation is the parent corporation organized and existing under the laws of Michigan having its principal place of business located at 2825 Airview Boulevard, Kalamazoo, Michigan 49002. Defendant conducts business throughout the world and throughout the United States.

5. Defendant Stryker Sales Corporation is a corporation organized and existing under the laws of Michigan having its principal place of business located at 2825 Airview Boulevard, Kalamazoo, Michigan 49002 and conducts business throughout the United States. Stryker Sales Corporation is a wholly owned subsidiary of Stryker Corporation.

6. Upon information and belief, at all times herein mentioned, the employees of Defendants, their subsidiaries, affiliates, and other related entities, as well as the employees of the each of the individual Defendants' subsidiaries, affiliates, and other related entities, were the agents, servants and employees of Defendants, and at all relevant times, were acting within the purpose and scope of said agency and employment. Whenever reference in this Complaint is made to any act or transaction of Defendants, such designations shall be deemed to mean that the principals, officers, employees, agents, and/or representatives of the Defendants committed, knew of, performed, authorized, ratified and/or directed such transactions on behalf of Defendants while actively engaged in the scope of their duties.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a) based upon the complete diversity of the parties. The amount in controversy exceeds, exclusive of interest and costs, the sum of $75,000.00.

8. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred within this judicial district. Defendants conduct business in this judicial district to include, but not limited to, the sale of hip implant systems.

FACTUAL ALLEGATIONS

The Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head

9. The hip joint connects the thigh (femur) bone of a patient's leg to the patient's pelvis. The hip joint is often characterized as a ball and socket joint. The acetabulum is the cup shaped socket portion of the hip, and the femoral head (ball) at the top of the femur bone rotates within the curved surface of the acetabulum.

10. A total hip replacement replaces the body's natural joint with an artificial one, usually made out of metal, plastic, or ceramic. A total hip replacement typically consists of four separate components: (1) a femoral stem, (2) a femoral head, (3) an acetabular liner, and (4) an acetabular shell. After the surgeon hollows out a patient's femur bone, the metal femoral stem is implanted. The femoral head is usually a metal or ceramic ball that is fixed on top of the femoral stem. The femoral head forms the hip joint that can rotate when it is placed inside a plastic or ceramic acetabular liner that is attached to the interior portion of the metal acetabular shell comprised of metal on its outer surface. When complete, the femoral stem anchors the femoral head that rotates within the acetabular liner sitting inside the acetabular shell.

11. On March 16, 2000, Defendants received FDA clearance to sell the Accolade prosthetic hip stem in the United States.

12. The Accolade TMZF Stem is a hip replacement prosthesis. It is indicated for patients requiring primary total hip arthroplasty or replacement due to joint disease.

13. The Accolade TMZF Stem is a monoblock, single piece artificial hip replacement device that is designed to be implanted into the patient's femur. The Accolade TMZF Stem is designed to be used with any number of bearing surface components comprised of the modular ball or artificial femoral head and an acetabular cup or socket.

14. Stryker's L-FIT Anatomic V40 femoral head is one of the modular balls or heads designed to be used with the Accolade TMZF Stem. It is made of chromium/cobalt alloy.

15. The titanium stem is manufactured utilizing a proprietary titanium alloy consisting of titanium, molybdenum, zinc and iron. This alloy was designed and patented by Defendants and is different than the titanium alloy employed in the manufacture of prosthetic hip implants. The Defendants claim in their Accolade TMZF Stem promotional materials that TMZF alloy is both stronger and less rigid than other titanium alloys. They also claim that the particular titanium alloy has been tested and proven by Defendants to resist the effects of corrosion and fretting.

16. At all times material hereto, the Accolade TMZF Stem and L-FIT Anatomic V40 femoral head implanted in the Plaintiff was developed, designed, tested, assembled, manufactured, marketed, packaged, labeled, prepared, retailed, distributed, and/or supplied by Defendants.

THE STRYKER ACCOLADE HISTORY

17. In March 2000, Defendants released the Accolade TMZF Hip Stem, the latest evolution in the Meridian Titanium Femoral Stem, the Howmedica Asymmetric Stem Femoral

Component, the Osteonics Omnifit AD-HA Hip Stem Series all cleared for market between the years of 1994 and 1997.

18. According to Defendants' materials, the Accolade TMZF Stem was developed to maximize a patient's hip range of motion, increase stability, and prevent dislocation. These materials also state that the Accolade TMZF Hip Stem is designed to be used with V40 Femoral Heads, which are offered in both forged Vitallium alloy (CoCrMo) and zirconia ceramic. The Accolade TMZF Stem is also designed with two neck angles, the standard 132 degrees and extended 127 degrees offset, to assist with joint stability and proper restoration of joint kinematics without lengthening the leg. The neck lengths are proportional relative to the patient's body geometry to accommodate a wider patient population using a standard femoral head.

19. The Accolade TMZF Stem combines the material characteristics of TMZF (Ti12Mo-6Zr-2Fe) with a plasma sprayed ingrowth/ongrowth coating of PureFix HA. The LFIT Anatomic V40 Femoral Head was commonly used with the Accolade TMZF Hip Stem. It is made from a chromium/cobalt alloy. Defendants claim that laboratory testing demonstrates the compatibility of these materials without concern for fretting and corrosion.

20. Despite Defendants' claims, this material combination has been reported to cause corrosion. For decades, scientists have reported the occurrence of accelerated fretting and corrosion issues when dissimilar metals are combined. In their marketing and sale of the Defective Devices, Defendants represented and warranted that proprietary materials alleviate concerns for this problem.

21. In 2012, Defendants recalled the Rejuvenate and ABG II modular hip systems. These two systems employed the same TMZF titanium metal in the femoral stem. The modular neck of both recalled devices were manufactured from chromium/cobalt. These devices were

recalled after reports surfaced indicating excessive device failure due to fretting and corrosion at the taper junction where these dissimilar metals were joined.

22. Patients in whom Stryker Rejuvenate and ABG II hip stems had been implanted were experiencing device failure, symptoms and diagnostic findings identical to Plaintiff. Information disseminated by Stryker at or about the time of the recall cited this failure mechanism as the reason for the recall.

23. Since the recall, revision rates for the Rejuvenate have been reported to exceed 50% in a very short period of time.

24. At or about the same time Stryker recalled the Rejuvenate and ABG II, it redesigned its Accolade TMZF Stem. Stryker abandoned use of TMZF titanium and, instead, its new Accolade II stem is manufactured from a different titanium alloy.

25. Upon information and belief, Stryker has abandoned the use of TMZF titanium through its product line.

26. In addition, Stryker has now recalled a large number of L-FIT Anatomic V40 chromium/cobalt heads. The recall cites gross trunnion failure, metal wear, adverse tissue reaction and the need for revision surgery as causes for recalling the heads. Plaintiff suffered each of the above and the combination resulted in the need to surgically remove his Accolade TMZF Stem and L-FIT Anatomic V40 head.

PLAINTIFF-SPECIFIC ALLEGATIONS

27. On or about April 27, 2010, Plaintiff underwent right total hip replacement surgery at Brookwood Medical Center in Birmingham, Alabama by Dr. Kenneth Bramlett who implanted the Accolade TMZF® Hip Stem and the LFIT Anatomic V40 Femoral Head.

28. Following implantation, Plaintiff suffered a device failure related to trunnionosis

or fretting and/or corrosion between the femoral stem-femoral head junction, causing plaintiff to suffer damage including pain and inflammation from exposure to toxic metal debris and metal ions circulating in Plaintiff's blood.

29. Physicians, including Dr. Kenneth Bramlett, examined and advised Plaintiff he required revision surgery since he suffered from severe pain and discomfort, limited mobility, soft tissue damage from metallosis, and elevated levels of metal ions in his blood stream.

30. The increased presence of said metal ions in the Plaintiff's bloodstream can cause significant health problems, the exacerbation of pre-existing conditions, while subjecting the Plaintiff to increased medical diagnosis and treatments.

31. As a direct and proximate result of Defendants placing the Defective Devices into the stream of commerce, Plaintiff required painful, expensive, and risky hip revision surgery to replace the Defective Devices. The revision surgery was performed by Dr. Kenneth Bramlett, on or about March 17, 2015, at Brookwood Medical Center in Birmingham, Alabama.

32. As a direct and proximate result of Defendants' defective design, manufacturing and marketing of their Defective Devices described above, Plaintiff has suffered and continues to suffer both injuries and damages, including but not limited to: past, present and future physical and mental pain and suffering; physical disability, and past, present and future medical, hospital, rehabilitative and pharmaceutical expenses, and other related damages.

33. Revision surgeries of the femoral hip stem are more invasive and technically complex than the original hip replacement surgery since the femoral stem has to removed, rather than simply replacing the bearing surfaces. Revision surgeries also usually take longer than the original hip replacement surgery, and the revision surgery has a higher rate of complications.

Additionally, if metal particles or metal debris from the Defective Devices are present, the revision surgery is more difficult.

34. Plaintiff will need many years of continuous medical treatment as a direct and proximate cause of the Defective Devices.

35. Plaintiff's injuries may be permanent, and they may cause additional complications in the future including revision surgeries.

36. All of the injuries and complications suffered by Plaintiff were caused by the defective design and construction, lack of adequate warnings, and unreasonably dangerous character of the Defective Devices that were implanted. Had Defendants not concealed the known defects, the early failure rate, the known complications and the unreasonable risks associated with the use of the Defective Devices, Plaintiff would not have consented to be implanted with the Defective Devices.

COUNT ONE
AEMLD

37. Plaintiffs repeat and incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

38. Defendants are liable to the Plaintiff for the damages sustained based on the Alabama Extended Manufacturer's Liability Doctrine (AEMLD) as the Defendants manufactured, designed, and/or sold the Defective Devices, the Accolade TMZF® Hip Stem and the LFIT Anatomic V40 Femoral Head, which, because of their unreasonably unsafe condition, injured the Plaintiff when such products, substantially unaltered, were put to their intended use. Furthermore, Defendants failed to adequately warn the Plaintiff of the unreasonably dangerous nature of their Defective Devices.

39. As a direct and proximate result of the Defendants' defective design, manufacturing defect, and/or Defendants' failure to warn of the Defective Devices dangers, Plaintiff has suffered, and will continue to suffer, injury, emotional distress, harm and economic loss as alleged herein.

COUNT TWO
NEGLIGENCE AND WANTONNESS

40. Plaintiffs adopt and incorporate by reference all the foregoing language of this Complaint as if fully set forth herein and further states as follows:

41. Defendants designed, manufactured, marketed, detailed, and advertised, the Accolade TMZF Stem and L-FIT Anatomic V40 head both to physicians and consumers.

42. As a result, Defendants had a duty to perform each of these functions reasonably and with reasonable and due care for the safety and well-being of patients in whom the devices would be implanted.

43. Defendants failed to use reasonable and due care for the safety and well-being of those in whom the Defective Devices would be implanted and is, therefore, negligent in the following respects:

a. Defendants failed to adequately design and manufacture the devices to ensure that when combined each would not fret, corrode, erode, deteriorate and induce severe metal toxicity in patients. The flaws include but are not limited to:

i. The incompatibility of the TMZF titanium with chromium/cobalt heads;

ii. Use of the TMZF alloy that contains a modulus of elasticity with far inferior stiffness characteristics to other available titanium alloys;

iii. Use of the TMZF alloy with a known corrosion/fretting profile inferior to other titanium alloys;

iv. Poor design of the taper junction between femoral head and neck such that micro motion was predictable;

v. Poor design of the Accolade neck such that the "softer" TMZF alloy would induce suffer from excessive bending and movement;

vi. Poor manufacturing practices such that the taper junction between the femoral head and neck do not "fit" as deigned and intended;

vii. Not restricting authorized or recommended use of the Accolade TMZF Stem to ceramic heads only;

viii. Allowing and promoting the use of large metal heads on Stryker's small and insufficient V40 trunnion which would predictably lead to excessive motion, fretting, mechanically assisted crevice corrosion and ultimately device failure; and

ix. A combination of the above factors leads to rapid, severe heavy metal cast off causing soft tissue and bony necrosis, pain and premature failure of the device.

b. Defendants failed to adequately test the Defective Devices and their combination to insure they would not fret, corrode, erode, deteriorate and induce severe metal toxicity in the patient;

c. Prior to marketing the Defective Devices, Defendants failed to conduct anything other than simple, basic bench testing. At the time, Defendants designed the Defective Devices, sufficient scientific art and knowledge

existed to conduct testing that would have exposed the defects in the Accolade TMZF Stem when implanted in patients with the chromium/cobalt head;

d. In fact, Stryker has likely conducted testing that reveals the incompatibility of these two materials when used in this design;

e. Defendants made affirmative representations that the Defective Devices would not fret or corrode in the human body. These representations were false and misleading to both physicians and the consumer;

f. Defendants trained its sales force to detail the Defective Devices utilizing representations the Defendants knew or should have known to be false, creating in the minds of both surgeons and consumers the belief that the Defective Devices were safe for its intended use;

g. Defendants specifically marketed the Defective Devices as a safe alternative to metal-on-metal bearing surface that had been widely publicized as capable of causing premature failure due to heavy metal toxicity;

h. Defendants failed to manufacture the products to Defendants' own internal specifications such that the taper junction between the neck and stem prematurely failed causing metal debris cast-off and severe metal toxicity in patients;

i. Defendants failed to adequately test the TMZF alloy's compatibility with chromium/cobalt components in an effort to prevent corrosion and fretting at the bearing surface junction of this stem;

j. Defendants failed to promptly act upon reports of failure or warn surgeons such that the device continued to be implanted in combination with chromium/cobalt femoral heads well after it should have been recalled or redesigned; and

k. Defendants chose these materials to be used in combination as a system at a time when safer alternative designs and materials were available.

44. The above conduct illustrates Defendants' failure to exercise reasonable and appropriate care. It was foreseeable that such negligence would lead to premature device failure as well as severe, permanent, debilitating injury to patients, including Plaintiff.

45. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered, and will continue to suffer, severe physical pain and injuries which are permanent and lasting in nature, emotional distress, loss of the capacity for the enjoyment of life, medical and nursing expenses, surgical expenses, and economic loss as alleged herein. These damages have occurred in the past and will continue into the future.

46. In performing the foregoing acts and omissions, Defendants acted grossly negligent, fraudulently, and with malice so as to justify an award of punitive and/or exemplary damages.

COUNT THREE
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

47. Plaintiffs repeat and incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

48. At the time Defendants marketed, sold, and distributed the Defective Devices, Defendants knew of the use for which the products were intended and impliedly warranted the products to be of safe merchantable quality, safe, fit and effective for such use.

49. Defendants knew, or had reason to know, that Plaintiff and his physicians would rely on Defendants' judgment and skill in providing the Defective Devices for their intended use.

50. Plaintiff and his physicians reasonably relied upon the skill and judgment of Defendants as to whether the Defective Devices were of merchantable quality, safe, fit, and effective for its intended use.

51. Contrary to such implied warranty, the Defective Devices were not of merchantable quality or safe or fit or effective for their intended use, because the products were, and are, unreasonably dangerous, defective, unfit and ineffective for the ordinary purposes for which the Defective Devices were used.

52. As direct and proximate result of the breach of implied warranty of merchantability, Plaintiff has suffered, and will continue to suffer, injury, emotional distress, harm and economic loss as alleged herein.

COUNT FOUR
BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

53. Plaintiffs repeat and incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

54. At the time Defendants marketed, sold, and distributed the Defective Devices, Defendants knew of the particular purpose for which the products were intended and warranted the product to be of safe merchantable quality, safe, fit and effective for such use.

55. Defendants knew, or had reason to know, that Plaintiff and his physicians would rely on Defendants' judgment and skill in providing the Defective Devices for that particular use.

56. Plaintiff and his physicians reasonably relied upon the skill and judgment of Defendants as to whether the Defective Devices were of merchantable quality, safe, fit, and effective for its particular purpose.

57. Contrary to such implied warranty, the Defective Devices were not of merchantable quality or safe or fit or effective for its particular purpose, because the products were, and are, unreasonably dangerous, defective, unfit and ineffective for the particular purposes for which the Defective Devices were used.

58. As direct and proximate result of the breach of implied warranty of fitness for particular purpose, Plaintiff has suffered, and will continue to suffer, injury, emotional distress, harm and economic loss as alleged herein.

COUNT FIVE
BREACH OF EXPRESS WARRANTY

59. Plaintiffs repeat and incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

60. Through the Defendants' public statements, the descriptions of the Defective Devices, and Defendants' promises relating to the Defective Devices, Defendants expressly warranted, among other things, that the Defective Devices were effective and safe for their intended use; were designed and constructed of materials that would prevent fretting and corrosion; would last longer than competing hip implant devices; and were more suitable for younger adults than other devices given its purported longevity.

61. These warranties came in the form of (i) publicly-made written and verbal assurances of safety; (ii) press releases and dissemination via the media of uniform promotional information that was intended to create a demand for the Defective Devices (but which contained material misrepresentations and utterly failed to warn of the risks of Defective Devices); (iii) verbal

assurances made by Defendants' consumer relations personnel to the public about the safety of the Defective Devices that also downplayed the risks associated with Defective Devices; and, (iv) false and misleading written information supplied by Defendants.

62. The most prominent representation made by Defendants was on their website where it expressly warranted that the design, testing, and materials utilized in the Defective Devices would prevent fretting and corrosion.

63. Plaintiff further allege that all of the aforementioned written materials are known to Defendants and in their possession, and it is Plaintiff's reasonable belief that these materials shall be produced by Defendants and be made part of the record once Plaintiff is afforded the opportunity to conduct discovery.

64. When Defendants made these express warranties, they knew the purpose for which the Defective Devices were to be used, and warranted it to be in all respects safe and proper for such purpose.

65. Defendants drafted the documents and/or made statements upon which these warranty claims are based and, in doing so, defined the terms of those warranties.

66. The Defective Devices do not conform to Defendants' representations in that these devices are not safe and instead produce serious and debilitating side effects.

67. As such, the Defective Devices did not conform to Defendants' promises, descriptions, or affirmations of fact, and were not adequately packaged, labeled, promoted, or fit for the ordinary purposes for which such devices are used.

68. As a direct and proximate result of the breach of Defendants' warranties, Plaintiff suffers, and will continue to suffer, injury, emotional distress, harm and economic loss as alleged herein.

COUNT SIX
FRAUDULENT MISREPRESENTATION

69. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

70. Defendants made fraudulent misrepresentations with respect to the Defective Devices in the following particulars:

a. Defendants represented through the labeling, advertising, marketing materials, detail persons, seminar presentations publications, and/or notice letters that the Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head had been tested and found to be safe and effective for the treatment of pain and inflammation; and

b. Defendants represented that the quality and character of the Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head were safer than other alternative hip devices.

71. Defendants knew that their representations were false, yet they willfully, wantonly, and recklessly disregarded their obligation to provide truthful representations regarding the safety and risk of the Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head to consumers, including Plaintiff, and the medical community.

72. The representations were made by Defendants with the intent that doctors and patients, including Plaintiff, rely upon them.

73. Defendants' representations were made with the intent of defrauding and deceiving Plaintiff, other consumers, and the medical community to induce and encourage the sale of the Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head.

74. Plaintiff and his physicians did in fact rely upon the representations.

75. Defendants' fraudulent representations evinced its callous, reckless, willful, and depraved indifference to the health, safety, and welfare of consumers, including Plaintiff.

76. Plaintiff was injured as a direct and proximate result of Defendants' actions, omissions, and misrepresentations. Plaintiff has incurred, and will continue to incur expenses as a result of using the Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head.

77. Defendants acted with oppression, fraud, and malice towards Plaintiff, who accordingly requests that the trier of fact, in the exercise of its sound discretion, award additional damages for the sake of example and for the purpose of punishing Defendants for their conduct, in an amount sufficiently large to be an example to others, and to deter this Defendants and others from engaging in similar conduct in the future.

COUNT SEVEN
FRAUDULENT CONCEALMENT

78. Plaintiffs repeat and incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

79. Defendants fraudulently concealed information with respect to the Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head in the following particulars:

a. Defendants represented through the labeling, advertising, marketing materials, detail persons, seminar presentations, publications, and/or notice letters that the Defective Devices were safe and fraudulently withheld and concealed information about the substantial risks of using the Defective Devices; and

b. Defendants represented that the Defective Devices were safer than other alternative hip devices and fraudulently concealed information which

demonstrated that the Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head were not safer than alternatives available on the market.

80. Defendants had sole access to material facts concerning the dangers and unreasonable risks of the Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head.

81. The concealment of information by the Defendants about the risks of the Defective Devices was intentional, and the representations made by Defendants were known by Defendants to be false.

82. The concealment of information and the misrepresentations about the Defective Devices were made by the Defendants with the intent that doctors and patients, including Plaintiff, rely upon them.

83. Plaintiff and his physicians relied upon the representations and were unaware of the substantial risks of the Defective Devices which the Defendants concealed from the public, including Plaintiff and his physicians.

84. Plaintiff was injured as a direct and proximate result of the Defendants' actions, omissions, and misrepresentations. Plaintiff has incurred, and will continue to incur expenses as a result of using the Defective Devices.

85. Defendants acted with oppression, fraud, and malice towards Plaintiff, who accordingly requests that the trier of fact, in the exercise of its sound discretion, award additional damages for the sake of example and for the purpose of punishing the Defendants for conduct, in an amount sufficiently large to be an example to others, and to deter this Defendants and others from engaging in similar conduct in the future.

COUNT EIGHT
FRAUDULENT INDUCEMENT AND SUPPRESSION

86. Plaintiffs repeat and incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

87. Defendants misrepresented to the Plaintiff and the health care industry the safety and effectiveness of the Defective Devices and/or fraudulently, intentionally and/or negligently concealed material information, including adverse information regarding the safety and effectiveness of the Defective Devices.

88. Defendants made misrepresentations and actively concealed adverse information at a time when the Defendants knew, or should have known, that the Defective Devices had defects, dangers, and characteristics that were other than what the Defendants had represented to the Plaintiff and the health care industry generally. Specifically, Defendants misrepresented to and/or actively concealed from the Plaintiff, the health care industry and consuming public that:

a. Defendants represented through the labeling, advertising, marketing materials, detail persons, seminar presentations, publications, and/or notice letters that the Accolade TMZF® Hip Stem and LFIT Anatomic V40 Femoral Head had been tested and found to be safe and effective for the treatment of pain and inflammation; and

b. Defendants represented that the Defective Devices were safer, in better quality and in character than other alternative hip devices.

89. The misrepresentations of and/or active concealment alleged were perpetuated directly and/or indirectly by Defendants.

90. Defendants knew or should have known that these representations were false and made the representations with the intent or purpose that the Plaintiff and health care industry would rely on them, leading to the use of the Defective Devices.

91. At the time of the Defendants' fraudulent suppression, Plaintiff was unaware of the falsity of the statements being made and believed them to be true. Plaintiff had no knowledge of the information concealed and/or suppressed by the Defendants.

92. Plaintiff justifiably relied on and/or were induced by the misrepresentations and/or active concealment and relied on the absence of safety information which the Defendants did suppress, conceal or failed to disclose to the Plaintiff's detriment.

93. Defendants had a post-sale duty to warn Plaintiff and the public about the potential risks and complications associated with the Defective Devices in a timely manner.

94. The misrepresentations and active fraudulent concealment by the Defendants constitutes a continuing tort against the Plaintiff, who received the Defective Devices.

95. Defendants made the misrepresentations and actively concealed information about the defects and dangers of the Defective Devices with the intention and specific desire that Plaintiff's health care professionals and the consuming public would rely on such or the absence of information in selecting the Defective Devices as medical treatment.

96. As a direct and proximate result of the fraudulent acts and omissions, suppression and misrepresentation of the Defendants, Plaintiff suffered significant and ongoing injury and damages.

COUNT NINE
LOSS OF CONSORTIUM

97. Plaintiffs repeat and incorporate by reference all other paragraphs of this Complaint as if fully set forth herein. Plaintiff's Spouse, Glenda Campbell, is the wife of Plaintiff, David Campbell, and was the wife of Plaintiff at all times referred to herein.

98. The aforesaid breach of legal duties by each of the Defendants as set forth herein combined and concurred and, as a proximate consequence of said negligent, wanton or wrongful conduct, the plaintiff, Glenda Campbell was caused to suffer the following injuries and damages:

a. She was caused and will be caused in the future to lose the services and consortium of her husband, David Campbell; and

b. She was caused and will be caused in the future to suffer great emotional and mental distress and anguish.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs requests that the trier of fact render a verdict for the Plaintiffs and against the Defendants, jointly and severally, for compensatory damages in an amount which will adequately compensate Plaintiffs for the injuries and damages sustained by them due to the Defendants' conduct; and for exemplary damages in an amount which will adequately reflect the wrongfulness of Defendants' conduct. Further, Plaintiffs requests that the Court enter judgment consistent with said verdict, and that it also award Plaintiffs interest from the date of judgment and the costs incurred by the Court in managing this lawsuit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

a. For an award of compensatory damages in excess of Seventy-Five Thousand Dollars ($75,000.00);

b. For an award of punitive or exemplary damages against Defendants;

c. For reasonable attorney fees and costs;

d. For pre-judgment interest; and

e. For such further and other relief this Court deems just and equitable.

JURY DEMAND

Plaintiffs herein demand a trial by jury.

Dated: March 3, 2017

Respectfully submitted,

/s/ Chris T. Hellums
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