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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

COORDINATION PROCEEDING SPECIAL TITLE [RULE 3.550(c)]

DePUY ASR™ HIP SYSTEM CASES

THIS DOCUMENT RELATES TO:

Sandra Ellis, Loren Kransky and ROES 1-100 v. DePuy et al., Case No. BC456086

Judicial Council Coordination Proceeding No.: 4649

FIRST AMENDED COMPLAINT FOR DAMAGES, ADDING PLAINTIFF SHERYL KRANSHY AS A PARTY AND ADDING A LOSS OF CONSORTIUM CLAIM AS TO PLAINTIFF SHERYL KRANSKY ONLY

1. Negligence
2. Strict Products Liability (Manufacturing Defect)
3. Strict Products Liability (Design Defect)
4. Strict Products Liability (Failure to Warn)
5. Strict Products Liability (Failure to Adequately Test)
6. Breach of Express Warranty
7. Breach of Implied Warranty of Merchantability
8. Breach of Implied Warranty of Fitness for a Particular Purpose
9. Fraudulent Concealment
10. Intentional Misrepresentation
11. Negligent Misrepresentation
12. Negligence – Recall
13. Unlawful, Unfair and Fraudulent Business Practices in Violation of Cal. Bus. & Prof. Code Sec. 17200, Et Seq.
14. Loss of Consortium as to Plaintiff Sheryl Kransky Only

(Unlimited Civil – Amount Demanded

Exceeds $25,000)

I. PARTIES

1. Plaintiff SANDRA ELLIS is a competent adult and a citizen of Bozeman, Montana.

2. Plaintiff LOREN KRANSKY is a competent adult and a citizen of Miles City, Montana.

3. Plaintiff SHERYL KRANSKY is a competent adult and a citizen of Miles City, Montana.

4. ROES 1-100, inclusive are individuals similarly situated whose true names are not known to Plaintiffs at this time. Plaintiffs will amend their complaint when the true names are discovered.

5. Defendant DEPUY, INC. is, and at all times herein mentioned was, a corporation with its principal place of business in the State of Delaware. Defendant DEPUY, INC. is, and was at all relevant times herein, doing business in California and/or directing its activities in California.

6. Defendant DEPUY ORTHPAEDICS, INC. is, and at all times herein mentioned was, a corporation with its principal place of business in the State of Indiana. Defendant DEPUY ORTHPAEDICS, INC. is, and was at all relevant times herein, doing business in California and/or directing its activities in California.

7. Defendant JOHNSON & JOHNSON, INC. is, and at all times herein mentioned was, a corporation with its principal place of business in the State of New Jersey. Defendant JOHNSON & JOHNSON, INC. is, and was at all relevant times herein, doing business in California and/or directing its activities in California.

8. Defendant JOHNSON & JOHNSON SERVICES, INC. is, and at all times herein mentioned was, a corporation with its principal place of business in the State of New Jersey. Defendant JOHNSON & JOHNSON, INC. is, and was at all relevant times herein, doing business in California and/or directing its activities in California.

9. Defendant SFG MEDICAL, INC. is, and at all times herein mentioned was, a corporation with its principal place of business in the State of California.

10. Defendant THOMAS SCHMALZRIED, M.D., is and at all times herein mentioned was, an individual residing in Los Angeles County in the State of California.

11. Defendant THOMAS VAIL, M.D., is and at all times herein mentioned was, an individual residing in the State of California.

12. Defendant VAIL CONSULTING, LLC, is, and at all times herein mentioned was, a corporation with its principal place of business in the State of North Carolina. Defendant VAIL CONSULTING, LLC is, and was at all relevant times herein, doing business in California and/or directing its activities in California.

13. The true names and capacities, whether individual, corporate, associate or otherwise, of defendants named as DOES 1 through 100, inclusive, are unknown to Plaintiffs who therefore sue such defendants by fictitious names. Plaintiffs will seek leave of this Court to amend this Complaint with the true names and capacities of the DOE defendants when the true names and capacities become known to Plaintiffs. Plaintiffs are informed and believe, and thereon allege that each of the fictitiously named defendants is responsible in some manner for the claims, obligations, and damages sued upon herein.

14. At all times relevant herein, Defendants were the agents of each other, and in doing the things alleged herein, each Defendant was acting within the course and scope of its agency and was subject to and under the supervision of its Co-Defendants

II. VENUE

15. This Court is the proper court because at least one defendant now resides in Los Angeles County. Moreover, the acts that give rise to the damages incurred by some of the Plaintiffs occurred in Los Angeles County.

III. JURISDICTION

16. This action is an unlimited civil case. The relief sought in this complaint is within the jurisdiction of this court.

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IV. GENERAL ALLEGATIONS

A. PRODUCT HISTORY

17. DEPUY, INC.; DEPUY ORTHPAEDICS, INC.; JOHNSON & JOHNSON, INC.; JOHNSON & JOHNSON SERVICES, INC.; SFG MEDICAL, INC.; THOMAS SCHMALZRIED, M.D.; THOMAS VAIL, M.D.; VAIL CONSULTING, LLC; and DOES 1-50, inclusive ("Defendants"), and each of them, manufactured, designed, formulated, constructed, rebuilt, fabricated, produced, marketed, assembled, sold and/or distributed the DePuy ASR Acetabular Hip Systems and the DePuy ASR Hip Resurfacing Systems at all times relevant herein.

18. Patients who received the DePuy ASR Acetabular Hip Systems experienced pain, popping, grinding, lack of mobility, metal sensitivity, loosening of the prosthesis, malalignment of the prosthesis, infection, dislocation, bone fracture, high metal ion levels in their bloodstreams, cyst formation, and the necessity for revision surgery to explant the DePuy ASR Acetabular Hip Systems and the DePuy ASR Hip Resurfacing Systems and replace them with non-defective products.

19. On or about August 24, 2010, the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were recalled.

20. Defendants, and each of them, knew for years before issuing the recall that DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System patients were experiencing the symptoms discussed herein and incorporated by reference.

B. PLAINTIFF SANDRA ELLIS

21. Each and every allegation set forth in the foregoing paragraphs is incorporated by reference as if fully set forth herein.

22. On or about December 7, 2007, Plaintiff Sandra Ellis ("Plaintiff Ellis") underwent a total left hip replacement and received a DePuy ASR Acetabular Hip System orthopaedic implant.

23. Plaintiff Ellis first suspected her injuries were caused by the DePuy ASR Acetabular Hip System on or about September 1, 2010. This is the approximate date that Plaintiff Ellis was contacted by her orthopaedic surgeon and informed that the DePuy ASR Acetabular Hip System orthopaedic implant Plaintiff Ellis had received on or about December 7, 2007 was the subject of a

recall. As a result, Plaintiff Ellis first suspected Defendants' wrongdoing and the aforementioned causal connection only after receiving correspondence from her orthopaedic surgeon.

24. Plaintiff Ellis was reasonably diligent in trying to discover the cause of the complained of injuries. That is, Plaintiff Ellis sought and obtained medical treatment in relation to pain caused by the then unknown and unidentified injuries that were not visually apparent. None of those medical providers from whom Plaintiff Ellis sought treatment for her complained of injuries identified or knew to consider the DePuy ASR Acetabular Hip System orthopaedic implant as a potential cause of Plaintiff Ellis' injuries. Moreover, Plaintiff Ellis does not have the medical training that would have enabled her to identify the cause of the injuries of which she complained.

25. Plaintiff Ellis was unable to discover the cause of her complained of injuries because: (1) it is difficult for a patient to distinguish between the pain caused by the underlying total hip replacement and the pain caused by an injury resulting from the use of the DePuy ASR Acetabular Hip System orthopaedic implant; (2) it was counter-intuitive that the medical device prescribed to mitigate pain and heal injuries, in fact, resulted in pain and caused injuries; (3) the Defendants, and each of them, concealed facts by contending that the DePuy ASR Acetabular Hip System orthopaedic implant is not harmful and does not cause injuries; and (4) the Defendants, and each of them, failed to adequately warn their users of the harms posed by the DePuy ASR Acetabular Hip System orthopaedic implant.

26. As a direct and proximate result of the acts and omissions of Defendants, and each of them, Plaintiff Ellis has suffered significant harm, including, but not limited to, physical injury, pain, bodily impairment, debilitating lack of mobility, high levels of toxic metal in her blood stream, conscious pain and suffering and loss of earnings.

27. In addition, as a direct and proximate result of the acts and omissions of Defendants, and each of them, Plaintiff Ellis is informed and believes that she will be required to undergo a surgical revision, wherein the defective DePuy ASR Acetabular Hip System orthopaedic implant will be removed and replaced with a non-defective product. As a result of that revision surgery, Plaintiff Ellis will suffer harm, including, but not limited to, physical injury, bodily impairment, loss of enjoyment of life, conscious pain and suffering and loss of earnings.

C. PLAINTIFF LOREN KRANSKY

28. Each and every allegation set forth in the foregoing paragraphs is incorporated by reference as if fully set forth herein.

29. On or about December 5, 2007, Plaintiff Loren Kransky ("Plaintiff Kransky") underwent a total left hip replacement and received a DePuy ASR Acetabular Hip System orthopaedic implant.

30. Plaintiff Kransky first suspected his injuries were caused by the ASR Acetabular Hip System on or about December 6, 2010. This is the approximate date that Plaintiff Kransky was contacted by Broadspire Services on behalf of Johnson & Johnson and informed that the DePuy ASR Acetabular Hip System orthopaedic implant Plaintiff Kransky had received on or about December 5, 2007 was the subject of a recall. As a result, Plaintiff Kransky first suspected Defendants' wrongdoing and the aforementioned causal connection only after receiving correspondence from Broadspire.

31. Plaintiff Kransky was reasonably diligent in trying to discover the cause of his complained of injuries. That is, Plaintiff Kransky sought and obtained medical treatment in relation to pain caused by the then unknown and unidentified injuries that were not visually apparent. None of those medical providers from whom Plaintiff Kransky sought treatment for his complained of injuries identified or knew to consider the DePuy ASR Acetabular Hip System orthopaedic implant as a potential cause of Plaintiff Kransky's injuries. Morcover, Plaintiff Kransky does not have the medical training that would have enabled him to identify the cause of the injuries of which he complained.

32. Plaintiff Kransky was unable to discover the cause of his complained of injuries because: (1) it is difficult for a patient to distinguish between the pain caused by the underlying total hip replacement and the pain caused by an injury resulting from the use of the DePuy ASR Acetabular Hip System orthopaedic implant; (2) it was counter-intuitive that the medical device prescribed to mitigate pain and heal injuries, in fact, resulted in pain and caused injuries; (3) the Defendants, and each of them, concealed facts by contending that the DePuy ASR Acetabular Hip System orthopaedic implant is not harmful and does not cause injuries; and (4) the Defendants, and each of them, failed to adequately warn their users of the harms posed by the DePuy ASR Acetabular Hip System orthopaedic implant.

33. As a direct and proximate result of the acts and omissions of Defendants, and each of them, Plaintiff Kransky has suffered significant harm, including, but not limited to, physical injury, pain, bodily impairment, debilitating lack of mobility, conscious pain and suffering and high levels of toxic metal in his blood system.

34. In addition, as a direct and proximate result of the acts and omissions of Defendants, and each of them, Plaintiff Kransky is informed and believes he will have to undergo revision surgery, wherein the defective DePuy ASR Acetabular Hip implant will be removed and replaced with a non-defective product.

35. Plaintiff Kransky is informed and believes that in the near future, he will be required to have the DePuy ASR Acetabular Hip implant explanted from his right hip joint and replaced with a non-defective product. As a result of that revision surgery, Plaintiff Kransky will suffer harm, including, but not limited to, physical injury, bodily impairment, loss of enjoyment of life, conscious pain and suffering and loss of earnings.

D. PLAINTIFF SHERYL KRANSKY

36. Plaintiff Sheryl Kransky is the wife of Plaintiff Loren Kransky.

37. Plaintiff Sheryl Kransky has been harmed as a direct and proximate result of the harm Defendants caused to her husband, Plaintiff Loren Kransky.

38. Plaintiff Sheryl Kransky has suffered, and will continue to suffer, the loss of her husband's companionship and services, including, but not limited to, the loss of love, comfort, care, assistance, protection, affection, society, moral support; and the loss of the enjoyment of sexual relations.

E. ALLEGATIONS JUSTIFYING JOINDER OF THE PLAINTIFFS

39. **Each Plaintiff Complains Solely About the Same Defendants and the Same Injurious Conduct of Those Defendants, and Each of Them**: Each Plaintiff complains solely about the same Defendants and the same injurious conduct of each of those Defendants in causing the Plaintiffs' harm. Defendants, and each of them, manufactured, designed, formulated, constructed, rebuilt, fabricated, produced, marketed, assembled, sold and/or distributed the metal on metal DePuy ASR Acetabular Hip System and the metal on metal DePuy ASR Hip Resurfacing System. As a result

of the same acts and omissions of Defendants, and each of them, with respect to the metal on metal DePuy ASR Acetabular Hip System and the metal on metal DePuy ASR Hip Resurfacing System, Plaintiffs suffered the same harm described herein and incorporated herein by reference.

40. **Each Plaintiff Complains About the Same Product – A DePuy Acetabular Cup and Femoral Head Hip Implant System**: Each Plaintiff underwent either a total hip replacement or a hip resurfacing procedure and was implanted with a metal on metal DePuy ASR Acetabular Hip System or a metal on metal DePuy ASR Hip Resurfacing System. Each of these hip implant systems were manufactured, designed, formulated, constructed, rebuilt, fabricated, produced, marketed, assembled, sold and/or distributed by Defendants, and each of them. Each system consists of a metal acetabulum cup (hip socket) and a femoral head (ball) of the hip joint.

41. **Each Plaintiff's Injuries Were Caused by the Same Defects in the DePuy Hip Implant**: Each Plaintiff suffered injuries as a result of the same defective nature of the metal on metal DePuy ASR Acetabular Hip System or the metal on metal DePuy ASR Hip Resurfacing System. The defects in each of these orthopaedic hip implant systems arise directly from the same manufacturing, designing, formulating, constructing, rebuilding, fabricating, producing, marketing, assembling, selling and/or distributing practices by Defendants, and each of them.

42. **Each Plaintiff Complains of the Same Injuries**: Each Plaintiff has suffered similar, and in some cases identical, injuries as a result of receiving the DePuy hip implant systems. Each Plaintiff suffered a physical injury, bodily impairment, conscious pain and suffering, high levels of toxic metal in their bloodstreams, loss of enjoyment of life and the medical need for a surgical revision consisting of removing the implanted DePuy hip system and replacing it with a non-defective total hip replacement orthpaedic implant.

43. **Each Injury Was Caused by the Same Process**: Each Plaintiffs' similar injuries were caused by the same injury-causing process. Specifically, the implantation of a defective hip implant device consisting of a metal acetabulum cup (socket) and a femoral stem (ball) of the hip joint that caused pain, popping, grinding, lack of mobility, metal sensitivity, loosening of the prosthesis, infection, dislocation, bone fracture, high metal ion levels in their bloodstreams, cyst formation, loss of

enjoyment of life and the necessity for revision surgery to explant the DePuy hip implant systems and replace them with non-defective products.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION – NEGLIGENCE

(Against All Named and DOE Defendants)

44. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

45. Defendants, and each of them, owed Plaintiffs a duty to exercise reasonable care in the testing, manufacturing, designing, formulating, constructing, rebuilding, fabricating, producing, marketing, assembling, selling and/or distributing of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System to avoid exposing Plaintiffs to a reasonably foreseeable risk of harm.

46. Defendants, and each of them, breached their duties by failing to exercise reasonable care in the testing, manufacturing, designing, formulating, constructing, rebuilding, fabricating, producing, marketing, assembling, selling, distributing or issuance of warnings for the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System and providing products that Defendants knew, or should have known, of the likelihood and severity of potential harm from the products, including, but not limited to, pain, popping, grinding, lack of mobility, metal sensitivity, loosening of the prosthesis, infection, dislocation, bone fracture, high metal ion levels in their bloodstreams, cyst formation, and the necessity for revision surgery to explant the hip devices and replace them with non-defective products. Moreover, the likelihood and severity of harm was not outweighed by the lesser burden of taking safety measures to reduce or avoid that harm.

47. Plaintiffs suffered the harms described herein and incorporated herein by reference.

48. The negligence of Defendants, and each of them, was a substantial factor in causing Plaintiffs' harm.

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SECOND CAUSE OF ACTION FOR PRODUCTS LIABILITY – STRICT LIABILITY – MANUFACTURING DEFECT

(Against All Named and DOE Defendants)

49. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

50. The DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System contained a manufacturing defect when they left the possession of Defendants, and each of them.

51. Plaintiffs, and each of them, used the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System in a reasonably foreseeable manner.

52. The defect of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System was a substantial factor in causing the harm of Plaintiffs, and each of them.

53. As a direct and proximate result of being implanted with the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System, and the negligent acts and omissions of Defendants, and each of them, Plaintiffs, and each of them, suffered the harm described herein and incorporated herein by reference.

THIRD CAUSE OF ACTION FOR PRODUCTS LIABILITY – STRICT LIABILITY – DESIGN DEFECT

(Against All Named and DOE Defendants)

54. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

55. The DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System did not perform as safely as an ordinary consumer would have expected at the time of use.

56. Plaintiffs, and each of them, were harmed as described herein while using the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System in a reasonably foreseeable manner.

57. The failure of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System to perform safely was a substantial factor in causing the harm described herein to Plaintiffs, and each of them.

58. The design of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System was a substantial factor in causing the harm described herein to Plaintiffs, and each of them.

FOURTH CAUSE OF ACTION FOR PRODUCTS LIABILITY – STRICT LIABILITY – FAILURE TO WARN

(Against All Named and DOE Defendants)

59. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

60. The DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System had potential risks that were known at the time of manufacture, distribution or sale.

61. The potential risks presented a substantial risk of danger to users of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System.

62. Ordinary consumers would not have recognized the potential risks of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System.

63. Defendants, and each of them, failed to adequately warn of the potential risks of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System.

64. Plaintiffs, and each of them, were harmed as described herein while using the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System in a reasonably foreseeable manner.

65. The lack of sufficient warnings was a substantial factor in causing the harm described herein to Plaintiffs, and each of them.

FIFTH CAUSE OF ACTION FOR PRODUCTS LIABILITY – STRICT LIABILITY – FAILURE TO ADEQUATELY TEST

(Against All Named and DOE Defendants)

66. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

67. Defendants designed, manufactured, tested, marketed and distributed into the stream of commerce the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System.

68. Defendants advised consumers that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were safe and effective hip replacement devices. Defendants failed to adequately test the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System to ensure that the devices were not prone to early failure and that they would not cause metal contamination of the patient's body, unnecessary physical injury, pain and suffering, debilitation, the need for revision surgery to replace the DePuy device or the attendant risks associated with additional surgery, including, but not limited to, infection, complications and death.

69. If the Defendants had adequately tested the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System and disclosed the results of those tests to the public, Plaintiffs would not have elected to have the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System surgically implanted into their bodies.

70. As a direct and proximate result of Defendants' placement of the defective DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System into the stream of commerce, Plaintiffs have suffered significant damages, including, but not limited to, physical therapy, economic loss, pain and suffering, and the need for further surgery to replace the faulty devices. Plaintiffs will continue to suffer damages in the future.

71. Defendants' actions and omissions as described herein caused Plaintiffs' damages and, therefore, Defendants are guilty of malice, oppression and fraud, and Plaintiffs are thereby entitled to recover punitive damages from the Defendants.

SIXTH CAUSE OF ACTION FOR PRODUCTS LIABILITY – STRICT LIABILITY – BREACH OF EXPRESS WARRANTY

(Against All Named and DOE Defendants)

72. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

73. Defendants, and each of them, made a statement of fact or a promise to, which was received by, Plaintiffs, and each of them, that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were state of the art orthopaedic hip implants that would last 15-20 years; would not cause pain, popping, grinding, lack of mobility, metal sensitivity, loosening of the

prosthesis, infection, dislocation, bone fracture, high metal ion levels in their bloodstreams, cyst formation, or the necessity for revision surgery within a couple of years to explant the DePuy devices and replace them with non-defective orthopaedic implants.

74. The DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System did not perform as stated or promised by Defendants, and each of them, insofar as they were defective and did not conform to the express statements made by Defendants, and each of them

75. Plaintiffs, and each of them, took reasonable steps to notify Defendants, and each of them, within a reasonable time, that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were not as represented, whether or not Defendants, and each of them, received such notice.

76. Plaintiffs, and each of them, were harmed as described herein.

77. The failure of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System to be as represented by Defendants, and each of them, was a substantial factor in causing the harm to Plaintiffs, and each of them, described herein.

SEVENTH CAUSE OF ACTION FOR PRODUCTS LIABILITY – STRICT LIABILITY – BREACH OF IMPLIED WARRANTY

(Against All Named and DOE Defendants)

78. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

79. At the time Plaintiffs, and each of them, purchased and were implanted with the device described herein, Defendants, and each of them, were in the business of manufacturing, designing, formulating, constructing, rebuilding, fabricating, producing, marketing, assembling, selling and/or distributing orthopaedic hip implants or by their occupations held themselves out as having special knowledge or skill regarding orthopaedic hip implants.

80. The DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were not of the same quality as those generally acceptable in the trade. The DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were not fit for the ordinary purposes for which such goods are used.

81. Plaintiffs, and each of them, took reasonable steps to notify DEFENDANTS, and each of them, within a reasonable time that the DePuy ASR Acetabular Hip System, the DePuy ASR Hip Resurfacing System and the DePuy Pinnacle hip systems did not have the expected quality.

82. Plaintiffs, and each of them, were harmed as described herein.

83. The failure of the DePuy ASR Acetabular Hip System, the DePuy ASR Hip Resurfacing System and the DePuy Pinnacle hip systems to have the expected quality was a substantial factor in causing the harm described herein to Plaintiffs, and each of them.

EIGHTH CAUSE OF ACTION FOR PRODUCTS LIABILITY – STRICT LIABILITY – BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

(Against All Named and DOE Defendants)

84. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

85. Plaintiffs, and each of them, purchased the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System from Defendants, and each of them.

86. At the time of purchase, Defendants, and each of them, knew or had reason to know that Plaintiffs intended to use the product for a particular purpose.

87. At the time of purchase, Defendants, and each of them, knew or had reason to know that Plaintiffs were relying on Defendants' skill and judgment to select or furnish a product that was suitable for the particular purpose.

88. Plaintiffs justifiably relied on Defendants' skill and judgment.

89. The DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were not suitable for Plaintiffs' particular purpose.

90. Plaintiffs took reasonable steps to notify Defendants, and each of them, within a reasonable time that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were not suitable.

91. Plaintiffs suffered the harm described herein and incorporated herein.

92. The failure of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System to be suitable was a substantial factor in causing Plaintiffs' harm.

NINTH CAUSE OF ACTION– FRAUDULENT CONCEALMENT

(Against All Named and DOE Defendants)

93. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

94. Defendants, and each of them, had a duty to disclose all material facts about the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System.

95. Defendants, and each of them, concealed or suppressed material facts about the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System. Specifically, Defendants concealed the material fact that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System would fail before the standard 15-20 year hip orthopaedic implant lifespan and cause pain, popping, grinding, lack of mobility, metal sensitivity, loosening of the prosthesis, infection, dislocation, bone fracture, high metal ion levels in their bloodstreams, cyst formation, and the necessity for revision surgery to explant the DePuy devices and replace them with non-defective products.

96. Defendants, and each of them, intentionally concealed or suppressed the material facts with the intent to defraud Plaintiffs.

97. Plaintiffs were unaware of these material facts and would not have acted as they did in allowing the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System to be implanted in their bodies if they had known of the concealed or suppressed material facts.

98. As a result of the concealment or suppression of the material facts, Plaintiffs suffered the harm described herein and incorporated herein.

99. In taking the actions and omissions that caused these damages, Defendants, and each of them, are guilty of malice, oppression, and fraud, and Plaintiffs are therefore entitled to seek and recover punitive damages.

TENTH CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION

(Against All Named and DOE Defendants)

100. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

101. Defendants, and each of them, represented to Plaintiffs that an important fact was true. Specifically, Defendants represented that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were safe and effective orthopaedic hip implants that would not fail before the standard 15-20 year lifespan of an orthopaedic hip implant and would not cause pain, popping, grinding, lack of mobility, metal sensitivity, loosening of the prosthesis, infection, dislocation, bone fracture, high metal ion levels in their bloodstreams, cyst formation, and the necessity for revision surgery to explant the DePuy devices and replace them with non-defective products.

102. Defendants' representations were false.

103. Defendants, and each of them, knew that the representations were false when they made them or made the representations recklessly without regard for the truth.

104. Defendants, and each of them, intended that Plaintiffs rely on their representations.

105. Plaintiffs, and each of them, reasonably relied on the representations of Defendants, and each of them.

106. Plaintiffs suffered the harm described herein and incorporated herein.

107. Plaintiffs' reliance on Defendants' representations was a substantial factor in causing Plaintiffs' harm.

108. In taking the actions and omissions that caused these damages, Defendants, and each of them, are guilty of malice, oppression, and fraud, and Plaintiffs are therefore entitled to seek and recover punitive damages.

ELEVENTH CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION

(Against All Named and DOE Defendants)

109. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

110. Defendants, and each of them, represented to Plaintiffs that an important fact was true. Specifically, Defendants represented that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were safe and effective orthopaedic hip implants that would not fail before the standard 15-20 year lifespan of an orthopaedic hip implant and would not cause pain, popping, grinding, lack of mobility, metal sensitivity, loosening of the prosthesis, infection, dislocation, bone

fracture, high metal ion levels in their bloodstreams, cyst formation, and the necessity for revision surgery to explant the DePuy devices and replace them with non-defective products.

111. Defendants' representations were false.

112. Although Defendants, and each of them, may have honestly believed that the representations were true, Defendants had no reasonable grounds for believing the representations were true at the time they made the representations.

113. Defendants, and each of them, intended that Plaintiffs rely on their representations.

114. Plaintiffs, and each of them, reasonably relied on the representations of Defendants, and each of them.

115. Plaintiffs suffered the harm described herein and incorporated herein.

116. Plaintiffs' reliance on Defendants' representations was a substantial factor in causing Plaintiffs' harm.

117. In taking the actions and omissions that caused these damages, Defendants, and each of them, are guilty of malice, oppression, and fraud, and Plaintiffs are therefore entitled to seek and recover punitive damages.

TWELFTH CAUSE OF ACTION FOR PRODUCTS LIABILITY – STRICT LIABILITY – NEGLIGENCE - RECALL

(Against All Named and DOE Defendants)

118. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

119. Defendants, and each of them, knew or reasonably should have known that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were dangerous or likely to be dangerous when used in a reasonably foreseeable manner.

120. Defendants, and each of them, became aware of this defect after the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were distributed or sold.

121. Defendants, and each of them, failed to recall or warn of the danger of the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System even after they learned of complaints that the product caused harm.

122. A reasonable manufacturer, distributor or seller under the same or similar circumstances would have recalled the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System in advance of the date Defendants recalled the products.

123. Plaintiffs, and each of them, suffered the harm described herein and incorporated herein.

124. The failure of Defendants, and each of them, to recall the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System was a substantial factor in causing Plaintiffs' harm.

THIRTEENTH CAUSE OF ACTION

UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA B & P CODE SEC. 17200, ET SEQ.

(Against All Named and DOE Defendants)

125. Plaintiffs incorporate by reference, as if fully set forth herein, each and every allegation set forth in the preceding paragraphs.

126. California's Unfair Competition Law (UCL) creates a cause of action for those harmed by unfair competition, which includes "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

127. Defendants have made numerous misrepresentations to Plaintiffs and the general public. Among those misrepresentations are Defendants' claims that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were safe and effective hip replacement systems. Defendants claimed that the devices were based on "strong clinical history," and that the devices would allow patients to "return to their more active lifestyles."

128. Defendants failed to disclose to Plaintiffs and the general public the results of research showing that the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System were subject to early failure, which caused a need for revision surgery to remove the DePuy devices, resulting in unnecessary pain and suffering and further surgical risks.

129. Defendants' business practices relating to the DePuy ASR Acetabular Hip System and the DePuy ASR Hip Resurfacing System are unlawful because they constitute false advertising, intentional misrepresentation and fraudulent concealment.

130. As a direct and proximate result of Defendants' unlawful business practices and false advertising, Plaintiffs have suffered significant damages, including but not limited to physical injury and actual loss of money or property, and will continue to suffer such damages in the future.

131. Plaintiffs hereby request an order of this Court awarding damages, restitution, disgorgement, injunctive relief, attorneys' fees and costs and all other relief allowed under California Business and Professions Code Section 17200 et seq.

FOURTEENTH CAUSE OF ACTION FOR LOSS OF CONSORTIUM AS TO PLAINTIFF SHERYL KRANSKY ONLY

(Against All Named and DOE Defendants)

132. Plaintiff Sheryl Kransky is the wife of Plaintiff Loren Kransky.

133. Plaintiff Sheryl Kransky has been harmed as a direct and proximate result of the harm Defendants caused to her husband, Plaintiff Loren Kransky.

134. Plaintiff Sheryl Kransky has suffered, and will continue to suffer, the loss of her husband's companionship and services, including, but not limited to, the loss of love, comfort, care, assistance, protection, affection, society, moral support; and the loss of the enjoyment of sexual relations.

WHEREFORE, Plaintiffs, and each of them, pray for judgment against Defendants, and each of them, as follows:

1. For general damages according to proof at the time of trial.
2. For medical and incidental expenses according to proof at the time of trial.
3. For wage loss and loss of earning capacity.
4. For punitive and/or exemplary damages.
5. For pre-judgment interest according to proof at the time of trial.
6. For costs of suit and attorney fees herein incurred.

7. For restitution and disgorgement of all revenue that Defendants have obtained through the manufacture, marketing, sale and administration of the DePuy ASR Acetabular Hip System, the DePuy ASR Hip Resurfacing System and the DePuy Pinnacle hip systems;

8. For such other and further relief, both legal and equitable, as the court may deem just and proper.

The exact nature and extent of Plaintiffs' damages have not yet been calculated, and Plaintiffs will seek leave of Court to amend this complaint to conform to proof at the time of trial.

JURY DEMAND

Plaintiffs demand a jury trial for all claims so triable.

Attorneys for Plaintiffs

Dated: February 13, 2012

THE GOMEZ LAW FIRM

John H. Gomez, Esq.
Theresa K. Bowen, Esq.

LAW OFFICES OF DEAN GOETZ

Dean Goetz

PROOF OF SERVICE VIA LEXIS-NEXIS FILE & SERVE

Sandra Ellis, Loren Kransky, et al. v. DePuy et al, Case No. BC456086

I, Nancy Fournier, declare that: I am over the age of eighteen years and not a party to the case. My business address is: 625 Broadway, Suite 1200, San Diego, California. On February 13, 2012, I caused the following document(s) to be served:

First Amended Complaint for Damages

Pursuant to the Court's Order Regarding Electronic Service, the above-named document has been electronically served on counsel of record by transmission through the LexisNexis File and Serve system on the date below. The transmission of this document to the LexisNexis File & Serve Transaction Receipt will be maintained along with the original document(s) and proof of service in our office.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Executed on February 13, 2012, at San Diego, California.

Nancy A. Fournier